Revised Remedial Law Reviewer

Elmer P. Brabante
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TO GOD BE ALL THE HONOR AND GLORY!
PART I
CIVIL PROCEDURE
Rules 1 - 71
I. GENERAL PRINCIPLES

Concept of Remedial Law

(1) **Bar 2006**: What is the concept of remedial law? (2%)  
The concept of Remedial Law lies at the very core of procedural due process, which means a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial, and contemplates an opportunity to be heard before judgment is rendered. Remedial Law is that branch of law which prescribes the method of enforcing rights or obtaining redress for their invasion (*Bustos vs. Lucero, GR No. L-2068, 08/20/1948; First Lepanto Ceramics, Inc. vs. CA, GR No. 110571, 03/10/1994; Albert vs. University Publishing, GR No. L-19118, 01/30/1965*).

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

(3) **Bar 2006**: How are remedial laws implemented in our system of government? (2%)  
Remedial laws are implemented in our system of government through the pillars of the judicial system, including the prosecutor service, our courts of justice and quasi-judicial agencies.

Substantive Law Distinguished from Remedial Law

(1) **2006 Bar**: Distinguish between substantive law and remedial law (2%)  
Substantive law creates, defines and regulates rights and duties regarding life, liberty or property which when violated gives rise to a cause of action. Remedial law prescribes the methods of enforcing those rights and obligations created by substantive law by providing a procedural system for obtaining redress for the invasion of rights and violations of duties and by prescribing rules as to how suits are filed, tried and decided by the courts (*Bustos vs. Lucero, supra.*).

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

Meaning of Procedural Laws

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

(2) **Bar 1998**: How shall the Rules of Court be construed? (2%)  
The Rules of Court should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding (Sec. 6, Rule 1).
Rule-Making Power of the Supreme Court

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

Limitations of the Rule-making Power of the Supreme Court

(1) The rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases.
(2) They shall be uniform for all courts of the same grade.
(3) They shall not diminish, increase, or modify substantive rights (Sec. 5[5], Art. VIII, Constitution).
(4) The power to admit attorneys to the Bar is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice or personal hostility, but is the duty of the court to exercise and regulate it by a sound and judicial discretion. (Andres vs. Cabrera, 127 SCRA 802)

Power of the Supreme Court to Amend and Suspend Procedural Rules

(1) When compelling reasons so warrant or when the purpose of justice requires it. What constitutes a good and sufficient cause that would merit suspension of the rules is discretionary upon courts. (CIR v. Migrant Pagbilao Corp., GR No. 159593, 10/12/2006). 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 ay 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, 02/05/2007).
(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. vs. 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, 07/30/2006).
(6) Procedural rules may be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure. More so, when to allow the assailed decision to go unchecked would set a precedent that will sanction a violation of substantive law (Phil. Economic Zone Authority vs. Carates, GR Ni, 181274, 07/23/2010).
(7) The bare invocation of the interest of substantial justice is not a magic wand that will automatically compel the Court to suspend procedural rules. The rules may be relaxed
only in exceptionally meritorious cases. (Mapagay vs. people, GR No. 178984, 08/19/2009).

Nature of Philippine Courts

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

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

What is a Court

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

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

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

Court distinguished from Judge

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

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

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

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

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

Classification of Philippine Courts

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

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

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

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

(2) Metropolitan Trial Courts (MeTC), Municipal Circuit Trial Courts (MCTCs) and Municipal Trial Courts (MTCs) are courts of original jurisdiction without appellate jurisdiction. Regional Trial Court (RTC) is likewise a court of original jurisdiction with respect to cases originally filed with it; and appellate court with respect to cases decided by MTCs within its territorial jurisdiction (Sec. 22, BP 129).

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

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

Courts of General and Special Jurisdiction

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

(2) A court may also be considered ‘general’ if it has the competence to exercise jurisdiction over cases not falling within the jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions. It is in 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) The Principle of Judicial Hierarchy of Courts most certainly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed with the RTC and those against the latter should be filed in the Court of Appeals. This rule, however, may be relaxed when pure questions of law are raised (Miaque vs. Patag, GR Nos. 179069-13, 01/30/2009).

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

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

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

**Doctrine of Judicial Courtesy**

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

**Doctrine of Non-interference or Doctrine of Judicial Stability**

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

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

(1) Jurisdiction is the power and authority of the court to hear, try and decide a case.
(2) Jurisdiction is not only the power of the court to hear and decide cases; it includes the power to execute decisions (Secretary of Justice vs. Echegaray, 301 SCRA 96).
(3) Jurisdiction is conferred by law based on the facts alleged in the complaint since the latter comprises a concise statement of the ultimate facts constituting the plaintiff's causes of action (Sante vs. Claravall, GR No. 173915, 02/22/2010).

Jurisdiction over the Parties

(1) The manner by which the court acquires jurisdiction over the parties depends on whether the party is the plaintiff or the defendant.
(2) Jurisdiction over the plaintiff is acquired by his filing of the complaint or petition and the payment of correct docket fee. By doing so, he submits himself to the jurisdiction of the court.
(3) Jurisdiction over the person of the defendant is obtained either by a valid service of summons upon him or by his voluntary submission to the court's authority.
(4) The mode of acquisition of jurisdiction over the plaintiff and the defendant applies to both ordinary and special civil actions like mandamus or unlawful detainer cases.

How jurisdiction over plaintiff is acquired

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

How jurisdiction over defendant is acquired

(1) Jurisdiction over the person of the defendant is required only in an action in personam; it is not a prerequisite in an action in rem and quasi in rem. In an action in personam, jurisdiction over the person is necessary for the court to validly try and decide the case, while in a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided the latter has jurisdiction over the res.
(2) By voluntary appearance of the defendant, without service of summons or despite a defective service of summons. The defendant’s voluntary appearance in the action shall be equivalent to service of summons.
(3) Instances when the appearance of the defendant is not tantamount to voluntary
submission to the jurisdiction of the court:
(a) when defendant files the necessary pleading;
(b) when defendant files motion for reconsideration of the judgment by default;
(c) when defendant files a petition to set aside the judgment of default;
(d) when the parties jointly submit a compromise agreement for approval of the court;
(e) when defendant files an answer to the contempt charge;
(f) when defendant files a petition for certiorari without questioning the court’s
jurisdiction over his person.

(4) A defendant who files a motion to dismiss, assailing the jurisdiction of the court over his
person, together with other grounds raised therein, is not deemed to have appeared
voluntarily before the court. What the rule on voluntary appearance means is that the
voluntary appearance of the defendant in court is without qualification, in which case he
is deemed to have waived his defense of lack of jurisdiction over his person due to
improper service of summons (Lhuillier vs. British Airways, GR No. 171092, 03/15/2010).

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

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

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
confering jurisdiction.

(3) The exclusion of the term “damages of whatever kind” in determining the jurisdictional
amount under Section 19 [8] and Section 33 [1] of BP 129, as amended by RA 7691,
applies to cases where the damages are merely incidental to or a consequence of the main cause of action. However, in cases where the claim for damages is the main cause of action, or one of the causes of action, the amount of such claim shall be considered in determining the jurisdiction of the court (Sante vs. Claravall, supra).

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

### Jurisdiction versus exercise of jurisdiction

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

### Error of jurisdiction vs. error of judgment

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

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

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

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

### How jurisdiction is conferred and determined

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

(2) It is the duty of the court to consider the question of jurisdiction before it looks at other matters involved in the case. If the court finds that it has jurisdiction, it is the duty of the court to exercise the jurisdiction conferred upon it by law and to render a decision in a case properly submitted to it. It cannot decline to exercise its jurisdiction. Failure to do so may be enforced by way of mandamus proceeding.
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 (Omcintin vs. CA, GR 148004, January 22, 2007).

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

Doctrine of adherence of jurisdiction / continuity of jurisdiction

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

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

Objection to jurisdiction over the subject matter

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

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

(3) Under the omnibus motion rule, a motion attacking a pleading like a motion to dismiss shall include all grounds then available and all objections not so included shall be deemed waived. The defense of lack of jurisdiction over the subject matter is however, a defense not barred by the failure to invoke the same in a motion to dismiss already filed. Even if a motion to dismiss was filed and the issue of jurisdiction was not raised therein, a party may, when he files an answer, raise the lack of jurisdiction as an affirmative defense because this defense is not barred under the omnibus motion rule.
Effect of estoppel on objection to jurisdiction

(1) The active participation of a party in a case is tantamount to the recognition of that court’s jurisdiction and will bar a party from impugning the court’s jurisdiction. Jurisprudence however, did not intend this statement to lay down the general rule. (Lapanday Agricultural & Development Corp. v. Estita, 449 SCRA 240; Mangailag 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, 02/06/2007).

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

(3) The 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 (initiatory pleadings or complaint and not the answer) of the parties. The pleadings present the issues to be tried and determine whether or not the issues are of fact or law.
(4) Jurisdiction over the issues may also be determined and conferred by stipulation of the parties as when in the pre-trial, the parties enter into stipulations of facts and documents or enter into agreement simplifying the issues of the case.
(5) It may also be conferred by waiver or failure to object to the presentation of evidence on a matter not raised in the pleadings. Here the parties try with their express or implied consent issues not raised by the pleadings. The issues tried shall be treated in all respects as if they had been raised in the pleadings.

Jurisdiction over the res or property in litigation

(1) Jurisdiction over the res refers to the court’s jurisdiction over the thing or the property which is the subject of the action. Jurisdiction over the res may be acquired by the court by placing the property 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.

(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, NLRC, 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, CTA en banc, Sandiganbayan, RTC on pure questions of law; and in cases involving the constitutionality or validity of a law or treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation, legality of a tax, impost, assessment, toll or penalty, jurisdiction of a lower court; and CTA in its decisions rendered en banc.

(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; ad
   (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.

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

(5) 2006 Bar: Does the Court of Appeals have jurisdiction to review the decisions in criminal and administrative cases of the Ombudsman? (2.5%) Answer: The Supreme Court has exclusive appellate jurisdiction over decisions of the Ombudsman in criminal cases (Sec. 14, RA 6770). In administrative and disciplinary cases, appeals from the Ombudsman must be taken to the Court of Appeals under Rule 43 (Lanting vs. Ombudsman, GR No. 141426, 05/06/2005; Fabian vs. Desierto, GR No. 129742, 0916/1998; Sec. 14, RA 6770).

(6) 2008 Bar: Give at least three instances where the Court of Appeals may act as a trial court. (3%) Answer: The Court of Appeals may act as a trial court in the following instances:

(a) In annulment of judgments (Secs. 5 and 6, Rule 47);

(b) When a motion for new trial is granted by the Court of Appeals (Sec. 4, Rule 53);

(c) A petition for habeas corpus shall be set for hearing (Sec. 12, Rule 102);

(d) To resolve factual issues in cases within its original and appellate jurisdiction (Sec. 12, Rule 124);

(e) In cases of new trial based on newly discovered evidence (Sec. 14, Rule 124);

(f) In cases involving claims for damages arising from provisional remedies;

(g) In writ of amparo proceedings (AM No. 07-9-12-SC);

(h) In writ of kalikasan proceedings (Rule 7, AM No. 09-6-8-SC);

(i) In writ of habeas data proceedings (AM No. 08-1-16-SC).

**Jurisdiction of the Court of Tax Appeals**

*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 counterveiling duties under Secs. 301 and 302, respectively, of the Tariff and Customs Code, and safeguard measures under RA 8800, where either party may appeal the decision to impose or not to impose said duties.

(2) Exclusive original jurisdiction

(a) Over all criminal cases arising from violation of the NIRC 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.

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

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

(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.

(3) 2001 Bar: Governor Padro Mario of Tarlac was charged with indirect bribery before the Sandiganbayan for accepting a car in exchange of the award of a series of contracts for medical supplies. The Sandiganbayan, after going over the information, found the same to be valid and ordered the suspension of Mario. The latter contested the suspension claiming that under the law (Sec. 13, RA 3019), his suspension is not automatic upon the filing of the information and his suspension under Sec. 13, RA 3019 is in conflict with Sec. 5 of the Decentralization Act of 1967 (RA 5185). The Sandiganbayan overruled Mario’s contention stating that Mario’s suspension under the circumstances is mandatory. Is the court’s ruling correct? Why? (5%)

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

Jurisdiction of the Ombudsman

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

(2) 2005 Bar: Regional Director AG of the Department of Public Works and Highways was charged with violation of Section 3(e) of Republic Act No. 3019 in the Office of the Ombudsman. An administrative charge for gross misconduct arising from the transaction subject matter of said criminal case was filed against him in the same office. The Ombudsman assigned a team composed of investigators from the Office of the Special Prosecutor and from the Office of the Deputy Ombudsman for the military to conduct a joint investigation of the criminal case and the administrative case. The team of investigators recommended to the Ombudsman that AG be preventively suspended for a period not exceeding six (6) months on its finding that the evidence of guilt is strong. The Ombudsman issued the said order as recommended by the investigators.

AG moved to reconsider the order on the following grounds:

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

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

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

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

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

a. AG’s contention that the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case should be rejected considering that the investigatory powers of the Office of Special Prosecutor is under the supervision of the Office of Ombudsman, which exercises the investigatory and prosecutor powers granted by the Constitution (Office of the Ombudsman vs. Enoc, 374 SCRA 691 [2002]). This is but in accordance with Section 31 of RA 6770 which provides that the Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal state prosecutor or lawyer in the government service to act as special investigator or prosecutors to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

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

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

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

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

### 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 Metro Manila
   
   (d) Admiralty or maritime cases where the demand or claim exceeds P300,000 outside Metro Manila or exceeds P400,000 in Metro Manila
   
   (e) 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 of association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership of association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee.
(4) Concurrent and original jurisdiction
   (a) with the Supreme Court in actions affecting ambassadors, other public ministers and consuls
   (b) with the SC and CA in petitions for certiorari, prohibition and mandamus against lower courts and bodies in petitions for quo warranto, habeas corpus, and writ of continuing mandamus on environmental cases
   (c) with the SC, CA and Sandigabayan in petitions for writs of habeas data and amparo
(5) Appellate jurisdiction over cases decided by lower courts in their respective territorial jurisdictions
(6) Special jurisdiction over JDRC, agrarian and urban land reform cases not within the exclusive jurisdiction of quasi-judicial agencies when so designated by the SC.
(7) 2008 Bar: Jose, Alberto and Romeo were charged with murder. Upon filing of the information, the RTC judge issued the warrants for their arrest. Learning of the issuance of the warrants, the three accused jointly filed a motion for reinvestigation and for the recall of the warrants of arrest. On the date set for hearing of their motion, none of the accused showed up in court for fear of being arrested. The RTC judge denied their motion because the RTC did not acquire jurisdiction over the persons of the movants. Did the RTC rule correctly? (4%)
Answer: The RTC was not entirely correct in stating that it had no jurisdiction over the persons of the accused. By filing motions and seeking affirmative reliefs from the court, the accused voluntarily submitted themselves to the jurisdiction of the court. However, the RTC correctly denied the motion for reinvestigation. Before an accused can move for reinvestigation and the recall of his warrant of arrest, he must first surrender his person to the court (Miranda vs. Tuliao, GR No. 158763, 03/31/2006).

Jurisdiction of Family Courts

(1) Under RA 8369, Family Courts shall have exclusive original jurisdiction over the following cases, whether civil or criminal:
   (a) Petitions for guardianship, custody of children and habeas corpus involving children
   (b) Petitions for adoption of children and the revocation thereof
   (c) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains
   (d) Petitions for support and/or acknowledgment
   (e) Summary judicial proceedings brought under the provisions of EO 209 (Family Code)
   (f) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children, the suspension, termination or restoration of parental authority and other cases cognizable under PD 603, EO 56 (1986) and other related laws
   (g) Petitions for the constitution of the family home
   In areas where there are no Family Courts, the above-enumerated cases shall be adjudicated by the RTC (RA 8369).
(2) 2001 Bar: How should the records of child and family cases in the Family Courts or Regional Trial Court designated by the Supreme Court to handle Family Court cases be treated and dealt with? (3%)
Under what conditions the identity of the parties in child and family cases may be divulged? (2%)
Answer: The records of the child and family cases in the Family Courts or Regional Trial Court designated by the Supreme Court cases shall be dealt with utmost confidentiality (Sec. 12, Family Courts Act of 1997). The identity of the parties in child and family cases shall not be divulged unless necessary and with authority of the judge.

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

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

2. **Civil actions**
   - 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 Metro Manila or does not exceed P400,000 in Metro Manila, exclusive of interest, damages of whatever kind, attorney’s fees, litigation expenses, and costs.
     2. Summary procedure of forcible entry and unlawful detainer, violation of rental law
     3. Title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed P20,000 outside Metro Manila or does not exceed P50,000 in Metro Manila.
     4. Admiralty or maritime cases where the demand or claim is below P300,000 outside Metro Manila or below P400,000 in Metro Manila

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

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

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

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

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

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

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

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

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

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

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

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

Was the municipal trial court correct in its ruling? Why? (5%)

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

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

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

### Jurisdiction of Shari’a Courts

(1) Article 143 of the Muslim Code would reveal that Sharia courts have jurisdiction over real actions when the parties are both Muslims. The fact that the Shari’a courts have concurrent jurisdiction with the regular courts in cases of actions involving real property means that jurisdiction may only be exercised by the said courts when the action involves parties who are both Muslims. In cases where one of the parties is a non-Muslim, the Shari’a Courts cannot exercise jurisdiction over it. It would immediately divest the Shari’a court jurisdiction over the subject matter. (*Villagracia v. Fifth Shari’a District Court and Mala, GR No. 188832, April 23, 2014*).

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

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

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

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

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

3) 1999 Bar: What is the object of the Katarungang Pambarangay Law? (2%)  
Answer: The object of the Katarungang Pambarangay Law is to effect an amicable settlement of disputes among family and barangay members at the barangay level without judicial recourse and consequently help relieve the court of docket congestion (Preamble, PD 1508).

Totality Rule

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

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

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

4) 2008 Bar: Fa filed a suit for collection of P387,000 against Ramon in the RTC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney’s fees as a result of the baseless filing of the complaint, as well as P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe. Does the RTC have jurisdiction over Ramon’s counterclaims, and if so, does he have to pay docket fees therefor? (3%)  
Answer: Yes, applying the totality rule which sums up the total amount of claims of the parties, the RTC has jurisdiction over the counter-claims. Unlike in the case of compulsory counterclaims, a defendant who raises a permissive counterclaim must first pay docket fees before the court can validly acquire jurisdiction. One compelling test of compulsoriness is the logical relation between the claim alleged in the complaint and that in the counterclaim. Ramon does not have to pay docket fees for his compulsory counterclaims. Ramon is liable for docket fees only on his permissive counterclaim for the balance of the purchase price of 30 units of air conditioners in the sum of P250,000, as neither arises out of nor is it connected with the transaction or occurrence constituting Fe’s claim (Sec. 19[8] and 33[1], BP 129; AO 04-94 implementing RA 7691, 03/25/1994; Alday vs. FGU Insurance Corp., GR No. 138822, 01/23/2001; Bayer Phil., Inc. vs. CA, GR No. 109269, 09/15/2000).
III. ACTIONS

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

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

Ordinary Civil Actions, Special Civil Actions, Criminal Actions

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

(2) 1998 Bar: Distinguish civil actions from special proceedings. (3%) A civil action is one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong (Sec. 3[a], Rule 1), while a special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact (Sec. 3[c], Rule 1).

Personal Actions and Real Actions

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

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

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

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

(5) The distinction between real action and personal action is important for the purpose of determining the venue of the action. A real action is “local”, which means that its venue depends upon the location of the property involved in the litigation. A personal action is “transitory”, which means that its venue depends upon the residence of the plaintiff or the defendant at the option of the plaintiff.
(6) In personal action, the plaintiff seeks the recovery of personal property, the enforcement of a contract, or the recovery of damages. Real actions, on the other hand, are those affecting title to or possession of real property, or interest therein (Marcos-Araneta vs. CA, GR No. 154096, 08/22/2008).

(7) 2006 Bar: What do you mean by a) real action; and b) personal action? (2%)
Answer: Real actions are actions affecting title to or possession of real property or an interest therein (Fortune Motors, Inc. vs. CA, GR No. 76431, 10/16/1989; Rule 4, Sec. 1). All other actions are personal actions which include those arising from privity of contract.

Local and Transitory Actions

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

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

Actions in rem, in personam and quasi in rem

(1) An action in rem, 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. An action *in rem* is an action against the thing itself instead of against the person. An action *quasi in rem* is one wherein an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or lien burdening the property.

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

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

(7) An action *in personam* is lodged against a person based on personal liability; an action *in rem* is directed against the thing itself instead of the person; while and action *quasi in rem* names a person as defendant, but its object is to subject that person's interest in a property to a corresponding lien or obligation. A petition directed against the “thing” itself or the *res*, which concerns the status of a person, like a petition for adoption, annulment of marriage, or correction of entries in the birth certificate, is an action *in rem* (*Lucas vs. Lucas, GR No. 190710, 06/06/2011*).

(8) An action for injunction is *in personam* since it can be enforced only against the defendant therein (*Dial Corp. vs. Soriano, GR No. 82330, 05/31/1988*).
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). It is the delict or wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff (Chua vs. Metrobank, GR No. 182311, 08/19/2009).

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

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

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

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).

(4) 1999 Bar Question: Distinguish action from cause of action. (2%)
Answer: An action is one by which a party sues another for the enforcement of protection of a right, or the prevention or redress of a wrong (Sec. 3[a], Rule 1). A cause of action is the act or omission by which a party violates a right of another (Sec. 2, Rule 2). An action must be based on a cause of action (Sec. 1, Rule 2).

Failure to State Cause of Action

(1) The mere existence of a cause of action is not sufficient for a complaint to prosper. Even if in reality the plaintiff has a cause of action against the defendant, the complaint may be dismissed if the complaint or the pleading asserting the claim “states no cause of action”. This means that the cause of action must unmistakably be stated or alleged in the complaint or that all the elements of the cause of action required by substantive law must clearly appear from the mere reading of the complaint. To avoid an early
dismissal of the complaint, the simple dictum to be followed is: “If you have a cause of action, then by all means, state it!” Where there is a defect or an insufficiency in the statement of the cause of action, a complaint may be dismissed not because of an absence or a lack of cause of action but because the complaint states no cause of action. The dismissal will therefore, be anchored on a “failure to state a cause of action”.

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

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

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

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

(5) Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause of action refers to a situation where the evidence does not prove the cause of action alleged in the pleading (Lourdes Suites [Crown Hotel Management Corporation] v. Binaro, GR No. 204729, 08/06/2014).

**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 matters *alium ete* 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).
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).

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

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

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

A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action. It is well to point out that the plaintiff's cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient." This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would justify the relief demanded. As a corollary, it has been held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test. This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiff's cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate. Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four corners of the complaint, and no other. (Zuniga-Santos v. Santos-Gran and Register of Deeds of Marikina, GR No. 197380, 10/08/2014).

A complaint is said to assert a sufficient cause of action if, admitting what appears solely on its face to be correct, the plaintiff would be entitled to the relief prayed for. Accordingly, if the allegations furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed, regardless of the defenses that may be averred by the defendants. Petitioners are pushing the case too far ahead of its limits. They are themselves determining that the issue is whether the properties of the corporation can be included in the inventory of the estate of the decedent when the only question to be resolved in a demurrer to evidence is whether based on the evidence, respondents, as already well put in the prior Chua Suy Phen case, have a right to share in the ownership of the corporation. (Capitol Sawmill Corporation v. Chua Gaw, GR No. 187843, 06/09/2014).
Doctrine of Anticipatory Breach

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

Splitting a Single Cause of Action and Its Effects

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

(2) The filing of the first may be pleaded in abatement of the other or others and a judgment upon the merits in any one is available as a bar to, or a ground for dismissal of, the others (Sec. 4, Rule 2; Bacolod City vs. San Miguel, Inc., L-2513, 10/30/1969). The remedy of the defendant is to file a motion to dismiss on the ground of litis pendencia, res judicata, or forum shopping. Hence, if the first action is pending when the second action is filed, the latter may be dismissed based on litis pendencia, there is another action pending between the same parties for the same cause. If a final judgment had been rendered in the first action when the second action is filed, the latter may be dismissed based on res judicata, that the cause of action is barred by prior judgment. As to which action should be dismissed would depend upon judicial discretion and the prevailing circumstances of the case.

(3) 1999 Bar: What is the rule against splitting a cause of action and its effect on the respective rights of the parties for failure to comply with the same? (2%)
Answer: The rule against splitting a cause of action and its effect is that if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment on the merits in any one is available as a ground for the dismissal of the others (Sec. 4, Rule 2).

(4) 2005 Bar: Raphael, a warehouseman, filed a complaint against V Corporation, X Corporation and Y Corporation to compel them to interplead. He alleged therein that the three corporations claimed title and right of possession over the goods deposited in his warehouse and that he was uncertain which of them was entitled to the goods. After due proceedings, judgment was rendered by the court declaring that X Corporation was entitled to the goods. The decision became final and executory.
Raphael filed a complaint against X Corporation for the payment of P100,000.00 for storage charges and other advances for the goods. X Corporation filed a motion to dismiss the complaint on the ground of res judicata. X Corporation alleged that Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances and that for his failure he was barred from interposing his claim. Raphael replied that he could not have claimed storage fees and other advances in his complaint for interpleader because he was not yet certain as to who was liable therefor.
Resolve the motion with reasons. (4%)
Answer: The motion to dismiss should be granted. Raphael should have incorporated in his complaint for interpleader his claim for storage fees and advances. They are part
of Raphael's cause of action which he may not split. The filing of the interpleader is available as a ground for the dismissal of the second case (Sec. 4, Rule 2). It is akin to a compulsory counterclaim which, if not set up, is barred (Sec. 2, Rule 9). The law also abhors the multiplicity of suits; hence, the claim for storage fees should have been made part of his cause of action in the interest of complete adjudication of the controversy and its incidents (Arreza vs. Diaz, 364 SCRA 88 [2001]).

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

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

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

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

4. **1999 Bar**: What is the rule on the joinder of causes of action? (2%)
   Answer: The rule on joinder of causes of action is that a party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, provided that the rule on joinder of parties is complied with; the joinder shall not include special civil actions or actions governed by special rules, but may include causes of action pertaining to different venues or jurisdictions provided, one cause of action falls within the jurisdiction of the Regional Trial Court and venue lies therein; and the aggregate amount claimed shall be the test of jurisdiction where the claims in all the causes of action are principally for the recovery of money. (Sec. 5, Rule 2).

5. **1999 Bar**: A secured two loans from B, one for P500,000.00 and the other for P1,000,000.00, payable on different dates. Both have fallen due. Is B obliged to file only one complaint against A for the recovery of both loans? Explain. (2%)
   Answer: No. Joinder is only permissive since the loans are separate loans which may be governed by the different terms and conditions. The two loans give rise to two separate causes of action and may be the basis of two separate complaints.

6. **2005 Bar**: Perry is a resident of Manila, while Ricky and Marvin are residents of Batangas City. They are the co-owners of a parcel of residential land located in Pasay City with an assessed value of P100,000.00. Perry borrowed P100,000.00 FROM Ricky which he promised to pay on or before December 1, 2004. However, Perry failed to pay his loan. Perry also rejected Ricky and Marvin's proposal to partition the property. Ricky filed a complaint against Perry and Marvin in the Regional Trial Court of Pasay City for the partition of the property. He also incorporated in his complaint his action
against Perry for the collection of the latter’s P100,000.00 loan, plus interests and attorney’s fees.

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

Answer: It was not proper for Ricky to join his causes of action against Perry in his complaint for partition against Perry and Marvin. The causes of action may be between the same parties, Ricky and Perry, with respect to the loan but not with respect to the partition which includes Marvin. The joinder is between a partition and a sum of money, but the partition is a special civil action under Rule 69, which cannot be joined. Also, the causes of action pertains to different venues and jurisdictions. The case for a sum of money pertains to the municipal court and cannot be filed in Pasay City because the plaintiffs from Manila while Ricky and Marvin are from Batangas City (Sec. 5, Rule 2).

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

(b) Those who are not principally or subsidiarily obligated in the contract, in which they had no intervention, may show their detriment that could result from it. For instance, Art. 1313, 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, of 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 or arise if the court provides otherwise (Sec. 21, Rule 3).

(5) Representatives as parties pertain to the parties allowed by the court as substitute parties to an action whereby the original parties become incapacitated of incompetent (Sec. 16, Rule 3). The substitution of a party depends on the nature of the action. If the action is personal, and a party dies 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).

(7) The RTC issued an order denying the petitioners’ motion for leave to litigate as indigents. Petitioners argue that respondent judge did not conduct the proper hearing as prescribed under Section 21, Rule 3 of the Rules of Court. They claimed that private respondents neither submitted evidence nor were they required by respondent judge to submit evidence in support of their motions on the issue of indigency of petitioners. The Supreme Court ruled that the hearing requirement, contrary to petitioners’ claim, was complied with during the hearings on the motions to dismiss filed by respondents. In said hearings, petitioners’ counsel was present and they were given the opportunity to prove their indigency. Clearly, their non-payment of docket fees is one of the grounds raised by respondents in their motions to dismiss and the hearings on the motions were indeed the perfect opportunity for petitioners to prove that they are entitled to be treated as indigent litigants and thus exempted from the payment of docket fees as initially found by the Executive Judge. (Frias v. Judge Sorongon and First Asia Realty Development Corp., GR No. 184827, 02/11/2015).

(8) An indispensable party is one who has an interest in the controversy or subject matter and in whose absence there cannot be a determination between the parties already before the court which is effective, complete or equitable. Such that, when the facilities of a corporation, including its nationwide franchise, had been transferred to another corporation by operation of law during the time of the alleged delinquency, the former cannot be ordered to pay as it is not the proper party to the case. In this case, the transferees are certainly the indispensable parties to the case that must be necessarily included before it may properly go forward. (National Power Corporation v. Provincial Government of Bataan, GR No. 180654, 04/21/2014).

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

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

(11) Under Sections 1 and 2 of Rule 3 of the Rules of Court, only natural and juridical persons or entities authorized by law may be parties to a civil action, which must be prosecuted and defended by a real party-in-interest. A real party-in-interest is the person who stands benefitted or injured to the outcome of the case or is entitled to the avails of the suit. Moreover, under Section 4, Rule 8 of the Rules of Court the facts showing the capacity of a party to sue or be sued or the authority of the party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. *(Association of Flood Victims v. COMELEC, et al., GR No. 203775, 08/05/2014).*

### Compulsory and permissive joinder of parties

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

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

3. **1998 Bar:** Give the effects of the following: Non-joinder of a necessary party. (2%) 
   Answer: The effect of the non-joinder of a necessary party may be stated as follows: The court may order the inclusion of an omitted necessary party if jurisdiction over his person may be obtained. The failure to comply with the order for his inclusion without justifiable cause is a waiver of the claim against such party. The court may proceed with the action but the judgment rendered shall be without prejudice to the rights of such necessary party *(Sec. 9, Rule 3).*

4. **2002 Bar:** P sued A and B in one complaint in the RTC-Manila, the cause of action against A being on an overdue promissory note for P300,000.00 and that against B on an alleged balance of P300,000.00 on the purchase price of goods sold on credit. Does the RTC-Manila have jurisdiction over the case? Explain. (3%) 
   Answer: No, the RTC-Manila has no jurisdiction over the case. A and B could not be joined as defendants in one complaint because the right to relief against both defendants do not arise out of the same transaction or series of transactions and there is no common question of law or fact common to both *(Sec. 6, Rule 3).* Hence, separate complaints will have to be filed and they would fall under the jurisdiction of the Metropolitan Trial Courts *(Flores vs. Mallare-Phillips, 144 SCRA 377 [1988]).*

### Misjoinder and non-joinder of parties

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

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

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

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

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

(6) 2008 Bar: Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio's cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for the reconveyance of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the souther half to Nina. Salvio did not amend the complaint to implead Nina.

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

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

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

Class suit

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

(2) An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attendant facts. A class suit does not require commonality of interest in the questions involved in the suit. What is required by the Rules is a common or general interest in the subject matter of
the litigation. The subject matter of the action means the physical, the things real or personal, the money, lands, chattels, and the like, in relation to the suit which is prosecuted and not the direct 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 Bank & Trust Co., 58 SCRA 559).* There is no class suit when interests are conflicting.

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

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

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

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**Suits against entities without juridical personality**

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

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

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

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**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 and attorney *(Laviña vs. CA, 171 SCRA 691).* Neither does he become the counsel of the heirs of the deceased unless his services are engaged by said heirs *(Lawas vs. CA, 146 SCRA 173).*

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

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

(4) The court may appoint an executor or administrator when:
(a) the counsel for the deceased does not name a legal representative; or
(b) there is a representative named but he failed to appear within the specified period (Sec. 16, Rule 3).

(5) **1999 Bar**: What is the effect of the death of a party upon a pending action? (2%)  
Answer: When the claim in a pending action is purely personal, the death of either of the parties extinguishes the claims and the action is dismissed. When the claim is not purely personal and is not thereby extinguished, the party should be substituted by his heirs or his executor or administrator (Sec. 16, Rule 3). If the action is for recovery of money arising from contract express or implied, and the defendant dies before entry of judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner provided in the rules of prosecuting claims against the estate of a deceased person (Sec. 20, Rule 3).

(6) **2000 Bar**: PJ engaged the services of Atty. ST to represent him in a civil case filed by OP against him which was docketed as Civil Case No. 123. A retainer agreement was executed between PJ and Atty. ST whereby PJ promised to pay Atty. ST a retainer sum of P24,000.00 a year and to transfer ownership of a parcel of land to Atty. ST after presentation of PJ’s evidence. PJ did not comply with his undertaking. Atty. ST filed a case against PJ which was docketed as Civil Case No. 456. During the trial of Civil Case No. 456, PJ died.

Is the death of PJ a valid ground to dismiss the money claim of Atty. ST in Civil Case No. 456? Explain. (2%)  
Answer: No. Under Sec. 20, Rule 3, when an action is for the recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action is pending at the time of such death, it shall not be dismissed but it shall instead be allowed to continue until entry of the final judgment. A favorable judgment obtained by the plaintiff shall be enforced by in the manner specifically provided in the Rules for prosecuting claims against the estate of deceased person.

### 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) **2006 Bar**: Distinguish jurisdiction from venue. (2%)  
Jurisdiction treats of the power of the Court to decide a case on the merits, while venue refers to the place where the suit may be filed. In criminal actions, however, venue is jurisdictional. Jurisdiction is matter of substantive law; venue, of procedural law. Jurisdiction may not be conferred by consent through waiver upon a court, but venue may be waived, except in criminal cases (Nocum, et al. vs. Tan, GR No. 145022, 09/23/2005; Santos III vs. Northwest Airlines, GR No. 101538, 09/23/1992).
### Jurisdiction

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

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

   **Answer:** (a) No. The action will not prosper because it was filed in the wrong venue. Since the action for reconveyance is a real action, it should have been filed separately in Tarlac and Nueva Ecija, where the parcels of land are located (*Sec. 1, Rule 4*). However, an improperly laid venue may be waived, if not pleaded in a timely motion to dismiss (*Sec. 4, Rule 4*). Without a motion to dismiss on the ground of improperly laid venue, it would be incorrect for the court to dismiss the action for improper venue (*United Overseas Bank Philippines v. Roosemore Mining & Development Corp.*, GR Nos. 159669 and 163521, 03/12/2007).
(b) The action must be filed in any province where any of the lands involved lies—whether in Tarlac or in Nueva Ecija, because the action is a real action. However, an improperly laid venue may be waived if not pleaded as a ground for dismissal (Sec. 4, Rule 4; Bank of America v. American Realty Corp., GR No. 133876, 12/29/1999).

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 (c) exclusive as to the venue (Sec. 4[b], Rule 4).

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

(3) In interpreting stipulations as to venue, there is a need to inquire as to whether the agreement is restrictive or not. If the stipulation is restrictive, the suit may be filed only in the place agreed upon by the parties. It must be reiterated and made clear that under Rule 4, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place (Spouses Lantin vs. Lantin, GR 160053, August 28, 2006). This exclusivity must be couched in words of exclusivity (Schonfield doctrine).

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

(3) The three modes of specific denials are:
   (a) Absolute Denial - where the defendant specifies each material allegations of fact, the truth of which he does not admit and whenever practicable sets forth the substance of the matters upon which he relies to support such denial.
   (b) Partial Denial - where the defendant does not make a total denial of the material allegations in a specific paragraph, denying only a part of the averment. In doing so, he specifies that part the truth of which he admits and denies only the remainder.
   (c) Denial by Disavowal of Knowledge - where the defendant alleges having no knowledge of information sufficient to form a belief as to the truth of a material averment made in the complaint. Such denial must be made in good faith.

Negative Pregnant

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

(2) It is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with the 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) Affirmative defenses are allegations of new matters which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him. Affirmative defenses include:
   (a) Fraud
   (b) Statute of limitations
   (c) Release
   (d) Payment
   (e) Illegality
   (f) Statute of frauds
   (g) Estoppel
   (h) Former recovery
   (i) Discharge in bankruptcy
   (j) Any other matter by way of confession and avoidance (Sec. 5[6b], Rule 6).

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

Counterclaim

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

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

Answer: A counterclaim is distinguished from a cross-claim in that a cross-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. A counterclaim is against a co-party (Sec. 6, Rule 6).

Compulsory Counterclaim

(1) A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication, the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court, both as to the amount and the nature thereof, except that in an original action before the RTC, the counterclaim may be considered compulsory regardless of the amount (Sec. 7, Rule 6).

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

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

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

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

Rule on the motion to dismiss the counterclaim on the ground of lack of jurisdiction over the subject matter.

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

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

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

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

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

(6) 2007 Bar: RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses.

RC filed a motion to dismiss the counterclaim on the ground that Bank V’s Answer with Counterclaim was not accompanied by a certification against forum shopping. Rule.

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

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

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

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

Answer: The dismissal of the complaint is without prejudice to the right of the defendant (Ramon) to prosecute his counterclaim in the same or in a separate action (Sec. 6, Rule 16; Pinga v. Heirs of Santiago, GR No. 170354, 06/30/2006).

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

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

**Permissive Counterclaim**

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

(2) The requirements of a permissive counterclaim are:

   (a) It does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction;

   (b) It must be within the jurisdiction of the court wherein the case is pending and is cognizable by the regular courts of justice; and

   (c) It does not arise out of the same transaction or series of transactions subject of the complaint.

   (d) Payment of correct docket fee.

**Effect on the Counterclaim when the complaint is dismissed**

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

(2) The dismissal of the complaint under Sec. 3 (due to fault of plaintiff) is without prejudice to the right of the defendant to prosecute his counterclaim in the same action or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court. The dismissal of the main action does not carry with it the dismissal of the counterclaim (Sec. 6, Rule 16).
(3) As the rule now stands, the nature of the counterclaim notwithstanding, the dismissal of the complaint does not ipso jure result in the dismissal of the counterclaim, and the latter may remain for independent adjudication of the court, provided that such counterclaim, states a sufficient cause of action and does not labor under any infirmity that may warrant its outright dismissal. Stated differently, the jurisdiction of the court over the counterclaim that appears to be valid on its face, including the grant of any relief thereunder, is not abated by the dismissal of the main action. The court’s authority to proceed with the disposition of the counterclaim independent of the main action is premised on the fact that the counterclaim, on its own, raises a novel question which may be aptly adjudicated by the court based on its own merits and evidentiary support. *(Dio and H.S. Equities, Ltd. V. Subic Bay Marine Exploration, Inc., GR No. 189532, 09/11/2014).*

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

Cross-claims

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

Third (fourth, etc.) party complaints

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

Complaint-in-intervention

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

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

Reply

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

(2) Reply is necessary when an actionable document is in issue.
Pleadings allowed in small claim cases and cases covered by the rules on summary procedure

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

(2) The only pleadings allowed under small claim cases are:
   (a) Statement of claim
   (b) Reply
   (c) Counterclaim in the response

Parts of a Pleading (Rule 7)

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

Caption

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

Signature and address

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

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

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

(4) In every pleading, counsel has to indicate his professional tax receipt (PTR) 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 an affidavit, which declares that: (a) the affiant has read the pleading, and (b) the allegations therein are true and correct to his personal knowledge or based on authentic records.

(4) The verification requirement is significant, as it is intended to secure an assurance that the allegations in a pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The absence of proper verification is cause to treat the pleading as unsigned and dismissal.

(5) It has, however, been held that the absence of a verification or the non-compliance with the verification requirement does not necessarily render the pleading defective. It is only a formal and not a jurisdictional requirement. The requirement is a condition affecting only the form of the pleading (Sarmiento vs. 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 (Pampanga Development Sugar Co. vs. NLRC, 272 SCRA 737). The court may order the correction of the pleading or act on an unverified pleading if the attending circumstances are such that strict compliance would not fully serve substantial justice, which after all, is the basic aim for the rules of procedure (Robert Development Corp. vs. Quitain, 315 SCRA 150).

Certification against forum-shopping

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

(2) The certification is mandatory under Sec. 5, Rule 7, but 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.

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

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

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

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

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

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

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

(13) **2000 Bar:** As counsel for A, B, C and D, Atty. XY prepared a complaint for recovery of possession of a parcel of land against Z. Before filing a complaint, XY discovered that his clients were not able to sign the certification of non-forum shopping. To avoid further delays in the filing of the complaint, XY signed the certification and immediately filed the complaint in court. Is XY justified in signing the certification? Why? (5%)

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

(14) **2006 Bar:** Honey filed with the Regional Trial Court, Taal, Batangas, a complaint for specific performance against Bernie. For lack of certification against forum shopping, the judge dismissed the complaint. Honey’s lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how will you resolve the motion? (5%)

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

**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 evidentiary facts. *(Sec. 1, Rule 8)*

### Manner of making allegations *(Rule 8)*

1. **2004 Bar**: In his complaint for foreclosure of mortgage to which was duly attached a copy of the mortgage deed, plaintiff PP alleged inter alia as follows: (1) that the defendant DD duly executed the mortgage deed, copy of which is marked Annex “A” of the complaint and made an integral part thereof; and (2) that to prosecute his complaint, plaintiff contracted a lawyer, CC, for a fee of P50,000. In his answer, defendant alleged, inter alia, that he had no knowledge of the mortgage deed and he also denied any liability for plaintiff's contracting with a lawyer for a fee. Does defendant's answer as to plaintiff's allegation no. 1 as well as no. 2 sufficiently raise an issue of fact? Reason briefly. *(5%)*

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

### Condition precedent

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

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

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

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

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

### Pleading an actionable document

1. An actionable document is a document relied upon by either the plaintiff or the defendant. A substantial number of complaints reaching the courts show that the plaintiff's cause of action 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) Absolute denial - by specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matter which he will rely upon to support his denial;
   - (b) Partial denial - by specifying so much of the averment in the complaint as is true and material and denying only the remainder;
   - (c) Denial by disavowal of knowledge - by stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint, which has the effect of denial (Gaza vs Lim, GR No. 126863, 01/16/2003).

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

### Effect of failure to make specific denials

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

2. Material allegations, except unliquidated damages, not specifically denied are deemed admitted. If the allegations are deemed admitted, there is no more triable issue between the parties and if the admissions appear in the answer of the defendant, the plaintiff may file a motion for judgment on the pleadings under Rule 34.
(3) An admission in a pleading cannot be controverted by the party making such admission because the admission is conclusive as to him. All proofs submitted by him contrary thereto or inconsistent therewith should be ignored whether an objection is interposed by a party or not (Republic vs. Sarabia, GR 157847, 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).

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

Effect of failure to plead (Rule 9)

Failure to plead defenses and objections

(1) Defenses or objections no 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.

(2) 1999 Bar: When may a party be declared in default? (2%)
Answer: A party may be declared in default when he fails to answer within the time allowed therefor, and upon motion of the claiming party with notice to the defending party, and proof of such failure (Sec. 3, Rule 9).

(3) 1999 Bar: What is the effect of an Order of Default? (2%)
Answer: The effect of an Order of Default is that the court may proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. The party in default cannot take part in the trial but shall be entitled to notice of subsequent proceedings (Sec. 3[a], Rule 9).

(4) 1999 Bar: For failure to seasonably file his Answer despite due notice. A was declared in default in a case instituted against him by B. the following day, A's mistress who is working as a clerk in the sala of the Judge before whom his case is pending, informed him of the declaration of default. On the same day, A presented a motion under oath to set aside the order of default on the ground that his failure to answer was due to fraud and he has a meritorious defense. Thereafter he went abroad. After his return a week later, with the case still undecided, he received the order declaring him in default. The motion to set aside the default was opposed by B on the ground that it was filed before A received notice of his having been declared in default, citing the rule that the motion to set aside may be made at any time after notice but before judgment. Resolve the Motion. (2%)
Answer: Assuming that the motion to set aside complies with the other requirements of the rule, it should be granted. Although such a motion may be made after notice but before judgment (Sec. 3[b], Rule 9), with more reason that it may be filed after discovery even before receipt of the order of default.

(5) 2000 Bar: For failure of KJ to file an answer within the reglementary period, the court upon motion of LM declared KJ in default. In due time, KJ filed an unverified motion to lift the order of default without an affidavit of merit attached to it. KJ however attached to the motion his answer under oath, stating in said answer his reason for his failure to file an answer on time as well as his defenses. Will the motion to lift the order of default prosper? Explain. (3%)
Answer: Yes. There is substantial compliance with the rule. Although the motion is unverified, the answer attached to the motion to lift the order of default and affidavit of merit should contain, which are reasons for movant’s failure to answer as well as his defenses (Sec. 3[b], Rule 9; Citibank vs. Court of Appeals, 304 SCRA 679 [1999]; Nasser vs. Court of Appeals, 191 SCRA 783 [1992]).

(6) 2000 Bar: Defendant was declared in default by the RTC. Plaintiff was allowed to present evidence in support of his complaint. Photocopies of official receipts and original copies of affidavits were presented in court, identified by the plaintiff on the witness stand and marked as exhibits. Said documents were offered by the plaintiff and admitted in evidence by the court on the basis of which the RTC rendered a judgment in favor of the plaintiff pursuant to the relief prayed for. Upon receipt of the judgment, defendant appeals to the CA claiming that the judgment is not valid because the RTC based its judgment on mere photocopies and affidavits of persons not presented in court. Is the claim of defendant valid?
Answer: The claim of the defendant is not valid because under the 1997 Rules, reception of evidence is not required. After the defendant is declared in default, the court shall proceed to render the judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit the evidence, which may be delegated to the Clerk of Court (Sec. 3, Rule 9).

(7) 2001 Bar: Mario was declared in default but before judgment was rendered, he decided to file a motion to set aside the order of default. What should Mario state in his motion in order to justify the setting aside of order of default? (3%)
Answer: In order to justify the setting aside of the order of default, Mario should state in his motion that his failure to answer was due to fraud, accident, mistake or excusable negligence and that he has a meritorious defense (Sec. 3[b], Rule 9).

(8) 2002 Bar: The defendant was declared in default in the RTC for his failure to file an answer to a complaint for a sum of money. On the basis of the plaintiff's ex parte presentation of evidence, judgment by default was rendered against the defendant. The default judgment was served on the defendant on October 1, 2001. On October 10, 2001, he filed a verified motion to lift the order of default and to set aside the judgment. In his motion, the defendant alleged that, immediately upon receipt of the summons, he saw the plaintiff and confronted him with his receipt evidencing his payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. The trial court denied the defendant's motion because it was accompanied by an affidavit of merit. The defendant filed a special civil action for certiorari under Rule 65 challenging the denial order.

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

Answer: Yes, the trial court gravely abused its discretion or acted without or in excess of its jurisdiction in denying the defendant's motion because it was not accompanied by a separate affidavit of merit. In his verified motion to set aside the judgment, the defendant alleged that immediately upon receipt of the summons, he saw the plaintiff and confronted him with his receipt showing payment and that the plaintiff assured him that he would instruct his lawyer to withdraw the complaint. Since the good defense of the defendant was already incorporated in the verified motion, there was not need for a separate affidavit of merit. (Capuz vs. Court of Appeals, 233 SCRA 471 [1994]; Mago vs. Court of Appeals, 303 SCRA 600 [1999]).

When a declaration of default is proper

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

Effect of an order of default

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

Relief from an order of default

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

(2) Remedy after judgment but before finality:
   (b) Motion for new trial under Rule 37; or
   (c) Appeal from the judgment as being contrary to the evidence or the law;

(3) Remedy after judgment becomes final and executory:
   (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. 3[c], Rule 9).

**Extent of relief**

(1) A judgment rendered against a party in default may not exceed the amount or be different from that prayed for nor include unliquidated damages which are not awarded (Sec. 3[c], Rule 9). In fact, there can be no automatic grant of relief as the court has to weigh the evidence. Furthermore, there can be no award of unliquidated damages (*Gajudo vs. Traders Royal Bank, GR 151098, 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 Filipinas 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 executory (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, 01/21/2004).

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

Filing versus service of pleadings

(1) Filing is the act of presenting the pleading or other paper to the clerk of court;
(2) Service is the act of providing a party with a copy of the pleading or paper concerned (Sec. 2, Rule 13).

Periods of filing of pleadings

(1) The date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case (Sec. 3, Rule 13)
(2) Answer to complaint: 15 days from service. Answer of defendant foreign juridical entity: 30 days from service.

Manner of filing

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

(2) Rule 13, Section 2 of the Rules of Court states in part that "if any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the court." In the case at bar, Atty. Pilapil was furnished a copy of the motion for execution which states that the trial court rendered a decision, yet petitioner's counsel filed no opposition. At that time, he did not file any motion asserting that he was not furnished a copy of the Decision. It was only when his client informed him of the Writ of Execution did petitioner's counsel file an Urgent Motion to Vacate the Writ of Execution on the ground that he did not receive a copy of the RTC decision. The receipt of Atty. Pilapil of a copy of the motion for execution amounts to effective official notice of the Regional Trial Court Decision albeit he was not furnished a copy of the Decision. (Bracero v. Arcelo and Heirs of Monisit, GR No. 212496, 03/18/2015).

Modes of service

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

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

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

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

Service by mail

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

Substituted service

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

(2) In actions in personam such as ejectment, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant. The readily acceptable conclusion in this case is that the process server at once resorted to substituted service of summons without exerting enough effort to personally serve summons on respondents. In the case at bar, the Returns contained mere general statements that efforts at personal service were made. Not having specified the details of the attendant circumstances or of the efforts exerted to serve the summons, there was a failure to comply strictly with all the requirements of substituted service, and as a result the service of summons is rendered ineffective. *(Prudential Bank [now BPI] v. Magdamit, Jr., GR No. 183795, 11/12/2014)*.

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

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

**Service of judgments, final orders or resolutions**

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

Priorities in modes of service and filing

(1) Personal service is the preferred mode of service.
(2) The preferred service by mail is by registered mail.
(3) The following papers are required to be filed in court and served upon the parties
affected:
   (a) Judgments
   (b) Resolutions
   (c) Orders
   (d) Pleadings subsequent to the complaint
   (e) Written motions
   (f) Notices
   (g) Appearances
   (h) Demands
   (i) Offers of judgment
   (j) Similar papers (Sec. 4, Rule 13).

When service is deemed complete

(1) Personal service is deemed complete upon the actual delivery following the above
procedure (Sec. 10, Rule 13).
(2) Service by ordinary mail is deemed complete upon the expiration of ten (10) days after
mailing, unless the court otherwise provides. On the other hand, service by registered
mail is complete upon actual receipt by the addressee, or after five (5) days from the
date he received the first notice of the postmaster, whichever is earlier (Sec. 8, Rule
13).
(3) Substituted service is complete at the time of delivery of the copy to the clerk of court.

Proof of filing and service

(1) The filing of a pleading or paper shall be proved by its existence in the record of the
case, if it is not in the record, but is claimed to have been filed personally, the filing shall
be proved by the written or stamped acknowledgment of its filing by the clerk of court in
a copy of the same (Sec. 12, Rule 13).
(2) If the filing or paper is filed by registered mail, proof of filing is by the registry receipt and
by the affidavit of the person who did the mailing, containing a full statement of the date
and place of depositing the mail in the post office in a sealed envelope addressed to the
court, with postage fully prepaid, and with instructions to the postmaster to return the
mail to the sender after ten (10) days if not delivered (Sec. 12, Rule 13).
(3) Proof of personal service shall consist of the written admission of the party served. It
may also be proven by the official return of the server, or the affidavit of the party
serving, containing full information of the date, place and manner of service (Sec. 13,
Rule 13). If the service is by ordinary mail, proof thereof shall consist of the affidavit of
the person mailing of the facts showing compliance with Sec. 7, Rule 13. If the service
is by registered mail, the proof shall consist of such affidavit and the registry receipt
issued by the mailing office. The registry return card is to be filed immediately upon its
receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or
sworn copy of the notice given by the postmaster to the addressee (Sec. 13, Rule 13).
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).

(3) Circumstances after the fact (Section 5).

Formal amendment

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

Amendments to conform to or authorize presentation of evidence

(1) When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made (Sec. 5, Rule 10).
(2) **2004 Bar:** In a complaint for a sum of money filed before the MM Regional Trial Court, plaintiff did not mention or even just hint at any demand for payment made on defendant before commencing suit. During the trial, plaintiff duly offered Exh. "A" in evidence for the stated purpose of proving the making of the extra judicial demand on defendant to pay P500,000, the subject of the suit. Exh. "a" was a letter of demand for defendant to pay said sum of money within 10 days from receipt, addressed to any served on defendant some two months before suit was begun. Without objection from defendant, the court admitted Exh. "A" in evidence. Was the court's admission of Exh. "A" in evidence erroneous or not? Reason. (5%)

**Answer:** The court's admission of Exh. "A" in evidence is not erroneous. It was admitted in evidence without objection on the part of the defendant. It should be treated as if it had been raised in the pleadings. The complaint may be amended to conform to the evidence, but if it is not amended, it does not affect the result of the trial on this issue (Sec. 5, Rule 10).

Different from supplemental pleadings

(1) A supplemental pleading is one which sets forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented. The filing of supplemental pleadings requires leave of court. The court may allow the pleading only upon such terms as are just. This leave is sought by the filing of a motion with notice to all parties (Sec. 6, Rule 10).

(2) A supplemental pleading does not extinguish the existence of the original pleading, while an amended pleading takes the place of the original pleading. A supplemental pleading exists side by side with the original; it does not replace that which it supplements; it does not supersede the original but assumes that the original pleading remain as the issues to be tried in the action. A supplemental pleading supplies the deficiencies in aid of an original pleading, not to entirely substitute the latter (Sps. Caalil vs. CA, GR 128325, Sept. 14, 1999).

(3) **2000 Bar:** X, an illegitimate child of Y, celebrated her 18th birthday on May 2, 1996. A month before her birthday, Y died. The legitimate family of Y refused to recognize X as an illegitimate child of Y. After countless efforts to convince them, X filed on April 25, 2000, and action for recognition against Z, wife of Y. After Z filed her answer on August 14, 2000, X filed a motion for leave to file amended complaint impleading the three (3) legitimate children of Y. the trial admitted the amended complaint on August 22, 2000. What is the effect of the admission of the amended complaint? Has the action of X prescribed? Explain. (5%)

**Answer:** No. The action filed on April 25, 2000 is still within the four-year prescriptive period which started to run on May 2, 1996. The amended complaint impleading the three legitimate children, though admitted on August 22, 2000 beyond the four-year prescriptive period, retroacts to the date of filing of the complaint because they do not constitute a new cause of action (Versoza v. Court of Appeals, 299 SCRA 100 [1998]).

(4) **2008 Bar:** Arturo lent P1 million to his friend Robert on the condition that Robert execute a promissory note for the loan and a real estate mortgage over his property located in Tagaytay City. Robert complied. In his promissory note dated September 20, 2006, Robert undertook to pay the loan within a year from its date at 12% per annum interest. In June 2007, Arturo requested Robert to pay ahead of time but the latter refused and insisted on the agreement. Arturo issued a demand letter and when Robert did not comply, Arturo filed an action to foreclose the mortgage. Robert moved to dismiss the complaint for lack of cause of action as the debt was not yet due. The resolution of the motion to dismiss was delayed because of the retirement of the judge.
(a) On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging that Robert’s debt had in the meantime become due but that Robert still refused to pay. Should the amended complaint be allowed considering that no answer has been filed? (3%)

(b) Would your answer be different had Arturo filed instead a supplemental complaint stating that the debt became due after the filing of the original complaint? 2%)

**Answers:**

(a) No. The complaint may not be amended under the circumstances. A complaint may be amended as a right before answer (Sec. 2, Rule 10), but the amendment should refer to facts which occurred prior to the filing of the original complaint. It thus follows that a complaint whose cause of action has not yet accrued cannot be cured or remedied by an amended or supplemental pleading alleging the existence or accrual of a cause of action while the case is pending (RCPI v. CA, GR No. 121397, 04/17/1997; Swagman Hotels & Travel, Inc. v. CA, GR No. 161135, 04/08/32005).

(b) A supplemental complaint may be filed with leave of court to allege an event that arose after the filing of the original complaint that should have already contained a cause of action (Sec. 6, Rule 10). However, if no cause of action is alleged in the original complaint, it cannot be cured by the filing of a supplemental or amendment to allege that subsequent acquisition of cause of action (Swagman Hotels & Travel, Inc. v. CA, GR No. 161135, 04/08/32005).

**Effect of amended pleading**

1. An amended pleading supersedes the original one which it amends (Sec. 8, Rule 10). The original pleading loses its status as a pleading, is deemed withdrawn and disappears from the record. It has been held that the original complaint is deemed superseded and abandoned by the amendatory complaint only if the latter introduces a new or different cause of action (Versoza vs. CA, 299 SCRA 100).

2. The original pleading is superseded or disappears from the records. The defenses in the original pleadings not reproduced in the amended pleadings are waived (Magaspi vs. Remotele, 115 SCRA 193).

3. However, admissions in the original pleading are not pleaded insofar as they become extrajudicial admissions.
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 - that is, of acquiring jurisdiction over the person of the defendant.

(2) The service of summons enables the court to acquire jurisdiction over the person of the defendant. If there is no service of summons, any judgment rendered or proceedings had in a case are null and void, except in case of voluntary appearance (Echevarria vs. Parsons Hardware, 51 Phil. 980). The law requiring the manner of service of summons in jurisdictional (Toyota Cubao vs. CA, GR 126321, 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 (Service in the person of the defendant)

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

(2) 2002 Bar: The plaintiff, a Manila resident, sued the defendant, a resident of Malolos, Bulacan, in the RTC-Manila for a sum of money. When the sheriff tried to serve the summons with a copy of the complaint on the defendant at this Bulacan residence, the sheriff was told that the defendant had gone to Manila for business and would not be back until the evening of that day. So, the sheriff served the summons, together with a copy of the complaint, on the defendant’s 18-year-old daughter, who was a college student. For the defendant’s failure to answer the complaint within the reglementary period, the trial court, on motion of the plaintiff, declared the defendant in default. A month later, the trial court rendered judgment holding the defendant liable for the entire amount prayed for in the complaint.

After the judgment had become final, a writ of execution was issued by the court. As the writ was returned unsatisfied, the plaintiff filed a motion for an order requiring the defendant to appear before it and to be examined regarding his property and income. How should the court resolve the motion? (2%)

Answer:
The RTC-Manila should deny the motion because it is the violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of examination concerning his property and income, outside the province or city in which such obligor resides. In this case, the judgment obligor resides in Bulacan (Sec. 36, Rule 39).

(3) 2004 Bar: Summons was issued by the MM Regional Trial Court and actually received on time by the defendant from his wife at their residence. The sheriff’s return of proof of service filed with the court in sum states that the summons, with attached copy of the complaints, was served on defendant at his residence thru his wife, a person of suitable age and discretion then residing therein. Defendant moved to dismiss on the ground that the court had no jurisdiction over his person as there was no valid service of summons on him because the sheriff's return on proof of service did not show that the sheriff first made a genuine attempt to serve the summons on defendant personally before serving it thru his wife. Is the motion to dismiss meritorious? What is the purpose of summons and by whom may it be served? Explain (5%)

Answer:
The motion to dismiss is not meritorious because the defendant actually received the summons on time from his wife. Service on the wife was sufficient. It is the duty of the court to look in the sufficiency of the service. The sheriff's negligence is not stating in his return that he first made a genuine effort to serve the summons on the defendant, should not prejudice the plaintiff (Mapa v. CA, 214 SCRA 417 [1992]).

The purpose of the summons is to inform the defendant on the complaint filed against him and to enable the court to acquire jurisdiction over his person. It may be served by the sheriff or his deputy or any person authorized by the court.

Substituted service

(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).

(5) 2006 Bar: Tina Guerrero filed with the Regional Trial Court of Biñan, Laguna, a complaint for sum of money amounting to P1 million against Carlos Corro. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglementary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence ex parte. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution of the promissory note and contending that he has fully paid his loan with interest at 12% per annum.

(a) Was the summons validly served on Carlos? (2.5%)

(b) If you were the judge, will you grant Tina’s motion to declare Carlos in default? (2.5%)

Answers:

(a) The summons was not validly served on Carlos because it was served on his secretary and the requirements for substituted service have not been followed, such as a showing that efforts have been exerted to serve the same on Carlos and such attempt has failed despite due diligence (Manotoc v. CA, GR No. 130974, 08/16/2006).

(b) If I were the judge, I would not grant Tina’s motion to declare Carlos in default because summons was not properly served and, anyway, a verified answer to the complaint had already been filed. Moreover, it is better to decide a case on the merits rather than on technicality.

**Constructive service (by publication)**

(1) As a rule, summons by publication is available only in actions *in rem* or *quasi in rem*. It is not available as a means of acquiring jurisdiction over the person of the defendant in an action *in personam*.

(2) Against a resident, the recognized mode of service is service in person on the defendant under Sec. 6 Rule 14. In a case where the defendant cannot be served within a reasonable time, substituted service will apply (Sec. 7, Rule 14), but no summons by publication which is permissible however, under the conditions set forth in Sec. 14, Rule 14.
(3) Against a non-resident, jurisdiction is acquired over the defendant by service upon his person while said defendant is within the Philippines. As once held, when the defendant is a nonresident, personal service of summons in the state is essential to the acquisition of jurisdiction over him (Banco Do Brasil, supra). This is in fact the only way of acquiring jurisdiction over his person if he does not voluntarily appear in the action. Summons by publication against a nonresident in an action in personam is not a proper mode of service.

(4) Publication is notice to the whole world that the proceeding has for its object to bar indefinitely all who might be minded to make an objection of any sort against the right sought to be established. It is the publication of such notice that brings the whole world as a party in the case and vests the court with jurisdiction to hear and decide it (Alaban vs. CA, GR 156021, 09/23/2005).

(5) 2008 Bar: Lani filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, who is a resident of Singapore and is not found in the Philippines. Upon motion, the court ordered the publication of the summons for three weeks in a local tabloid, Bulgar. Linda, an OFW vacationing in the Philippines, saw the summons in Bulgar and brought a copy of the tabloid when she returned to Singapore. Linda showed the tabloid and the page containing the summons to Mary Rose, who said, “Yes, I know, my kumara Anita scanned and e-mailed that page of Bulgar to me!”

Did the court acquire jurisdiction over Mary Rose? (4%)

Answer: Partition is an action quasi in rem. Summons by publication is proper when the defendant does not reside and is not found in the Philippines, provided that a copy of the summons and order of the court are sent by registered mail to the last known address of the defendant (Sec. 15, Rule 14). Publication of the notice in Bulgar, a newspaper of general circulation, satisfies the requirements of summons by publication.

Service upon a defendant where his identity is unknown or where his whereabouts are unknown

(1) Where the defendant is designated as unknown, or whenever his whereabouts are unknown and cannot be ascertained despite a diligent inquiry, service may, with prior leave of court, be effected upon the defendant, by publication in a newspaper of general circulation. The place and the frequency of the publication is a matter for the court to determine (Sec. 14, Rule 14).

(2) The rule does not distinguish whether the action is in personam, in rem or quasi in rem. The tenor of the rule authorizes summons by publication whatever the action may be as long as the identity of the defendant is unknown or his whereabouts are unknown. Under the previous rulings, jurisdiction over the defendant in an action in personam cannot be acquired by the summons by publication (Pantaleon vs. Asuncion, 105 Phil. 761; Consolidated Plyware Industries vs. Breva, 166 SCRA 516).

Rules on Summons on Defendant

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<td>1. Extraterritorial service (in rem and quasi in rem)</td>
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(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 newspaper of general circulation together with a registered mailing of a copy of the summons and the order of the court to the last known address of the defendant, or (c) by any manner the court may deem sufficient under Sec. 16. Like in the case of an unknown defendant or one whose whereabouts are unknown, the rule affecting residents who are temporarily out of the Philippines applies in any action. Note also, that summons by publication may be effected against the defendant.

(2) The defendant may however, also be served by substituted service (Montalban vs. Maximo, 22 SCRA 1070). This is because even if he is abroad, he has a residence in the Philippines or a place of business and surely, because of his absence, he cannot be served in person within a reasonable time.

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)

Definition of Motion

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

Motions in general

(1) Motions are classified into six, namely:
   (a) **Motion ex parte** - a motion made without the presence of a notification to the other party because the question generally presented is not debatable. Sometimes 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 at 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, where 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).

Motions versus Pleadings

(1) A pleading is a written statement of the respective claims and defenses of the parties submitted to the court for appropriate judgment (Sec. 1, Rule 6). It may be in the form of a complaint, counterclaim, cross-claim, third-party complaint, or complaint-in-intervention, answer or reply (Sec. 2, Rule 6).
(2) A motion on the other hand is an application for relief other than a pleading (Sec. 1, Rule 15).
(3) A motion is not a pleading, even when reduced to writing; it relates generally to procedural matters, unlike pleadings which generally states substantial questions (37 Am. Jur. 502). Moreover, a motion is not an independent remedy, and thus cannot replace an action to enforce a legal right (Lyon vs. Smith, 66 Mich. 676).
## Contents and form of motions

1. A motion shall state the order sought to be obtained, and the grounds which it is based, and if necessary shall be accompanied by supporting affidavits and other papers (Sec. 3).

2. All motions must be in writing except those made in open court or in the course of a hearing or trial (Sec. 2).

## Notice of hearing and hearing of motions

1. Except for motions which the court may act upon without prejudicing the rights of the adverse party, every motion shall be set for hearing by the applicant. Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt of the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. (Sec. 4, Rule 15).

2. In every written motion, the three-day notice rule for hearing is not absolute. The purpose of the rule on hearing is to safeguard the adverse party's right to due process. Thus, if the adverse party was given a reasonable opportunity to study the motion and oppose it, then strict compliance with the three-day notice rule may be dispensed with. Under Section 1 of Rule 45 of the Rules of Court, petitions for review by certiorari "shall raise only questions of law." A question of fact exists when there is a doubt as to the truth of certain facts, and it can only be resolved through a reexamination of the body of evidence. Probable cause is dependent largely on the opinion and findings of the judge who conducted the examination and who had the opportunity to question the applicant and his witnesses. For this reason, the findings of the judge deserve great weight. In the instant case, when the court a quo ordered petitioners to submit their comment on the motion to quash, it was, in effect, giving petitioners their day in court. Thus, while the three-day notice rule was not strictly observed, its purpose was still satisfied when respondent judge did not immediately rule on the motion giving petitioners the opportunity to study and oppose the arguments stated in the motion. (Microsoft Corporation v. Farajallah, GR No. 205800, 09/10/2014).

3. **2000 Bar**: The Regional Trial Court rendered a judgment against ST, copy of which was received by his counsel on February 28, 2000. On March 10, 2000, ST, through counsel, filed for a motion for reconsideration of the decision with notice to the Clerk of Court submitting the Motion for Reconsideration of the court. On March 15, 2000, realizing that the motion lacked a notice of hearing, ST’s counsel filed a supplemental pleading. Was the Motion for Reconsideration filed within the reglementary period?

   **Answer**: Yes, because the last day for filing a motion for reconsideration was March 15 if February had 28 days or March 16 if February had 29 days. Although the original Motion for Reconsideration was defective because it lacked a notice of hearing, the defect was cured on time by its filing on March 15 of a supplemental pleading, provided the motion was set for hearing and served the adverse party at least three (3) days before the date of hearing (Rule 15, Section 4).

## Omnibus Motion Rule

1. The rule is a procedural principle which requires that every motion that attacks a pleading, judgment, order or proceeding shall include all grounds then available, and all objections not so included shall be deemed waived (Sec. 8). Since the rule is subject to the provisions of Sec. 1, Rule 9, the objections mentioned therein are not deemed
waived even if not included in the motion. These objections are: (a) that the court has no jurisdiction over the subject matter, (b) that there is another action pending between the same parties for the same cause \((\text{litis pendencia})\), (c) that the action is barred by a prior judgment \((\text{res judicata})\), and (d) that the action is barred by the statute of limitations \((\text{prescription})\) (Sec. 1, par. 2, Rule 9).

(2) A motion to dismiss is a typical example of a motion subject to omnibus motion rule, since a motion to dismiss attacks a complaint which is a pleading. Following the omnibus motion rule, if a motion to dismiss is filed, then the motion must invoke all objections which are available at the time of the filing of said motion. If the objection which is available at the time is not included in the motion, that ground is deemed waived. It can no longer be invoked as affirmative defense in the answer which the movant may file following the denial of his motion to dismiss.

(3) The motion to quash the search warrant which the accused may file shall be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress. Obviously, the issue of the defect in the application was available and existent at the time of filing of the motion to quash. (\text{Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation, GR No. 189669, 02/16/2015}).

\textbf{Litigated and \textit{ex parte} motions}

(1) A \textit{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 \textit{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 \textit{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 \textit{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).

\textbf{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 \textit{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). It is a mere scrap of paper.
Motions for Bill of Particulars (Rule 12)

Purpose and when applied for

(1) A party’s right to move for a bill of particulars in accordance with Sec. 1, Rule 12 (doesn’t include matters evidentiary in nature, which are covered by Modes of Discovery) when the allegations of the complaint are vague and uncertain is intended to afford a party not only a chance to properly prepare a responsive pleading but also an opportunity to prepare an intelligent answer. This is to avert the danger where the opposing party will find difficulty in squarely meeting the issues raised against him and plead the corresponding defenses which if not timely raised in the answer will be deemed waived. The proper preparation of an intelligent answer requires information as to the precise nature, character, scope and extent of the cause of action in order that the pleader may be able to squarely meet the issues raised, thereby circumscribing them within determined confines and preventing surprises during the trial, and in order that he may set forth his defenses which may not be so readily availed of if the allegations controverted are vague, indefinite, uncertain or are mere general conclusions. The latter task assumes significance because defenses not pleaded (save those excepted in Sec. 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 ever of a pre-trial under Rule 18. In other words, the function of a bill of particulars is to clarify the allegations in the pleading so an adverse party may be informed with certainty of the exact character of a cause of action or a defense. Without the clarifications sought by the motion, the movant may be deprived of the opportunity to submit an intelligent responsive pleading.

(3) A motion for a bill of particulars is to be filed before, not after responding to a pleading (Sec. 1, Rule 12). The period to file a motion refers to the period for filing the responsive pleading in Rule 11. Thus, where the motion for bill of particulars is directed to a complaint, the motion should be filed within fifteen (15) days after service of summons. If the motion is directed to a counterclaim, then the same must be filed within ten (10) days from service of the counterclaim which is the period provided for by Sec. 4, Rule 11 to answer a counterclaim.

(4) In case of a reply to which no responsive pleading is provided for by the Rules, the motion for bill of particulars must be filed within ten (10) days of the service of said reply (Sec. 1, Rule 12).

Actions of the court

(1) Upon receipt of the motion which the clerk of court must immediately bring to the attention of the court, the latter has three possible options, namely: (a) to deny the motion outright, (b) to grant the motion outright or (c) to hold a hearing on the motion.

Compliance with the order and effect of non-compliance

(1) If a motion for bill of particulars is granted, the court shall order the pleader to submit a bill of particulars to the pleading to which the motion is directed. The compliance shall be effected within ten (10) days from notice of the order, or within the period fixed by the
court (Sec. 3, Rule 12). If denied, the pleader only has the balance of the period within which to file an answer (see Rule 22).

(2) In complying with the order, the pleader may file the bill of particulars either in a separate pleading or in the form of an amended pleading (Sec. 3, Rule 12). The bill of particulars submitted becomes part of the pleading for which it is intended (Sec. 6, Rule 12).

(3) If the order to file a bill of particulars is not obeyed, or in case of insufficient compliance therewith, the court may order (a) the striking out of the pleading (b) or the portions thereof to which the order was directed (c) or make such other order as it deems just (Sec. 4).

(4) 2003 Bar: What is the effect of non-compliance with the order of a bill of particulars? (4%)
Answer: If the order is not complied with, the court may order the striking out of the pleading or the portions thereof to which the order was directed or make such other order as it deems just (Sec. 4, Rule 12).

(5) 2008 Bar: Within the period for filing a responsive pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of the filing, stating that the allegations of the complaint were sufficiently made.
(a) Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion? (3%)
(b) If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? (3%)
Answers:
(a) There is no need to set the motion for hearing. The duty of clerk of court is to bring the motion immediately to the attention of the judge, who may act on it at once (Sec. 2, Rule 12).
(b) Yes, the judge may dismiss the case for failure of the plaintiff to comply with its order (Sec. 3, Rule 17) or order the striking out of the pleading and may issue any other order at its discretion (Sec. 4, Rule 12).

Effect on the period to file a responsive pleading

(1) A motion for bill of particulars is not a pleading hence, not a responsive pleading. Whether or not his motion is granted, the movant may file his responsive pleading. When he files a motion for BOP, the period to file the responsive pleading is stayed or interrupted. After service of the bill of particulars upon him or after notice of the denial of his motion, he may file his responsive pleading within the period to which he is entitled to at the time the motion for bill of particulars is filed. If he has still eleven (11) days to file his pleading at the time the motion for BOP is filed, then he has the same number of days to file his responsive pleading from the service upon him of the BOP. If the motion is denied, then he has the same number of days within which to file his pleading counted from his receipt of the notice of the order denying his motion. If the movant has less than five (5) days to file his responsive pleading after service of the bill of particulars or after notice of the denial of his motion, he nevertheless has five (5) days within which to file his responsive pleading (Sec. 5, Rule 12).

(2) A seasonable motion for a bill of particulars interrupts the period within which to answer. After service of the bill of particulars or of a more definite pleading, of after notice of denial of his motion, the moving party shall have the same time to serve his responsive
pleading, if any is permitted by the rules, as that to which he was entitled at the time of serving his motion, but no less than five (5) days in any event (Tan vs. Sandigabayan, GR 84195, Dec. 11, 1989; Sec. 5).

(3) **2002 Bar Question:** The plaintiff sued the defendant in the RTC for damages allegedly caused by the latter’s encroachment on the plaintiff’s lot. In his answer, the defendant denied the plaintiff’s claim and alleged that it was the plaintiff who in fact had encroached on his (defendant’s) land. Accordingly, the defendant counterclaimed against the plaintiff for damages resulting from the alleged encroachment on his lot. The plaintiff filed an ex parte motion for extension of time to answer the defendant’s counterclaim, but the court denied the motion on the ground that it should have been set for hearing. On the defendant’s motion, therefore, the court declared the plaintiff in default on the counterclaim. Was the plaintiff validly declared in default? Why? (5%)

Answer: No, the plaintiff was not validly declared in default. A motion for extension of time to file an answer may be filed ex parte and need not be set for hearing. (Amante v. Suñga, 64 SCRA 192 [1975]).

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**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 (litis pendentia);

   (f) The cause of action is barred by a prior judgment (res judicata) or by the statute of limitations (prescription);

   (g) The pleading asserting the claim states no cause of action;

   (h) The claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

   (i) The claim on which the action is founded is unenforceable under the provisions of the statute of frauds; and

   (j) A condition precedent for filing the action has not been complied with.

   1. Exhaustion of administrative remedies
   2. Compliance with earnest efforts between or among members of the family
   3. Barangay conciliation

(2) The language of the rule, particularly on the relation of the words “abandoned” and “otherwise extinguished” to the phrase “claim or demand deemed set forth in the plaintiff’s pleading” is broad enough to include within its ambit the defense of bar by laches. However, when a party moves for the dismissal of the complaint based on laches, the trial court must set a hearing on the motion where the parties shall submit not only their arguments on the questions of law but also their evidence on the questions of fact involved. Thus, being factual in nature, the elements of laches must be
proved or disproved through the presentation of evidence by the parties (Pineda vs. Heirs of Eliseo Guevara, GR No. 143188, 02/14/2007).

(3) The issue of lack of jurisdiction was raised by respondents in their Appellant's Brief. And the fact that it was raised for the first time on appeal is of no moment. Under Sec. 1, Rule 9 of the Revised Rules of Court, defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, except for lack of jurisdiction, litis pendentia, res judicata, and prescription, which must be apparent from the pleadings or the evidence on record. In other words, the defense of lack of jurisdiction over the subject matter may be raised at any stage of the proceedings, even for the first time on appeal. In fact, the court may motu proprio dismiss a complaint at any time when it appears from the pleadings or the evidence on record that lack of jurisdiction exists. (Heirs of Juliao v. Sps. De Jesus, GR No. 176020, 09/29/2014).

(4) 2008 Bar: Within the period for filing a responsive pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? (3%)

Answer: Yes, the judge may dismiss the case for failure of the plaintiff to comply with its order (Rule 17, Section 3) or order the striking out of the pleading and my issue any other order at its discretion (Rule 12, Section 4).

Resolution of motion

(1) After the hearing, the court may
(a) dismiss the action or claim;
(b) deny the motion, or
(c) order the amendment of the pleading.
The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable. In every case, the resolution shall state clearly and distinctly the reasons therefor (Sec. 3).

(2) Options of the court after hearing - but not to defer the resolution of the motion for the reason that the ground relied upon is not indubitable:
(a) dismiss the action or claim;
(b) deny the motion to dismiss; or
(c) order amendment of the pleading.

Remedies of plaintiff when the complaint is dismissed

(1) If the motion is granted, the complaint is dismissed. Since the dismissal is final and not interlocutory in character, the plaintiff has several options:
(a) Refile the complaint, depending upon the ground for the dismissal of the action. For instance, if the ground for dismissal was anchored on improper venue, the defendant may file the action in the proper venue.
(b) Appeal from the order of dismissal where the ground relied upon is one which bars the refiling of the complaint like res judicata, prescription, extinguishment of the obligation or violation of the statute of frauds (Sec. 5, Rule 16). Since the complaint cannot be refiled, the dismissal is with prejudice. Under Sec. 1[h], Rule 41, it is an order dismissing an action without prejudice which cannot be appealed from.
Conversely, where the dismissal is with prejudice, an appeal from the order of dismissal is not precluded. However, where the ground for dismissal for instance, is the failure of the complaint to state cause of action, the plaintiff may simply file the complaint anew; but since the dismissal is without prejudice to its refiling, the order of dismissal cannot be appealed from under the terms of Sec. 1[h], Rule 41.

(c) Petition for certiorari is availed of if the court gravely abuses its discretion in a manner amounting to lack of jurisdiction and is the appropriate remedy in those instances when the dismissal is without prejudice (Sec. 1, Rule 41).

Remedies of the defendant when the motion is denied

(1) File answer within the balance of the period prescribed by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event (Sec. 4, Rule 16). As a rule, the filing of an answer, going through the usual trial process, and the filing of a timely appeal from an adverse judgment are the proper remedies against a denial of a motion to dismiss. The filing of an appeal from an order denying a motion to dismiss is not the remedy prescribed by existing rules. The order of denial, being interlocutory is not appealable by express provision of Sec 1[c], Rule 41.

(2) Special civil action under Rule 65. This remedy however is predicated upon an allegation and a showing that the denial of the motion was tainted with grave abuse of discretion amounting to lack of jurisdiction. Without such showing, Rule 65 cannot be availed of as a remedy.

(3) The general rule is that the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal unless and until a final judgment or order is rendered. In order to justify the grant of the extraordinary remedy of certiorari, the denial of the motion to dismiss must have been tainted with grave abuse of discretion amounting to lack or excess of jurisdiction (Douglas Lu Ym vs. Gertrudes Nabua, Gr 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 refiling the same action of claim if the dismissal is based on the following grounds:
   (a) The cause of action is barred by a prior judgment
   (b) The cause of action is barred by the statute of limitations
   (c) The claim or demand has been paid, waived, abandoned or otherwise extinguished
   (d) The claim on which the action is founded is unenforceable under the provisions of the statute of frauds.

(5) The denial of a motion to dismiss is interlocutory, hence, the remedy is to file an answer, proceed to trial, and await judgment before interposing an appeal. The denial should be raised as an error of the trial court on appeal. Certiorari is not the proper remedy. A writ of certiorari is not intended to correct every controversial interlocutory ruling: It is resorted to only to correct a grave abuse of discretion or a whimsical exercise of judgment equivalent to lack of jurisdiction. Its function is limited to keeping an inferior court within its jurisdiction and to relieve persons from arbitrary acts, acts which courts or judges have no power or authority in law to perform. It is not designed to correct erroneous findings and conclusions made by the courts (Bonifacio Construction Management Corp. vs. Hon. Estela Bernabe, GR 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 deductible therefrom. Hence, if the allegations in the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendant (Davao Light and Power Co. vs. Hon. Judge, Davao City RTC, GR 147058, March 10, 2005).

(2) When the complaint is dismissed on the grounds of (a) prior judgment or by (b) the statute of limitations, or (c) payment, waiver, abandonment or extinguishment of the claim or (d) unenforceability of the cause of action under the statute of frauds, the dismissal shall bar the refiling of the same action or claim, but this is without prejudice to the right of the other party to appeal from the order of dismissal because such dismissal is a final order, not merely interlocutory (Sec. 5).

When grounds pleaded as affirmative defenses

(1) If no motion to dismiss has been filed, any of the grounds provided for dismissal may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss has been filed (Sec. 6, Rule 16).

(2) Implied under Sec. 6, Rule 16 is that the grounds for a motion to dismiss are not waived even if the defendant fails to file a motion to dismiss because he may still avail of the defenses under Rule 16 as affirmative defenses in his answer.

(3) The preliminary hearing authorized on the affirmative defenses raised in the answer, applies only if no motion to dismiss has been filed. As a rule, a preliminary hearing is not authorized when a motion to dismiss has been filed. An exception previously carved out is if the trial court had not categorically resolved the motion to dismiss. Another exception would be justified under the liberal construction rule as when it is evident that the action is barred by res judicata. A strict application of Sec. 6 would accordingly lead to absurdity when an obviously barred complaint continues to be litigated. The denial of a motion to dismiss does not preclude any future reliance on the grounds relied thereupon (Sps. Rasdas vs. Sps. Villa, GR 157605, 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,
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 un reversed by proper authority (Moraga vs. Spouses Somo, GR 166781, 09/05/2006).

(3) The doctrine of res judicata in the form or bar by prior judgment provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and in the form or bar by prior judgment provides that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. To apply this doctrine, there must be identity of parties, subject matter, and causes of action as between the first case where the first judgment was rendered and the second case that is sought to be barred (Serrano v. Ambassador Hotel, Inc., GR No. 197003, 02/11/2013).

(4) Grounds for dismissal that bar refiling
   (a) cause of action is barred by a prior judgment;
   (b) cause of action is barred by the statute of limitations;
   (c) claim or demand set forth in the plaintiff’s pleading has been paid, waived, abandoned, or otherwise extinguished;
   (d) claim is unenforceable under the statute of frauds.

(5) 2007 Bar: Husband H files a petition declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife’s petition on the ground of the pendency of the other case. Rule. (10%)

   Answer: The husband’s motion to dismiss his wife’s petition for habeas corpus should be granted because the case for nullity of marriage constitutes litis pendencia. The custody over the minor child and the action for nullity of the marriage are not separate causes of action. Judgment on the issue of custody in the nullity of marriage case before the RTC of Pasig City, regardless of which party would prevail, would constitute res judicata on the habeas corpus case before the RTC of Pasay City since the former has jurisdiction over the parties and the subject matter. The evidence to support the petition for nullity necessarily involves evidence of fitness to take custody of the child, as the court in the nullity of proceedings has a duty under the Family Code to protect the best interest of the child (Yu vs. Yu, GR No. 164915, 03/10/2006; Sec. 1[e], Rule 16) and Sec. 2, Rule 102).

(6) Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). Jurisprudence taught us well that res judicata under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. The case at hand satisfies the essential requisites of res judicata under the first concept. The RTC is therefore correct in dismissing the case on the ground of res judicata. (Samson v. Sps. Gabor, GR No. 182970, 07/23/2014).
(7) The principle of *res judicata* is applicable either by way of "bar by prior judgment" or by "conclusiveness of judgment." Here, Salvador's defense was *res judicata* by conclusiveness of judgment. Contrary to Salvador's contention, however, there appears to be no identity of issues and facts in the two administrative cases. The first case involved facts necessary to resolve the issue of whether or not Salvador falsified her PDS. The second one involved facts necessary to resolve the issue of whether or not Salvador was convicted of a crime involving moral turpitude. Falsification was the main issue in the first case, while it was no longer an issue in the second case. The only fact to consider in the second administrative complaint is the fact of conviction of a crime involving moral turpitude. It must be borne in mind that both administrative complaints were based on different grounds. The grounds were separate and distinct from each other and entailed different sets of facts. (*Pagaduan v. Civil Service Commission*, GR No. 206379, 11/19/2014).

(8) **2002 Bar:** Rolando filed a petition for declaration of the nullity of his marriage to Carmela because of the alleged psychological incapacity of the latter. After trial, the court rendered judgment dismissing the petition on the ground that Rolando failed to prove the psychological incapacity of his wife. The judgment having become final, Rolando filed another petition, this time on the ground that his marriage to Carmela had been celebrated without a license. Is the second action barred by the judgment in the first? Why? (2%)

**Answer:** No, the second action is not barred by the judgment in the first because they are different causes of action. The first is for annulment of marriage on the ground of psychological incapacity under Article 36 of the Family Code, while the second is for declaration of nullity of marriage in view of the absence of a basic requirement, which is a marriage license. They are different causes of action because the evidence required to prove them are not the same (*Pagsisihan v. Court of Appeals*, 95 SCRA 540 [1980]).

(9) **2003 Bar:** A filed with the Metropolitan Trial Court (MTC) of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon City having an assessed value of P19,000.00. B received the summons and a copy of the Complaint on 02 January 2003. On 10 January 2003, B filed a Motion to Dismiss the Complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of pecuniary estimation. The court denied the motion. In due time, B filed with the Regional Trial Court (RTC) a Petition for Certiorari praying that the said Order be set aside because the MTC had no jurisdiction over the case. On 13 February 2003, A filed with the MTC a motion to declare B in default. The motion was opposed by B on the ground that his Petition for Certiorari was still pending. Was the denial of the Motion to Dismiss the Complaint correct? (6%)

**Answer:** The denial of the Motion to Dismiss the Complaint was not correct. Although the assessed value of the parcel of land involved was P19,000, within the jurisdiction of the MTC of Manila, the action filed by A for specific performance against B to compel the latter to execute a Deed of Conveyance of said parcel of land was not capable of pecuniary estimation and, therefore, the action was within the jurisdiction of the RTC (*Copioso v. Copioso*, GR No. 149243, 10/28/2002; *Cabutihan v. Landcenter Construction*, 383 SCRA [2002]).

(10) **2008 Bar:** Fe filed a suit for collection of P387,000 against Ramon in the RC of Davao City. Aside from alleging payment as a defense, Ramon in his answer set up counterclaims for P100,000 as damages and P30,000 as attorney’s fees as a result of the baseless filing of the complaint, as well as for P250,000 as the balance of the purchase price of the 30 units of air conditioners he sold to Fe.
b. Suppose Ramon’s counterclaim for the unpaid balance is ₱310,000, what will happen to his counterclaims if the court dismisses the complaint after holding a preliminary hearing on Ramon’s affirmative defenses? (3%)

Answer: The dismissal of the complaint shall be without prejudice to the prosecution in the same or separate action of a counterclaim pleaded in the answer (Pinga v. Heirs of Herman Santiago, GR No. 170354, 06302006).

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

Answer: His counterclaims can continue to be prosecuted or may be pursued separately at his option. (Pinga v. Heirs of Herman Santiago, supra).

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<thead>
<tr>
<th>Motion to Dismiss Distinguished from Demurrer to Evidence (Rule 33)</th>
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<td>(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.</td>
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<td>(2) Distinctions:</td>
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<td>(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;</td>
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<td>(b) A motion to dismiss is anchored on many grounds; a demurrer is anchored on one ground—plaintiff has no right to relief; and</td>
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<tr>
<td>(c) If a motion to dismiss is denied, the defendant may file his responsive pleading; in a demurrer, the defendant may present his evidence.</td>
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X. DISMISSAL OF ACTIONS (Rule 17)

(1) The Court previously ruled that an issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled to and which would be negated by the dismissal of the complaint. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process.

In this case, it reveals that Erlinda did not only pray that BCCC be enjoined from denying her access to the cottage and be directed to provide water and electricity thereon, but she also sought to be indemnified in actual, moral and exemplary damages because her proprietary right was violated by the respondents when they denied her of beneficial use of the property. In such a case, the Court should not have dismissed the complaint and should have proceeded to trial in order to determine the propriety of the remaining claims. (Ilusorio v. Baguio Country Club Corporation, GR No. 179571, 07/02/2014).

(2) The Court of Appeals reversed and set aside the decision of the RTC dismissing the complaint filed by the respondents due to failure to prosecute. The petitioner contends that the Court of Appeals erred in reversing the said decision. The Supreme Court ruled that relief is accorded to the client who suffered by reason of the lawyer’s palpable mistake or negligence and where the interest of justice so requires. The Court finds that respondents would be deprived of the opportunity to prove the legitimacy of their claims if the RTC’s dismissal of the case – on a procedural technicality at that, which was clearly caused by the palpable negligence of their counsel – is sustained. (Yap-Co v. Sps. Yu, GR No. 209295, 02/11/2015).

Dismissal upon notice by plaintiff

(1) Before the service of an answer or the service of a motion for summary judgment, a complaint may be dismissed by the plaintiff by filing a notice of dismissal. Upon the filing of the notice of dismissal, the court shall issue an order confirming the dismissal. (Sec. 1, Rule 17).

(2) It is not the order confirming the dismissal which operates to dismiss the complaint. As the name of the order implies, said order merely confirms a dismissal already effected by the filing of the notice of dismissal. The court does not have to approve the dismissal because it has no discretion on the matter. Before an answer or a motion for summary judgment has been served upon the plaintiff, the dismissal by the plaintiff by the filing of the notice is a matter of right. The dismissal occurs as of the date of the notice is filed by the plaintiff and not the date the court issues the order confirming the dismissal.

(3) Under the clear terms of Sec. 1, Rule 17, the dismissal as a matter of right ceases when an answer or a motion for summary judgment is served on the plaintiff and not when the answer or the motion is filed with the court. Thus, if a notice of dismissal is filed by the plaintiff even after an answer has been filed in court but before the responsive pleading has been served on the plaintiff, the notice of dismissal is still a matter of right.
Two-dismissal rule

(1) The two-dismissal rule applies when the plaintiff has (a) twice dismissed actions, (b) based on or including the same claim, (c) in a court of competent jurisdiction. The second notice of dismissal will bar the refiling of the action because it will operate as an adjudication of the claim upon the merits. In other words, the claim may only be filed twice, the first being the claim embodied in the original complaint. Since as a rule, the dismissal is without prejudice, the same claim may be filed. If the refiled claim or complaint is dismissed again through a second notice of dismissal, that second notice triggers the application of the two-dismissal rule and the dismissal is to be deemed one with prejudice because it is considered as an adjudication upon the merits.

Dismissal upon motion by plaintiff

(1) Once either an answer or motion for summary judgment has been served on the plaintiff, the dismissal is no longer a matter of right and will require the filing of a motion to dismiss, not a mere notice of dismissal. The motion to dismiss will now be subject to the approval of the court which will decide on the motion upon such terms and conditions as are just (Sec. 2, Rule 17). The dismissal under Sec. 2 is no longer a matter of right on the part of the plaintiff but a matter of discretion upon the court.

Effect of dismissal upon existing counterclaim

(1) If a counterclaim has already been pleaded by the defendant prior to the service upon him of the plaintiff's motion to dismiss, and the court grants said motion to dismiss, the dismissal "shall be limited to the complaint" (Sec. 2, Rule 17). The phraseology of the provision is clear: the counterclaim is not dismissed, whether it is a compulsory or a permissive counterclaim because the rule makes no distinction. The defendant if he so desires may prosecute his counterclaim either in a separate action or in the same action. Should he choose to have his counterclaim resolved in the same action, he must notify the court of his preference within fifteen (15) days from the notice of the plaintiff's motion to dismiss. Should he opt to prosecute his counterclaim in a separate action, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint.

(2) A similar rule is adopted in Sec. 6, Rule 16 and Sec. 3, Rule 17, wherein the dismissal of the complaint does not carry with it the dismissal of the counterclaim. The same provision also grants the defendant a choice in the prosecution of his counterclaim.

(3) Dismissal with prejudice under Rule 17, Section 3 cannot defeat the right of a co-owner to ask for partition of the property at any time, as provided by Article 494 of the Civil Code, given that there is no actual adjudication of ownership of shares yet. Between dismissal with prejudice under rule 17, Section 3, and the right granted to co-owners under Article 494 of the Civil Code, the latter must prevail. To construe otherwise would diminish the substantive right of a co-owner through the promulgation of procedural rules. In other words, Article 494 is an exception to Rule 17, Section 3. However, there can still be res judicata in partition cases concerning the same parties and the same subject matter once the respective shares of the co-owners have been determined with finality by a competent court with jurisdiction or if the court determines that partition is improper for co-ownership does not or no longer exists. Here, the RTC has not made any such determination (Quintos, et al. v. Nicolas, et al, GR No. 210252, 06/16/2014).
Dismissal due to the fault of plaintiff

(1) A complaint may be dismissed even if the plaintiff has no desire to have the same dismissed. The dismissal in this case will be through reasons attributed to his fault. Section 3 of Rule 17 provides the following grounds for dismissal:
   (a) Failure of the plaintiff, without justifiable reasons, to appear on the date 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. 3, Rule 17). The court may dismiss an action *motu proprio* for:
   (a) Failure to prosecute for unreasonable length of time;
   (b) Failure to appear at the trial;
   (c) Failure to comply with the rules;
   (d) Failure to comply with the order of the court; and
   (e) Lack of jurisdiction.

Dismissal of counterclaim, cross-claim or third-party complaint

(1) The rule on the dismissal of a complaint applies to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone by notice pursuant to Sec. 1, Rule 17 shall be made before a responsive pleading or a motion for summary judgment is served or, if there is none, before the introduction of evidence at the trial or hearing (Sec. 4).

XI. PRE-TRIAL (Rule 18)

Concept of pre-trial

(1) Pre-trial is a procedural device intended to clarify and limit the basic issues between the parties. It thus paves the way for a less cluttered trial and resolution of the case. Its main objective is to simplify, abbreviate and expedite trial, or totally dispense with it (*Abubakar vs. Abubakar*, 317 SCRA 264). It is a basic precept that the parties are bound to honor the stipulations made during the pre-trial (*Interlining Corp. vs. Phil. Trust Co.*, GR 144190, 03/06/2002).

Nature and purpose

(1) After the last pleading has been served and filed, it shall be the duty of the plaintiff to promptly move *ex parte* that the case be set for pre-trial.
(2) The conduct of a pre-trial is mandatory.
(3) Pre-trial is a procedural device held prior to the trial for the court to consider the following purposes:
(a) The possibility of an amicable settlement or a submission to alternative modes of dispute resolution;
(b) Simplification of issues;
(c) Necessity or desirability of amendments to the pleadings;
(d) Possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
(e) Limitation of the number of witnesses;
(f) Advisability of a preliminary reference of issues to a commissioner;
(g) Propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
(h) Advisability or necessity of suspending the proceedings; and
(i) Other matters as may aid in the prompt disposition of the action (Sec. 2, Rule 18).

(4) Pre-trial is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. It is an answer to the clarion call for the speedy disposition of cases. The non-appearance by the plaintiff in the pre-trial shall be cause for dismissal of the action. However, the non-appearance of a party may be excused if a valid cause is shown therefor (Sec. 4) (Anson Trade Ctr. vs. Pacific Banking Corp., GR 179999, 03/17/2009).

(5) Contending that the RTC was correct in dismissing the case for failure of respondent to prosecute his case, petitioner filed the instant petition praying that the decision of the CA be set aside. The SC however ruled that respondent had the option to move for pre-trial and if he fails to do so as he did, the branch clerk of court had the duty to have the case set for pre-trial. The Court emphasizes that in the absence of a pattern or scheme to delay the disposition of the case or a wanton failure to observe the mandatory requirement of the rules on the part of the plaintiff, as in the case at bar, courts should decide to dispense with rather than wield their authority to dismiss. (Soliman v. Fernandez, GR No. 176652, 06/04/2014).

(6) Parañaque Kings clearly trifled with the mandatory character of a pre-trial, which is a procedural device intended to clarify and limit the basic issues raised by the parties and to take the trial of cases out of the realm of surprise and maneuvering. More significantly, a pre-trial has been institutionalized as the answer to the clarion call for the speedy disposition of cases. Hailed as the most important procedural innovation in Anglo-Saxon justice in the nineteenth century, it paves the way for a less cluttered trial and resolution of the case. It is, thus, mandatory for the trial court to conduct pre-trial in civil cases in order to realize the paramount objective of simplifying; abbreviating, and expediting trial. (Parañaque Kings Enterprises, Inc. v. Santos, GR No. 194638, 07/02/2014).

(7) 2001 Bar: Lilio filed a complaint in the Municipal Trial Court of Lanuza for the recovery of a sum of money against Juan. The latter filed his answer to the complaint serving a copy thereof on Lilio. After the filing of the answer of Juan, whose duty is to have the case set for pre-trial? Why? (5%)
Answer: After the filing of the answer of Juan, the plaintiff has the duty to promptly move ex parte that the case be set for pre-trial. The reason is that it is the plaintiff who knows when the last pleading has been filed and it is the plaintiff who has the duty to prosecute (Rule 18, Section 1).

**Notice of pre-trial**

(1) The notice of pre-trial shall be served on the counsel of the party if the latter is represented by counsel. Otherwise, the notice shall be served on the party himself. The counsel is charged with the duty of notifying his client of the date, time and place of the pre-trial (Sec. 3, Rule 18).
(2) Notice of pre-trial is so important that it would be grave abuse of discretion for the court for example, to allow the plaintiff to present his evidence ex parte for failure of the defendant to appear before the pre-trial who did not receive through his counsel a notice of pre-trial. Accordingly, there is no legal basis for a court to consider a party notified of the pre-trial and to consider that there is no longer a need to send notice of pre-trial merely because it was his counsel who suggested the date of pre-trial (Agulto vs. Tucson, 476 SCRA 395).

(3) Lack of notice of pre-trial voids a subsequently issued decision. Under Section 3, Rule 18, it is unequivocally required that the notice of pre-trial shall be served on counsel, or on the party who has no counsel. The notice of pre-trial seeks to notify the parties of the date, time and place of the pre-trial and to require them to file their respective pre-trial briefs within the time prescribed by the rules. Its absence therefore, renders the pre-trial and all subsequent proceedings null and void (Philippine National Bank v. Sps. Perez, GR No. 187640, 06/15/2011).

Appearance of parties; effect of failure to appear

(1) It shall be the duty of both the parties and their counsels to appear at the pre-trial (Sec. 4, Rule 18).

(2) The failure of the plaintiff to appear shall be cause for the dismissal of the action. This dismissal shall be with prejudice except when the court orders otherwise (Sec. 5, Rule 18). Since the dismissal of the action shall be with prejudice, unless otherwise provided, the same shall have the effect of an adjudication on the merits thus, final. The remedy of the plaintiff is to appeal from the order of dismissal. An order dismissing an action with prejudice is appealable. Under the Rules, it is only when the order of dismissal is without prejudice, that appeal cannot be availed of (Sec. 1[h], Rule 41). Since appeal is available, certiorari is not the remedy because the application of a petition for certiorari under Rule 65 is conditioned upon the absence of appeal or any plain, speedy and adequate remedy (Sec. 1, Rule 65).

(3) The failure of the defendant to appear shall be cause to allow the plaintiff to present his evidence ex parte and for the court to render judgment on the basis of the evidence presented by the plaintiff (Sec. 5, Rule 18). The order of the court allowing the plaintiff to present his evidence ex parte does not dispose of the case with finality. The order is therefore, merely interlocutory; hence, not appealable. Under Sec. 1(c) of Rule 41, no appeal may be taken from an interlocutory order. The defendant who feels aggrieved by the order may move for the reconsideration of the order and if the denial is tainted with grave abuse of discretion, he may file a petition for certiorari. (Aguilar v. Lightbringers Credit Cooperative, GR No. 209605, 01/12/2015).

(4) During pre-trial, if the absent party is the plaintiff, then his case shall be dismissed. If it is the defendant who fails to appear, then the plaintiff is allowed to present his evidence ex parte and the court shall render judgment on the basis thereof. In the case at bench, the petitioners failed to attend the pre-trial conference. They did not even give any excuse for their non-appearance. Thus, the MCTC properly allowed respondent to present evidence ex parte. Thus, the Court can only consider the evidence on record offered by respondent. The petitioners lost their right to present their evidence during the trial and, a fortiori, on appeal due to their disregard of the mandatory attendance in the pre-trial conference. (Aguilar v. Lightbringers Credit Cooperative, GR No. 209605, 01/12/2015).

(5) On the procedural aspect, the Court reiterates the rule that the failure to attend the pre-trial conference does not result in the default of an absent party. Under the 1997 Rules of Civil Procedure, a defendant is only declared in default if he fails to file his Answer within the reglementary period. On the other hand, if a defendant fails to attend the pre-trial conference, the plaintiff can present his evidence ex parte. There is no dispute that
Spouses Salvador and their counsel failed to attend the pre-trial conference set on February 4, 2005 despite proper notice. Spouses Salvador aver that their non-attendance was due to the fault of their counsel as he forgot to update his calendar. This excuse smacks of carelessness, and indifference to the pre-trial stage. It simply cannot be considered as a justifiable excuse by the Court. As a result of their inattentiveness, Spouses Salvador could no longer present any evidence in their favor. (Spes. Salvador v. Spes. Rabaja, GR No. 199990, 02/04/2015).

Pre-trial brief; effect of failure to file

(1) The parties shall file with the court their respective pre-trial briefs which shall be received at least three (3) days before the date of the pre-trial. This pre-trial brief shall be served on the adverse party (Sec. 6, Rule 18).

(2) The pre-trial brief shall contain the following matters:
   (a) A statement of their willingness to enter into an amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
   (b) A summary of admitted facts and proposed stipulation of facts;
   (c) The issues to be tried or resolved;
   (d) The documents or exhibits to be presented, stating the purposes thereof;
   (e) A manifestation of their having availed of or their intention to avail of discovery procedures or referral to commissioners; and
   (f) The number and names of the witnesses, and the substance of their respective testimonies (Sec.6, Rule 18).

(3) Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial (Sec. 6, Rule 18). Hence, if it is the plaintiff who fails to file a pre-trial brief, such failure shall be cause for dismissal of the action. If it is the defendant who fails to do so, such failure shall be cause to allow the plaintiff to present his evidence ex parte. A pre-trial brief is not required in a criminal case.

Distinction between pre-trial in civil case and pre-trial in criminal case

<table>
<thead>
<tr>
<th>Civil Pre-trial (Rule 18)</th>
<th>Criminal Pre-trial (Rule 118)</th>
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<tbody>
<tr>
<td>Mandatory</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Presence of defendant and counsel mandatory (failure to appear is a ground for dismissal)</td>
<td>Accused need not be present, but his counsel must be present, otherwise he may be sanctioned</td>
</tr>
<tr>
<td>Amicable settlement is discussed</td>
<td>Amicable settlement is not discussed, unless the criminal case is covered by summary procedure</td>
</tr>
<tr>
<td>Agreement included in pre-trial order need not be in writing</td>
<td>Agreements or admissions must be written and signed by the accused and counsel to be admissible against him.</td>
</tr>
<tr>
<td>Can have proffer of evidence</td>
<td>Proffer of evidence only after trial</td>
</tr>
<tr>
<td>Requires motion ex parte</td>
<td>Does not require a motion; the court shall order motu proprio</td>
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<tr>
<td>Held after the last pleading has been served</td>
<td>Held after arraignment</td>
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</table>
(1) The pre-trial in a civil case is set when the plaintiff moves *ex parte* to set the case for pre-trial (Sec. 1, Rule 18). The pre-trial in criminal case is ordered by the court and no motion to set the case for pre-trial is required from either the prosecution or the defense (Sec. 1, Rule 118).

(2) The motion to set the case for pre-trial in a civil case is made after the last pleading has been served and filed (Sec. 1, Rule 18). In a criminal case, the pre-trial is ordered by the court after arraignment and within thirty (30) days from the date the court acquires jurisdiction over the person of the accused (Sec. 1, Rule 118).

(3) The pre-trial in a civil case considers the possibility of an amicable settlement as an important objective (Sec. 2[a], Rule 18). The pre-trial in a criminal case does not include the considering of the possibility of amicable settlement of criminal liability as one of its purposes (Sec. 1, Rule 118).

(4) In a civil case, the agreements and admissions made in the pre-trial are not required to be signed by the parties and their counsels. They are to be contained in the record of pre-trial and the pre-trial order (Sec. 7, Rule 18). In a criminal case, all agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel; otherwise, they cannot be used against the accused (Sec. 2, Rule 118).

(5) The sanctions for non-appearance in a pre-trial are imposed upon the plaintiff or the defendant in a civil case (Sec. 4, Rule 18). The sanctions in a criminal case are imposed upon the counsel for the accused or the prosecutor (Sec. 3, Rule 118).

### 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).

(3) Disputes do not go to arbitration unless and until the parties have agreed to abide by the arbitrator's decision. Necessarily, a contract is required for arbitration to take place and to be binding. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of that contract. As a rule, contracts are respected as the law between the contracting parties and produce effect as between them, their assigns and heirs. Only those parties who have agreed to submit a controversy to arbitration who, as against each other, may be compelled to submit to arbitration. (*Aboitiz Transport System Corp. v. Gothong Lines, Inc. GR No. 198226, 07/18/2014*).

(4) While there is jurisprudential authority stating that "a clerical error in the judgment appealed from may be corrected by the appellate court," the application of that rule cannot be made in this case considering that the CIAC Rules provides for a specific
procedure to deal with particular errors involving "an evident miscalculation of figures, a typographical or arithmetical error. While the CA correctly affirmed in full the CIAC Arbitral Tribunal’s factual determinations, it improperly modified the amount of the award in favor of AIC, which modification did not observe the proper procedure for the correction of an evident miscalculation of figures in the arbitral award. Section 17.1 of the CIAC Rules mandates the filing of a motion for the foregoing purpose within fifteen (15) days from receipt thereof. Failure to file said motion would consequently render the award final and executory under Section 18. 1 of the same rules. (National Transmission Corporation v. Alphaomega Integrated Corp., GR No. 184295, 07/30/2014).

(5) While it appears that the Special ADR Rules remain silent on the procedure for the execution of a confirmed arbitral award, it is the Court’s considered view that the Rules’ procedural mechanisms cover not only aspects of confirmation but necessarily extend to a confirmed award’s execution in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. As the Court sees it, execution is but a necessary incident to the Court’s confirmation of an arbitral award. To construe it otherwise would result in an absurd situation whereby the confirming court previously applying the Special ADR Rules in its confirmation of the arbitral award would later shift to the regular Rules of Procedure come execution. Irrefragably, a court’s power to confirm a judgment award under the Special ADR Rules should be deemed to include the power to order its execution for such is but a collateral and subsidiary consequence that may be fairly and logically inferred from the statutory grant to regional trial courts of the power to confirm domestic arbitral awards. (Department of Environment and Natural Resources v. United Planners Consultants, Inc., GR No. 212081, 02/23/2015).

XI. 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.

(3) The Ombudsman may not be allowed to intervene and seek reconsideration of the adverse decision rendered by CA in absolving Sison from the liability. In order to file an intervention two requisites must concur: (1) movant has legal interest in the matter in litigation; and (2) intervention must not unduly delay or prejudice the adjudication of the rights of the parties, nor should the claim of the intervenor be capable of being properly decided in a separate proceeding. The interest referred to must be direct and immediate in character that the intervenor will be affected by the decision or judgment to be rendered. Moreover, when judges actively participate in the appeal of the decision
which they have rendered, they become adversarial and cease to be judicial which
supposed to be principal function. The Court ruled that the Ombudsman must be
mindful of its role as an adjudicator which must remain partial and detached from the
cases it ruled upon (Office of the Ombudsman v. Sison, GR No. 185954, 02/16/2010).

(4) Intervention is never an independent action, but is ancillary and supplemental to the
existing litigation. Its purpose is not to obstruct nor unnecessarily delay the placid
operation of the machinery of trial, but merely to afford one not an original party, yet
having a certain right or interest in the pending case, the opportunity to appear and be
joined so he could assert or protect such right or interests. In this case, Pulgar does not
contest the RTC’s dismissal of Civil Case No. 0587-M for lack of jurisdiction, but oddly
maintains his intervention by asking in this appeal a review of the correctness of the
subject realty tax assessment. This recourse, the Court, however, finds to be improper
since the RTC’s lack of jurisdiction over the main case necessarily resulted in the
dismissal of his intervention. (Pulgar v. RTC of Mauban, Quezon, GR No. 157583,
09/10/2014).

Requisites for intervention

(1) The following requisites must be complied with before a non-party may intervene in a
pending action:
   (a) There must be a motion for intervention filed before rendition of judgment by the trial
court (Sec. 1, Rule 19). A motion is necessary because leave of court is required
before a person may be allowed to intervene.
   (b) The movant must show in his motion that he has:
      i. A legal interest in the matter in litigation, the success of either of the parties in
         the action, or against both parties;
      ii. That the movant is so situated as to be adversely affected by a distribution or
          other disposition of property in the custody of the court or of an officer thereof;
      and
      iii. That the intervention must not only unduly delay or prejudice the adjudication of
           the rights of the original parties and that the intervenor’s rights may not
           be fully protected in a separate proceeding (Mabayo Farms, Inc. vs. CA, GR 140058,
           Aug. 1, 2002).

(2) 2000 Bar: What are the requisites for an intervention by a non-party in an action
pending in court? (5%)
Answer: The requisites for intervention are:
   (a) Legal interest in the matter in controversy; or
   (b) Legal interest in the success of either of the parties; or
   (c) Legal interest against both; or
   (d) So situated as to be adversely affected by the distribution or other disposition of
      property in the custody of the court or of an officer thereof; or
   (e) Intervention will not unduly delay or prejudice the adjudication of the rights of
      original parties; or
   (f) Intervenor’s rights may not be fully protected in a separate proceeding (Acenas v.
      Court of Appeals, 247 SCRA 773 [1995]).

Time to intervene

(1) The motion to intervene may be filed at any time before the rendition of judgment by the
trial court (Sec. 2, Rule 18). Intervention after trial and decision can no longer be
permitted (Yau vs. Manila Banking Corp., GR 126731, July 11, 2002).
Remedy for the denial of motion to intervention

(1) The remedy of the aggrieved party is a motion for reconsideration. Intervention is an interlocutory action or judgment; hence, unappealable. Mandamus will not lie except in case of grave abuse of discretion.

XII. 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, 5th Ed.).

Service of subpoena

(1) It shall be made in the same manner as personal or substituted service of summons. The original shall be exhibited and a copy thereof delivered to the person on whom it is served, tendering to him the fees for one day’s attendance and the kilometrage allowed by the Rules, except that when a subpoena is issued by or on behalf of the Republic, or an officer or agency thereof, the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. If the subpoena is *duces tecum*, the reasonable cost of producing the books, documents or things demanded shall also be tendered.

(2) Service of a subpoena shall be made by the sheriff, by his deputy, or by any other person specially authorized, who is not a party and is not less than eighteen (18) years of age (Sec. 6, Rule 21).

Compelling attendance of witnesses; Contempt

(1) In case of failure of a witness to attend, the court or judge issuing the subpoena, upon proof of the service thereof and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and the cost of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was willful and without just cause (Sec. 8).

(2) Failure by any person without adequate cause to obey a subpoena served upon him shall be deemed a contempt of the court from which the subpoena is issued. If the
subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule (Sec. 9).

Quashing of subpoena

(1) The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein: (a) if it is unreasonable and oppressive, or (b) the relevancy of the books, documents or things does not appear, or (c) if the person on whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof, or (d) the witness fees and the kilometrage allowed by the Rules were not tendered when the subpoena was served (Sec. 4).

(2) Subpoena *ad testificandum* may be quashed on the ground that: (a) the witness is not bound thereby, where the residence is more than 100 kilometers from the place of trial, and (b) the witness fees and the kilometrage allowed by the Rules were not tendered when the subpoena was served (Sec. 4).

(3) Viatory Right of a Witness. This is a right availed of only in civil cases where a witness resides more than 100 kilometers from the place of trial where he has to travel by ordinary course or travel, or where a detention prisoner with no permission obtained from the court where his case is pending, then he cannot be compelled to attend the trial (*People vs. Montejo, GR No. L-24154, 10/31/1967*).
XIII. 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 pending action, 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 of Deposition

(1) A deposition may be sought for use in a future action (Rule 24), during a pending action (Rule 23), or for use in a pending appeal (Rule 24). If the deposition is for use during a pending action, it is commonly called a deposition de bene 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 perpetuum rei memoriam*. Any or all of the deposition, so far as admissible under the rules of evidence, may be used (a) against any party who was present or represented at the taking of the deposition, or (b) against one who had due notice of the deposition *(Sec. 4, Rule 23)*.

(2) The deposition may be used for the following purposes:
(a) For contradicting or impeaching the testimony of the deponent as a witness;
(b) For any purpose by the adverse party where the deponent is a party;
(c) For any purpose by any party, where the deponent is a witness if the court finds that:
   1. The witness is dead;
   2. The witness resides more than 100 kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition;
   3. That the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or
   4. That the party offering the deposition has been unable to procure the attendance of witnesses by subpoena; or
   5. When exceptional circumstances exist *(Sec. 4, Rule 23)*.

**Scope of examination**

(1) Unless otherwise ordered by the court as provided by Sec. 16 or 18, the deponent may be examined regarding any matter not privileged, which is relevant to the pending action, whether relating to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts *(Sec. 2)*.

**When may Objections to Admissibility be Made**

(1) Subject to the provisions of Sec. 29, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying *(Sec. 6)*.

**When may taking of deposition be terminated or its scope limited**

(1) At any time during the taking of the deposition, on motion or petition of any party or of the deponent and upon showing that the examination is being conducted in bad faith or in such manner as reasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the RTC of the place where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition, as provided in Sec. 16, Rule 23. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a notice for an order. In granting or refusing such order, the court may impose upon either party or upon the witness the requirement to pay such costs or expenses as the court may deem reasonable *(Sec. 18)*.
Written interrogatories to adverse parties

(1) Rule 25 lays down the procedure for conducting interrogatories to parties:
   (a) By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or
   (b) Without leave after an answer has been served, any party desiring to elicit material and relevant facts from any adverse parties shall file and serve upon the latter written interrogatories to be answered by the party served. If a party served is a public or private corporation or a partnership or association, by any officer thereof competent to testify in its behalf.

(2) The interrogatories shall be answered fully in writing, signed and sworn to by the person making them. The party whom the interrogatories have been served shall file and serve a copy of the answers on the party submitting the interrogatories within fifteen (15) days after service thereof unless the court on motion and for good cause shown, extends or shortens the time.

(3) When objections to any interrogatories is presented to the court within ten (10) days after service thereof, with notice as in a case of a motion; and answers shall be deferred until the objections are resolved, which shall be at as early as time as is practicable.

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:
   
   - 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;
   
   - 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 motion must be filed by a party showing good cause therefor;
   
   - The motion must sufficiently describe the document or thing sought to be produced or inspected;
   
   - The motion must be given to all the other parties;
   
   - The document or thing sought to be produced or inspected must constitute or contain evidence material to the pending action;
   
   - The document or thing sought to be produced or inspected must not be privileged; and
   
   - The document or thing sought to be produced or inspected must be in the possession of the adverse party or, at least under his control (Sec. 1, Rule 27; Lime Corp. vs. Moran, 59 Phil. 175).

3. The Court ruled that the availment of a motion for production, as one of the modes of discovery, is not limited to the pre-trial stage. Rule 27 does not provide for any time frame within which the discovery mode of production or inspection of documents can be utilized. The rule only requires leave of court "upon due application and a showing of
due cause” *(Eagle Ridge Development Corporation v. Cameron Granville 3 Asset Management, Inc., GR No. 204700, 11/24/2014).*

4. **2002 Bar:** The plaintiff sued the defendant in the RTC to collect on a promissory note, the terms of which were stated in the complaint and a photocopy attached to the complaint and as an annex. Before answering, the defendant filed a motion for an order directing the plaintiff to produce the original of the note so that the defendant could inspect it and verify his signature and the handwritten entries of the dates and amounts.

a. Should the judge grant the defendant’s motion for production and inspection of the original of the promissory note? (2%)

Answer: Yes, because upon motion of any party showing good cause, the court in which the action is pending may order any party to produce and permit the inspection of designated documents *(Rule 27).* The defendant has the right to inspect and verify the original of the promissory note so that he could intelligently prepare his answer.

b. Assuming that an order for production and inspection was issued but the plaintiff failed to comply with it, how should the defendant plead to the alleged execution of the note? (3%)

Answer: The defendant is not required to deny under oath the genuineness and due execution of the promissory note, because of the non-compliance by the plaintiff with the order for production and inspection of the original thereof *(Rule 8, Section 8).*

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**Physical and mental examination of persons (Rule 28)**

1. Requirements of physical and mental examination of persons:
   a. The physical or mental condition of a party must be in controversy in the action;
   b. A motion showing good cause must be filed; and
   c. Notice of the motion must be given to the party to be examined and to all the other parties *(Secs. 1 and 2).*

2. Rules governing the rights of parties on the report of the examining physician regarding the physical or mental condition of party examined:
   a. The person examined shall, upon request, be entitled to a copy of the detailed written report of the examining physician setting out his findings and conclusions;
   b. The party causing the examination to be made shall be entitled upon request to receive from the party examined, a like report of any examination previously or thereafter made, of the same physical or mental condition;
   c. If the party examined refuses to deliver such report, the court on motion and notice may make an order requiring delivery;
      a. If a physician fails or refuses to make such report, the court may exclude his testimony if offered at the trial;
   d. The party examined who obtains a reports of the examination or takes the deposition of the examiner waives any privilege he may have in that action or any other action involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical examination *(Sec. 4).*

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**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).

XIV. TRIAL (Rule 30)

(1) A trial is the judicial process of investigating and determining the legal controversies, starting with the production of evidence by the plaintiff and ending with his closing arguments (Acosta vs. People, 5 SCRA 774).

Adjournments and postponements

(1) The general rule is that a court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require (Sec. 2).

(2) The court has no power to adjourn a trial for a period longer than one month from each adjournment, nor more than three (3) months in all, except when authorized in writing by the Court Administrator. A motion for postponement should not be filed on the last hour especially when there is no reason why it could not have been presented earlier (Republic vs. Sandiganbayan, 301 SCRA 237).

(3) Postponement is not a matter of right. It is addressed to the sound discretion of the court (Garces vs. Valenzuela, 170 SCRA 745).

(4) The Constitution guarantees the right of persons against unreasonable delay in the disposition of cases before all judicial, quasi-judicial or administrative bodies. Judges play an active role in ensuring that cases are resolved with speed and dispatch so as not to defeat the cause of the litigants. The mandatory continuous trial system was adopted precisely to minimize delay in the processing and expedite the resolution of
cases in the trial courts by holding trials on scheduled dates without needless postponements and terminating the entire proceedings within ninety days from the initial hearing. The need for speedy administration of justice cannot be ignored. Excessive delay in the disposition of cases renders the rights of people guaranteed by various legislations inutile (Matias vs. Plan, AM No. MTJ-98-1159, 08/03/1998).

Requisites of motion to postpone trial for absence of evidence

(1) Trial may be postponed on the ground of absence of evidence upon compliance with the following:
   (a) A motion for postponement must be filed;
   (b) The motion must be supported by an affidavit or sworn certification showing (1) the materiality or relevancy of the evidence, and (2) that due diligence has been used to procure it (Sec. 3).

(2) If the adverse party admits the facts given in evidence, the trial shall not be postponed even if he reserves the right to object to the admissibility of the evidence (Sec. 3).

Requisites of motion to postpone trial due to illness of party or counsel

(1) A motion for postponement must be filed;

(2) The motion must be supported by an affidavit or sworn certification showing that (a) the presence of the party or counsel at the trial is indispensable, and (b) that the character of his illness is such as to render his non-attendance excusable (Sec. 4).

Agreed statements of facts

(1) If the parties agree, in writing, on the facts involved in the action, they may then ask the court to render judgment thereon without the introduction of evidence. If the agreement of facts is partial, trial shall be held as to others (Sec. 6). The agreed statement of facts is conclusive on the parties, as well as on the court. Neither of the parties may withdraw from the agreement, nor may the court ignore the same (McGuire vs. Manufacturers Life Ins., 87 Phil. 370).

Order of trial

(1) Subject to the provisions of Sec. 2, Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
   (a) The plaintiff shall adduce evidence in support of his complaint;
   (b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third party complaint;
   (c) The third party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;
   (d) The fourth party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;
   (e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;
   (f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and
(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third party defendants and so forth having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence (Sec. 5).

Reversal of order (see Reverse Trial)

(1) When the accused admits the act or omission charged in the complaint or information but interposes a lawful defense, the order of trial may be modified (Sec. 11, Rule 119).

(2) This is availed of when defendant alleges or adduces affirmative defenses, the order shall start with the defendant.

Consolidation or Severance of hearing or trial (Rule 31)

(1) **Consolidation.** When actions involving a common question of law or facts are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay (Sec. 1).

(2) **Severance (Separate) Trials.** The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third party complaint, or of any separate issue or of any number of claims, cross-claims, counterclaim, third party complaints or issue (Sec. 2).

(3) Consolidation is a procedural device to aid the court in deciding how cases in its docket are to be tried so that business of the court may be dispatched expeditiously and with economy while providing justice to the parties. To promote this end, the rule allows the consolidation and a single trial of several cases in the court’s docket, or in the consolidation of issues within those cases (Republic vs. Heirs of Oribello, GR No. 199501, 0306/2013).

(4) In the context of legal procedure, the term “consolidation” is used in three different sense:

(a) Where all except one of several actions are stayed until one is tried, in which case the judgment in the one trial is conclusive as to the others. (quasi-consolidation);

(b) Where several actions are combined into one, lose their separate identity, and become a single action in which a single judgment is rendered. This is illustrated by a situation where several actions are pending between the same parties stating claims which might have been set out originally in one complaint. (actual consolidation); and

(c) Where several actions are ordered to be tried together but each retains its separate character and requires the entry of a separate judgment. This type of consolidation does not merge the suits into single action, or cause the parties to one action to be parties to the other. (consolidation for trial) (Republic vs. Heirs of Oribello, supra.).

Delegation of reception of evidence

(1) The judge of the court where the case is pending shall personally receive the evidence to be adduced by the parties. Reception of the evidence may nevertheless be delegated to the clerk of court who is a member of the bar, in any of the following cases:

(a) In default hearings;

(b) In *ex parte* hearings; or

(c) In any case by written agreement of the parties (Sec. 9).
Reference by consent

(1) By written consent of both parties, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court (Sec. 1).

Reference ordered on motion

(1) When the parties do not consent, the court may, upon the application of either or on its own motion, direct a reference to a commissioner in the following cases:
   (a) When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein;
   (b) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;
   (c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect (Sec. 2).

Powers of commissioner

(1) Under the Rules, the court’s order may specify or limit the powers of the commissioner. Hence, the order may direct him to:
   (a) Report only upon particular issues;
   (b) Do or perform particular acts; or
   (c) Receive and report evidence only.

(2) The order may also fix the date for beginning and closing of the hearings and for the filing of his report.

(3) Subject to such limitations stated in the order, the commissioner:
   (a) Shall exercise the power to regulate the proceedings in every hearing before him;
   (b) Shall do all acts and take all measures necessary or proper for the efficient performance of his duties under the order;
   (c) May issue subpoenas and subpoenas duces tecum, and swear witnesses; and
   (d) Rule upon the admissibility of evidence, unless otherwise provided in the order of reference (Sec. 3, Rule 32).

Commissioner’s report; notice to parties and hearing on the report

(1) Upon completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach in his report all exhibits, affidavits, depositions, papers and the transcript, if any, of the evidence presented before him (Sec. 9).

(2) The commissioner’s report is not binding upon the court which is free to adopt, modify, or reject, in whole or in part, the report. The court may receive further evidence or recommit the report with instructions (Sec. 11, Rule 32; Baltazar vs. Limpin, 49 Phil. 39).
(3) Notice of the filing of the report must be sent to the parties for the purpose of giving them an opportunity to present their objections \textit{(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 \textit{(Govt. vs. Osorio, 50 Phil. 864)}.

(4) In the hearing to be conducted on the commissioner’s report, the court will review only so much as may be drawn in question by proper objections. It is not expected to rehear the case upon the entire record \textit{(Kreidt vs. McCullough and Co., 37 Phil. 474)}.

(5) The rule, however, is not absolute. In \textit{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.

\textbf{XV. DEMURRER TO EVIDENCE \textit{(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 \textit{(Ballentine’s Law Dictionary)}.

(2) The provision of the Rules governing demurrer to evidence does not apply to an election case \textit{(Gementiza vs. COMELEC, 353 SCRA 724)}.

(3) Relate with Section 23, Rule 119.

\textbf{Ground}

(1) The only ground for demurrer to evidence is that the plaintiff has no right to relief.

\textbf{Effect of denial; Effect of grant}

(1) In the event his motion is denied, the defendant does not waive his right to offer evidence. An order denying a demurrer to evidence is interlocutory and is therefore, not appealable. It can however be the subject of a petition for certiorari in case of grave abuse of discretion or an oppressive exercise of judicial authority.

(2) If the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present the evidence on his behalf. In the case of reversal, the appellate court shall render judgment for the plaintiff based on the evidence alone.

(3) It is not correct for the appellate court reversing the order granting the demurrer to remand the case to the trial court for further proceedings. The appellate court should, instead of remanding the case, render judgment on the basis of the evidence submitted by the plaintiff \textit{(Radiowealth Finance Corp. vs. Del Rosario, 335 SCRA 288)}. Remanding the case to the RTC avails the plaintiff the opportunity to adduce evidence, which is against the Rules.
(4) 2001 Bar: Carlos filed a complaint against Pedro in the Regional Trial Court (RTC) of Ozamis City for the recovery of the ownership of a car. Pedro filed his answer within the reglementary period. After the pre-trial and actual trial, and after Carlos has completed with the presentation of his evidence, Pedro moved for the dismissal of the complaint on the ground that under the facts proven and the law applicable to the case, Carlos is not entitled to the ownership of the car. The RTC granted the motion for dismissal. Carlos appealed the order of dismissal and the appellate court reversed the order of the trial court. Thereafter, Pedro filed a motion with the RTC asking the latter to allow him to present his evidence. Carlos objected to the presentation of evidence by Pedro. Should the RTC grant Pedro’s motion to present his evidence? Why? (5%)

Answer: No, Pedro’s motion should be denied. He can no longer present evidence. The Rules provide that the motion for dismissal is granted by the trial court but on appeal the order of dismissal is reversed, he shall be deemed to have waived the right to present evidence.

**Waiver of right to present evidence**

(1) If the demurrer is granted but on appeal the order of dismissal is reversed, the defendant is deemed to have waived his right to present evidence.

**Demurrer to evidence in a civil case versus demurrer to evidence in a criminal case**

(1) In a civil case, leave of court is not required before filing a demurrer. In a criminal case, demurrer to evidence is filed with or without leave of court (Sec. 23, Rule 119).

(2) In a civil case, if the demurrer is granted, the order of dismissal is appealable—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).

(4) Both are in the nature of motion to dismiss, with the same ground, available after plaintiff or prosecutor has rested his case.
Immutability of Final and Executory Judgments

(1) It is well-settled that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. In this case, the Court concurs with the CA’s view that the Assailed Order had already become final and executory at the time when the NHA sought to have it reconsidered before the court a quo. As evidenced by the registry return receipt on record, the NHA, however, moved for reconsideration therefrom only more than four (4) months from notice. As the motion was filed way beyond the 15-day reglementary period prescribed therefor, the court a quo’s judgment had already lapsed into finality. (National Housing Authority v. Court of Appeals, GR No. 173802, 04/07/2014).

(2) Well-entrenched in jurisprudence is the rule that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and considered conclusive between the parties, save for the following exceptional and meritorious circumstances: (1) when the factual findings of the appellate court and the trial court are contradictory; (2) when the findings of the trial court are grounded entirely on speculation, surmises or conjectures; (3) when the lower court’s inference from its factual findings is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (6) when there is a misappreciation of facts; (7) when the findings of fact are themselves conflicting; and (8) when the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. (Federal Builders, Inc. v. Foundation Specialists, Inc., GR No. 194507, 09/08/2014).

(3) A decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law, and whether it will be made by the court that rendered it or by the highest court of the land. There are, however, exceptions to the general rule, namely: (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. In this case, the clarification made by Secretary Pangandaman in his February 2, 2006 Order falls under the fourth exception. (Delfino, Sr. v. Anasao, GR No. 197486, 09/10/2014).

(4) The court ruled that a judgment on compromise agreement is a judgment on the merits. It has the effect of res judicata, and is immediately final and executory unless set aside because of falsity or vices of consent. The doctrine of immutability of judgments bars courts from modifying decisions that have already attained finality, even if the purpose of the modification is to correct errors of fact or law. (Gadrinab v. Salamanca, GR No. 194560, 06/11/2014).

(5) When given judicial approval, a compromise agreement becomes more than a contract binding upon the parties. Having been sanctioned by the court, it is entered as a determination of a controversy and has the force and effect of a judgment. It is immediately executory and not appealable, except for vices of consent or forgery. The nonfulfillment of its terms and conditions justifies the issuance of a writ of execution; in
such an instance, execution becomes a ministerial duty of the court. *(Metro Manila Shopping Mecca Corp. v. Toledo, GR No. 190818, 11/10/2014).*

**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 rigueur*. 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)*.

(2) *2005 Bar:* In a complaint for recovery of real property, the plaintiff averred, among others, that he is the owner of the said property by virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex “A” thereof. In his unverified answer, the defendant denied the allegation concerning the sale of the property in question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof. Is it proper for the court to render judgment without trial? Explain? (4%)

Answer: Defendant cannot deny the sale of the property for lack of knowledge or information sufficient to form a belief as to the truth thereof. The answer, being defective amounts to an admission *(Rule 8, Sec. 10)*. Moreover, the genuineness and due execution of the deed of sale can only be denied by the defendant under oath and failure to do so is also an admission of the deed. Hence, a judgment on the pleadings can be rendered by the court without need of a trial *(Phil. Advertising Counselors, Inc. v. Revilla, 52 SCRA 246 [1973]; Gutierrez v. Court of Appeals, 74 SCRA 127 [1976])*.

**Contents of a judgment**

(1) Judgment has two parts: (a) the body of the judgment or the *ratio decidendi*, and (b) the dispositive portion of the judgment or *fallo*. The body of the decision *(ratio decidendi)* is not the part of the judgment that is subject to execution but the fallo because it is the latter which is the latter which is the judgment of the court. The importance of *fallo* or dispositive portion of a decision should state whether the complaint or petition is granted or denied, the specific relief granted, and the costs *(Morales vs. CA, 461 SCRA 34)*. It is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally, definitively, and authoritatively *(Light Rail Transit Authority vs. CA, 444 SCRA 125)*.

(2) The general rule is that where there is a conflict between the *fallo* and the *ratio decidendi*, the fallo controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. Where the inevitable conclusion from the body of the decision is so clear that there was a mere mistake in the dispositive portion, the body of the decision prevails *(Poland Industrial Limited vs. National Development Company, 467 SCRA 500)*.
(3) **Bar 2006**: What is the difference between a judgment and an opinion of the court? (2.5%)

The judgment or fallo is the final disposition of the Court which is reflected in the dispositive portion of the decision. A decision is directly prepared by the judge and signed by him, containing clearly and distinctly a statement of the facts proved and the law upon which the judgment is based. An opinion of the court is the informal expression of the views of the court and cannot prevail against its final order. The opinion of the court is contained in the body of the decision that serves as a guide or enlightenment to determine the ratio decidendi of the decision. The opinion forms no part of the judgment even if combined in one instrument, but may be referred to for the purpose of construing the judgment *(Etoya vs. Singson, AM No. RTJ-91-758, 09/26/1994; Contreras vs. Felix, GR No. L-477, 09/30/1947)*.

(4) **2004 Bar**: Distinguish clearly but briefly: Legislative facts and adjudicative facts. (2.5%)

Legislative facts refer to facts mentioned in a statute or in an explanatory note, while adjudicative facts are facts found in a court decision.

**Answer**: The rule is that in case of ambiguity or uncertainty in the dispositive portion of a decision, the body of the decision may be scanned for guidance in construing the judgment. The Court's silence as to the payment of the legal interests in the dispositive portion of the decision is not tantamount to its deletion or reversal. If such was the intention, it should have also expressly declared its deletion together with its express mandate to remove the award of liquidated damages to UPSI. *(UPSI Property Holdings, Inc. v. Diesel Construction Co., Inc., GR No. 200250, 08/06/2014)*.

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**Judgment on the pleadings (Rule 34)**

(1) Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party’s pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation (or for unliquidated damages, or admission of the truth of allegation of adverse party), the material facts alleged in the complaint shall always be proved *(Sec. 1)*.

(2) An order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is “interlocutory,” e.g., an order denying a motion to dismiss under Rule 16 of the Rules. Unlike a “final” judgment or order, which is appealable, an “interlocutory” order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case. The RTC Order denying respondents' special and affirmative defenses contained in their answer is no doubt interlocutory since it did not finally dispose of the case but will proceed for the reception of the parties’ respective evidence to determine the rights and obligations of each other. *(Heirs of Dimaampao v. Atty. Alug, GR No. 198223, 02/18/2015)*.

(3) The court ruled that judgment on the pleadings is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party’s pleading. An answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8 and 10, Rule 8 of the 1997 Rules of Civil Procedure, resulting in the admission of the material allegations of the adverse party’s pleadings. *(Asian Construction and Development Corporation v. Sannaedle Co., Ltd., GR No. 181676, 06/11/2014)*.

(4) Judgment on the pleadings is proper where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party’s pleading. An answer
would “fail to tender an issue” if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party’s pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. Now, if an answer does in fact specifically deny the material averments of the complaint and/or asserts affirmative defenses (allegations of new matter which, while admitting the material allegations of the complaint expressly or impliedly, would nevertheless prevent or bar recovery by the plaintiff), a judgment on the pleadings would naturally be improper. (Adolfo v. Adolfo, GR No. 201427, 03/18/2015).

Summary judgments *(Rule 35)*

(1) A summary judgment or accelerated judgment is a procedural technique to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits on record, or for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a trial. Its object is to separate what is formal or pretended denial or averment from what is genuine and substantial so that only the latter may subject a party-in-interest to the burden of trial. Moreover, said summary judgment must be premised on the absence of any other triable genuine issues of fact. Otherwise, the movants cannot be allowed to obtain immediate relief. A genuine issue is such issue of fact which requires presentation of evidence as distinguished from a sham, fictitious, contrived or false claim *(Monterey Foods Corp. vs. Eserjose, GR 153126, 09/11/2003)*.

(2) The requisites are: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law.

(3) Section 19, Rule 70 of the Rules of Court provides for the immediate execution of judgment in favor of the plaintiff in ejectment cases, which can only be stayed if the defendant perfects an appeal, files a supersedeas bond, and makes periodic deposit of rental or other reasonable compensation for the use and occupancy of the subject premises during the pendency of the appeal. These requirements are mandatory and concurrent, without which execution will issue as a matter of right. *(Mauleon v. Porter, GR No. 203288, 07/18/2014)*.

(4) A judgment on the pleadings is a judgment on the facts as pleaded, and is based exclusively upon the allegations appearing in the pleadings of the parties and the accompanying annexes. It is settled that the trial court has the discretion to grant a motion for judgment on the pleadings filed by a party if there is no controverted matter in the case after the answer is filed. A genuine issue of fact is that which requires the presentation of evidence, as distinguished from a sham, fictitious, contrived or false issue. Under Rule 35, on Summary Judgments, the petitioner had recourse to move for summary judgment, wherein it could have adduced supporting evidence to justify its action on the parties’ lease, but it did not do so. *(Comqisco Corporation/Aguila Glass v. Santos Car Check Center Corporation, GR No. 202989, 03/25/2015)*.

(5) When a party moves for summary judgment, this is premised on the assumption that a scrutiny of the facts will disclose that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. A judgment on the motion must be “rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file show that, except as to the amount of damages, there is no genuine issue and that the moving party is entitled to a judgment as a matter of law. A prudent examination of the evidence on record yields to no other conclusion that there exists a genuine issue of fact as raised in
both petitions. (YKR Corporation v. Philippine Agri-Business Center Corporation, GR No. 191838, 10/20/2014).

(6) Trial is the judicial examination and determination of the issues between the parties to the action. During trial, parties present their respective evidence of their claims and defenses. Parties to an action have the right "to a plenary trial of the case" to ensure that they were given a right to fully present evidence on their respective claims. However, there are instances when trial may be dispensed with. Under Rule 35 of the 1997 Rules of Civil Procedure, a trial court may dispense with trial and proceed to decide a case if from the pleadings, affidavits, depositions, and other papers on file, there is no genuine issue as to any material fact. In such a case, the judgment issued is called a summary judgment. (Olivarez Realty Corporation v. Castillo, GR No. 19 6251, 07/09/2014).

For the claimant

(1) A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof (Sec. 1).

For the defendant

(1) A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof (Sec. 2).

When the case not fully adjudicated

(1) If on motion, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly (Sec. 4, Rule 35).

(2) 2004 Bar. After defendant has served and filed his answer to plaintiff's complaint for damages before the proper Regional Trial Court, plaintiff served and filed a motion (with supporting affidavits) for a summary judgment in his opposition (with supporting affidavits) to the motion. After due hearing, the court issued an order (1) stating that the court has found no genuine issue as to many material fact and thus concluded that plaintiff is entitled to judgment in his favor as a matter of law except as to the amount of damages recoverable, and (2) accordingly ordering that the plaintiff shall have judgment summarily against defendant for such amount as may be found due plaintiff for damages to be ascertained by trial on October 7, 2004, at 8:30 o'clock in the morning.

May defendant properly take an appeal from said order? Or may defendant properly challenge said order thru a special civil action for certiorari? Reason. (5%) Answer: No, plaintiff may not properly take an appeal from said order because it is an interlocutory order and not a final and appealable order (Sec. 4, Rule 35). It does not dispose of the action or proceeding. Partial summary judgments are interlocutory. There is still something to be done, which is the trial for the adjudication of damages.
(but the defendant may properly challenge said order thru a special civil action for certiorari (Sec. 1[c], Rule 41; Province of Pangasinan v. CA, 220 SCRA 726 [1993]).

Affidavits and attachments

(1) Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Certified true copies of all papers or parts thereof referred to in the affidavit shall be attached thereto or served therewith (Sec. 5).

(2) Should it appear to its satisfaction at any time that any of the affidavits presented pursuant to the Rules are presented in bad faith, or solely for the purpose of delay, the court shall forthwith order the offending party or counsel to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including attorney's fees. It may, after hearing, further adjudge the offending party or counsel guilty of contempt (Sec. 6).

Judgments on the pleadings versus summary judgments

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<tr>
<th>Judgment on the Pleading</th>
<th>Summary Judgment</th>
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<td>Answer for does not tender an issue</td>
<td>There is an issue tendered in the answer, but not real and genuine issue</td>
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<tr>
<td>Three-day notice required</td>
<td>Ten-day notice required</td>
</tr>
<tr>
<td>Entire case may be terminated</td>
<td>Only partially terminated</td>
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<tr>
<td>Only plaintiff and defendant can file</td>
<td>Only plaintiff and defendant can file</td>
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</table>

(1) In the judgment on the pleadings, the answer does not tender an issue; in summary judgment, there is an issue tendered in the answer, but it is not genuine or real issue as may be shown by affidavits and depositions that there is no real issue and that the party is entitled to judgment as a matter of right;

(2) In judgment on the pleadings, the movants must give a 3-day notice of hearing; while in summary judgment, the opposing party is given 10-day notice;

(3) In judgment on the pleadings, the entire case may be terminated; while in summary judgment, it may only be partial;

(4) In judgment on the pleadings, only the plaintiff or the defendants as far as the counterclaim, cross-claim or third-party complaint is concerned can file the same; while in summary judgment, either the plaintiff or the defendant may file it.

Rendition of judgments and final orders (Rule 36)

(1) Rendition of judgment is the filing of the same with the clerk of court. It is not the pronouncement of the judgment in open court that constitutes the rendition. Even if the judgment has already been put in writing and signed, it is still subject to amendment if it has not yet been filed with the clerk of court and before its filing does not yet constitute the real judgment of the court (Ago vs. CA, 6 SCRA 530). It is not the writing of the judgment or its signing which constitutes rendition of the judgment (Castro vs. Malazo, 99 SCRA 164).

(2) A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and
the law on which it is based, signed by him, and filed with the clerk of the court (Sec. 1, Rule 36).

(3) **2004 Bar:** After Plaintiff in an ordinary civil action before the ZZ Regional Trial Court has completed presentation on his evidence, defendant without prior leave of court moved for dismissal of plaintiff’s complaint for insufficiency of plaintiff’s evidence. After due hearing of the motion and the opposition thereto, the court issued an order, reading as follows: “The Court hereby grants defendant’s motion to dismiss and accordingly orders the dismissal of plaintiff’s complaint, with the cost taxed against him. It is so ordered.” Is the order of dismissal valid? May plaintiff properly take an appeal? Reason. (5%)

Answer: The order and decision is void because it does not state findings of fact and of law, as required by Sec. 14, Article VII of the Constitution and Section 1, Rule 36 of the Rules of Civil Procedure. Being void, appeal is not available. The proper remedy is certiorari under Rule 65.

**Entry of judgment and final order (Rule 36)**

(1) If no appeal or motion for new trial or reconsideration is filed within the time provided in the Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. The date of finality of the judgment or final order shall be deemed the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory (Sec. 2).

(2) The entry of judgment refers to the physical act performed by the clerk of court in entering the dispositive portion of the judgment in the book of entries of judgment and after the same has become final and executory. The record shall contain the dispositive portion of the judgment or final order and shall be signed by the clerk of court, with a certificate by said clerk that the judgment has already become final and executory (Sec. 2, Rule 36).

(3) There are some proceedings the filing of which is reckoned from the date of the entry of judgment: (a) the execution of a judgment by motion is within five (5) years from the entry of the judgment (Sec. 6, Rule 39); (b) the filing of a petition for relief has, as one of its periods, not more than six (6) months from the entry of the judgment or final order (Sec. 3, Rule 38).

**Judgment (Rule 51; relate with Rules 36 and 120)**

(1) The judgment shall be rendered by members of the court who participated in the deliberation on the merits of the case before its assignment to a member for the writing of the decision (Sec. 2).

(2) Harmless Error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the trial court or by any of the parties is ground for granting a new trial or for setting aside, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceedings must disregard any error or defect which does not affect the substantial rights of the parties (Sec. 6).
XVII. POST JUDGMENT REMEDIES *(Rules 37-38, 40-47, 52-53)*

(1) Remedies before a judgment becomes final and executory
   (a) Motion for reconsideration (prohibited in a case that falls under summary
       procedure) *(Rules 37, 52)*;
   (b) Motion for new trial *(Rules 37, 53)*; and
   (c) Appeal *(Rules 40, 41, 42, 43, 45)*

(2) Remedies after judgment becomes final and executory
   (a) Petition for relief from judgment *(Rule 38)*;
   (b) Action to annul a judgment *(Rule 47)*;
   (c) Certiorari *(Rule 65)*; and
   (d) Collateral attack of a judgment.

(3) 2002 Bar:  May an order denying the probate of a will still be overturned after the period
to appeal therefrom has lapsed? Why? (3%)

   Answer: Yes, an order denying the probate of a will may be overturned after the period
to appeal therefrom has lapsed. A petition for relief may be filed on the grounds of
fraud, accident, mistakes or excusable negligence within a period of sixty (60) days after
the petitioner learns of the judgment or final order and not more than six (6) months
after such judgment or final order was entered *(Rule 38, Sections 1 and 3)*. An action
for annulment may also be filed on the ground of extrinsic fraud within four (4) years
from its discovery, and if based on lack of jurisdiction, before it is barred by laches or
estoppel *(Rule 47, Sections 2 and 3)*.

(4) 2006 Bar: Jojie filed with the Regional Trial Court (RTC) of Laguna a complaint for
damages against Joe. During the pre-trial, Jojie (sic) and her (sic) counsel failed to
appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as
in default and Jojie was allowed to present her evidence ex parte. Thereafter, the court
rendered its Decision in favor of Jojie.

Joe hired Jose as his counsel. What are the remedies available to him? Explain. (5%)

| Motion for New Trial  
* *(Rule 37)* | Petition for Relief from 
Judgment *(Rule 38)* | Action to Annul 
Judgment *(Rule 47)* |
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<td>1. Extrinsic fraud</td>
<td>5. Extrinsic fraud</td>
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<td>2. Accident</td>
<td>6. Accident</td>
<td>2. Lack of jurisdiction</td>
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<td>3. Mistake of fact</td>
<td>7. Mistake of fact</td>
<td>over the subject</td>
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<td>4. Excusable negligence</td>
<td>8. Excusable negligence</td>
<td>matter</td>
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<td><strong>Period of filing:</strong></td>
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<td>1. Within fifteen (15) days from receipt of notice of judgment or final order (Notice of Appeal); or</td>
<td>1. Within sixty (60) after petitioner learns of the judgment or order, and not more than six (6) months after entry of judgment.</td>
<td>1. Extrinsic fraud - within four (4) years from discovery</td>
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<tr>
<td>2. Within thirty (30) days from receipt of notice of judgment or final order (Record on Appeal)</td>
<td></td>
<td>2. Lack of jurisdiction - before barred by laches or estoppel</td>
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### 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.
3. For the grounds of fraud, accident, mistake, or excusable negligence, attachment of affidavit of merit is required; otherwise, it would be a pro forma motion.

#### Grounds for a motion for reconsideration

1. The damages awarded are excessive;
2. The evidence is insufficient to justify the decision or final order;
3. The decision or final order is contrary to law *(Sec. 1)*.

#### When to file

1. A motion for new trial should be filed within the period for taking an appeal. Hence, it must be filed before the finality of the judgment *(Sec. 1)*. No motion for extension of time to file a motion for reconsideration shall be allowed. In *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 movant has a “fresh period” of fifteen days from receipt of notice of the order denying or dismissing the motion for reconsideration within which to file a notice of appeal.
2. When the motion for new trial is denied on the ground of fraud, accident, mistake of fact or law, or excusable negligence, the aggrieved party can no longer avail of the remedy of petition for relief from judgment *(Francisco vs. Puno, 108 SCRA 427)*.
3. The denial of a motion for reconsideration signifies that the grounds relied upon have been found, upon due deliberation, to be without merit, as not being of sufficient weight to warrant a modification of the judgment or final order. It means not only that the grounds relied upon are lacking in merit but also that any other, not so raised, is deemed waived and may no longer be set up in a subsequent motion or application to overturn the judgment; and this is true, whatever may be the title given to such motion or application, whether it be “second motion for reconsideration” or “motion for clarification” or “plea for due process” or “prayer for a second look,” or “motion to defer, or set aside, entry of judgment,” *(Social Justice Society v. Lim, GR No. 187836, 03/10/2015)*.
Grant of the motion; effect

(1) If a new trial be granted in accordance with the provisions of the rules, the original judgment shall be vacated or set aside, and the action shall stand for trial de novo, but the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same (Sec. 6). The filing of the motion for new trial or reconsideration interrupts the period to appeal (Sec. 2, Rule 40; Sec. 3, Rule 41).

(2) If the court grants the motion (e.g., it finds that excessive damages have been awarded or that the judgment or final order is contrary to the evidence or law), it may amend such judgment or final order accordingly (Sec. 3). The amended judgment is in the nature of a new judgment which supersedes the original judgment. It is not a mere supplemental decision which does not supplant the original but only serves to add something to it (Esquivel vs. Alegre, 172 SCRA 315). If the court finds that a motion affects the issues of the case as to only a part, or less than all of the matters in controversy, or only one, or less than all of the parties to it, the order may grant a reconsideration as to such issues if severable without interfering with the judgment or final order upon the rest (Sec. 7).

(3) As a general rule, new trial based on newly discovered evidence is not allowed on appeal. However, this rule admits of an exception, provided the following requirements are present:
   (a) The new evidence must have been discovered after trial;
   (b) Earnest efforts were done to look for newly discovered evidence but fruitless;
   (c) If so allowed, it would probably alter the result; and
   (d) It must be material and not just corroborative or cumulative (Mendoza vs. Ozamis).

Remedy when motion is denied

(1) The party aggrieved should appeal the judgment. This is so because a second motion for reconsideration is expressly prohibited under the Interim Rules (Sec. 5).

(2) An order denying a motion for reconsideration or new trial is not appealable, the remedy being an appeal from the judgment or final order under Rule 41. The remedy from an order denying a motion for new trial is not to appeal from the order of denial. Again, the order is not appealable. The remedy is to appeal from the judgment or final order itself subject of the motion for new trial (Sec. 9, Rule 37).

Fresh Fifteen (15) -day Period Rule (Neypes Doctrine)

(1) If the motion is denied, the movant has a fresh period of 15 days from receipt of notice of the order denying or dismissing the motion for reconsideration within which to file a notice to appeal. This new period becomes significant if either a motion for reconsideration or a motion for new trial has been filed but was denied or dismissed. This fresh period rule applies not only to Rule 41 governing appeals from the RTC but also to Rule 40 governing appeals from MTC to RTC, Rule 42 on petitions for review from the RTC to the CA, Rule 43 on appeal from quasi-judicial agencies to the CA, and Rule 45 governing appeals by certiorari to the SC. Accordingly, this rule was adopted to standardize the appeal periods provided in the Rules to afford fair opportunity to review the case and, in the process, minimize errors of judgment. Obviously, the new 15 day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41 (Neypes vs. CA, GR No. 141524, 09/14/2005).
(2) The *Neypes* ruling shall not be applied where no motion for new trial or motion for reconsideration has been filed in which case the 15-day period shall run from notice of the judgment. This shall not apply to Rules 12, 16, 62, and 64. The period for Rules 40 and 41 are extendible, while those of Rules 42, 43, and 45 are not extendible.

(3) The fresh period rule does not refer to the period within which to appeal from the order denying the motion for new trial because the order is not appealable under Sec. 9, Rule 37. The non-appealability of the order of denial is also confirmed by Sec. 1(a), Rule 41, which provides that no appeal may be taken from an order denying a motion for new trial or a motion for reconsideration.

(4) Appeal from the MTC to the RTC: the fifteen-day period is counted from the date of the receipt of the notice of denial of motion.

(5) The doctrine of finality of judgment dictates that, at the risk of occasional errors, judgments or orders must become final at some point in time. In Neypes, the Supreme Court, in order to standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, declared that an aggrieved party has a fresh period of 15 days counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration, within which to file the notice of appeal in the RTC. *(Heirs of Bihag v. Heirs of Bathan, GR No. 181949, 04/23/2014).*
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).

(2) An interlocutory order is not appealable until after the rendition of the judgment on the merits. Exception: Doctrine of Procedural Void.

(3) Certain rules on appeal:
   (a) No trial de novo anymore. The appellate courts must decide the case on the basis of the record, except when the proceedings were not duly recorded as when there was absence of a qualified stenographer (Sec. 22[d], BP 129; Rule 21[d], Interim 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. Abuga, 88 SCRA 610);
   (e) There can be amendments of pleadings to conform to the evidence submitted before the trial court (Dayao vs. Shell, 97 SCRA 407);
   (f) The liability of solidary defendant who did not appeal is not affected by appeal of solidary debtor (Mun. of Orion vs. Concha, 50 Phil. 679);
   (g) Appeal by guarantor does not inure to the principal (Luzon Metal vs. Manila Underwriter, 29 SCRA 184);
   (h) In ejectment cases, the RTC cannot award to the appellant on his counterclaim more than the amount of damages beyond the jurisdiction of the MTC (Agustin vs. Bataclan, 135 SCRA 342);
   (i) The appellate court cannot dismiss the appealed case for failure to prosecute because the case must be decided on the basis of the record (Rule 21, Interim Rules).

(4) Doctrinally entrenched is that the right to appeal is a statutory right and the one who seeks to avail that right must comply with the statute or rules. The perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence, failure to perfect the same renders the judgment final and executory. (De Leon v. Hercules Agro Industrial Corporation, GR No. 183239, 06/02/2014).

(5) An appeal throws the entire case open for review. An appeal, once accepted by this Court, throws the entire case open to review, and that this Court has the authority to review matters not specifically raised or assigned as error by the parties, if their consideration is necessary in arriving at a just resolution of the case. (Barcelona v. Lim, GR No. 189171, 06/032014).

(6) The Court did relax the rule respecting the bond requirement to perfect appeal in cases where: (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary
period. Clearly therefore, the Rules only allow the filing of a motion to reduce bond on two (2) conditions: (1) that there is meritorious ground and (2) a bond in a reasonable amount is posted. Compliance with the two conditions stops the running of the period to perfect an appeal provided that they are complied with within the 10-day reglementary period. (Sara Lee Philippines, Inc. v. Macatlang, GR Nos. 180147, 180149-50, 180319, 180685, 06/04/2014).

(7) It is axiomatic that a party who does not appeal or file a petition for certiorari is not entitled to any affirmative relief. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed. Thus, for failure of respondent to assail the validity of her dismissal, such ruling is no longer in issue. (Immaculate Concepcion Academy v. Camilon, GR No. 188035, 07/02/2014).

(8) When an accused appeals from the sentence of the trial court, he waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate, whether favorable or unfavorable to the appellant. (People v. Torres, GR No. 189850, 09/22/2014).

(9) 2003 Bar: Defendant X received an adverse Decision of the Regional Trial Court in an ordinary civil case on 02 January 2003. He filed a Notice of Appeal on 10 January 2003. On the other hand, plaintiff A received the same decision on 06 January 2003, and on 19 January 2003, filed a Motion for Reconsideration of the Decision. On 13 January 2003, defendant X filed a Motion withdrawing his notice of appeal in order to file a Motion for New Trial which he attached. On 20 January 2003, the court denied A’s Motion to Withdraw Notice of Appeal. Plaintiff A received the Order denying his Motion for Reconsideration on 03 February 2003 and filed his Motion for Appeal on 05 February 2003. The court denied due course of A’s Notice of Appeal on the ground that the period to appeal had already lapsed.

a. Is the court’s denial of X’s Motion to Withdraw Notice of Appeal proper?
b. Is the court’s denial of due course to A’s appeal correct?
Answer: No, the court’s denial of X’s Motion to Withdraw Notice of Appeal is not proper, because the period of appeal of X has not yet expired. From 02 January 2003 when X received a copy of the adverse decision up to 13 January 2003 when he filed his withdrawal of appeal and Motion for New Trial, only ten (10) days had elapsed and he had fifteen (15) days to do so.

b. No, the court’s denial of due course to A’s appeal is not correct because the appeal was not on time. From January 6, 2003 when A received a copy of the decision up to January 19, 2003 when he filed a Motion for Reconsideration, only twelve (12) days had elapsed. Consequently, he had three (3) days from receipt of February 3, 2003 Order denying his Motion for Reconsideration within which to appeal. He filed his notice of appeal on February 5, 2003, or only two (2) days later.

Judgments and final orders subject to appeal

(1) An appeal may be taken only from judgments or final orders that completely dispose of the case (Sec. 1, Rule 41). An interlocutory order is not appealable until after the rendition of the judgment on the merits.

(2) There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of
In the instant case, petitioner appealed the Order of the trial court which dismissed his complaint for improper venue, lack of cause of action, and res judicata. Dismissals based on these grounds do not involve a review of the facts of the case but merely the application of the law, specifically in this case, Rule 16 of the Revised Rules of Civil Procedure. Considering, therefore, that the subject appeal raised only questions of law, the CA committed no error in dismissing the same. (Samson v. Sps. Gabor, GR No. 182970, 07/23/2014).

Matters not appealable

(1) No appeal may be taken from:
   (a) An order denying a petition for relief or any similar motion seeking relief from judgment;
   (b) An interlocutory order;
   (c) An order disallowing or dismissing an appeal;
   (d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;
   (e) An order of execution;
   (f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims, and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and
   (g) An order dismissing an action without prejudice (Sec. 1, Rule 41).

(2) A question that was never raised in the courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process (Bank of Commerce vs. Serrano, 451 SCRA 484). For an appellate court to consider a legal question, it should have been raised in the court below (PNOC vs. CA, 457 SCRA 32). It would be unfair to the adverse party who would have no opportunity to present evidence in contra to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. It is true that this rule admits of exceptions as in cases of lack of jurisdiction, where the lower court committed plain error, where there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy (Baluyot vs. Poblete, GR 144435, 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.

(4) The Supreme Court ruled that an appellate court has a broad discretionary power in waiving the lack of assignment of errors in the following instances:
   (a) Grounds not assigned as errors but affecting the jurisdiction of the court over the subject matter;
   (b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
   (c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of a justice or to avoid dispensing piecemeal justice;
(d) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
(e) Matters not assigned as errors on appeal but closely related to an error assigned; and
(f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent (General Milling Corp. v. Sps. Ramos, GR No. 193723, 07/20/2011).

Remedy against judgments and orders which are not appealable

(1) In those instances where the judgment or final order is not appealable, the aggrieved party may file the appropriate special civil action under Rule 65. Rule 65 refers to the special civil actions of certiorari, prohibition and mandamus. Practically, it would be the special civil action of certiorari that would be availed of under most circumstances. The most potent remedy against those judgments and orders from which appeal cannot be taken is to allege and prove that the same were issued without jurisdiction, with grave abuse of discretion or in excess of jurisdiction, all amounting to lack of jurisdiction.

Modes of appeal (Sec. 2, Rule 41)

(a) Ordinary appeal. The appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
(b) Petition for review. The appeal to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
(c) Petition for review on certiorari. In all cases where only questions of law are raised or involved, the appeal shall be to the SC by petition for review on certiorari in accordance with Rule 45.

Material Data Rule (Sec. 1 [a], Rule 50)

(1) The record on appeal must show the following material data:
   (a) Date of the receipt of the copy of final order or judgment;
   (b) Date of filing of the motion for reconsideration or new trial; and
   (c) Date of the receipt of the denial of the motion for reconsideration or new trial.
(2) An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
   (a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by the Rules;
   (b) Failure to file the notice of appeal or the record on appeal within the period prescribed by the Rules;
   (c) Failure of the appellant to pay the docket and other lawful fees as provided in Section 5 of Rule 40 and Section 4 of Rule 41;
   (d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44;
   (e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by the Rules;
(f) Absence of specific assignment of errors in the appellant's brief, or page references to the record as required in Section 13 [a], [c], [d], and [f] of Rule 44;
(g) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;
(h) Failure of the appellant to appear at the preliminary conference under Rule 48 or to comply with orders, circulars, or directives of the court without justifiable cause; and
(i) The fact that the order or judgment appealed from is not appealable.

Issues to be raised on appeal

(1) Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties (Sec. 15, Rule 44).

Period of appeal

<table>
<thead>
<tr>
<th>MODE OF APPEAL</th>
<th>PERIOD OF APPEAL</th>
<th>Period of appeal if party files MFR or New Trial (Neypes Rule)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinary Appeal (Rules 40, 41)</td>
<td>Within 15 days from receipt of judgment or final order, with no extension</td>
<td>Within 15 days from receipt of order denying motion for reconsideration or new trial</td>
</tr>
<tr>
<td>a) Notice of Appeal (Rule 40)</td>
<td>Within 30 days from receipt of judgment or final order</td>
<td>The 30-day to file the notice of appeal and record on appeal should be reckoned from the receipt of the order denying the motion for new trial or motion for reconsideration (Zayco vs. Himlo, GR 170243, April 16, 2008)</td>
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<tr>
<td>b) Record on Appeal (Rule 41)</td>
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<tr>
<td>Petition for Review (Rule 42)</td>
<td>Within 15 days from receipt of judgment</td>
<td>Within 15 days from receipt of the order denying motion for reconsideration or new trial</td>
</tr>
<tr>
<td>Petition for Review (Rule 43)</td>
<td>Within 15 days from receipt of judgment or final order or of last publication</td>
<td>Within 15 days from receipt of the order denying motion for reconsideration or new trial</td>
</tr>
<tr>
<td>Petition for Review on Certiorari (Rule 45)</td>
<td>Within 15 days from receipt of judgment or final order</td>
<td>Within 15 days from receipt of the order denying motion for reconsideration or new trial</td>
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</table>

(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.
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, 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 duly filed in accordance with the governing law of the court or agency *a quo*. 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*).

(6) In appeals cognized by the Office of the President, the time during which a motion for reconsideration has been pending with the Ministry/agency concerned shall be deducted from the period for appeal. (*Sps. Rosete v. Briones, GR No. 176121, 09/22/2014*).

### Perfection of appeals

1. For Ordinary Appeals from MTC to the RTC (Rule 40) and from the RTC to the CA (Rule 41):
   - 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;
   - 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;
   - 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 of appeal of the other parties. However, before the CA give due course to the petition, the RTC may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Sec. 2, Rule 39, and allow withdrawal of the appeal.

(b) Except in civil cases decided under Rules on Summary Procedure, the appeal shall stay the judgment or final order unless the CA, the law, or the Rules provide otherwise.

(c) A party’s appeal by notice of appeal is deemed perfected as to him upon the filing thereof in due time, and a party’s appeal by record on appeal is deemed perfected as to him upon the approval thereof. In the first case, the court loses jurisdiction over the whole case upon the perfection of the appeals taken by the parties who have appealed and the expiration of the time to appeal of the other parties. In the second case, the court loses jurisdiction over the subject matter thereof upon the approval of all the records on appeal filed by the parties who have appealed and the expiration of the time to appeal of the other parties; and retains jurisdiction over the remaining subject matter not covered by the appeal.

(3) The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law. Filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein. (Bañez v. Social Security System, GR No. 189574, 07/18/2014).

(4) A counsel’s failure to perfect an appeal within the reglementary period is simple negligence. It is not one as gross, palpable, and reckless as to deprive a party of its day in court. Hence, we will not override the finality and immutability of a judgment based only on the simple negligence of a party’s counsel. IK&G Mining Corporation v. Acoje Mining Company, GR No.188364, 02/11/2015).

Appeal from judgments or final orders of the MTC

(1) An appeal from a judgment or final order of an MTC may be taken to the RTC exercising jurisdiction over the area to which the former pertains. The title of the case shall remain as it was in the court of origin, but the party appealing the case shall be further referred to as the appellant and the adverse party as the appellee (Sec. 1, Rule 40).

(2) The appeal is taken by filing a notice of appeal with the court that rendered the judgment or final order appealed from. The notice of appeal shall indicate the parties to the appeal, the judgment or final order or part thereof appealed from, and state the material dates showing the timeliness of the appeal. A record on appeal shall be required only in special proceedings and in other cases of multiple or separate appeals (Sec. 3).
(3) Procedure (Sec. 7):
(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the RTC shall notify the parties of such fact.
(b) Within 15 days from such notice, the appellant shall submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within 15 days from receipt of appellant’s memorandum, the appellee may file his memorandum. Failure of appellant to file a memorandum shall be a ground for dismissal of the appeal.
(c) Once the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The RTC shall decide the case on the basis of the record of the proceedings had in the court of origin and such memoranda as are filed.

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<tr>
<th>Appeal from judgments or final orders of the RTC</th>
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<tr>
<td>(1) Judgment or orders of the RTC may be appealed to the Supreme Court through any of the following modes:</td>
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<tr>
<td>Rule 41 (Ordinary Appeal) applies to appeals from the judgment or final order of the RTC in the exercise of its original jurisdiction.</td>
</tr>
<tr>
<td>Rule 42 (Petition for Review) applies to an appeal from the judgment or final order of the RTC to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction.</td>
</tr>
<tr>
<td>Rule 45, Petition for Review on Certiorari to the Supreme Court on purely questions of law.</td>
</tr>
<tr>
<td>(2) 2004 Bar: Distinguish clearly but briefly: Questions of law and questions of fact. (5%)</td>
</tr>
<tr>
<td>A question of law is when the doubt of difference arises as to what the law is on a certain set of facts, while a question of fact is when the doubt or differences arise as to the truth or falsehood of alleged facts (Ramos vs. Pepsi-Cola Bottling Co., 19 SCRA 289 [1967]).</td>
</tr>
<tr>
<td>(3) Section 21, Rule 70 provides that the judgment of the RTC in ejectment cases appealed to it shall be immediately executory and can be enforced despite the perfection of an appeal to a higher court. To avoid such immediate execution, the defendant may appeal said judgment to the CA and therein apply for a writ of preliminary injunction. In this case, the decisions of the MTCC, of the RTC, and of the CA, unanimously recognized the right of the ATO to possession of the property and the corresponding obligation of Miaque to immediately vacate the subject premises. This means that the MTCC, the RTC, and the Court of Appeals all ruled that Miaque does not have any right to continue in possession of the said premises. It is therefore puzzling how the Court of Appeals justified its issuance of the writ of preliminary injunction with the sweeping statement that Miaque “appears to have a clear legal right to hold on to the premises leased by him from ATO at least until such time when he shall have been duly ejected therefrom by a writ of execution of judgment caused to be issued by the MTCC. (Air Transportation Office v. Court of Appeals, GR No. 173616, 06/25/2014).</td>
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<th>Appeal from judgments or final orders of the CA</th>
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<tr>
<td>(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:</td>
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<tr>
<td>(a) The conclusion of the CA is grounded entirely on speculations, surmises and conjectures;</td>
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<tr>
<td>(b) The inference made is manifestly mistaken, absurd or impossible;</td>
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There is grave abuse of discretion;  
(d) The judgment is based on misapprehension of facts;  
(e) The findings of facts are conflicting;  
(f) The CA in making its findings went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;  
(g) The findings are contrary to those of the trial court;  
(h) The facts set forth in the petition as well as in the petitioner’s main and reply briefs are not disputed by the respondents;  
(i) The findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record; or  
(j) Those filed under Writs of amparo, habeas data, or kalikasan.

(2) **2005 Bar**: May the aggrieved party file a petition for certiorari to the Supreme Court under Rule 65 instead of filing petition for review on certiorari under Rule 45 for the nullification of a decision of the Court of Appeals in the exercise either of its original or appellate jurisdiction? Explain.  
**Answer**: The remedy to nullify a decision of the Court of Appeals is a petition for review on certiorari in the Supreme Court under Rule 45 instead of a petition for certiorari under Rule 65, except in certain exceptional circumstances such as where appeal is inadequate. By settled jurisprudence, certiorari is not a substitute for lost appeal.

(3) **2006 Bar**: Explain certiorari: As a mode of appeal from the Regional Trial Court or the Court of Appeals to the Supreme Court. (2.5%)  
**Answer**: Certiorari as a mode of appeal is governed by Rule 45 which allows appeal from judgment, final order of resolution of the Court of Appeals, Sandiganbayan, the RTC or other courts to the Supreme Court via verified petition for review whenever authorized by law raising only questions of law distinctly set forth.

### Appeal from judgments or final orders of the Court of Tax Appeals

(1) Under Sec. 11 of RA 9282, no civil proceeding involving matters arising under the NIRC, the TCC or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA *en banc* and disposed of in accordance with the provisions of the Act. A party adversely affected by a resolution of a Division of CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *en banc*.  
(2) Sec. 11 of RA 9282 further provides that a party adversely affected by a decision or ruling of the CTA *en banc* may file with the SC a verified petition for review on certiorari pursuant to Rule 45.  
(3) An appeal directly filed to the Supreme Court from the Court of Tax Appeals division must be dismissed for failure to comply with the procedure on appeal. It must be emphasized that an appeal is neither a natural nor a constitutional right, but is merely statutory. The implication of its statutory character is that the party who intends to appeal must always comply with the procedures and rules governing appeals; or else, the right of appeal may be lost or squandered. Neither is the right to appeal a component of due process. It is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. *(Duty Free Philippines v. Bureau of Internal Revenue, GR No. 197228, 10/08/2014).*
Review of final judgments or final orders of the COMELEC

(1) A judgment, resolution or final order of the COMELEC may be brought by the aggrieved party to the SC on certiorari under Rule 65 by filing the petition within 30 days from notice (Sec. 2, Rule 64).

Review of final orders of the Civil Service Commission

(1) A judgment, final order or resolution of the Civil Service Commission may be taken to the CA under Rule 43. Note the difference between the mode of appeal from a judgment of the CSC and the mode of appeal from the judgments of other constitutional commissions.

Review of final orders of the Commission on Audit

(1) A judgment, resolution or final order of the Commission on Audit may be brought by the aggrieved party to the SC on certiorari under Rule 65 by filing the petition within 30 days from notice (Sec. 3, Rule 64).

Review of final orders of the Ombudsman

(1) In administrative disciplinary cases, the rulings of the Office of the Ombudsman are appealable to the Court of Appeals. Sec. 27 of RA 6770 (Ombudsman Act of 1987) insofar as it allowed a direct appeal to the SC was declared unconstitutional in Fabian vs. Desierto because the statute, being one which increased the appellate jurisdiction of the SC was enacted without the advice and concurrence of the Court. Instead, appeals from decisions of the Ombudsman in administrative disciplinary actions should be brought to the CA under Rule 43 (Gonzales vs. Rosas, 423 SCRA 288).

(a) The CA has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative cases only. It cannot, therefore, review the orders, directives or decisions of the OO in criminal or non-administrative cases (Golangco vs. Fung, GR 147640-762, 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.

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<th>Administrative cases</th>
<th>Rule 43, to the CA</th>
<th>15 days</th>
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<tr>
<td>Criminal cases</td>
<td>Rule 65, to the SC</td>
<td>30 days</td>
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(3) The Ombudsman’s decision imposing the penalty of removal shall be executed as a matter of course and shall not be stopped by an appeal thereto. An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive
suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. *(Office of the Ombudsman v. Valencerina, GR No. 178348, 07/14/2014).*

(4) Appeals from decisions in administrative disciplinary cases of the Office of the Ombudsman should be taken to the CA by way of petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Rule 43 which prescribes the manner of appeal from quasi-judicial agencies, such as the Ombudsman, was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies. Thus, certiorari under Rule 65 will not lie, as appeal under Rule 43 is an adequate remedy in the ordinary course of law. *(Ombudsman v. Delos Reyes, GR No. 208976, 10/13/2014).*

(5) The Court herein ruled that decisions of the Ombudsman are executory pending appeal. Moreover, since there is no vested right in a public office, the retroactive application of the AO does not prejudice the rights of the accused. *(Villaseñor v. Ombudsman, GR No. 202303, 06/04/2014).*

(6) The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. The nature of the case before the Office of the Ombudsman determines the proper remedy available to the aggrieved party and with which court it should be filed. In administrative disciplinary cases, an appeal from the Ombudsman’s decision should be taken to the Court of Appeals (CA) under Rule 43, unless the decision is not appealable owing to the penalty imposed *(Gupilan-Aguilar v. Ombudsman, GR No. 197307, 02/26/2014).*

**Review of final orders of the National Labor Relations Commission (NLRC)**

(1) The remedy of a party aggrieved by the decision of the National Labor Relations Commission is to promptly move for the reconsideration of the decision and if denied to timely file a special civil action of certiorari under Rule 65 within 60 days from notice of the decision. In observance of the doctrine of hierarchy of courts, the petition for certiorari should be filed with the Court of Appeals *(St. Martin Funeral Homes vs. NLRC, GR 130866, Sept. 16, 1998).*

(2) In ruling for legal correctness, we have to view the CA decision in the same context that the petition for certiorari it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case? *(Arabit, et al. v. Jardine Pacific Finance, Inc., GR No. 181719, 04/21/2014).*

(3) The jurisdiction of the Supreme Court (SC) in cases brought before it from the Court of Appeals (CA) via Rule 45 of the 1997 Rules of Civil Procedure is generally limited to reviewing errors of law. This principle applies with greater force in labor cases, where this Court has consistently held that findings of fact of the NLRC are accorded great respect and even finality, especially if they coincide with those of the Labor Arbiter and are supported by substantial evidence. Judicial review by the SC does not extend to a reevaluation of the sufficiency of the evidence upon which the proper labor tribunal has based its determination. Factual issues are beyond the scope of the SC’s authority to review on certiorari. *(Angeles v. Bucad, GR No. 196249, 07/21/2014).*
Review of final orders of the quasi-judicial agencies

(1) Appeals from judgments and final orders of quasi-judicial bodies/agencies are now required to be brought to the CA under the requirements and conditions set forth in Rule 43. This rule was adopted precisely to provide a uniform rule of appellate procedure from quasi-judicial bodies (Carpio vs. Sulu Resource Devt. Corp., 387 SCRA 128).

(2) The appeal (by notice of appeal) under Rule 43 may be taken to the CA whether the appeal involves a question of fact, a question of law, or mixed questions of fact and law. The appeal shall be taken by filing a verified petition for review with the CA. The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the CA shall direct otherwise upon such terms as it may deem just.

(3) Non-submission of documents does not warrant dismissal of the petition for review. In filing the petition for review as an appeal from awards, judgments, final orders, or resolutions of any quasi-judicial agency in the exercise of its quasi-judicial functions, it is required under Sec. 6(c), Rule 43 of the Rules of Court that it be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order, or resolution appealed from, with certified true copies of such material portions of the record referred to in the petition, as well as the documents that should accompany the petition, shall be sufficient ground for its dismissal as stated in sec. 7, Rule 43 of the Rules.

In the case at bar, the issues raised before the CA would show that the foregoing documents required by the appellate court (e.g., the writ of execution, the order nullifying the writ of execution, and such material portions of the record referred to in the petition and other supporting papers) are not necessary for the proper disposition of the case. The original documents submitted with the petition for review are sufficient and compliant with the requirements under Sec. 6(c) of Rule 43. Moreover, the subsequent submission of the documents required by the CA with the MR constitutes substantial compliance with such rule. A strict and rigid application of the technicalities must be avoided if it tends to frustrate rather than promote substantial justice (Heirs of Deleste v. Land Bank of the Philippines, GR No. 169913, 06/08/2011).

(4) Under Rule 43 of the Rules of Court, an appeal from the awards, judgments, final orders or resolutions, authorized by any quasi-judicial agency such as the Office of the President, in the exercise of its quasi-judicial functions shall be filed to the CA within a period of fifteen (15) days from notice of, publication or denial of a motion for new trial or reconsideration. The appeal may involve questions of fact, of law, or mixed questions of fact and law. A direct resort to this Court, however, may be allowed in cases where only questions of law are raised. (Almero v. Heirs of Pacquing, GR No. 199008, 11/19/2014).

(5) The period to appeal decisions of the HLURB Board of Commissioners is fifteen (15) days from receipt thereof pursuant to Section 15 of PD No. 957 and Section 2 of PD No. 1344 which are special laws that provide an exception to Section 1 of Administrative Order No. 18. Concomitantly, Section 1 of Administrative Order No. 18 provides that the time during which a motion for reconsideration has been pending with the ministry or agency concerned shall be deducted from the period for appeal. Swire received the HLURB Board Resolution denying its Motion for Reconsideration on July 23, 2007 and filed its appeal only on August 7, 2007. Consequently therefore, Swire had only four days from July 23, 2007, or until July 27, 2007, within which to file its appeal to the OP as the filing of the motion for reconsideration merely suspended the running of the 15-day period. Thus, while there may be exceptions for the relaxation of technical rules principally geared to attain the ends of justice, Swire’s fatuous belief that it had a fresh 15-day period to elevate an appeal with the OP is not the kind of exceptional
circumstance that merits relaxation. (Swire Realty Development Corporation v. Yu, GR No. 207133, 03/09/2015).

(6) **2006 Bar:** Explain each mode of certiorari: As a mode of review of the decisions of the National Labor Relations Commission and the Constitutional Commissions. (2.5%)

**Answer:** Certiorari as a mode of review of the decision of the NLRC is elevated to the Court of Appeals under Rule 65, as held in the case of St. Martin’s Funeral Home v. NLRC (GR No. 130865, 09/16/1998). Certiorari as a mode of review from the Commission of Audit (COA) and COMELEC is elevated to the Supreme Court within 30 days from notice of the judgment, decision or final order or resolution sought to be reviewed, as provided for under Rule 64 of the Rule of Civil Procedure. In the case of the Civil Service Commission (CSC), review of its judgments is through petitions for review under Sec. 5, Rule 43.

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**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).

(3) Delayed New Trial. This is not a substitute for lost appeal.

(4) Equitable remedies may be availed of only when petitioner has not been given the chance to avail of other remedies not because of his own fault.

(5) A petition for relief from judgment must be filed within 60 days after petitioner learns of the judgment, final order, or proceeding and within six (6) months from entry of judgment or final order. The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with. A petition for relief from judgment filed beyond the reglementary period is dismissed outright. Under Section 1, Rule 38, a petition for relief from judgment may be filed on the ground of fraud, accident, mistake, or excusable negligence. A motion for reconsideration is required before a petition for certiorari is filed to grant the court which rendered the assailed judgment or order an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. (Madarang v. Sps. Morales, GR No. 199283, 06/09/2014).

(6) A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: first, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and second, within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put an end to litigation. (Philippine Amanah Bank v. Contreras, GR No. 173168, 09/29/2014).
Grounds for availing of the remedy (petition for relief)

(1) When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through (a) fraud, (b) accident, (c) mistake, or (c) excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside (Sec. 1, Rule 38).

(2) When the petitioner has been prevented from taking an appeal by fraud, mistake, or excusable negligence (Sec. 2).

Time to file petition

(1) A petition for relief from judgment, order or other proceedings must be verified, filed within 60 days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be (Sec. 3, Rule 38).

Contents of petition

(1) The petition must be verified and must be accompanied with affidavits [Affidavit of Merits] showing fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be (Sec. 3).

Annulment of Judgments, or Final Orders and Resolutions

(Rule 47)

(1) It is settled that the negligence and mistakes of the counsel are binding on the client. It is only in cases involving gross or palpable negligence of the counsel or where the interests of justice so require, when relief is accorded to a client who has suffered thereby. Furthermore, for a claim of a counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown and it should not be accompanied by the client's own negligence or malice. It is a correlative duty of clients to be in contact with their counsel from time to time to inform themselves of the status of their case especially, when what is at stake is their liberty. Hence, diligence is required not only from lawyers but also from their clients. As such, the failure of the lawyer to communicate with his clients for nearly three years and to inform them about the status of their case, does not amount to abandonment that qualifies as gross negligence. If at all, the omission is only an act of simple negligence, and not gross negligence that would warrant the annulment of the proceedings below. (Resurreccion v. People, GR No. 192866, 07/09/2014).

(2) The general rule is that a final and executory judgment can no longer be disturbed, altered, or modified in any respect, and that nothing further can be done but to execute it. A final and executory decision may, however, be invalidated via a Petition for Relief or a Petition to Annul the same under Rules 38 or 47, respectively, of the Rules of Court. Rule 47 of the Rules of Court is a remedy granted only under exceptional circumstances where a party, without fault on his part, has failed to avail of the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies. The same petition is not available as a substitute for a remedy which was lost due to the party's
own neglect in promptly availing of the same. There is here no attempted substitution; annulment of judgment is the only remedy available to petitioner. Requisite elements for the filing of a petition for annulment of judgment on the grounds of extrinsic fraud, lack of jurisdiction, and want of due process, are present in this case. All the requisite elements for the filing of a petition for annulment of judgment on the grounds of extrinsic fraud, lack of jurisdiction, and want of due process, are present in this case. (Genato Investments, Inc. v. Barre-Toss, GR No. 207443, 07/23/2014).

(3) 1999 Bar: A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. in the course of the trial, B died. However, X failed to notify the court of B’s death. The court proceeded to hear the case and rendered judgment against B. After the judgment became final, a writ of execution was issued against C, who being B’s sole heir, acquired the property.

If you were the counsel of C, what course of action would you take?

Answer: As counsel of C, I would move to set aside the writ of execution and the judgment for lack of jurisdiction and lack of due process I the same court because the judgment is void. If X had notified the court of B’s death, the court would have ordered the substitution of the deceased by C, the sole heir of B (Rule 3, Section 16). The court acquired no jurisdiction over C upon whom the trial and the judgment are not binding (Lawas v. Court of Appeals, 146 SCRA 173).

I would also file an action to annul the judgment for lack of jurisdiction because C, as the successor of B, was deprived of due process and should have been heard before judgment.

Grounds for annulment

(1) The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction. Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief (Sec. 2, Rule 47).

(2) No annulment of judgments of quasi-judicial agencies is allowed. Rule 47 can only be taken to the Court of Appeals.

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 estoppeps (Sec. 3).

Effects of judgment of annulment

(1) A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void, without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein (Sec. 7, Rule 47).

Collateral attack of judgments

(1) A collateral attack is made when, in another action to obtain a different relief, an attack on the judgment is made as an incident in said action. This is proper only when the
judgment, on its face, is null and void, as where it is patent that the court which rendered said judgment has no jurisdiction (Co vs. CA, 196 SCRA 705). Examples: A petition for certiorari under Rule 65 is a direct attack. It is filed primarily to have an order annulled. An action for annulment of a judgment is likewise a direct attack on a judgment. A motion to dismiss a complaint for collection of a sum of money filed by a corporation against the defendant on the ground that the plaintiff has no legal capacity to sue is a collateral attack on the corporation. A motion to dismiss is incidental to the main action for sum of money. It is not filed as an action intended to attack the legal existence of the plaintiff (Co vs. CA, 196 SCRA 705).

(2) A non-party may file the petition when he can show that he is adversely affected by the judgment (Islamic vs. CA, 178 SCRA 178).

XVIII. 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, 455 SCRA 612). Since the finality of a judgment has the effect of ending the litigation, an aggrieved party may then appeal from the judgment. Under Sec. 1, Rule 41, an appeal may be taken from a judgment or final order that completely disposes of the case. Under the same rule, an appeal cannot be taken from an interlocutory order.

(2) In another sense, the word “final” may refer to a judgment that is no longer appealable and is already capable of being executed because the period for appeal has elapsed without a party having perfected an appeal or if there has been appeal, it has already been resolved by a highest possible tribunal (PCGG vs. Sandiganbayan, 455 SCRA 526). In this sense, the judgment is commonly referred to as one that is final and executory.

When execution shall issue; Execution as a matter of right (Sec. 1)

(1) When a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right. However, the Court enumerates the instances where a writ of execution may be appealed, one of which is when there has been a change in the situation of the parties making execution inequitable or unjust. Also, Sec. 5, Rule 135 of...
the Rules of Court states that it is an inherent power of a court to amend and control its process and orders so as to make them conformable to law and justice (Parel v. heirs of Simeon Prdencio, GR No. 192217, 03/02/2011).

(2) Execution is a matter of right upon the expiration of the period to appeal and no appeal was perfected from a judgment or order that disposes of the action or proceeding (Sec. 1, Rule 39). Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes the ministerial duty of the court. Once a decision becomes final and executory, it is the ministerial duty of the presiding judge to issue a writ of execution except in certain cases, as when subsequent events would render execution of judgment unjust (Mangahas vs. Paredes, GR 157866, Feb. 14, 2007).

(3) The above principles have been consistently applied. Thus, in a subsequent ruling the Court declared: "Once a judgment becomes final, it is basic that the prevailing party is entitled as a matter of right to a writ of execution the issuance of which is the trial court’s ministerial duty, compellable by mandamus" (Greater Metropolitan Manila Solid Waste Management Committee vs. Jancod Environmental Corp., GR 2163663, Jan. 30, 2006).

(4) Judgments and orders become final and executory by operation of law and not by judicial declaration. The trial court need not even pronounce the finality of the order as the same becomes final by operation of law. Its finality becomes a fact when the reglementary period for appeal lapses, and no appeal is perfected within such period (Testate of Maria Manuel Vda. De Biascan, 374 SCRA 621; Vlason Enterprises vs. CA, 310 SCRA 26).

(5) Execution is a matter or right after expiration of period to appeal and no appeal is perfected, except in the following cases:
   (a) Where judgment turns out to be incomplete or conditional;
   (b) Judgment is novated by the parties;
   (c) Equitable grounds (i.e., change in the situation of the parties—supervening fact doctrine)
   (d) Execution is enjoined (i.e., petition for relief from judgment or annulment of judgment with TRO or writ of preliminary injunction);
   (e) Judgment has become dormant; or
   (f) Execution is unjust or impossible.

Discretionary execution (Sec. 2)

(1) The concept of discretionary execution constitutes an exception to the general rule that a judgment cannot be executed before the lapse of the period for appeal or during the pendency of an appeal. Under Sec. 1, Rule 39, execution shall issue only as a matter of right upon a judgment or final order that finally disposes of the action or proceeding upon the execution of the period to appeal therefrom if no appeal has been duly perfected.

(2) A discretionary execution is called "discretionary" precisely because it is not a matter of right. The execution of a judgment under this concept is addressed to the discretionary power of the court (Bangkok Bank Public Company Ltd. vs. Lee, GR 159806, Jan. 29, 2006). Unlike judgments that are final and executory, a judgment subject to discretionary execution cannot be insisted upon but simply prayed and hoped for because a discretionary execution is not a matter of right.

(3) A discretionary execution like an execution pending appeal must be strictly construed because it is an exception to the general rule. It is not meant to be availed of routinely
because it applies only in extraordinary circumstances. It should be interpreted only insofar as the language thereof fairly warrants, and all doubts should be resolved in favor of the general rule. (Planters Products, Inc. vs. CA, GR 106052, 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).

(5) The execution of a judgment pending appeal is an exception to the general rule that only a final judgment may be executed; hence, under Section 2, Rule 39 of the Rules of Court (Rules), the existence of "good reasons" for the immediate execution of a judgment is an indispensable requirement as this is what confers discretionary power on a court to issue a writ of execution pending appeal. Good reasons consist of compelling circumstances justifying immediate execution; lest judgment becomes illusory, that is, the prevailing party’s chances for recovery on execution from the judgment debtor are altogether nullified. The "good reason" yardstick imports a superior circumstance demanding urgency that will outweigh injury or damage to the adverse party and one such "good reason" that has been held to justify discretionary execution is the imminent danger of insolvency of the defeated party. The factual findings that NSSC is under a state of rehabilitation and had ceased business operations, taken together with the information that NSSC President and General Manager Orimaco had permanently left the country with his family, constitute such superior circumstances that demand urgency in the execution of the October 31, 2007 Decision because respondents now run the risk of its non-satisfaction by the time the appeal is decided with finality. (Centennial Guarantee Assurance Corporation v. Universal Motors Corporation, GR No. 189358, 10/082014).

How a judgment is executed (Sec. 4)

(1) Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support. The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

(2) Judgments that may be altered or modified after becoming final and executory:
(a) Facts and circumstances transpire which render its execution impossible or unjust;
(b) Support;
(c) Interlocutory judgment.

Execution by motion or by independent action (Sec. 6)

(1) A final and executory judgment or order may be executed on motion within 5 years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within 5 years from the date of its entry and thereafter by action before it is barred by the statute of limitations.
(2) File for revival of judgment within ten (10) years after finality of judgment which is a new and separate action filed with the RTC.

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<th>By motion</th>
<th>Within 5 years</th>
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<tr>
<td>By revival of judgment</td>
<td>Within 10 years from date of entry</td>
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(3) A judgment unenforced within 10 years after its finality shall be barred. However an exception is when a registered owner of land cannot invoke the protection accorded by the Statute of Limitations when he derived his right from misrepresentation. *(Campit v. Gripa, GR No. 195443, 09/17/2014)*.

(4) **2003 Bar**: A filed with the Metropolitan Trial Court (MTC) of Manila an action for specific performance against B, a resident of Quezon City, to compel the latter to execute a deed of conveyance covering a parcel of land situated in Quezon City having an assessed value of P19,000. B received the summons and a copy of the Complaint on 02 January 2003. On January 2003, B filed a motion to dismiss the complaint on the ground of lack of jurisdiction contending that the subject matter of the suit was incapable of pecuniary estimation. The court denied the motion. In due time, B filed with the RTC a petition for certiorari praying that the said Order be set aside because the MTC had no jurisdiction over the case.

On 13 February 2003, A filed with the MTC a motion to declare B in default. The motion was opposed by B on the ground that his Petition for Certiorari was still pending. (6%)

a. Was the denial of the Motion to Dismiss the Complaint correct?
b. Resolve the Motion to Declare the Defendant in Default.

Answer: The denial of the Motion to Dismiss the Complaint was not correct. Although the assessed value of the parcel of land involved was P19,000, within the jurisdiction of the MTC of Manila, the action filed by A for Specific Performance against B to compel the latter to execute a Deed of Conveyance of said parcel of land was not capable of pecuniary estimation and, therefore, the action was within the jurisdiction of the RTC *(Copioso v. Copioso, GR No. 149243, 10/28/2002)*.

(5) **2007 Bar**: A filed a case against B. While awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines seven years later, A discovered that a decision was rendered by the court in her favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

Answer: No, A cannot file a motion for execution of the judgment seven years after the entry of the judgment. She can only do that within five (5) years from entry of judgment. However, she can file a case for revival of the judgment, which can be done before it is barred by the statute of limitations *(Rule 39, Section 6)* which is within ten (10) years from the date of finality of the judgment *(Macias v. Lim, GR No. 139284, 06/04/2004)*.

**Issuance and contents of a writ of execution (Sec. 8)**

(1) The writ of execution shall: (i) issue in the name of the Republic of the Philippines from the court which granted the motion; (ii) state the name of the court, the case number and title, the dispositive part of the subject judgment or order; and (iii) require the sheriff or other proper officer to whom it is directed to enforce the writ according to its term, in the manner hereinafter provided:

a) If the execution be against the property of the judgment obligor, to satisfy the judgment, with interest, out of the real or personal property of such judgment obligor;
(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees of the judgment obligor, to satisfy the judgment, with interest, out of such property;
(c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the writ of execution;
(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property; and
(e) In all cases, the writ of execution shall specifically state the amount of the interest, costs, damages, rents, or profits due as of the date of the issuance of the writ, aside from the principal obligation under the judgment. For this purpose, the motion for execution shall specify the amounts of the foregoing reliefs sought by the movants.

(2) **2005 Bar**: A obtained a money judgment against B. After the finality of the decision, the court issued a writ of execution for the enforcement thereof. Conformably with the said writ, the sheriff levied upon certain properties under B’s name. C filed a third-party claim over said properties claiming that B had already transferred the same to him. A moved to deny the third-party claim and to hold B and C jointly and severally liable to him for the money judgment alleging that B had transferred said properties to C to defraud him (A).

After due hearing, the court denied the third-party claim and rendered an amended decision declaring B and C jointly and severally liable to A for the money judgment. (4%)

**Answer**: No, C has not been properly impleaded as a party defendant. He cannot be held liable for damages against A without a trial. In fact, since no bond was filed by B, the sheriff is liable to C for damages. C can file a separate action to enforce his third-party claim. It is in that suit that B can properly raise the ground of fraud against C. However, the execution may proceed where there is a finding that the claim is fraudulent (*Tanongan v. Samson, 382 SCRA 130 [2002]*) Besides, judgment is already final.

**Execution of judgment for money (Sec. 9)**

(1) In executing a judgment for money, the sheriff shall follow the following steps:

(a) Demand from the judgment obligor the immediate payment of the full amount stated in the judgment including the lawful fees in cash, certified check payable to the judgment obligee or any other form of payment acceptable to him (Sec. 9). In emphasizing this rule, the SC held that in the execution of a money judgment, the sheriff is required to first make a demand on the obligor for the immediate payment of the full amount stated in the writ of execution (*Sibulo vs. San Jose, 474 SCRA 464*).

(b) If the judgment obligor cannot pay all or part of the obligation in cash, certified check or other mode of payment, the officer shall levy upon the properties of the judgment obligor. The judgment obligor shall have the option to choose which property or part thereof may be levied upon. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the personal judgment but the sheriff shall sell only so much of the property that is sufficient to satisfy the judgment and lawful fees (Sec. 9[b]).
(2) The sheriff should demand from the judgment obligor the immediate payment in cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his property can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment. (Quicho v. Reyes, AM No. P-14-3246, 10/15/2014).

Execution of judgment for specific acts (Sec. 10)

(1) If the judgment requires a person to perform a specific act, said act must be performed but if the party fails to comply within the specified time, the court may direct the act to be done by someone at the cost of the disobedient party and the act when so done shall have the effect as if done by the party (Sec 10[a]). If the judgment directs a conveyance of real or personal property, and said property is in the Philippines the court in lieu of directing the conveyance thereof, may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law (Sec. 10[a], Rule 39).

(2) 2002 Bar: The trial court rendered judgment ordering the defendant to pay the plaintiff moral and exemplary damages. The judgment was served on the plaintiff on October 1, 2001, and on the defendant on October 5, 2001. On October 8, 2001, the defendant filed a notice of appeal from the judgment, but the following day, October 9, 2001, the plaintiff moved for the execution of the judgment pending appeal. The trial court granted the motion upon the posting by the plaintiff of a bond to indemnify the defendant for damages it may suffer as a result of the execution. The court gave as a special reason for its order the imminent insolvency of the defendant. Is the order of execution pending appeal correct? Why? (5%)

Answer: No, because awards for moral and exemplary damages cannot be the subject of execution pending appeal. The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. Liabilities for moral and exemplary damages, as well as the exact amounts remain uncertain and indefinite pending resolution by the Court of Appeals or Supreme Court (RCPI v. Lantin, 134 SCRA 395 [1985]; International School, Inc. v. Court of Appeals, 309 SCRA 474 [1999]).

Execution of special judgments (Sec. 11)

(1) When a judgment requires the performance of any act other than those mentioned in the two preceding sections, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

(2) 2001 Bar: An amicable settlement was signed before a Lupon Tagapamayapa on January 3, 2001. On July 6, 2001, the prevailing party asked the Lupon to execute the amicable settlement because of the non-compliance of the other party with the terms of the agreement. The Lupon concerned refused to execute the settlement/agreement. Is the Lupon correct in refusing to execute the settlement/agreement. (3%)

What should be the course of action of the prevailing party in such a case? (2%)

Answer: Yes, the Lupon is correct in refusing to execute the settlement/agreement because the execution sought is already beyond the period of six months from the date
of the settlement within which the Lupon is authorized to execute \(\text{(Sec. 417, Local Government Code)}\). After the six-month period, the prevailing party should move to execute the settlement/agreement in the appropriate city or municipal court.

**Effect of levy on third persons \(\text{(Sec. 12)}\)**

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 \(\text{(Sec. 13)}\)**

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 \(\text{(Sec. 13, Rule 39)}\).

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.

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**Proceedings where property is claimed by third persons \(\text{(Sec. 16)}\)**

1. If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession
thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

(2) **Requisites for a claim by a third person** (Relate with Rule 57, Sec. 14, and Rule 60, Sec. 7):

- (a) The property is levied;
- (b) The claimant is a person other than the judgment obligor or his agent;
- (c) Makes an affidavit of his title thereto or right to the possession thereof stating the grounds of such right or title;
- (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) **Tercedia** - By making an affidavit of his title thereto or his right to possession thereof, stating the grounds of such right or title. The affidavit must be served upon the sheriff and the attaching party (Sec. 14, Rule 57). Upon service of the affidavit upon him, the sheriff shall not be bound to keep the property under attachment except if the attaching party files a bond approved by the court. the sheriff shall not be liable for damages for the taking or keeping of the property, if such bond shall be filed.

- (b) **Exclusion or release of property** - Upon application of the third person through a motion to set aside the levy on attachment, the court shall order a summary hearing for the purpose of determining whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the writ of attachment. The court may order the sheriff to release the property from the erroneous levy and to return the same to the third person. In resolving the application, the court cannot pass upon the question of title to the property with any character of finality but only insofar as may be
necessary to decide if the sheriff has acted correctly or not (*Ching vs. CA, 423 SCRA 356*).

(c) **Accion Reivindicatoria** - 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) **Effect of Redemption.** If the judgment obligor redeems, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon, no further redemption shall be allowed and he is restored to his estate. The person to whom the redemption payment is made must execute and deliver to him a certificate of redemption acknowledged before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the registry of deeds of the place in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale (Sec. 29).

(5) **Proof required of redemptioner.** A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer a copy of the judgment or final order under which he claims the right to redeem, certified by the clerk of the court wherein the judgment or final order is entered; or, if he redeems upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of
deeds; or an original or certified copy of any assignment necessary to establish his claim; and an affidavit executed by him or his agent, showing the amount then actually due on the lien (Sec. 30).

(6) **Manner of using premises pending redemption.** Until the expiration of the time allowed for redemption, the court may, as in other proper cases, restrain the commission of waste on the property by injunction, on the application of the purchaser or the judgment obligee, with or without notice; but it is not waste for a person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs to buildings thereon while he occupies the property (Sec. 31).

(7) Rents, earnings and income of property pending redemption. The purchaser or a redemptioner shall not be entitled to receive the rents, earnings and income of the property sold on execution, or the value of the use and occupation thereof when such property is in the possession of a tenant. All rents, earnings and income derived from the property pending redemption shall belong to the judgment obligor until the expiration of his period of redemption (Sec. 32).

(8) Deed and possession to be given at expiration of redemption period; by whom executed or given. If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of the registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor (Sec. 33).

**Examination of judgments obligor when judgment is unsatisfied (Sec. 36)**

(1) When the return of a writ of execution issued against property of a judgment obligor, or any one of several obligors in the same judgment, shows that the judgment remains unsatisfied, in whole or in part, the judgment obligee, at any time after such return is made, shall be entitled to an order from the court which rendered the said judgment, requiring such judgment obligor to appear and be examined concerning his property and income before such court or before a commissioner appointed by it, at a specified time and place; and proceedings may thereupon be had for the application of the property and income of the judgment obligor towards the satisfaction of the judgment. But no judgment obligor shall be so required to appear before a court or commissioner outside the province or city in which such obligor resides or is found.

(2) **2002 Bar:** The plaintiff, a Manila resident, sued the defendant, a resident of Malolos, Bulacan, in the RTC-Manila for a sum of money. When the sheriff tried to serve the summons with a copy of the complaint on the defendant at his Bulacan residence, the sheriff was told that the defendant had gone to Manila for business and would not be back until the evening of that day. So, the sheriff served the summons, together with a copy of the complaint, on the defendant’s 18-year old daughter, who was a college
student. For the defendant’s failure to answer the complaint within the reglementary period, the trial court, on motion of the plaintiff, declared the defendant in default. A month later, the trial court rendered judgment holding the defendant liable for the entire amount prayed for in the complaint.

After the judgment had become final, a writ of execution was issued by the court. As the writ was returned unsatisfied, the plaintiff filed a motion for an order requiring the defendant to appear before it and to be examined regarding his property and income. How should the court resolve the motion? (2%

Answer: The RTC-Manila should deny the motion because it is in violation of the rule that no judgment obligor shall be required to appear before a court, for the purpose of examination concerning his property and income, outside the province or city in which such obligor resides. In this case, the judgment obligor resides in Bulacan. (Rule 39, Section 36).

Examination of obligor of judgment obligor (Sec. 37)

(1) When the return of a writ of execution against the property of a judgment obligor shows that the judgment remains unsatisfied, in whole or in part, and upon proof to the satisfaction of the court which issued the writ, that person, corporation, or other juridical entity has property of such judgment obligor or is indebted to him, the court may, by an order, require such person, corporation, or other juridical entity, or any officer or member thereof, to appear before the court or a commissioner appointed by it, at a time and place within the province or city where such debtor resides or is found, and be examined concerning the same. The service of the order shall bind all credits due the judgment obligor and all money and property of the judgment obligor in the possession or in control of such person, corporation, or juridical entity from the time of service; and the court may also require notice of such proceedings to be given to any party to the action in such manner as it may deem proper.

(2) 2008 Bar: The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you are the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (3%)

Answer: I would ask for a writ of garnishment against the deposit in the bank (Rule 57, Section 9[c]).

b. If the bank denies holding the deposit in the name of the judgment obligor but your client’s informant is certain that the deposit belongs to the judgment obligor under an assumed name, what is your remedy to reach the deposit? (3%)

Answer: I will move for the examination under oath of the bank as a debtor of the judgment debtor (Rule 39, Section 37). I will ask the court to issue an order requiring the judgment obligor, or the person who has the property of such judgment obligor, to appear before the court and be examined in accordance with Sections 36 and 37 of Rule 39, for the complete satisfaction of the judgment award (Co v. Salvador, AM No. P-07-2342, 08312007).

Effect of judgment or final orders: Res Judicata (Sec. 47)

(1) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the
probate of a will or granting of letters of administration shall only be prima facie evidence of the truth of the testator or intestate;

(2) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(3) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

### 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).

(4) Arbitral award from a foreign jurisdiction is not enforceable and covered by Rule 39, Sec. 48. It can only be recognized prior to its enforcement, unless contrary to public policy (Mijares vs. Rañada).

(5) In an action for enforcement of foreign judgment, the Court has limited review over the decision rendered by the foreign tribunal. The Philippine courts cannot pass upon the merits of the case pursuant to the incorporation clause of the Constitution, unless there is proof of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (Bank of Philippine Islands v. Guevara, GR No. 167052, 03/11/2015).

(6) **2007 Bar:** What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)

**Answer:** The rules on the recognition and enforcement of foreign judgments in our courts are as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing (Sect 48[a]);

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title (Section 48[b]).

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, or fraud, or clear mistake of law or fact.

b. Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2%)
Answer: No. Foreign arbitral awards are not enforced like foreign court judgments under Rule 39 of the Rules of Court, but they can be enforced under Section 44. A foreign arbitral award, when confirmed by the RTC, shall be enforced in the same manner as final and executory decisions of courts of the Philippines. Said law provides that the case shall be filed with the RTC as a special proceeding, and if the 1958 New York Convention on the Recognition and Enforcement of Foreign Judgments is not applicable, the court may, on grounds of comity and reciprocity, recognizes a non-convention award as a convention award.

c. How about a global injunction issued by a foreign court to prevent dissipation of funds against a defendant therein who has assets in the Philippines? Explain briefly. (2%)

Answer: Yes, a global injunction, also known as the Mareva Injunction, should be considered as an order of foreign court. Therefore, the rules on recognition and enforcement of foreign judgments under Rule 39 must apply. However, to prevent dissipation of funds, the action to enforce must be accompanied with an application for preliminary injunction (Asiavest Merchant Bankers v. Ca, GR No. 110263, 07/20/2001).

XIX. 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 pendente lite (Rule 61).

(4) 1999 Bar: What are the provisional remedies under the rules? (2%)

The provisional remedies under the Rules are preliminary attachment, preliminary injunction, receivership, replevin, and support pendente lite.
Jurisdiction over provisional remedies

(1) The court which grants or issues a provisional remedy is the court which has jurisdiction over the main action. Even an inferior court may grant a provisional remedy in an action pending with it and within its jurisdiction.

Preliminary Attachment (Rule 57)

(1) Preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property of the defendant so the property may be held by the sheriff as security for the satisfaction of whatever judgment may be rendered in the case (Davao Light and Power, Inc. vs. CA, 204 SCRA 343).

(2) When availed of and is granted in an action purely in personam, it converts the action to one that is quasi in rem. In an action in rem or quasi in rem, jurisdiction over the res is sufficient. Jurisdiction over the person of the defendant is not required (Villareal vs. CA, 295 SCRA 511).

(3) Preliminary attachment is designed to:
   (a) Seize the property of the debtor before final judgment and put the same in custodial legis even while the action is pending for the satisfaction of a later judgment (Insular Bank of Asia and America vs. CA, 190 SCRA 629);
   (b) To enable the court to acquire jurisdiction over the res or the property subject of the action in cases where service in person or any other service to acquire jurisdiction over the defendant cannot be affected.

(4) Preliminary attachment has three types:
   (a) Preliminary attachment - one issued at the commencement of the action or at any time before entry of judgment as security for the satisfaction of any judgment that may be recovered. Here the court takes custody of the property of the party against whom attachment is directed.
   (b) Garnishment - plaintiff seeks to subject either the property of defendant in the hands of a third person (garnishee) to his claim or the money which said third person owes the defendant. Garnishment does not involve actual seizure of property which remains in the hands of the garnishee. It simply impounds the property in the garnishee's possession and maintains the status quo until the main action is finally decided. Garnishment proceedings are usually directed against personal property, tangible or intangible and whether capable of manual delivery or not.
   (c) Levy on execution - writ issued by the court after judgment by which the property of the judgment obligor is taken into custody of the court before the sale of the property on execution for the satisfaction of a final judgment. It is the preliminary step to the sale on execution of the property of the judgment debtor.

(5) The grant of the remedy is addressed to the discretion of the court whether or not the application shall be given full credit is discretionary upon the court. in determining the propriety of the grant, the court also considers the principal case upon which the provisional remedy depends.

(6) Attachment is defined as a provisional remedy by which the property of an adverse party is taken into legal custody, either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any judgment that may be recovered by the plaintiff or any proper party. Being merely ancillary to a principal proceeding, the attachment must fail if the suit itself cannot be maintained as the purpose of the writ can no longer be justified. The attachment itself cannot be the subject of a separate action independent of the principal action because the attachment was only an incident of such
action. In this case, with the RTC’s loss of jurisdiction over the Civil Case No. Q-05-53699 necessarily comes its loss of jurisdiction over all matters merely ancillary thereto. (Northern Islands Co., Inc., v. Sps. Dennis and Cherylin Garcia, GR No. 203240, 03/18/2015).

(7) 2000 Bar: JFK’s real property is being attached by the sheriff in a civil action for damages against LM. JK claims that he is not involved in said case; and that he is the sole registered owner of said property. Under the Rules of Court, what must JK do to prevent the sheriff from attaching his property?

Answer: If the real property has been attached, the remedy is to file a third party claim. The third-party claimant should make an affidavit of his title to the property attached, stating the grounds of his title thereto, and serve such affidavit upon the sheriff while the latter has possession of the attached property, and a copy thereof upon the attaching party (Rule 57, Section 1). The third-party claimant may also intervene or file a separate civil action to vindicate his claim to the property involved and secure the necessary reliefs, such as preliminary injunction, which will not be considered as interference with a court of coordinate jurisdiction (Ong v. Tating, 149 SCRA 265).

(8) 1999 Bar: Distinguish attachment from garnishment. (2%) 

Answer: Attachment and garnishment are distinguished from each other as follows: Attachment is a provisional remedy that effects a levy on property of a party as security for the satisfaction of any judgment that may be recovered, while garnishment is a levy on debts due to the judgment obligor or defendant and other credits, including bank-deposits, royalties, and other personal property not capable of manual delivery under a writ of execution or a writ of attachment.

(9) 1999 Bar: In a case, the property of an incompetent under guardianship was in custodia legis. Can it be attached? Explain. (2%) 

Answer: Although the property of an incompetent under guardianship is in custodia legis, it may be attached as in fact it is provided that in such case, a copy of the writ of attachment shall be filed with the proper court and notice of the attachment served upon the custodian of such property (Rule 57, Section 7).

(10) 1999 Bar: May damages be claimed by a party prejudiced by a wrongful attachment even if the judgment was adverse to him? Explain. (2%) 

Answer: Yes, damages may be claimed by a party prejudiced by a wrongful attachment even if the judgment is adverse to him. This is authorized by the Rules. A claim for damages may be made on account of improper, irregular, excessive attachment, which shall be heard with notice to the adverse party and his surety or sureties (Rule 57, Section 20; Javellana v. D.O. Plaza Enterprises, Inc., 32 SCRA 281).

(11) 2001 Bar: May a preliminary attachment be issued ex parte? Briefly state the reason(s) for your answer. (3%) 

May a writ of preliminary injunction be issued ex parte? (2%) 

Answer: Yes, an order of attachment may be issued ex parte or upon motion with notice and hearing (Section 2). The reason why the order may be issued ex parte is that requiring notice to the adverse party and hearing would defeat the purpose of the provisional remedy and enable the adverse party to abscond or dispose of his property before a writ of attachment or dispose of his property before a writ of attachment issues (Mindanao Savings and Loan Assn. v. Court of Appeals, 172 SCRA 480).

b. No, a writ of preliminary injunction may not be issued ex parte. As provided in the Rules, no preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined (Rule 58, Section 5). The reason is that a preliminary injunction may cause grave and irreparable injury to the party enjoined.

(12) 2002 Bar: The plaintiff obtained a writ of preliminary attachment upon a bond of P1 million. The writ was levied on the defendant’s property, but it was discharged upon the
posting by the defendant of a counter bond in the same amount of P1 million. After trial, the court rendered judgment finding that the plaintiff had no cause of action against the defendant and that he had sued out the writ of attachment maliciously. Accordingly, the court dismissed the complaint and ordered the plaintiff and its surety to pay jointly to the defendant P1.5 million as actual damages, P0.5 million as moral damages and P0.5 million as exemplary damages.

Evaluate the soundness of the judgment from the point of view of procedure. (5%)  
**Answer:** The judgment against the surety is not sound if due notice was not given to him of the application for damages (*Rule 57, Section 20*).

Moreover, the judgment against the surety cannot exceed the amount of its counterbond of P1 million.

**2002 Bar:** A default judgment was rendered by the RTC ordering D to pay P a sum of money. The judgment became final, but D filed a petition for relief and obtained a writ of preliminary injunction staying the enforcement of the judgment. After hearing, the RTC dismissed D’s petition, whereupon P immediately moved for the execution of the judgment in his favor. Should P’s motion be granted? Why (3%)

**Answer:** P’s immediate motion for execution of the judgment in his favor should be granted because the dismissal of D’s petition for relief also dissolves the writ of preliminary injunction staying the enforcement of the judgment, even if the dismissal is not yet final (*Golez v. Leonidas, 107 SCRA 187 [1981]*)

**2005 Bar:** Katy filed an action against Tyrone for collection of the sum of P1 million in the Regional Trial Court, with an ex parte application for a writ of preliminary attachment. Upon posting of an attachment bond, the court granted the application and issued a writ of preliminary attachment.

Apprehensive that Tyrone might withdraw his savings deposit with the bank, the sheriff immediately served a notice of garnishment on the bank to implement the writ of preliminary attachment. The following day, the sheriff proceeded to Tyrone’s house and served him the summons, with copies of the complaint containing the application for writ of preliminary containing the application for writ of preliminary attachment, Katy’s affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15) days from service of the summons, Tyrone filed a motion to dismiss and to dissolve the writ of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served ahead of the summons; (ii) the writ was improperly implemented; and (iii) said writ was improvidently issued because the obligation in question was already fully paid.

Resolve the motion with reasons. (4%)  
**Answer:** The fact that the writ of attachment was served ahead of the summons did not affect the jurisdiction of the court over the defendant. The effect is that the writ is not enforceable (*Rule 57, Sec. 5*). But, as pointed out by jurisprudence, all that is needed to be done is to re-serve the writ (*Onate v. Abrogar, 241 SCRA 659 [1985]*)

The writ was improperly implemented. Serving a notice of garnishment, particularly before summons is served, is not proper. What should be served on the defendant are a copy of the writ of attachment and notice that the bank deposits are attached pursuant to the writ (*Rule 57, Section 7d*).

The proper remedy where there is a payment is a motion to dismiss under Rule 16, Section 1[h]. A motion to discharge on the ground that the writ was improvidently issued will not lie, since such a motion would be tantamount to trial on the merits of the action which cannot be ventilated at a mere hearing of the motion instead of a regular trial. The writ is only ancillary to the main case (*Rule 57, Section 3*; *Mindanao Savings and Loans Assn. v. v. Court of Appeals, 172 SCRA 480 [1989]; Davao Light & Power Co. v. Court of Appeals, 204 SCRA 343 [1991]*).
(16) **2008 Bar**: After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trial court rendered a judgment in Porfirio’s favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Porfirio moved to charge the plaintiff’s attachment bond. The plaintiff and his sureties opposed the motion, claiming that the filing of the counterbond had relieved the plaintiff’s attachment bond from all liability for the damages. Rule on Porfirio’s motion. (4%)

**Answer**: Porfirio’s motion to charge the plaintiff’s attachment bond is proper. The filing of the counterbond by the defendant does not mean that he has waived his right to proceed against the attachment bond for damages. The attachment bond is posted to answer for any damage that a party may suffer if the attachment is wrongful or improper *(DM Wenceslao & Associates, Inc. v. Readycon Trading & Construction Corp., GR No. 154106, 29 June 2004)*.

(17) **2008 Bar**: The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you were the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (3%)

**Answer**: I would ask for a writ of garnishment against the deposit in the bank *(Rule 57, Section 9(c))*.

## Grounds for issuance of writ of attachment

(1) At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

(a) In an *action for* the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

(b) In an *action for* money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

(c) In an *action to recover* the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any party thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;

(d) In an *action against* a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or

(f) In an *action against* a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication *(Sec. 1)*.

## Requisites

(1) The issuance of an order/writ of attachment requires the following:

(a) The case must be any of those where preliminary attachment is proper;

(b) The applicant must file a motion *(ex parte or with notice and hearing)*;
(c) The applicant must show by affidavit (under oath) that there is no sufficient security for the claim sought to be enforced; that the amount claimed in the action is as much as the sum of which the order is granted above all counterclaims; and
(d) The applicant must post a bond executed to the adverse party. This is called an attachment bond, which answers for all damages incurred by the party against whom the attachment was issued and sustained by him by reason of the attachment (Carlos vs. Sandoval, 471 SCRA 266).

Issuance and contents of order of attachment; affidavit and bond

(1) An order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is pending, or by the CA or the SC, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant’s demand, unless such party makes deposit or gives a bond in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant’s demand or the value of the property to be attached as stated by the applicant, exclusive of costs. Several writs may be issued at the same time to the sheriffs of the courts of different judicial regions (Sec. 2).

(2) An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts:
   (a) that a sufficient cause of action exists,
   (b) that the case is one of those mentioned in Section 1,
   (c) that there is no other sufficient security for the claim sought to be enforced by the action, and
   (d) that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.

The affidavit, and the bond must be filed with the court before the order issues (Sec. 3).

Rule on prior or contemporaneous service of summons

(1) The requirement of prior or contemporaneous service of summons shall not apply in the following instances:
   (a) Where the summons could not be served personally or by substituted service despite diligent efforts;
   (b) The defendant is a resident of the Philippines who is temporarily out of the country;
   (c) The defendant is a non-resident; or
   (d) The action is one in rem or quasi in rem (Sec. 5).

(2) No levy on attachment pursuant to the writ of preliminary attachment shall be enforced unless it is preceded, or contemporaneously accompanied, by the service of summons, together with a copy of the complaint, the application for attachment, the applicant’s affidavit and bond, and the order and writ of attachment, on the defendant within the Philippines.

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

(1) Real and personal property shall be attached by the sheriff executing the writ in the following manner:
   (a) Real property, or growing crops thereon, or any interest therein, standing upon the record of the registry of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, or belonging to the
party against whom attachment is issued and held by any other person, or standing on
the records of the registry of deeds in the name of any other person, by filing with the
registry of deeds a copy of the order, together with a description of the property
attached, and a notice that it is attached, or that such real property and any interest
therein held by or standing in the name of such other person are attached, and by
leaving a copy of such order, description, and notice with the occupant of the property, if
any, or with such other person or his agent if found within the province. Where the
property has been brought under the operation of either the Land Registration Act or the
Property Registration Decree, the notice shall contain a reference to the number of the
certificate of title, the volume and page in the registration book where the certificate is
registered, and the registered owner or owners thereof.

The registrar of deeds must index attachments filed under this section in the names of
the applicant, the adverse party, or the person by whom the property is held or in whose
name it stands in the records. If the attachment is not claimed on the entire area of the
land covered by the certificate of title, a description sufficiently accurate for the
identification of the land or interest to be affected shall be included in the registration of
such attachment;

(b) Personal property capable of manual delivery, by taking and safely keeping it in his
custody, after issuing the corresponding receipt therefor;

(c) Stocks or shares, or an interest in stocks or shares, of any corporation or company,
by leaving with the president or managing agent thereof, a copy of the writ, and a notice
stating that the stock or interest of the party against whom the attachment is issued is
attached in pursuance of such writ;

(d) Debts and credits, including bank deposits, financial interest, royalties, commissions
and other personal property not capable of manual delivery, by leaving with the person
owing such debts, or having in his possession or under his control, such credits or other
personal property, or with his agent, a copy of the writ, and notice that the debts owing
by him to the party against whom attachment is issued, and the credits and other
personal property in his possession, or under his control, belonging to said party, are
attached in pursuance of such writ;

(e) The interest of the party against whom attachment is issued in property belonging to
the estate of the decedent, whether as heir, legatee, or devisee, by serving the executor
or administrator or other personal representative of the decedent with a copy of the writ
and notice that said interest is attached. A copy of said writ of attachment and of said
notice shall also be filed in the office of the clerk of the court in
which said estate is
being settled and served upon the heir, legatee or devisee concerned.

If the property sought to be attached is in custodia legis, a copy of the writ of attachment
shall be filed with the proper court or quasi-judicial agency, and notice of the attachment
served upon the custodian of such property (Sec. 7).

(2) Certain remedies available to a third person not party to the action but whose property
is the subject of execution:

(d) 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.

(e) 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).

(f) 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).

(g) Accion Reivindicatoria - The third party claimant is not precluded by Sec. 14, Rule 57 from vindicating his claim to the property in the same or in a separate action. He may file a separate action to nullify the levy with damages resulting from the unlawful levy and seizure. This action may be a totally distinct action from the former case.

Discharge of attachment and the counter-bond

(1) If the attachment has already been enforced, the party whose property has been attached may file a motion to discharge the attachment. This motion shall be with notice and hearing. After due notice and hearing, the court shall discharge the attachment if the movants make a cash deposit or files a counter-bond executed to the attaching party with the clerk of court where the application is made in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. Counter-bonds are replacements of the property formerly attached, and just as the latter, may be levied upon after final judgment. Note that the mere posting of counterbond does not automatically discharge the writ of attachment. It is only after the hearing and after the judge has ordered the discharge of attachment that the same is properly discharged (Sec. 12).

(2) Attachment may likewise be discharged without the need for filing a counter-bond. This is possible when the party whose property has been attached files a motion to set aside or discharge the attachment and during the hearing of the motion, he proves that:

   (a) The attachment was improperly or irregularly issued or enforced; or
   (b) The bond of the attaching creditor is insufficient; or
   (c) The attachment is excessive and must be discharged as to the excess (Sec. 13); or
   (d) The property is exempt from execution, and as such is also exempt from preliminary attachment (Sec. 2).

(3) Grounds for discharge of an attachment

   (a) Counterbond posted
   (b) improperly issued
   (c) irregularly issued or enforced
   (d) insufficient applicant's bond

   “Improperly” (e.g. writ of attachment was not based on the grounds in Sec. 1)

   “Irregularly” (e.g. writ of attachment was executed without previous or contemporaneous service of summons

Satisfaction of judgment out of property attached

(1) If judgment be recovered by the attaching party and execution issued thereon, the sheriff may cause the judgment to be satisfied out of the property attached, if it be sufficient for that purpose in the following manner:
(a) By paying to the judgment obligee the proceeds of all sales of perishable or other property sold in pursuance of the order of the court, or so much as shall be necessary to satisfy the judgment;

(b) If any balance remains due, by selling so much of the property, real or personal, as may be necessary to satisfy the balance, if enough for that purpose remain in the sheriff's hands, or in those of the clerk of the court;

(c) By collecting from all persons having in their possession credits belonging to the judgment obligor, or owing debts to the latter at the time of the attachment of such credits or debts, the amounts of such credits and debts as determined by the court in the action, and stated in the judgment, and paying the proceeds of such collection over to the judgment obligee (Sec. 15).

(2) Order of satisfaction of judgment of attached property

(1) Perishable or other property sold in pursuance of the order of the court;
(2) Property, real or personal, as may be necessary to satisfy the balance;
(3) collecting from debtors of the judgment obligor;
(4) ordinary execution.

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**Preliminary Injunction** *(Rule 58)*

**Definitions and Differences: Preliminary Injunction and Temporary Restraining Order**

(1) A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction (Sec. 1).

(2) As a provisional remedy, preliminary injunction aims to preserve the *status quo* or to prevent future wrongs in order to preserve and protect certain interests or rights during the pendency of the action *(Cortez-Estrada vs. Heirs of Domingo, 451 SCRA 275 [2005])*). The status quo is the last, actual, peaceable and uncontested situation which precedes a controversy. The injunction should not establish a new relation between the parties, but merely should maintain or re-establish the pre-existing relationship between them.

(3) A writ of preliminary injunction remains until it is dissolved; a temporary restraining order (TRO) has a lifetime only of 20 days (RTC and MTC) or 60 days (Court of Appeals). A TRO issued by the Supreme Court shall be effective until further orders. A TRO is issued to preserve the *status quo* until the hearing of the application for preliminary injunction. The judge may issue a TRO with a limited life of 20 days from date of issue. If before the expiration of the 20 day period, the application for preliminary injunction is denied, the TRO would be deemed automatically vacated. If no action is taken by the judge within the 20 day period, the TRO would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary *(Bacolod City Water District vs. Labayen, 446 SCRA 110)*.

(4) The following must be proved before a writ of preliminary injunction, be it mandatory or prohibitory, will issue:

(a) The applicant must have a clear and unmistakable right to be protected, that is a right in *esse*;

(b) There is a material and substantial invasion of such right;

(c) There is an urgent need for the writ to prevent irreparable injury to the applicant; and
(d) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury (St. James College of Parañaque v. EPCIB, GR No. 179441, 08/09/2010).

(5) Status quo order is merely intended to maintain the last, actual, peaceable and uncontested state of things which preceded the controversy, not to provide mandatory or injunctive relief. In this case, it cannot be applied when the respondent was already removed prior to the filing of the case. The directive to reinstate respondent to her former position as school director and curriculum administrator is a command directing the undoing of an act already consummated which is the exclusive province of prohibitory or mandatory injunctive relief and not of a status quo order. (Bro. Bernard Oca v. Custodio, GR No. 174996, 12/03/2014).

(6) 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.

(7) 2001 Bar: An application for a writ of preliminary injunction with a prayer for a temporary restraining order is included in a complaint and filed in a multi-sala Regional Trial Court (RTC) consisting of Branches 1, 2, 3, and 4. Being urgent in nature, the Executive Judge, who was sitting in Branch 1, upon the filing of the aforesaid application, immediately raffled the case in the presence of the judges of Branches 2, 3, and 4. The case was raffled to Branch 4 and the judge thereof immediately issued a temporary restraining order.

Is the temporary restraining order valid? Why? (5%)
Answer: No. It is only the Executive Judge who can issue immediately a temporary restraining order effective only for seventy-two (72) hours from issuance. No other judge has the right or power to issue a temporary restraining order ex parte. The judge whom the case is assigned will then conduct a summary hearing to determine whether the temporary restraining order shall be extended. But in no case beyond 20 days, including the original 72 hour period (Rule 58, Section 5).

(8) 2001 Bar: May a writ of preliminary injunction be issued ex parte Why? (2%)
Answer: No, a writ of preliminary injunction may not be issued ex parte. As provided in the Rules, no preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined (Rule 58, Section 5). The reason is that a preliminary injunction may cause grave and irreparable injury to the party enjoined.

(9) 2003 Bar: Can a suit for injunction be aptly filed with the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front? (4%)
Answer: No, a suit for injunction cannot be aptly filed with the Supreme Court to stop the Supreme Court to stop the President of the Philippines from entering into a peace agreement with the National Democratic Front, which is purely political question. The President of the Philippines is immune from suit during his term (Madarang v. Santamaria, 37 Phil. 304 [1917]).

(10) 2006 Bar: What are the requisites for the issuance of (a) a writ of preliminary injunction; and (b) a final writ of injunction? (2.5%)
Answer: Requisites for the issuance of a writ of preliminary injunction are a verified complaint showing the existence of a right in esse, violation or threat of violation of such
right, damages or injuries sustained or that will be sustained by reason of such violation, notice to all parties of raffle and of hearing, hearing on the application, and filing of an appropriate bond and service thereof.

On the other hand, a final writ of injunction may be rendered by judgment after trial, showing applicant to be entitled to the writ (Rule 58, Section 9).

(11) **2006 Bar:** May the Regional Trial Court issue injunction without bond (2%)

**Answer:** Yes, if the injunction that is issued is a final injunction. Generally, however, preliminary injunction cannot issue without bond unless exempted by the trial court (Rule 58, Section 4(b)).

(12) **2006 Bar:** What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? (2%)

**Answer:** In cases of extreme urgency, when the applicant will suffer grave injustice and irreparable injury, the duration of a TRO issued ex parte by an Executive Judge of a Regional Trial Court (RTC) is 72 hours (Rule 58, Section 5). In the exercise of his regular functions over cases assigned to his sala, an Executive Judge may issue a TRO for a duration not exceeding a total of 20 days.

A status quo order (SQO) is more in the nature of a cease and desist order, since it does not direct the doing or undoing of acts, as in the case of prohibitory or mandatory injunctive relief. A TRO is only good for 20 days if issued by the RTC; 60 days if issued by the CA; until further notice if issued by the Supreme Court. The SQO is without any prescriptive period and may be issued without a bond. A TRO dies a natural death after the allowable period; the SQO does not. A TRO is provisional. SQO lasts until revoked. A TRO is not extendible, but the SQO may be subject to agreement of the parties.

### Requisites

1. A preliminary injunction or temporary restraining order may be granted only when:

   a. The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

   b. Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.

   c. When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines. However where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

   d. The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within
twenty-four (24) hours after the sheriff’s return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately (Sec. 4).

(e) The applicant must establish that there is a need to restrain the commission or continuance of the acts complied of and if not enjoined would work injustice to the applicant (Barbajo vs. Hidden View Homeowners, Inc., 450 SCRA 315).

(f) The plaintiff must further establish that he or she has a present clear unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages. In the absence of proof of legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. Thus, where the plaintiff’s right is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for preliminary injunction (Sps. Nisce vs. Equitable PCI Bank, 02/19/2007).

Kinds of Injunction

(1) **Prohibitory** - its purpose is to prevent a person from the performance of a particular act which has not yet been performed. Here, the status quo is preserved or restored and this refers to the last peaceable, uncontested status prior to the controversy.
   (a) Preliminary - secured before the finality of judgment.
   (b) Final - issued as a judgment, making the injunction permanent. It perpetually restrains a person from the continuance or commission of an act and confirms the previous preliminary injunction. It is one included in the judgment as the relief or part of the relief granted as a result of the action, hence, granted only after trial (Sec. 10), and no bond is required.

(2) **Mandatory** - its purpose is to require a person to perform a particular positive act which has already been performed and has violated the rights of another.
   (a) Preliminary
   (b) Final

(3) Requisites for the issuance of mandatory preliminary injunction
   (a) The invasion of the right is material and substantial;
   (b) The right of a complainant is clear and unmistakable;
   (c) There is an urgent and permanent necessity for the writ to prevent serious damage (Rivera vs. Florendo, 144 SCRA 643).

(4) Cases when injunction may not issue:
   (a) Labor cases
   (b) Government infrastructure projects, unless stopped by the Supreme Court
   (c) Prosecution of criminal case, unless unconstitutional
   (d) Collection of taxes, unless unconstitutional
   (e) Stop court of equal rank
   (f) Customs cases

(5) The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the status quo until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or
until the termination of the action without the court issuing a final injunction. The SC therefore, ruled that the CA did not commit any error in treating Jadewell’s Petition for Certiorari as an original action for injunction. (Sangguniang Panlunsod ng Baguio City v. Jadewell Parking Systems Corporation, GR 160025, 04/23/2014.)

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).

(4) The conditions for the issuance of the injunctive writ are: (a) that the right to be protected exists prima facie; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. Under the circumstances averred in the complaint, the issuance of the writ of preliminary injunction upon the application of the spouses Borbon was improper. They had admittedly constituted the real estate and chattel mortgages to secure the performance of their loan obligation to the BPI, and, as such, they were fully aware of the consequences on their rights in the properties given as collaterals should the loan secured be unpaid. (Bank of Philippine Islands v. Hontanosas, GR 157163, 06/25/2014).

(5) In a prayer for preliminary injunction, the plaintiff is not required to submit conclusive and complete evidence. He is only required to show that he has an ostensible right to the final relief prayed land. In this case, the petitioners have adequately shown their entitlement to a preliminary injunction. First, the relief demanded consists in restraining the execution of the RTC decision ordering their ejectment from the disputed land. Second, their ejectment from the land from which they derive their source of livelihood would work injustice to the petitioners. Finally, the execution of the RTC decision is probably in violation of the rights of the petitioners, tending to render the MTC judgment dismissing the forcible entry cases ineffectual. (Novecio v. Hon. R. Lim, GR No. 193809, 03/23/2015).

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).

<table>
<thead>
<tr>
<th>Court</th>
<th>Lifetime</th>
</tr>
</thead>
<tbody>
<tr>
<td>MTC or RTC</td>
<td>20 days</td>
</tr>
<tr>
<td>Court of Appeals</td>
<td>60 days</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>Until lifted</td>
</tr>
</tbody>
</table>

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

(d) If it shall appear from the facts shown by affidavits or by the verified application that
    great or irreparable injury would result to the applicant before the matter can be
    heard on notice;

(e) If application is included in initiatory pleading:
    1) Notice of raffle shall be preceded, or contemporaneously accompanied, by
       service of summons, together with a copy of the complaint or initiatory
       pleading and the applicant's affidavit and bond, upon the adverse party in
       the Philippines;
    2) Raffled only after notice to and in the presence of the adverse party or the
       person to be enjoined.

(f) Issued with summary hearing (to determine whether the applicant will suffer great or
    irreparable injury) within 24 hours after sheriff's return of service and/or records are
    received by the branch selected by raffle;

(g) Within 20-day period, the court must order said person to show cause why the
    injunction should not be granted, and determine whether or not the preliminary
    injunction shall be granted, and accordingly issue the corresponding order;

(h) Including the original 72 hours, total effectivity of TRO shall:
    1) Not exceed 20 days, if issued by an RTC or MTC;
    2) Not exceed 60 days, if issued by the CA or a member thereof;
    3) Until further orders, if issued by the SC.

(i) TRO is automatically vacated upon expiration of the period and without granting of
    preliminary injunction;

(j) Effectivity is not extendible without need of any judicial declaration to that effect;

(k) No court shall have authority to extend or renew the same on the same ground for
    which it was issued.

(3) Preliminary Injunction

(l) Hearing and prior notice to the party sought to be enjoined;

(m) If application is included in initiatory pleading:
    1) Notice of raffle shall be preceded, or contemporaneously accompanied, by
       service of summons, together with a copy of the complaint or initiatory
       pleading and the applicant's affidavit and bond, upon the adverse party in
       the Philippines.
    2) Raffled only after notice to and in the presence of the adverse party or the
       person to be enjoined.

(n) Applicant posts a bond

(4) Final Injunction

(o) Note that a bond is required only in preliminary injunctions, but is not required in
    TROs. After lapse of the 20 day TRO, the court can still grant a preliminary
    injunction. Note that irreparable injury is always a requisite in TROs. But in the 72
    hour TRO, grave injustice must also be shown. In the 20 day TRO, the ground is
    great or irreparable injury (Paras v. Roura, 163 SCRA 1 [1988]). Without a
    preliminary injunction, a TRO issued by the CA expires without necessity of court
    action.
Receivership (Rule 59)

(1) Receivership is a provisional remedy wherein the court appoints a representative to preserve, administer, dispose of and prevent the loss or dissipation of the real or personal property during the pendency of an action.

(2) It may be the principal action itself or a mere provisional remedy; it can be availed of even after the judgment has become final and executory as it may be applied for to aid execution or carry judgment into effect.

(3) Although Rule 59, Sec. 1(d) is couched in general terms and broad in scope, encompassing instances not covered by the other grounds enumerated under the said section, courts must remain mindful of the basic principle that receivership may be granted only when the property sought to be placed in the hands of a receiver is in danger of being lost or because they run the risk of being impaired, and only when there is a clear showing of necessity for it in order to save plaintiff from grave and immediate loss or damage (Casaverde-Tantano v. casaverde, GR No. 203585, 07/29/2013).

(4) 2001 Bar: Joaquin filed a complaint against Jose for the foreclosure of a mortgage of a furniture factory with a large number of machinery and equipment. During the pendency of the foreclosure suit, Joaquin learned from reliable sources that Jose was quietly and gradually disposing of some of his machinery and equipment to a businessman friend who was also engaged in furniture manufacturing such that from confirmed reports Joaquin gathered, the machinery and equipment left with Jose were no longer sufficient to answer for the latter’s mortgage indebtedness. In the meantime, judgment was rendered by the court in favor of Joaquin but the same is not yet final.

Knowing what Jose has been doing, if you were Joaquin’s lawyer, what action would you take to preserve whatever remaining machinery and equipment are left with Jose? Why? (5%)

Answer: To preserve whatever remaining machinery and equipment are left with Jose, Joaquin’s lawyer should file a verified application for the appointment by the court of one or more receivers. The Rules provide that receivership is proper in an action by the mortgagee for the foreclosure of a mortgage when it appears that the property is in danger of being wasted or dissipated or materially injured and that its value is probably insufficient to discharge the mortgage debt (Rule 59, Section 1(b)).

Cases when receiver may be appointed

(1) The party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, or materially injured unless a receiver be appointed to administer and preserve it;

(2) In an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(3) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

(4) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation (Sec. 1).
Requisites

(1) Verified application;
(2) Appointed by the court where the action is pending, or by the CA or by the SC, or a member thereof;
   During the pendency of an appeal, the appellate court may allow an application for the appointment of a receiver to be filed in and decided by the court or origin and the receiver appointed to be subject to the control of said court.
(3) Applicant’s bond conditioned on paying the adverse party all damages he may sustain by the appointment of the receiver in case the appointment is without sufficient cause;
(4) Receiver takes his oath and files his bond.

Requirements before issuance of an Order

(1) Before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented, in an amount to be fixed by the court, to the effect that the applicant will pay such party all damages he may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages (Sec. 2).

General powers of a receiver

(1) To bring and defend, in such capacity, actions in his own name
(2) To take and keep possession of the property in controversy
(3) To receive rents
(4) To collect debts due to himself as receiver or to the fund, property, estate, person, or corporation of which he is the receiver
(5) To compound for and compromise the same
(6) To make transfer
(7) To pay outstanding debts
(8) To divide the money and other property that shall remain among the persons legally entitled to receive the same
(9) To do such acts respecting the property as the court may authorize.
   However, funds in the hands of a receiver may be invested only by order of the court upon the written consent of all the parties to the action. No action may be filed by or against a receiver without leave of the court which appointed him (Sec. 6).

Two (2) kinds of bonds

(1) Applicant’s Bond (for appointment of receiver) - To pay the damages the adverse party may sustain by reason of appointment of receiver; and
(2) Receiver’s Bond (of the appointed receiver, aside from oath) - To answer for receiver’s faithful discharge of his duties (Sec. 4);
(3) Counterbond (Sec. 3).

Termination of receivership

(1) Whenever the court, motu proprio or on motion of either party, shall determine that the necessity for a receiver no longer exists, it shall, after due notice to all interested parties and hearing, settle the accounts of the receiver, direct the delivery of the funds and
other property in his possession to the person adjudged to be entitled to receive them, and order the discharge of the receiver from further duty as such. The court shall allow the receiver such reasonable compensation as the circumstances of the case warrant, to be taxed as costs against the defeated party, or apportioned, as justice requires (Sec. 8).

(2) Receivership shall also be terminated (a) when its continuance is not justified by the facts and circumstances of the case (Samson vs. Araneta, 64 Phil. 549); or (b) when the court is convinced that the powers are abused (Duque vs. CFI, Manila, 13 SCRA 420).

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**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).

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**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).

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**Requisites**

(1) A party praying for the provisional remedy must file an application for a writ of replevin. His application must be filed at the commencement of the action or at any time before the defendant answers, and must contain an affidavit particularly describing the property to which he is entitled of possession.

(2) The affidavit must state that the property is wrongfully detained by the adverse party, alleging therein the cause of the detention. It must also state that the property has not been destranged 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.

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**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 third-party claimant may vindicate his claim to the property, and the applicant may claim damages against such third-party, in the same or separate action. A claim on the indemnity bond should be filed within 120 days from posting of such bond.

(4) If the property taken is claimed by any person other than the party against whom the writ of replevin had been issued or his agent, and such person makes an affidavit of his title thereto, or right to the possession thereof, stating the grounds therefor, and serves such affidavit upon the sheriff while the latter has possession of the property and a copy thereof upon the applicant, the sheriff shall not be bound to keep the property under replevin or deliver it to the applicant unless the applicant or his agent, on demand of said sheriff, shall file a bond approved by the court to indemnify the third-party claimant in the sum not less than the value of the property under replevin as provided in section 2 hereof. In case of disagreement as to such value, the court shall determine the same. No claim for damages for taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The sheriff shall not be liable for damages, for the taking or keeping of such property, to any such third-party claimant if such bond shall be filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property, or prevent the applicant from claiming damages against a third-party claimant who filed a frivolous or plainly spurious claim, in the same or a separate action (Sec. 7).
XX. SPECIAL CIVIL ACTIONS (Rules 62 - 71)

Nature of special civil actions

(1) Special civil actions are basically ordinary civil proceedings; what makes them special are the distinct peculiarities inherent in their very nature not found in ordinary civil actions. In *De Fiesta vs. Llorente*, 25 Phil. 544, the Supreme Court observed that partition of real estate, quo warranto, certiorari, prohibition and mandamus, eminent domain (expropriation) and foreclosure of mortgage are actions in themselves, but possessing special matters that required special procedures. For this reason, these proceedings are classified as special civil actions.

(2) Sec. 1, Rule 62 provides that rules provided for ordinary civil actions are applicable in special civil proceedings, which are not inconsistent with or may serve to supplement the provisions of the rules relating to such special civil actions.

Ordinary civil actions versus special civil actions

(1) Although both types of actions are governed by the rules for ordinary civil actions, there are certain rules that are applicable only to specific special civil actions (Sec. 3[a], Rule 1). The fact that an action is subject to special rules other than those applicable to ordinary civil actions is what makes a civil action special.

(2) An ordinary civil action must be based on a cause of action (Sec. 1, Rule 2). This means that the defendant must have performed an act or omitted to do an act in violation of the rights of another (Sec. 2, Rule 2). These definitions do not fit the requirements of a cause of action in certain special civil actions. The cause of action as defined and required of an ordinary civil action finds no application to the special civil action of declaratory relief. It finds no application also in a complaint for interpleader. In this action, the plaintiff may file a complaint even if he has sustained no actual transgression of his rights. In fact, he actually has no interest in the subject matter of the action. This is not so in an ordinary civil action.

(3) Ordinary civil actions may be filed initially in either the MTC or the RTC depending upon the jurisdictional amount or the nature of the action involved. On the other hand, there are special civil actions which can only be filed in an MTC like the actions for forcible entry and unlawful detainer. There are also special civil actions which cannot be commenced in the MTC, foremost of which are the petitions for certiorari, prohibition, and mandamus.

(4) The venue in ordinary civil actions is determined by either the residence of the parties where the action is personal or by the location of the property where the action is real. This dichotomy does not always apply to a special civil action. For instance, the venue in a petition for *quo warranto* is where the Supreme Court or the Court of Appeals sits if the petition is commenced in any of these courts and without taking into consideration where the parties reside. It is only when the petition is lodged with the RTC that the residence is considered in venue analysis. While in ordinary civil actions the residences of both the plaintiff and the defendant are factored in the determination, a petition for *quo warranto* filed with the RTC merely looks into the residence of the respondent, not that of the petitioner. But if it is the Solicitor General who commences the action, another special rule is followed because the petition may only be commenced in the RTC in Manila, in the Court of Appeals or in the Supreme Court.

(5) While ordinary civil actions when filed are denominated as “complaints”, some special civil actions are not denominated as such but “petitions”.

Special civil actions initiated by filing of a *Petition*:
1. Declaratory relief other than similar remedies (R63);
2. Review of adjudication of the COMELEC and COA (R64);
3. *Certiorari*, prohibition and *mandamus* (R65);
4. *Quo warranto* (R6); and
5. Contempt (R71)

Special civil actions initiated by filing of a *Complaint*:
1. Interpleader (R62);
2. Expropriation (R61);
3. Foreclosure of real estate mortgage (R68);
4. Partition (R69); and
5. Forcible entry and unlawful detainer (R70).

### 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 (*United 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:
   - Deed;
   - Will;
   - Contract or other written instrument;
   - Statute;
   - Executive order or regulation;
   - Ordinance; or
   - Any other governmental regulation (Sec. 1).

3. The petition for declaratory relief is filed before there occurs any breach or violation of the deed, contract, statute, ordinance or executive order or regulation. It will not prosper when brought after a contract or a statute has already been breached or violated. If there has already been a breach, the appropriate ordinary civil action and not declaratory relief should be filed.

4. Declaratory relief is not proper in following cases:
   - Citizenship
   - Abstract, hypothetical question
   - Hereditary rights
   - Based on contingent event
   - No administrative remedy has been exhausted
   - Pretends to be declaratory relief
   - Third-party complaint

5. Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation; or statute; and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute. As such, in the same manner that court decisions cannot be the proper subjects of such petition, decisions of quasi-judicial agencies cannot also be its subject for the simple reason that if a party is not agreeable to a decision either on questions of law or of fact, it may avail of the various remedies provided by the Rules of Court. In view of the foregoing, the decision of the BSP Monetary Board, in the exercise of its quasi-judicial powers or functions, cannot be a proper subject matter for such petition. (Monetary Board v. Philippine Veterans Bank, GR No. 189571, 01/21/2015).
Who may file the action

(1) Any person interested under a deed, will, contract or other written instrument or whose rights are affected by a statute, executive order or regulation, ordinance or other governmental regulation may before breach or violation thereof, bring an action in the RTC to determine any question of construction or validity arising and for a declaration of his rights or duties, thereunder (Sec. 1).

(2) Those who may sue under the contract should be those with interest under the contract like the parties, the assignees and the heirs as required by substantive law (Art. 1311, Civil Code).

(3) If it be a statute, executive order, regulation or ordinance, the petitioner is one whose rights are affected by the same (Sec. 1, Rule 63). The other parties are all persons who have or claim any interest which would be affected by the declaration. The rights of person not made parties to the action do not stand to be prejudiced by the declaration (Sec. 2).

Requisites of action for declaratory relief

(1) The subject matter must be a deed, will, contract or other written instrument, statute, executive order or regulation or ordinance;

(2) The terms of said document or the validity thereof are doubtful and require judicial construction;

(3) There must have been no breach of said document;

(4) There must be actual justiciable controversy or the ripening seeds of one( there is threatened litigation the immediate future); there must be allegation of any threatened, imminent and inevitable violation of petitioner’s right sought to be prevented by the declaratory relief sought;

(5) The controversy is between persons whose interests are adverse;

(6) The issue must be ripe for judicial determination e.g. administrative remedies already exhausted;

(7) The party seeking the relief has legal interest in the controversy; and

(8) Adequate relief is not available thru other means.

Stated otherwise, the requisites are:
(a) There must be a justiciable controversy;
(b) The controversy must be between persons whose interests are adverse;
(c) The party seeking the relief must have legal interest in the controversy; and
(d) The issue is ripe for judicial determination (Republic vs. Orbecido III, 472 SCRA 114).

When court may refuse to make judicial declaration

(1) Grounds for the court to refuse to exercise declaratory relief;
(a) A decision would not terminate the uncertainty or controversy which gave rise to the action; or
(b) The declaration or construction is not necessary and proper under the circumstances as when the instrument or the statute has already been breached (Sec. 5).

(2) In declaratory relief, the court is given the discretion to act or not to act on the petition. It may therefore choose not to construe the instrument sought to be construed or could refrain from declaring the rights of the petitioner under the deed or the law. A refusal of the court to declare rights or construe an instrument is actually the functional equivalent of the dismissal of the petition.
(3) On the other hand, the court does not have the discretion to refuse to act with respect to actions described as similar remedies. Thus, in an action for reformation of an instrument, to quiet or to consolidate ownership, the court cannot refuse to render a judgment (Sec. 5).

**Conversion to ordinary action**

(1) If before final termination of the case, a breach should take place, the action may be converted into ordinary action to avoid multiplicity of suits *(Republic vs. Orbecido, G.R. No. 154380, 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 statutorily mandated redemption of a property previously sold. For instance, a co-owner of a property may exercise the right of redemption in case the shares of all the other co-owners or any of them are sold to a third person (Art. 1620). The owners of adjoining lands shall have the right of redemption when a piece of rural land with a size of one hectare or less is alienated (Art. 1621). Conventional redemption (pacto de retro) sale is one that is not mandated by the statute but one which takes place because of the stipulation of the parties to the sale. The period of redemption may be fixed by the parties in which case the period cannot exceed ten (10) years from the date of the contract. In the absence of any agreement, the redemption period shall be four (4) years from the date of the contract (Art. 1606). When the redemption is not made within the period agreed upon, in case the subject matter of the sale is a real property, Art. 1607 provides that the consolidation of ownership in the vendee shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard.

(2) The action brought to consolidate ownership is not for the purpose of consolidating the ownership of the property in the person of the vendee or buyer but for the registration of the property. The lapse of the redemption period without the seller a retro exercising his right of redemption, consolidates ownership or title upon the person of the vendee by operation of law. Art. 1607 requires the filing of the petition to consolidate ownership because the law precludes the registration of the consolidated title without judicial order (Cruz vs. Leis, 327 SCRA 570).

Quieting of title to real property

(1) This action is brought to remove a cloud on title to real property or any interest therein. The action contemplates a situation where the instrument or a record is apparently valid or effective but is in truth and in fact invalid, ineffectual, 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. The bottomline is that decisions of quasi-judicial bodies are not stayed by appeal alone. Decisions of regular courts are stayed on appeal. Although in petition for review on certiorari to the SC via Rule 45, there is no express provision on effect of appeal on execution.

(5) The “not less than 5 days” provision for filing a pleading applies only to:
(a) filing an answer after a denial of a Motion to Dismiss (R12);
(b) filing an answer after denial or service of a Bill of Particulars (R12);
(c) filing an special civil action for Certiorari from a decision of the COMELEC or COA after denial of a Motion for Reconsideration or Motion for New Trial (R64). It does not apply to filing appeal from decisions of other entities after denial of a Motion for Reconsideration or Motion for New Trial. In such cases, either the parties have a fresh 15 days, or the balance.

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

<table>
<thead>
<tr>
<th>Rule 64</th>
<th>Rule 65</th>
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<tbody>
<tr>
<td>Directed only to the judgments, final orders or resolutions of the COMELEC and COA;</td>
<td>Directed to any tribunal, board or officers exercising judicial or quasi-judicial functions;</td>
</tr>
<tr>
<td>Filed within 30 days from notice of the judgment;</td>
<td>Filed within 60 days from notice of the judgment;</td>
</tr>
<tr>
<td>The filing of a motion for reconsideration or a motion for new trial if allowed, interrupts the period for the filing of the petition for certiorari.</td>
<td>The period within which to filed the petition if the motion for reconsideration or new trial is denied, is another 60 days from notice of the</td>
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</table>
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.

denial of the motion.

Certiorari, Prohibition and Mandamus (Rule 65)

(1) Certiorari is a remedy for the correction of errors of jurisdiction, not errors of judgment. It is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. More importantly, since the issue is jurisdiction, an original action for certiorari may be directed against an interlocutory order of the lower court prior to an appeal from the judgment (New Frontier Sugar Corp. vs. RTC of Iloilo, GR 165001, 01/31/2007).

(2) Where the error is not one of jurisdiction, but of law or fact which is a mistake of judgment, the proper remedy should be appeal. Hence, if there was no question of jurisdiction involved in the decision and what was being questioned was merely the findings in the decision of whether or not the practice of the other party constitutes a violation of the agreement, the matter is a proper subject of appeal, not certiorari (Centro Escolar University Faculty and Allied Workers Union vs. CA, GR 165486, 05/31/2006).

(3) Filing of petition for certiorari does not interrupt the course of the principal action nor the running of the reglementary periods involved in the proceeding, unless an application for a restraining order or a writ of preliminary injunction to the appellate court is granted (Sec. 7). Neither does it interrupt the reglementary period for the filing of an answer nor the course of the case where there is no writ of injunction (People vs. Almendras, 401 SCRA 555).

(4) In a summary proceeding, petitions for certiorari, prohibition or mandamus against an interlocutory order of the court are not allowed (Sec. 19, RRSP).

(5) Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. The remedy to obtain a reversal of judgment on the merits is appeal. This holds true even if the error ascribed to the lower court is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion. The existence and availability of the right to appeal prohibits the resort to certiorari because one of the requirements for certiorari is that there is no appeal (Bugarin vs. Palisoc, GR 157985, 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).

(7) The trial court's denial of the motion to dismiss is not a license to file a Rule 65 petition before the CA. An order denying a motion to dismiss cannot be the subject of a petition for certiorari as defendant still has an adequate remedy before the trial court - i.e., to file an answer and to subsequently appeal the case if he loses the case. As exceptions, it may avail of a petition for certiorari if the ground raised in the motion to dismiss is lack of jurisdiction over the person of the defendant or over the subject matter. Under the Rules of Court, entry of judgment may only be made if no appeal or motion for reconsideration
was timely filed. In the proceedings before the CA, if a motion for reconsideration is timely filed by the proper party, execution of the CA’s judgment or final resolution shall be stayed. This rule is applicable even to proceedings before the Supreme Court, as provided in Section 4, Rule 56 of the Rules of Court. In the present case, Tung Ho timely filed its motion for reconsideration with the CA and seasonably appealed the CA’s rulings with the Court through the present petition (G.R. No. 182153). To now recognize the finality of the Resolution of Ting Guan petition (G.R. No. 176110) based on its entry of judgment and to allow it to foreclose the present meritorious petition of Tung Ho, would of course cause unfair and unjustified injury to Tung Ho. (Tung Ho Steel Enterprises Corp. v. Ting Guan Trading Corp., GR No. 182153, 04/07/2014).

(8) 2008 Bar: Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of the Rules of Civil Procedure. (4%)
Answer: The certiorari jurisdiction of the Supreme Court under the Constitution is the mode by which the Court exercises its expanded jurisdiction, allowing it to take corrective action through the exercise of its judicial power. Constitutional certiorari jurisdiction applied even if the decision was not rendered by a judicial or quasi-judicial body; hence, it is broader than the writ of certiorari under Rule 65, which is limited to cases involving a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government and there is no other plain and speedy remedy available to a party in the ordinary course of law.

(9) 2007 Bar: L was charged with illegal possession of shabu before the RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postponed nineteen times over a period of two years. Twice during that period, L’s counsel filed motions to dismiss, invoking the right of the accused to a speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus? Reason briefly.
Answer: Yes, L can file a petition for mandamus, invoking the right to speedy trial (Rule 65, Section 3). The numerous and unreasonable postponements displayed an abusive exercise of discretion (Lumanlaw v. Peralta, GR No. 164953, 02/13/2005).

(10) 2006 Bar: In 1996, Congress passed RA 8189, otherwise known as the Voter’s Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter’s Registration and Identification System (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared and was issued a Notice of Award. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC’s modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract. Meanwhile, Fotokina filed with the RTC a petition for mandamus to compel the COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority of Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.
Is a petition for mandamus an appropriate remedy to enforce contractual obligations?
Answer: No, the petition for mandamus is not an appropriate remedy because it is not available to enforce a contractual obligation. Mandamus is directed only to ministerial acts, directing or commanding a person to do a legal duty (COMELEC v. Quijano-Ladilla, GR No. 151992, 09/18/2002).
## Definitions and distinctions

<table>
<thead>
<tr>
<th>Certiorari</th>
<th>Prohibition</th>
<th>Mandamus</th>
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<tr>
<td>Certiorari is an extraordinary writ annulling or modifying the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions when such tribunal, board or officer has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, there being no appeal or any other plain, speedy and adequate remedy in the ordinary course of law (Sec. 1, Rule 65).</td>
<td>Prohibition is an extraordinary writ commanding a tribunal, corporation, board or person, whether exercising judicial, quasi-judicial or ministerial functions, to desist from further proceedings when said proceedings are without or in excess of its jurisdiction, or with abuse of its discretion, there being no appeal or any other plain, speedy and adequate remedy in the ordinary course of law (Sec. 2, Rule 65).</td>
<td>Mandamus is an extraordinary writ commanding a tribunal, corporation, board or person, to do an act required to be done: (a) When he unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy and adequate remedy in the ordinary course of law; or (b) When one unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled (Sec. 3, Rule 65).</td>
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<td>Directed against a person exercising to judicial or quasi-judicial functions</td>
<td>Directed against a person exercising judicial or quasi-judicial functions, or ministerial functions</td>
<td>Directed against a person exercising ministerial duties</td>
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<tr>
<td>Object is to correct</td>
<td>Object is to prevent</td>
<td>Object is to compel</td>
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<tr>
<td>Purpose is to annul or modify the proceedings</td>
<td>Purpose is to stop the proceedings</td>
<td>Purpose is to compel performance of the act required and to collect damages</td>
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<tr>
<td>Person or entity must have acted without or in excess of jurisdiction, or with grave abuse of discretion</td>
<td>Person or entity must have acted without or in excess of jurisdiction, or with grave abuse of discretion</td>
<td>Person must have neglected a ministerial duty or excluded another from a right or office</td>
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<tr>
<th><strong>Prohibition</strong></th>
<th><strong>Injunction</strong></th>
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<tbody>
<tr>
<td>Always the main action</td>
<td>May be the main action or just a provisional remedy</td>
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<tr>
<td>Directed against a court, a tribunal exercising judicial or quasi-judicial functions</td>
<td>Directed against a party</td>
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<td>Ground must be the court acted without or in excess of jurisdiction</td>
<td>Does not involve a question of jurisdiction</td>
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<thead>
<tr>
<th><strong>Prohibition</strong></th>
<th><strong>Mandamus</strong></th>
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<tbody>
<tr>
<td>To prevent an act to be done by a respondent</td>
<td>To compel to do an act desired</td>
</tr>
<tr>
<td>May be directed against entities exercising judicial or quasi-judicial, or ministerial</td>
<td>May be directed against judicial and non-judicial entities</td>
</tr>
<tr>
<td>Functions</td>
<td>Extends to discretionary functions</td>
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<tr>
<td><strong>Mandamus</strong></td>
<td>Clarifies legal duties, not legal titles</td>
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<tr>
<td><strong>Quo warranto</strong></td>
<td>Respondent, without claiming any right to the office, excludes the petitioner</td>
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### Requisites

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<tr>
<th>Certiorari</th>
<th>Prohibition</th>
<th>Mandamus</th>
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<tr>
<td>That the petition is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; The tribunal, board or officer has acted without, or in excess of jurisdiction or with abuse of discretion amounting to lack or excess of jurisdiction; There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Accompanied by a certified true copy of the judgment or order subject of the petition, copies of all pleadings and documents relevant and pertinent thereto, and sworn certification of non-forum shopping under Rule 46.</td>
<td>The petition is directed against a tribunal, corporation, board or person exercising judicial, quasi-judicial, or ministerial functions; 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; There is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. Accompanied by a certified true copy of the judgment or order subject of the petition, copies of all pleadings and documents relevant and pertinent thereto, and sworn certification of non-forum shopping under Rule 46.</td>
<td>The plaintiff has a clear legal right to the act demanded; 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. 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.</td>
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When petition for **certiorari**, **prohibition** and **mandamus** is proper

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<tr>
<th>Certiorari</th>
<th>Prohibition</th>
<th>Mandamus</th>
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<tbody>
<tr>
<td>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.</td>
<td>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,</td>
<td>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</td>
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may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46 (Sec. 1, Rule 65).

speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Sec. 2, Rule 65).

remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46 (Sec. 3, Rule 65).

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(1) With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act or grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, Article VII of the 1987 Constitution. Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials. Necessarily, in discharging its duty under [the Constitution] to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the Republican system of checks and balances. (Araullo v. Aquino, GR No., 209287, 07/01/2014).

(2) A Petition for Certiorari will prosper if the following rules will be observed: 1) the applicant must allege with certainty that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law, or when any of those are present, allege facts showing that any existing remedy is impossible or unavailing, or that will excuse him for not having availed himself of such remedy; 2) he must also show that the party against whom it is being sought acted in grave abuse of discretion as to amount to lack
of jurisdiction; and 3) the hierarchy of courts must be respected. However, it cannot be resorted to when then the lower court acquired jurisdiction over the case and the person of the petitioners for any perceived error in its interpretation of the law and its assessment of evidence would only be considered an error of judgment and not of jurisdiction. Hence, such is correctible by appeal and not by certiorari. (Candelaria v. RTC-San Fernando Br. 42, GR No. 173861, 07/14/2014).

(3) For certiorari to prosper, the following requisites must concur: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. In this case, the Court finds no abuse of discretion, grave or simple in nature, committed by the CA in dismissing the petitioners’ certiorari petition for being the wrong mode of appeal. The CA’s dismissal of the certiorari petition is, in fact, well-supported by law and jurisprudence. The Court previously held that Rule 43 of the Rules of Court shall govern the procedure for judicial review of decisions, orders, or resolutions of the DAR Secretary, and that an appeal taken to the Supreme Court or the CA by the wrong or inappropriate mode shall be dismissed. (Heirs of Sobremonte v. Court of Appeals, GR No. 206234, 10/22/2014).

(4) The RTC issued a writ of execution to which respondent sheriff has reported that it has been fully implemented. Two years after, petitioner filed for another issuance of writ of execution which has been denied. Petitioner filed an action for mandamus to compel the RTC to issue such. The Court dismissed the petition. A writ of mandamus is employed to compel the performance, when refused, of a ministerial duty which is that which an officer or tribunal in obedience to the mandate of legal authority, without regard to or the exercise of his or its own judgment upon the propriety or impropriety of the act done. The writ of execution has already been implemented. The proper remedy is to cite the disobedient party in contempt. (Martinez v. Judge Martin, GR No. 203022, 12/03/2014).

(5) When petitioners, a Diocese and its Bishop posted tarpaulins in front of the cathedral which aimed to dissuade voters from electing candidates who supported the RH Law, and the COMELEC twice ordered the latter to dismantle the tarpaulin for violation of its regulation which imposed a size limit on campaign materials, the petitioners may directly file a Rule 65 Petition with the Supreme Court without need for a ruling from the COMELEC En Banc, as the petitioners are not candidates in the elections but is asserting their right to free speech, and the COMELEC acts not in its quasi-judicial function but in its regulatory function. In addition, the doctrine of hierarchy of courts is not violated, as the case falls under the exceptions thereto. The petitioners also did not violate the principle of exhaustion of administrative remedies, as the same yields in order to protect this fundamental right. Even if it applies, the case falls under the exceptions to the doctrine; namely: it involves a legal question and the application of the doctrine would be unreasonable. Finally, the case is about COMELEC’s breach of the petitioners’ fundamental right of expression of matters relating to election. Such a violation is grave abuse of discretion; thus the constitutionality of COMELEC’s orders are within the Supreme Court’s power to review under Rule 65. (Diocese of Bacolod v. COMELEC, GR No. 205728, 01/21/2015).

(6) As can be gleaned from both the Rules of Procedure of the Office of the Ombudsman and the Rules of Court, the respondent is required to be furnished a copy of the complaint and the supporting affidavits and documents. Clearly, these pertain to affidavits of the complainant and his witnesses, not the affidavits of the co-respondent. As such, no grave abuse of discretion can thus be attributed to the Ombudsman for the issuance of an order denying the request of the respondent to be furnished copies of counter-affidavits of his co-respondents. Also, as a general rule, a motion for reconsideration is mandatory before the filing of a petition for certiorari. Absent any
compelling reason to justify non-compliance, a petition for certiorari will not lie. All the more, it will lie only if there is no appeal or any other plain, speedy and adequate remedy available in the ordinary course of law. Thus, a failure to avail of the opportunity to be heard due to the respondent's own fault cannot in any way be construed as a violation of due process by the Ombudsman, much less of grave abuse of discretion. Finally, a respondent's claim that his rights were violated cannot be given credence when he flouts the rules himself by resorting to simultaneous remedies by filing Petition for Certiorari alleging violation of due process by the Ombudsman even as his Motion for Reconsideration raising the very same issue remained pending with the Ombudsman. (Estrada v. Bersamin, GR Nos. 212140-41, 01/21/2015).

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

<table>
<thead>
<tr>
<th>Certiorari as a Mode of Appeal (Rule 45)</th>
<th>Certiorari as a Special Civil Action (Rule 65)</th>
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<tbody>
<tr>
<td>Called Petition for Review on Certiorari, is a mode of appeal, which is but a continuation of the appellate process over the original case;</td>
<td>A special civil action that is an original action and not a mode of appeal, not a part of the appellate process but an independent action.</td>
</tr>
<tr>
<td>Seeks to review final judgments or final orders;</td>
<td>May be directed against an interlocutory order of the court or where no appeal or plain or speedy remedy available in the ordinary course of law</td>
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<tr>
<td>Raises only questions of law;</td>
<td>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;</td>
</tr>
<tr>
<td>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;</td>
<td>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;</td>
</tr>
<tr>
<td>Extension of 30 days may be granted for</td>
<td>Extension no longer allowed;</td>
</tr>
<tr>
<td>justifiable reasons</td>
<td>Motion for Reconsideration is a condition precedent, subject to exceptions</td>
</tr>
<tr>
<td>---------------------</td>
<td>--------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Does not require a prior motion for reconsideration;</td>
<td>Stays the judgment appealed from;</td>
</tr>
<tr>
<td>Stays the judgment appealed from;</td>
<td>Does not stay the judgment or order subject of the petition unless enjoined or restrained;</td>
</tr>
<tr>
<td>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;</td>
<td>The tribunal, board, officer exercising judicial or quasi-judicial functions is impleaded as respondent</td>
</tr>
<tr>
<td>Filed only with the Supreme Court</td>
<td>May be filed with the Supreme Court, Court of Appeals, Sandiganbayan, or Regional Trial Court</td>
</tr>
<tr>
<td>SC may deny the decision <em>motu proprio</em> on the ground that the appeal is (1) without merit, or is (2) prosecuted manifestly for delay, or that (3) the questions raised therein are too unsubstantial to require consideration.</td>
<td></td>
</tr>
</tbody>
</table>

(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

<table>
<thead>
<tr>
<th>Prohibition</th>
<th><em>Mandamus</em></th>
<th>Injunction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibition is an extraordinary writ commanding a tribunal, corporation, board or person, whether exercising judicial, quasi-judicial or ministerial functions, to desist from further proceedings when said proceedings are without or in excess of its jurisdiction, or with abuse of its discretion, there being no appeal or any other plain, speedy and adequate remedy in the ordinary course of law (Sec. 2, Rule 65).</td>
<td><em>Mandamus</em> is an extraordinary writ commanding a tribunal, corporation, board or person, to do an act required to be done: (a) When he unlawfully neglects the performance of an act which the law specifically enjoins as a duty, and there is no other plain, speedy and adequate remedy in the ordinary course of law; or (b) When one unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled (Sec. 3, Rule 65).</td>
<td>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.</td>
</tr>
<tr>
<td>Special civil action</td>
<td>Special civil action</td>
<td>Ordinary civil action</td>
</tr>
<tr>
<td>To prevent an encroachment, excess, usurpation or assumption of jurisdiction;</td>
<td>To compel the performance of a ministerial and legal duty;</td>
<td>For the defendant either to refrain from an act or to perform not necessarily a</td>
</tr>
</tbody>
</table>
legal and ministerial duty;

| May be directed against entities exercising judicial or quasi-judicial, or ministerial functions |
| May be directed against judicial and non-judicial entities |
| Directed against a party |

| Extends to discretionary functions |
| Extends only to ministerial functions |
| Does not necessarily extend to ministerial, discretionary or legal functions; |

| Always the main action |
| Always the main action |
| May be the main action or just a provisional remedy |

| May be brought in the Supreme Court, Court of Appeals, Sandiganbayan, or in the Regional Trial Court which has jurisdiction over the territorial area where respondent resides. |
| May be brought in the Supreme Court, Court of Appeals, Sandiganbayan, or in the Regional Trial Court which has jurisdiction over the territorial area where respondent resides. |
| May be brought in the Regional Trial Court which has jurisdiction over the territorial area where respondent resides. |

**Exceptions to filing of motion for reconsideration before filing petition**

(1) The following constitutes the exceptions to the rule:
(a) When the issue is one purely of law;
(b) When there is urgency to decide upon the question and any further delay would prejudice the interests of the government or of the petitioner;
(c) Where the subject matter of the action is perishable;
(d) When order is a patent nullity, as where the court a quo has no jurisdiction or there was no due process;
(e) When questions have been duly raised and passed upon by the lower court;
(f) When is urgent necessity for the resolution of the question;
(g) When Motion for Reconsideration would be useless, e.g. the court already indicated it would deny any Motion for Reconsideration;
(h) In a criminal case, where relief from order of arrest is urgent and the granting of such relief by the trial court is improbable;
(i) Where the proceedings was ex parte or in which the petitioner had no opportunity to object;
(j) When the petitioner is deprived of due process and there is extreme urgency for urgent relief; and
(k) When the issue raised is one purely of law or public interest is involved.

(2) The well-established rule is that the motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court. The rule is not absolute, however, considering that jurisprudence has laid down exceptions to the requirement for the filing of a petition for certiorari without first filing a motion for reconsideration, namely: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government, or of the petitioner, or the subject matter of the petition is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where the petitioner was deprived of due process, and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent, and the granting of such relief by the trial court is
improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding was ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or public interest is involved. A perusal of the circumstances of the case shows that none of the foregoing exceptions was applicable herein. Hence, Causing should have filed the motion for reconsideration, especially because there was nothing in the COMELEC Rules of Procedure that precluded the filing of the motion for reconsideration in election offense cases. (Causing v. COMELEC, GR No. 199139, 09/09/2014).

Reliefs petitioner is entitled to

(1) The primary relief will be annulment or modification of the judgment, order or resolution or proceeding subject of the petition. It may also include such other incidental reliefs as law and justice may require (Sec. 1). The court, in its judgment may also award damages and the execution of the award for damages or costs shall follow the procedure in Sec. 1, Rule 39 (Sec. 9).

Actions/Omissions of MTC/RTC in election cases

(1) Under Rule 65, the proper party who can file a petition for certiorari, prohibition or mandamus is the person aggrieved by the action of a trial court or tribunal in a criminal case pending before it. Ordinarily, the petition is filed in the name of the People of the Philippines by the Solicitor General. However, there are cases when such petition may be filed by other parties who have been aggrieved by the order or ruling of the trial courts. In the prosecution of election cases, the aggrieved party is the Comelec, who may file the petition in its name through its legal officer or through the Solicitor General if he agrees with the action of the Comelec (Comelec vs. Silva, Jr., 286 SCRA 177 [1998]).

When and where to file petition

<table>
<thead>
<tr>
<th>Supreme Court</th>
<th>Subject to the doctrine of hierarchy of courts and only when compelling reasons exist for not filing the same with the lower courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court of Appeals only</td>
<td>If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or rules</td>
</tr>
<tr>
<td>Court of Appeals or the Sandiganbayan</td>
<td>Whether or not in aid of appellate jurisdiction</td>
</tr>
<tr>
<td>Commission on Elections</td>
<td>In election cases involving an act or an omission of an MTC or RTC</td>
</tr>
<tr>
<td>Regional Trial Court</td>
<td>If the petition relates to an act or an omission of an MTC, corporation, board, officer or person</td>
</tr>
</tbody>
</table>

As amended by AM No. 07-7-12-SC, Dec. 12, 2007

(1) A petition for certiorari must be based on jurisdictional grounds because as long as the respondent acted with jurisdiction, any error committed by him or it in the exercise thereof will amount to nothing more than an error of judgment which may be reviewed or corrected by appeal (Microsoft Corp. vs. Best Deal Computer Center Corp., GR 148029, Sept. 24, 2002; Estrera vs. CA, GR 154235, Aug. 16, 2006).
(2) The petition for certiorari shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. However, the 60-day period may be extended under any of the circumstances. In the instant case, the Order of RTC was received by private complainants on 14 October 2010. Then the Petition for Certiorari was filed one day after the 60-day reglementary period for filing the Petition for Certiorari, since the letter evidencing that the OSG received the documents erroneously stated that the deadline for filing was 14 December 2010, instead of 13 December 2010. On 30 November 2010, counsel for private complainants submitted to the Office of the Prosecutor General the draft petition for certiorari, the verification and certification against forum shopping, the original copies containing the signatures of the private prosecutors, and the certified copies of the annexes. These documents were received by the OSG on 3 December 2010 only. Given the circumstances, the Court holds that the CA-Cebu should have applied the rules liberally and excused the belated filing. *(People v. Espinosa, GR No. 199070, 04/07/2014).*

(3) Under Section 4, Rule 65 of the Rules of Court, an aggrieved party has sixty (60) days from receipt of the assailed decision, order or resolution within which to file a petition for certiorari. Well-settled is the rule that if a litigant is represented by counsel, notices of all kinds, including court orders and decisions, must be served on said counsel, and notice to him is considered notice to his client. *(Pagdanganan v. Sarmiento, GR No. 206555, 09/17/2014).*

### Effects of filing of an unmeritorious petition

(1) The Court may impose *motu proprio*, based on *res ipsa loquitur*, other disciplinary sanctions or measures on erring lawyers for patently dilatory and unmeritorious petition for certiorari *(AM 07-7-12-SC, Dec. 12, 2007).* The court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. In such event, the court may award in favor of the respondent treble costs solidarily against the petitioner and counsel, in addition to subjecting counsel to administrative sanctions under Rules 139 and 139-B.

### Quo Warranto (Rule 66)

(1) *Quo warranto* is a demand made by the state upon some individual or corporation to show by what right they exercise some franchise or privilege appertaining to the state which, according to the Constitution and laws they cannot legally exercise by virtue of a grant and authority from the State *(44 Am. Jur. 88-89).*

(2) 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).*

(3) **2001 Bar:** Petitioner Fabian was appointed Election Registrar of the Municipality of Sevilla supposedly to replace the respondent Election Registrar Pablo who was transferred to another municipality without his consent and who refused to accept his aforesaid transfer, much less to vacate his position in Bogo town as election registrar, as in fact he continued to occupy his aforesaid position and exercise his functions thereto. Petitioner Fabian then filed a petition for mandamus against Pablo but the trial
court dismissed Fabian's petition contending that quo warranto is the proper remedy. Is the court correct in its ruling? Why? (5%)

Answer: Yes, the court is correct in its ruling. Mandamus will not lie. This remedy applies only when it is doubtful. Pablo was transferred without his consent which is tantamount to removal without cause contrary to the fundamental guarantee on non-removal except for cause. Considering that Pedro continued to occupy the disputed position and exercise his functions therein, the proper remedy is quo warranto, not mandamus (Garces v. Court of Appeals, 259 SCRA 99 [1996]).

(4) 2001 Bar: A group of businessmen formed an association in Cebu City calling itself Cars Co. to distribute/sell cars in said city. It did not incorporate itself under the law nor did it have any government permit or license to conduct its business as such. The Solicitor General filed before a Regional Trial Court (RTC) in Manila a verified petition for quo warranto questioning and seeking to stop the operation of Cars Co. The latter filed a motion to dismiss the petition on the ground of improper venue claiming that its main office and operations are in Cebu City and not in Manila. Is the contention of Cars Co. correct? Why? (5%)

Answer: No. As expressly provided in the Rules, when the Solicitor General commences the action quo warranto, it may be brought in a Regional Trial Court in the City of Manila, as in this case, in the Court of Appeals or in the Supreme Court (Rule 66, Section 7).

Distinguish from Quo Warranto in the Omnibus Election Code

<table>
<thead>
<tr>
<th>Quo Warranto (Rule 66)</th>
<th>Quo Warranto (Election Code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject of the petition is in relation to an appointive office;</td>
<td>Subject of the petition is in relation to an elective office;</td>
</tr>
<tr>
<td>The issue is the legality of the occupancy of the office by virtue of a legal appointment;</td>
<td>Grounds relied upon are: (a) ineligibility to the position; or (b) disloyalty to the Republic.</td>
</tr>
<tr>
<td>Petition is brought either to the Supreme Court, the Court of Appeals or the Regional Trial Court;</td>
<td>May be instituted with the COMELEC by any voter contesting the election qualification of any member of Congress, regional, provincial or city officer; or to the MeTC, MTC or MCTC if against any barangay official;</td>
</tr>
<tr>
<td>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;</td>
<td>Filed within ten (10) days after the proclamation of the results of the election;</td>
</tr>
<tr>
<td>Petitioner is the person entitled to the office;</td>
<td>Petitioner may be any voter even if he is not entitled to the office;</td>
</tr>
<tr>
<td>The court has to declare who the person entitled to the office is if he is the petitioner.</td>
<td>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.</td>
</tr>
</tbody>
</table>
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.

(2) 2016 Bar (Civil Law): The original landowners may reacquire the subject property because of the abandonment of the public use for which they were previously expropriated and pursuant to their original agreement of repurchase.

In expropriation proceedings, public usage of the property being expropriated is an essential element for the proceedings to be valid. If the genuine public necessity – the very reason or condition as it were allowing, at the first instance, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government’s retention of the expropriated land (Vda. De Ouano v. Republic, GR No. 168770, 02/09/2011).

(3) When the National Power Corporation filed an expropriation case and the same was subsequently dismissed due to failure to prosecute, it is as if no complaint for expropriation was filed. As a result the NPC is considered to have violated procedural requirements, and hence, waived the usual procedure prescribed in Rule 67, including the appointment of commissioners to ascertain just compensation. Thus, the RTC should have fixed the value of the property for the purposes of just compensation at the time NPC took possession of the same in 1990, and not at the time of the filing of the complaint for compensation and damages in 1994 or its fair market value in 1995. (National Power Corporation v. Samar, GR No. 197329, 09/08/2014).

(4) The determination of just compensation is a judicial function; hence, courts cannot be unduly restricted in their determination thereof. To do so would deprive the courts of their judicial prerogatives and reduce them to the bureaucratic function of inputting data and arriving at the valuation. While the courts should be mindful of the different formulae created by the DAR in arriving at just compensation, they are not strictly bound to adhere thereto if the situations before them do not warrant it. Thus, the RTC is advised that while it should be mindful of the different formulae created by the DAR in arriving at just compensation, it is not strictly bound to adhere thereto if the situations before it do not warrant their application. (Land Bank of the Philippines v. Heirs of Jesus Alsua, GR No. 211351, 02/04/2015).

(5) In the present case, NAPOCOR admits that the expropriation of the land in question is no longer necessary for public use. Had that admission been made in the trial court the case should have been dismissed there. It now appearing positively, by resolution of [NAPOCOR], that the expropriation is not necessary for public use, the action should be dismissed even without a motion... The moment it appears in whatever stage of the proceedings that the expro-priation is not for a public use the complaint should be dismissed and all the parties thereto should be relieved from further annoyance or litigation. (Republic v. Heirs of Saturnino Borbon, GR No. 165354, 01/12/2015).

(6) 2006 Bar: May Congress enact a law providing that a 5,000 square meter lot, a part of the UST compound in Sampaloc Manila, be expropriated for the construction of a park in honor of former City Mayor Arsenio Lacson? As compensation to UST, the City of Manila shall deliver its 5-hectare lot in Sta. Rosa, Laguna originally intended as a residential subdivision for the Manila City Hall employees. Explain. (5%)

Answer: Yes, Congress may enact a law expropriating property provided that it is for public use and with just compensation. In this case, the construction of a park is for public use. The planned compensation, however, is not legally tenable as the determination of just compensation is a judicial function. No statute, decree or executive order can mandate that the determination of just compensation by the executive or legislative departments can prevail over the court’s findings (Rule 67,
Section 5 to 8). In addition, compensation must be paid in money (*Reyes v. NHA*, GR No. 147511, 03/24/2003).

Matters to allege in complaint for expropriation

(1) An expropriation proceeding is commenced by the filing of a verified complaint which shall:

(a) State with certainty the right of the plaintiff to expropriation and the purpose thereof;

(b) Describe the real or personal property sought to be expropriated; and

(c) Join as defendants all persons owning or claiming to own, or occupying, any part of the property or interest therein showing as far as practicable the interest of each defendant. If the plaintiff cannot with accuracy identify the real owners, averment to that effect must be made in the complaint (*Sec. 1*).

Two stages in every action for expropriation

(1) 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.


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*). Deposit is fifteen percent (15%) of the fair market value (*Sec. 19, LGC*).

Defenses and objections

(1) Omnibus Motion Rule – Subject to the provisions of Sec. 1, Rule 9, a motion attacking a pleading, order, judgment or proceeding shall include all objections then available, and all objections not so included shall be deemed waived (*Sec. 8, Rule 15*).
(2) If a defendant has no objection or defense to the action or the taking of his property, he may file and serve a notice of appearance and a manifestation to that effect, specifically designating or identifying the property in which he claims to be interested, within the time stated in the summons. Thereafter, he shall be entitled to notice of all proceedings affecting the same.

If a defendant has any objection to the filing of or the allegations in the complaint, or any objection or defense to the taking of his property, he shall serve his answer within the time stated in the summons. The answer shall specifically designate or identify the property in which he claims to have an interest, state the nature and extent of the interest claimed, and adduce all his objections and defenses to the taking of his property. No counterclaim, cross-claim or third-party complaint shall be alleged or allowed in the answer or any subsequent pleading.

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing thereof. However, at the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award (Sec. 3).

Order of Expropriation

(1) If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.

A final order sustaining the right to expropriate the property may be appealed by any party aggrieved thereby. Such appeal, however, shall not prevent the court from determining the just compensation to be paid.

After the rendition of such an order, the plaintiff shall not be permitted to dismiss or discontinue the proceeding except on such terms as the court deems just and equitable (Sec. 4).

Ascertainment of just compensation

(1) The order of expropriation merely declares that the plaintiff has the lawful right to expropriate the property but contains no ascertainment of the compensation to be paid to the owner of the property. So upon the rendition of the order of expropriation, the court shall appoint not more than three (3) commissioners to ascertain the just compensation for the property. Objections to the appointment may be made within 10 days from service of the order of appointment (Sec. 5). The commissioners are entitled to fees and their fees shall be taxed as part of the costs of the proceedings, and all costs shall be paid by the plaintiff except those costs of rival claimants litigating their claims (Sec. 12).

(2) Where the principal issue is the determination of just compensation, a hearing before the commissioners is indispensable to allow the parties to present evidence on the issue of just compensation. Although the findings of the commissioners may be disregarded and the trial court may substitute its own estimate of the value, the latter may do so only for valid reasons, that is where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear
preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive.

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).

(3) The spouses mortgaged their property to PNB as security for their loan. Since they were unable to pay, it was foreclosed and PNB was the highest bidder. PNB filed for writ of possession which was held in abeyance by Judge Venadas, Sr. The Court ruled that the judge committed grave abuse of discretion. Once the one-year redemption period has lapsed from the foreclosure sale and once title is consolidated under the name of the purchaser, the issuance of the writ of possession becomes ministerial on the part of the court. The alleged invalidity of the sale of PNB to Atty. Garay is not a ground to defer the issuance of the Writ of Possession. (Sps. Sombilon v. Atty. Garay, AM No. RTJ-06-200, 01/16/2014).

(4) Under Section 33, Rule 39 of the Rules of Court, which is made applicable to extrajudicial foreclosures of real estate mortgages, the possession of the property shall be given to the purchaser or last redemptioner unless a third party is actually holding the property in a capacity adverse to the judgment obligor. It contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary, who possesses the property in his own right, and is not
merely the successor or transferee of the right of possession of another co-owner or the owner of the property. *(Cabling v. Lumanas, GR No. 196950, 06/18/2014)*.

(5) It is a well-established rule that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale. Once title to the property has been consolidated in the buyer’s name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court’s discretion. Moreover, a petition for a writ of possession is ex parte and summary in nature. As one brought for the benefit of one party only and without notice by the court to any person adverse of interest, it is a judicial proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. Since the judge to whom the application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure, it has been ruled that the ministerial duty of the trial court does not become discretionary upon the filing of a complaint questioning the mortgage. *(Gopia v. Metropolitan Bank and Trust Co., GR No. 188931, 07/28/2014)*.

(6) Petitioner filed the instant petition questioning the decision of the CA holding that an ex-parte petition for the issuance of a writ of possession was not the proper remedy for the petitioner. The SC, though agreed with the CA, held that petitioner is not without recourse. The remedy of a writ of possession is a remedy that is available to a mortgagee-purchaser for him to acquire possession of the foreclosed property from the mortgagor. It is made available to a subsequent purchaser only after hearing and after determining that the subject property is still in the possession of the mortgagor. Unlike if the purchaser is the mortgagee or a third party during the redemption period, a writ of possession may issue ex-parte or without hearing. Thus, petitioner being a third party who acquired the property after the redemption period, a hearing must be conducted to determine whether possession over the subject property is still with the mortgagor. If the property is in the possession of the mortgagor, a writ of possession could thus be issued. Otherwise, the remedy of a writ of possession is no longer available to petitioner, but he can wrest possession over the property through an ordinary action of ejectment. *(Okabe v. Saturnino, GR No. 196040, 08/26/2014)*.

(7) **2000 Bar:** AB mortgage his property to CD. AB failed to pay his obligation and CD filed an action for foreclosure of mortgage. After trial, the court issued an Order granting CD’s prayer for foreclosure of mortgage and ordering AB to pay CD the full amount of the mortgage debt including interest and other charges not later than 120 days from receipt of the order. AB received the order on August 10, 1999. No other proceeding took place thereafter. On December 20, 1999, AB tendered the full amount adjudged by the court to CD but the latter refused to accept it on the ground that the amount was tendered beyond the 120-day period granted by the court. AB filed a motion in the same court praying that CD be directed to receive the amount tendered by him on the ground that the order does not comply with the provisions of Section 2, Rule 68 of the Rules of Court which gives AB 120 days from entry of judgment, and not from date of receipt of the order. The court had already become final and cannot longer be amended to conform with Section 2, Rule 68. Aggrieved, AB files a petition for certiorari against the Court and CD. Will the petition for certiorari prosper? Explain. (5%)

**Answer:** Yes. The court erred in issuing an order granting CD’s prayer for foreclosure and ordering AB to pay the CD the full amount of mortgage debt including interest and other charges not later than 120 days from receipt of the order. The court should have rendered a judgment which is appealable. Since no appeal was taken, the judgment became final on August 25, 1999, which is the date of entry of judgment *(Rule 36,
Hence, AB had up to December 24, 1999, within which to pay the amount due (Rule 68, Section 2). The Court gravely abused its discretion amounting to lack or excess of jurisdiction in denying AB’s motion to direct CS to receive the amount tendered.

2003 Bar: A borrowed from the Development Bank of the Philippines (DBP) the amount of P1 million secured by the titled land of his friend B, who, however, did not assume personal liability for the loan. A defaulted and DBP filed an action for judicial foreclosure of the real estate mortgage impleading A and B as defendants. In due course, the court rendered judgment directing A to pay the outstanding account of P1.5 million (principal plus interest) to the bank. No appeal was taken by A on the decision within the reglementary period. A failed to pay the judgment debt within the period specified in the decision. Consequently, the court ordered the foreclosure sale of the mortgaged land. In that foreclosure sale, the land was sold to the DBP for P1.2 million. The sale was subsequently confirmed by the court, and the confirmation of the sale was registered with the Registry of Deeds on 05 January 2002.

On January 10, 2002, the bank filed an ex parte motion with the court for the issuance of a writ of possession to oust B from the land. It also filed a deficiency claim for P800,000 against A and B. The deficiency claim was opposed by A and B.

Resolve the motion for the issuance of a writ of possession.

Answer: In judicial foreclosure by banks such as DBP, the Mortgagor or Debtor whose real property has been sold on foreclosure has the right to redeem the property sold within one year after the sale (or registration of the sale). However, the purchaser at the auction sale has the right to obtain a writ of possession after the finality of the order confirming the sale (Rule 68, Section 3; Section 47, RA 8791, The General Banking Law). The motion for writ of possession, however, cannot be filed ex parte. There must be a notice of hearing.

---

### Judgment on foreclosure for payment or sale (stage 1)

(1) If after the trial, the court finds that the matters set forth in the complaint are true, it shall render a judgment containing the following matters:

(a) An ascertainment of the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, as well as costs;

(b) A judgment of the sum found due;

(c) An order that the amount found due be paid to the court or to the judgment obligee within the period of not less than 90 days nor more than 120 days from the entry of judgment; and

(d) An admonition that in default of such payment the property shall be sold at public auction to satisfy the judgment (Sec. 2).

(2) The judgment of the court on the above matters is considered a final adjudication of the case and hence, is subject to challenge by the aggrieved party by appeal or by other post-judgment remedies.

(3) The period granted to the mortgagor for the payment of the amount found due by the court is not just a procedural requirement but a substantive right given by law to the mortgagee as his first chance to save his property from final disposition at the foreclosure sale (De Leon vs. Ibañez, 95 Phil. 119).

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### Sale of mortgaged property; effect (stage 2)

(1) The confirmation of the sale shall divest the rights in the property of all parties to the action and shall vest their rights in the purchaser, subject to such rights of redemption.
as may be allowed by law (Sec. 3). The title vests in the purchaser upon a valid confirmation of the sale and retroacts to the date of sale (Grimalt vs. Vasquez, 36 Phil. 396).

(2) The import of Sec. 3 includes one vital effect: The equity of redemption of the mortgagor or redemptioner is cut-off and there will be no further redemption, unless allowed by law (as in the case of banks as mortgagees). The equity of redemption starts from the ninety-day period set in the judgment of the court up to the time before the sale is confirmed by an order of the court. Once confirmed, no equity of redemption may further be exercised.

(3) The order of confirmation is appealable and if not appealed within the period for appeal becomes final. Upon the finality of the order of confirmation or upon the expiration of the period of redemption when allowed by law, the purchaser at the auction sale or last redemptioner, if any, shall be entitled to the possession of the property and he may secure a writ of possession, upon, motion, from the court which ordered the foreclosure unless a third party is actually holding the same adversely to the judgment obligor (Sec. 3).

**Disposition of proceeds of sale**

(1) The proceeds of the sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority. If there be any further balance after paying them or if there be no junior encumbrancers, the same shall be paid to the mortgagor or any person entitled thereto (Sec. 4).

**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 mortgagee. 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 mortgagor 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

<table>
<thead>
<tr>
<th>Extra-judicial Foreclosure (Act 3135)</th>
<th>Judicial foreclosure (Rule 68)</th>
</tr>
</thead>
<tbody>
<tr>
<td>No complaint is filed;</td>
<td>Complaint is filed with the courts;</td>
</tr>
<tr>
<td>There is a right of redemption. Mortgagor has a right of redemption for 1 year from registration of the sale;</td>
<td>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);</td>
</tr>
<tr>
<td>Mortgagee has to file a separate action to recover any deficiency;</td>
<td>Mortgagor can move for deficiency judgment in the same action</td>
</tr>
<tr>
<td>Buyer at public auction becomes absolute owner only after finality of an action for consolidation of ownership;</td>
<td>Buyer at public auction becomes absolute owner only after confirmation of the sale;</td>
</tr>
<tr>
<td>Mortgagee is given a special power of attorney in the mortgage contract to foreclose the mortgaged property in case of default.</td>
<td>Mortgagee need not be given a special power of attorney.</td>
</tr>
</tbody>
</table>

### Equity of redemption versus right of redemption

<table>
<thead>
<tr>
<th>Equity of Redemption (Rule 68)</th>
<th>Right of Redemption (Rule 39, Sec. 29-31)</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>May be exercised even after the foreclosure sale provided it is made before the sale is confirmed by order of the court.</td>
<td>There is no right of redemption in a judicial foreclosure of mortgage under Rule 68. This right of redemption exists only in extrajudicial foreclosures where there is always a right of redemption within one year from the date of sale (Sec. 3, Act 3135), but interpreted by the Court to mean one year from the registration of the sale.</td>
</tr>
<tr>
<td>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 unexercised. 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.</td>
<td>General rule: In judicial foreclosures there is only an equity of redemption which can be exercised prior to the confirmation of the foreclosure sale. This means that after the foreclosure sale but before its confirmation, the mortgagor may exercise his right to pay the proceeds of the sale and prevent the confirmation of the sale.</td>
</tr>
</tbody>
</table>
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.

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**Partition (Rule 69)**

(1) Partition is the separation, division and assignment of a thing held in common among those to whom it may belong *(Cruz vs. CA, 456 SCRA 165)*. It presupposes the existence of a co-ownership over a property between two or more persons. The rule allowing partition originates from a well-known principle embodied in the Civil Code, that no co-owner shall be obliged to remain in the co-ownership. Because of this rule, he may demand at any time the partition of the property owned in common *(Art. 494)*.

(2) Instances when a co-owner may not demand partition at any time:

(a) There is an agreement among the co-owners to keep the property undivided for a certain period of time but not exceeding ten years *(Art. 494)*;

(b) When partition is prohibited by the donor or testator for a period not exceeding 20 years *(Art. 494)*;

(c) When partition is prohibited by law *(Art. 494)*;

(d) When the property is not subject to a physical division and to do so would render it unserviceable for the use for which it is intended *(Art. 495)*;

(e) When the condition imposed upon voluntary heirs before they can demand partition has not yet been fulfilled *(Art. 1084)*.

(3) **2000 Bar**: Linda and spouses Arnulfo Regina Ceres were co-owners of a parcel of land. Linda died without any issue. Ten (10) persons headed by Jocelyn, claiming to be the collateral relatives of the deceased Linda, filed an action for partition with the RTC, praying for the segregation of Linda’s one half share, submitting in support of their petition the baptismal certificates of seven of the petitioners, a family bible belonging to Linda in which the names of the petitioners have been entered, a photocopy of the birth certificate of Jocelyn and a certification of the local civil registrar that its office had been completely razed by fire. The spouses Ceres refuse to partition on the following grounds:

in the partition cases where filiation to the deceased is in dispute, prior and separate judicial declaration of heirship in a settlement of estate proceedings is necessary.

**Answer**: Declaration of heirship in a settlement proceeding is not necessary. It can be made in the ordinary action for partition wherein the heirs are exercising the right pertaining to the decedent, their predecessors-in-interest, to ask for partition as co-owners.

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**Who may file complaint; Who should be made defendants**

(1) The action shall be brought by the person who has a right to compel the partition of real estate *(Sec. 1)* or of an estate composed of personal property, or both real and personal property *(Sec. 13)*. The plaintiff is a person who is supposed to be a co-owner of the property or estate sought to be partitioned. The defendants are all the co-owners. All the
co-owners must be joined. Accordingly, an action will not lie without the joinder of all co-
owners and other persons having interest in the property (Reyes vs. Cordero, 46 Phil.
658). All the co-owners, therefore, are indispensable parties.

Matters to allege in the complaint for partition

(1) The plaintiff shall state in his complaint, the nature and extent of his title, an adequate
description of the real estate of which partition is demanded, and shall join as
defendants all other persons interested in the property (Sec. 1). He must also include a
demand for the accounting of the rents, profits and other income from the property
which he may be entitled to (Sec. 8). These cannot be demanded in another action
because they are parts of the cause of action for partition. They will be barred if not set
up in the same action pursuant to the rule against splitting a single cause of action.

Two (2) stages in every action for partition

(1) A reading of the Rules will reveal that there are actually three (3) stages in the action,
each of which could be the subject of appeal: (a) the order of partition where the
property of the partition is determined; (b) the judgment as to the accounting of the fruits
and income of the property; and (c) the judgment of partition (Riano, Civil Procedure (A
Restatement for the Bar), 2007).

Order of partition and partition by agreement

(1) During the trial, the court shall determine whether or not the plaintiff is truly a co-owner
of the property, that there is indeed a co-ownership among the parties, and that a
partition is not legally proscribed thus may be allowed. If the court so finds that the facts
are such that a partition would be in order, and that the plaintiff has a right to demand
partition, the court will issue an order of partition.

(2) The court shall order the partition of the property among all the parties in interest, if after
trial it finds that the plaintiff has the right to partition (Sec. 2). It was held that this order
of partition including an order directing an accounting is final and not interlocutory and
hence, appealable; thus, revoking previous contrary rulings on the matter. A final order
decreeing partition and accounting may be appealed by any party aggrieved thereby.

(3) Partition by agreement. The order of partition is one that directs the parties or co-
owners to partition the property and the parties may make the partition among
themselves by proper instruments of conveyance, if they agree among themselves. If
they do agree, the court shall then confirm the partition so agreed upon by all of the
parties, and such partition, together with the order of the court confirming the same,
shall be recorded in the registry of deeds of the place in which the property is situated
(Sec. 2). There always exists the possibility that the co-owners are unable to agree on
the partition. If they cannot partition the property among themselves, the next stage in
the action will follow, the appointment of commissioners.

Partition by commissioners; Appointment of commissioners, Commissioner’s report;
Court action upon commissioner’s report

(1) Commissioners to make partition when parties fail to agree. – If the parties are unable to
agree upon the partition, the court shall appoint not more than three (3) competent and
disinterested persons as commissioners to make the partition, commanding them to set
off to the plaintiff and to each party in interest such part and proportion of the property
as the court shall direct (Sec. 3).
(2) **Oath and duties of commissioners.** – Before making such partition, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. In making the partition, the commissioners shall view and examine the real estate, after due notice to the parties to attend at such view and examination, and shall hear the parties as to their preference in the portion of the property to be set apart to them and the comparative value thereof, and shall set apart the same to the parties in lots or parcels as will be most advantageous and equitable, having due regard to the improvements, situation and quality of the different parts thereof (Sec. 4).

(3) **Assignment or sale of real estate by commissioners.** – When it is made to appear to the commissioners that the real estate, or a portion thereof, cannot be divided without prejudice to the interests of the parties, the court may order it assigned to one of the parties willing to take the same, provided he pays to the other parties such amounts as the commissioners deem equitable, unless one of the interested parties asks that the property be sold instead of being so assigned, in which case the court shall order the commissioners to sell the real estate at public sale under such conditions and within such time as the court may determine (Sec. 5).

(4) **Report of commissioners; proceedings not binding until confirmed.** – The commissioners shall make a full and accurate report to the court of all their proceedings as to the partition, or the assignment of real estate to one of the parties, or the sale of the same. Upon the filing of such report, the clerk of court shall serve copies thereof on all the interested parties with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire. No proceeding had before or conducted by the commissioners shall pass the title to the property or bind the parties until the court shall have accepted the report of the commissioners and rendered judgment thereon (Sec. 6).

(5) **Action of the court upon commissioners’ report.** – Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after the interested parties have filed their objections to the report or their statement of agreement therewith, the court may, upon hearing, accept the report and render judgment in accordance therewith; or, for cause shown, recommit the same to the commissioners for further report of facts; or set aside the report and appoint new commissioners; or accept the report in part and reject it in part; and may make such order and render such judgment as shall effectuate a fair and just partition of the real estate, or of its value, if assigned or sold as above provided, between the several owners thereof (Sec. 7).

### Judgment and its effects

1. The judgment shall state definitely, by metes and bounds and adequate description, the particular portion of the real estate assigned to each party, the effect of the judgment shall be to vest in each party to the action in severalty the portion of the real estate assigned to him.

2. If the whole property is assigned to one of the parties upon his paying to the others the sum or sums ordered by the court, the judgment shall state the fact of such payment and of the assignment of the real estate to the party making the payment, and the effect of the judgment shall be to vest in the party making the payment the whole of the real estate free from any interest on the part of the other parties to the action.

3. If the property is sold and the sale confirmed by the court, the judgment shall state the name of the purchaser or purchasers and a definite description of the parcels of real estate sold to each purchaser, and the effect of the judgment shall be to vest the real
estate in the purchaser or purchasers making the payment or payments, free from the claims of any of the parties to the action.

(4) A certified copy of the judgment shall in either case be recorded in the registry of deeds of the place in which the real estate is situated, and the expenses of such recording shall be taxed as part of the costs of the action (Sec. 11).

**Partition of personal property**

(1) The provisions of this Rule shall apply to partitions of estates composed of personal property, or of both real and personal property, insofar as the same may be applicable (Sec. 13).

**Prescription of action**

(1) Prescription of action does not run in favor of a co-owner or co-heir against his co-owner or co-heirs as long as there is a recognition of the co-ownership expressly or impliedly (Art. 494).

(2) The action for partition cannot be barred by prescription as long as the co-ownership exists (Aguirre vs. CA, 421 SCRA 310).

(3) But while the action to demand partition of a co-owned property does not prescribe, a co-owner may acquire ownership thereof by prescription where there exists a clear repudiation of the co-ownership and the co-owners are apprised of the claim of adverse and exclusive ownership.

**Forcible Entry and Unlawful Detainer (Rule 70)**

(1) The actions for forcible entry and unlawful detainer belong to the class of actions known by the generic name **accion interdictal** (ejectment) where the issue is the right of physical or material possession of the subject real property independent of any claim of ownership by the parties involved (Mendoza vs. CA, 452 SCRA 117 [2005]).

(2) **Accion Interdictal** comprises two distinct causes of action:
   (a) Forcible entry (**detentacion**), where one is deprived of physical possession of real property by means of force, intimidation, strategy, threats or stealth;
   (b) Unlawful Detainer (**desahuico**), where one illegally-witholds possession after the expiration or termination of his right to hold possession under any contract, express or implied.

(3) To justify an action for unlawful detainer, it is essential that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy. In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners’ claim that they permitted or tolerated the occupation of the property by respondents. The complaint contains only bare allegations that "respondents without any color of title whatsoever occupies the land in question by building their house in the said land thereby depriving petitioners the possession thereof." Nothing has been said on how respondents' entry was effected or how and when dispossession started. (Zacaria v. Anacay, GR No. 202354, 09/24/2014).

(4) Section 1, Rule 70 of the Rules of Court, requires that in actions for forcible entry, it must be alleged that the complainant was deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, and that the action was filed anytime
within one year from the time the unlawful deprivation of possession took place. As such, the complainant must allege and prove prior physical possession (in the concept of possession de facto, or actual or material possession and not one flowing out of ownership) of the property in litigation until he or she was deprived thereof by the defendant. In this regard, it has been settled that tax declarations and realty tax payments are not conclusive proofs of possession. They are merely good indicia of possession in the concept of owner based on the presumption that no one in one’s right mind would be paying taxes for a property that is not in one’s actual or constructive possession. (Dela Cruz v. Sps. Antonio and Remedios Hermano, GR No. 160914, 03/25/2015).

(5) 2008 Bar: Ben sold a parcel of land to Del with right to repurchase within one (1) year. Ben remained in possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Bel had never been in possession of the property. Is Ben correct (4%)

Answer: No. For unlawful detainer, the defendant need not have been in prior possession of the property. This is upon the theory that the vendee steps into the shoes of the vendor and succeeds to his rights and interest. In contemplation of law, the vendee’s possession is that of vendor’s (Maninang v. Court of Appeals, GR No. 121719, 09/16/1999).

### Definitions and Distinction

<table>
<thead>
<tr>
<th>Forcible Entry</th>
<th>Unlawful Detainer</th>
</tr>
</thead>
<tbody>
<tr>
<td>The possession of the defendant is unlawful from the beginning; issue is which party has prior de facto possession;</td>
<td>The possession of the defendant, lawful from the beginning, becomes illegal by reason of the expiration or termination of his right to the possession of the property;</td>
</tr>
<tr>
<td>The law does not require previous demand for the defendant to vacate;</td>
<td>Plaintiff must first make such demand which is jurisdictional in nature;</td>
</tr>
<tr>
<td>The plaintiff must prove that he was in prior physical possession of the premises until he was deprived by the defendant; and</td>
<td>The plaintiff need not have been in prior physical possession;</td>
</tr>
<tr>
<td>The one year period is generally counted from the date of actual entry on the property.</td>
<td>The one-year period is counted from the date of last demand.</td>
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Distinguished from **accion publiciana** and **accion reinvindicatoria**

<table>
<thead>
<tr>
<th>Accion Publiciana</th>
<th>Accion Reivindicatoria</th>
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<td>A plenary ordinary civil action for the recovery of the better right of possession (juridical possession), must be filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. In other words, if at the time of the filing of the complaint more than one year had elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be not one of forcible entry or unlawful detainer but an accion publiciana</td>
<td>An action for the recovery of the exercise of ownership, particularly recovery of possession as an attribute or incident of ownership;</td>
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</table>
The basis of the recovery of possession is the plaintiff’s real right of possession or *jus possessio*nis, which is the right to the possession of the real property independent of ownership. The basis for the recovery of possession is ownership itself.

(1) A boundary dispute must be resolved in the context of *accion reivindicatoria*, not an ejectment case. The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiff’s property. A boundary dispute cannot be settled summarily under Rule 70 of the Rules of Court, the proceedings under which are limited to unlawful detainer and forcible entry. In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant’s possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession de facto. (Manalang v. Sps. Bacani, GR No. 156995, 01/12/2015).

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]).

(5) An allegation of tenancy before the MTC does not automatically deprive the court of its jurisdiction. The material averments in the complaint determine the jurisdiction of a court. A court does not lose jurisdiction over an ejectment suit by the simple expedient of a party raising as a defense therein the alleged existence of a tenancy relationship between the parties. The court continues to have the authority to hear and evaluate the evidence, precisely to determine whether or not it has jurisdiction, and, if, after hearing, tenancy is shown to exist, it shall dismiss the case for lack of jurisdiction. (Ofilada v. Sps. Ruben and Miraflor Andal, GR No. 192270, 01/26/2015).

(6) The subject of the action is for unlawful detainer, thus cognizable by a first level court or the Municipal Trial Court (MTC). Since the case was filed with the RTC, a second level court, the RTC’s decision is void for lack of jurisdiction over the case. The proceedings
before a court without jurisdiction, including its decision, are null and void. It then follows
that the appeal brought before the appellate court, as well as the decisions or
resolutions promulgated in accordance with said appeal, is without force and effect.

Who may institute the action and when; against whom the action may be maintained

(1) Subject to the provisions of the next succeeding section, a person deprived of the
possession of any land or building by force, intimidation, threat, strategy, or stealth, or a
lessor, vendor, vendee, or other person against whom the possession of any land or
building is unlawfully withheld after the expiration or termination of the right to hold
possession, by virtue of any contract, express or implied, or the legal representatives or
assigns of any such lessor, vendor, vendee, or other person, may, at any time within
one (1) year after such unlawful deprivation or withholding of possession, bring an
action in the proper Municipal Trial Court against the person or persons unlawfully
withholding or depriving of possession, or any person or persons claiming under them,
for the restitution of such possession, together with damages and costs (Sec. 1).

(2) Unless otherwise stipulated, such action by the lessor shall be commenced only after
demand to pay or comply with the conditions of the lease and to vacate is made upon
the lessee, or by serving written notice of such demand upon the person found on the
premises, or by posting such notice on the premises if no person be found thereon, and
the lessee fails to comply therewith after fifteen (15) days in the case of land or five (5)
days in the case of buildings (Sec. 2).

Pleadings allowed

(1) The only pleadings allowed to be filed are the complaint, compulsory counterclaim and
cross-claim pleaded in the answer, and the answers thereto. All pleadings shall be
verified (Sec. 4).

Action on the complaint

(1) The court may, from an examination of the allegations in the complaint and such
evidence as may be attached thereto, dismiss the case outright on any of the grounds
for the dismissal of a civil action which are apparent therein. If no ground for dismissal is
found, it shall forthwith issue summons (Sec. 5).

When demand is necessary

(1) Unless there exists a stipulation to the contrary, an unlawful detainer case shall
be commenced only after the demand to pay or comply with the conditions of the lease
and to vacate is made upon the lessee (Sec. 2). The requirement for a demand implies
that the mere failure of the occupant to pay rentals or his failure to comply with the
conditions of the lease does not ipso facto render his possession of the premises
unlawful. It is the failure to comply with the demand that vests upon the lessor a cause
of action.

(2) The demand may be in the form of a written notice served upon the person found in the
premises. The demand may also be made by posting a written notice on the premises if
no person can be found thereon (Sec. 2). It has been ruled, however, that the demand
upon a tenant may be oral (Jakihaca vs. Aquino, 181 SCRA 67). Sufficient evidence
must be adduced to show that there was indeed a demand like testimonies from disinterested and unbiased witnesses.

(3) The date of unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate. *(Pro-Guard Security Services Corp. v. Tormil Realty and Development Corp., GR No. 176341, 07/07/2014).*

(4) Failure to pay the rent must precede termination of the contract due to nonpayment of rent. It therefore follows that the cause of action for unlawful detainer must necessarily arise before the termination of the contract and not the other way around. *(Sps. Alejandro and Remedios Manzanilla v. Waterfields Industries Corp., GR No. 177484, 07/18/2014).*

**Preliminary injunction and preliminary mandatory injunction**

(1) The court may grant preliminary injunction, in accordance with the provisions of Rule 58, to prevent the defendant from committing further acts of dispossession against the plaintiff. A possessor deprived of his possession through forcible entry or unlawful detainer may, within five (5) days from the filing of the complaint, present a motion in the action for forcible entry or unlawful detainer for the issuance of a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof *(Sec. 15).*

**Resolving defense of ownership**

(1) The assertion by the defendant of ownership over the disputed property does not serve to divest the inferior court of its jurisdiction. The defendant cannot deprive the court of jurisdiction by merely claiming ownership of the property involved *(Rural Bank of Sta. Ignacia vs. Dimatulac, 401 SCRA 742; Perez vs. Cruz, 404 SCRA 487).* If the defendant raises the question of ownership and the issue of possession cannot be resolved without deciding the question of ownership, the issue of ownership shall be resolved only to determine the issue of possession *(Sec. 3, RA 7691).*

(2) When the defendant raises the issue of ownership, the court may resolve the issue of ownership only under the following conditions:

(a) When the issue of possession cannot be resolved without resolving the issue of ownership; and

(b) The issue of ownership shall be resolved only to determine the issue of possession *(Sec. 16).*

(3) Such judgment would not bar an action between the same parties respecting title to the land or building. The resolution of the MeTC on the ownership of the property is merely provisional or interlocutory. Any question involving the issue of ownership should be raised and resolved in a separate action brought specifically to settle the question with finality *(Roberts vs. Papio, GR 166714, 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. Riazo, 335 SCRA 531). These actions shall both fall under the coverage of the Rules of Summary Procedure irrespective of the amount of damages or unpaid rental sought to be recovered (Sec. 3).

(2) Prohibited pleadings and motions:
   (a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, or failure to comply with section 12;
   (b) Motion for a bill of particulars;
   (c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
   (d) Petition for relief from judgment;
   (e) Motion for extension of time to file pleadings, affidavits or any other paper;
   (f) Memoranda;
   (g) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
   (h) Motion to declare the defendant in default;
   (i) Dilatory motions for postponement;
   (j) Reply;
   (k) Third-party complaints;
   (l) Interventions

Contempt (Rule 71)

(1) Contempt is a disregard of, or disobedience to the rules or orders of a judicial body, or an interruption of its proceedings by disorderly behavior or insolent language, in its presence or so near thereto as to disturb the proceedings or to impair the respect due to such body (17 C.J.S. 4).

(2) Contempt of court is disobedience to the court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but also conduct tending to bring the authority of the court and the administration of law into disrepute or, in some manner to impede the due administration of justice (Siy vs. NLRC, GR 158971, 08/25/2005).

(3) The reason for the power to punish for contempt is that respect of the courts guarantees the stability of their institution. Without such guarantee, said institution would be resting on shaky foundation (Comejo 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
Coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court (Regalado vs. Go, GR 167988, 02/06/2007).

1998 Bar: A filed a complaint for the recovery of ownership of land against B who was represented by her counsel X. in the course of the trial, B died. However, X failed to notify the court of B’s death. The court proceeded to hear the case and rendered judgment against B, after the judgment became final, a writ of execution was issued against C, who being B’s sole heir, acquire the property.

Did the failure of counsel X to inform the court of B’s death constitute direct contempt? (2%)

Answer: No, it is not direct contempt under Section 11 of Rule 71, but it is indirect contempt within the purview of Section 3 of Rule 71. The lawyer can also be the subject of disciplinary action (Rule 3, Section 3).

Kinds of contempt; Purpose and nature of each

1. Civil or Criminal, depending on the nature and effect of the contemptuous act.
2. Direct or indirect, according to the manner of commission.

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<tr>
<th>Civil Contempt</th>
<th>Criminal Contempt</th>
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<td>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;</td>
<td>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;</td>
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<td>The purpose is to compensate for the benefit of a party;</td>
<td>The purpose is to punish, to vindicate the authority of the court and protect its outraged dignity;</td>
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<tr>
<td>The rules of procedure governing contempt proceedings or criminal prosecutions ordinarily are inapplicable to civil contempt proceedings.</td>
<td>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.</td>
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<th>Direct Contempt</th>
<th>Indirect Contempt</th>
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<td>In general is committed in the presence of or so near the court or judge as to obstruct or interrupt the proceedings before it;</td>
<td>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;</td>
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<td>Summary: motu proprio</td>
<td>Adversarial; with a written charge</td>
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<td>Acts constituting direct contempt are:</td>
<td>Acts constituting indirect contempt are:</td>
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<td>b) Misbehavior in the presence of or so near the court as to obstruct or interrupt the proceedings before it;</td>
<td>(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;</td>
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<td>c) Disrespect toward the court;</td>
<td>(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</td>
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<td>d) Offensive personalities towards others;</td>
<td>(c) Disobedience of a party to comply with, or resistance to, a lawful writ or process of a court, or of a person who, after being dispossessed of 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</td>
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<td>e) Refusal to be sworn as a witness or to answer as a witness;</td>
<td>(d) 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</td>
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<tr>
<td>f) Refusal to subscribe an affidavit or deposition when lawfully required to do so (Sec. 1);</td>
<td>(e) 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</td>
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<td>g) Acts of a party or a counsel which</td>
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constitute willful and deliberate forum shopping (Sec. 1, Rule 7);
h) Unfounded accusations or allegations or words in a pleading tending to embarrass the court or to bring it into disrepute (Re: Letter dated 21 Feb. 2005 of Atty. Noel Sorreda, 464 SCRA 32);

adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him (Sec. 3);

(3) A criminal contempt involves a conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Civil contempt on the other hand, consists in failing to do something ordered to be done by a court in a civil action for the benefit of the opposing party therein and is, therefore, an offense against the party in whose behalf the violated order is made. (Castillejos Consumers Association, Inc. v. Dominguez, GR No. 189949, 03/25/2015).

Remedy against direct contempt; penalty

(1) The penalty for direct contempt depends upon the court which the act was committed;

(a) If the act constituting direct contempt was committed against an RTC or a court of equivalent or higher rank, the penalty is a fine not exceeding 2,000 pesos or imprisonment not exceeding 10 days, or both;

(b) If the act constituting direct contempt was committed against a lower court, the penalty is a fine not exceeding 200 pesos or imprisonment not exceeding one (1) day, or both (Sec. 1);

(c) If the contempt consists in the refusal or omission to do an act which is yet within the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it (Sec. 8).

(2) A person adjudged in direct contempt may not appeal therefrom. His remedy is a petition for certiorari or prohibition directed against the court which adjudged him in direct contempt (Sec. 2). Pending the resolution of the petition for certiorari or prohibition, the execution of the judgment for direct contempt shall be suspended. The suspension however shall take place only if the person adjudged in contempt files a bond fixed by the court which rendered the judgment. This bond is conditioned upon his performance of the judgment should the petition be decided against him.

Remedy against indirect contempt; penalty

(1) The punishment for indirect contempt depends upon the level of the court against which the act was committed;

(a) Where the act was committed against an RTC or a court of equivalent or higher rank, he may be punished by a fine not exceeding 30,000 pesos or imprisonment not exceeding 6 months, or both;

(b) Where the act was committed against a lower court, he may be punished by a fine not exceeding 5,000 pesos or imprisonment not exceeding one month, or both. Aside from the applicable penalties, if the contempt consists in the violation of a writ of injunction, TRO or status quo order, he may also be ordered to make complete
restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved (Sec. 7);
(c) Where the act was committed against a person or entity exercising quasi-judicial functions, the penalty imposed shall depend upon the provisions of the law which authorizes a penalty for contempt against such persons or entities.

(2) The person adjudged in indirect contempt may appeal from the judgment or final order of the court in the same manner as in criminal cases. The appeal will not however have the effect of suspending the judgment if the person adjudged in contempt does not file a bond in an amount fixed by the court from which the appeal is taken. This bond is conditioned upon his performance of the judgment or final order if the appeal is decided against (Sec. 11).

How contempt proceedings are commenced

(1) Proceedings for indirect contempt may be initiated motu proprio by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision (Sec. 4).

Acts deemed punishable as indirect contempt

(1) After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:
   (l) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
   (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
   (c) Any abuse of or any unlawful interference with the processes or proceedings of a court, not constituting direct contempt under section 1 of this Rule;
   (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;
   (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
   (f) Failure to obey a subpoena duly served;
   (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him (Sec. 3).

(2) Failure by counsel to inform the court of the death of his client constitutes indirect contempt within the purview of Sec. 3, Rule 71, since it constitutes an improper conduct tending to impede the administration of justice.
When imprisonment shall be imposed

(1) When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it (Sec. 8). Indefinite incarceration may be resorted to where the attendant circumstances are such that the non-compliance with the court order is an utter disregard of the authority of the court which has then no other recourse but to use its coercive power. When a person or party is legally and validly required by a court to appear before it for a certain purpose, and when that requirement is disobeyed, the only remedy left for the court is to use force to bring the person or party before it.

(2) The punishment is imposed for the benefit of a complainant or a party to a suit who has been injured aside from the need to compel performance of the orders or decrees of the court, which the contemnor refuses to obey although able to do so. In effect, it is within the power of the person adjudged guilty of contempt to set himself free.

Contempt against quasi-judicial bodies

(1) The rules on contempt apply to contempt committed against persons or entities exercising quasi-judicial functions or in case there are rules for contempt adopted for such bodies or entities pursuant to law, Rule 71 shall apply suppletorily (Sec. 12).

(2) Quasi-judicial bodies that have the power to cite persons for indirect contempt can only do so by initiating them in the proper RTC. It is not within their jurisdiction and competence to decide the indirect contempt cases. The RTC of the place where contempt has been committed shall have jurisdiction over the charges for indirect contempt that may be filed (Sec. 12).
PART II
SPECIAL PROCEEDINGS
Rules 72 - 109

(1) Subject Matters of Special Proceedings: CATCH AGED SCRAM (Rules 72 - 109)
   (a) Change of Name
   (b) Adoption and Custody of Persons
   (c) Trustees
   (d) Constitution of Family Home
   (e) Medical Commitment of Insane Persons
   (f) Absence and Death, Declaration of
   (g) Guardianship and Custody of Children
   (h) Escheat
   (i) (Voluntary) Dissolution of Corporation
   (j) Settlement of Estate
   (k) Habeas Corpus
   (l) (Judicial) Approval of Voluntary Recognition of Minor Natural Children
   (m) Rescission and Revocation of Adoption
   (n) Cancellation or Correction of Entries in the Civil Registry

(2) Special Proceedings is an application or proceeding to establish the status or right of a party, or a particular fact, generally commenced by application, petition or special form of pleading as may be provided for by the particular rule or law.

(3) Special Proceedings is a remedy by which a party seeks to establish a status, a right, or a particular fact (Sec. 3, Rule 1).

(4) Petition for liquidation of an insolvent corporation is a special proceeding (Ong vs. PDIC, 08/18/2010).
I. SETTLEMENT OF ESTATE OF DECEASED PERSONS  
*(Rules 73 - 91)*

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

(1) The trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. The case at bar is an action for annulment of title, reconveyance with damages, a civil action, whereas matters which involve the settlement and distribution of the estate of a deceased person as well as filiation and heirship partake of the nature of a special proceeding, which requires the application of specific rules as provided for in the Rules of Court. With both parties claiming to be the heirs of Severo Basbas, it is but proper to thresh out this issue in a special proceeding, since Crispiniano and respondent Ricardo seeks to establish his status as one of the heirs entitled to the property in dispute. *(Heirs of Valentin Basbas, GR No. 188773, 09/10/2014).*

Which court has jurisdiction

(1) If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien, his will shall be proved, or letters of administration granted, and his estate settled, in the RTC in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the RTC of any province in which he had his estate. The court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of all other courts *(Sec. 1).*

(2) Under RA 7691, the law expanding the jurisdiction of the inferior courts, MTC, MeTC and MCTC shall exercise exclusive original jurisdiction over probate proceedings, testate and intestate, where the value of the estate does not exceed P300,000 (outside Metro Manila) or where such estate does not exceed P400,000 (in Metro Manila).

(3) The jurisdiction of the RTC is limited to the settlement and adjudication of properties of the deceased and cannot extend to collateral matters.

(4) **2003 Bar:** A, a resident of Malolos, Bulacan, died leaving an estate located in Manila, worth P200,000. In what court, taking into consideration the nature of jurisdiction and of venue, should the probate proceeding on the estate of A be instituted?  
*Answer:* The probate proceeding on the estate of A should be instituted in the Municipal Trial Court of Malolos, Bulacan, which has jurisdiction, because the estate is valued at P200,000, and is the court of proper venue because A was a resident of Malolos at the time of his death *(Sec. 33, BP 129 as amended by RA 7691; Rule 73, Sec. 1).*

Venue in judicial settlement of estate

(1) The residence of the decedent at the time of his death is determinative of the venue of the proceeding. If he was a resident (inhabitant) of the Philippines, venue is laid exclusively in the province of his residence, the jurisdiction being vested in the Regional Trial Court thereof. Residence means his personal, actual, or physical habitation, his actual residence or place of abode.

(2) It is only where the decedent was a nonresident of the Philippines at the time of his death that venue lies in any province in which he had estate, and then CFI thereof first taking cognizance of the proceeding for settlement acquires jurisdiction to the exclusion
of other courts. The question of residence is determinative only of the venue and does not affect the jurisdiction of the court. Hence, the institution of the proceeding in the province wherein the decedent neither had residence nor estate does not vitiate the action of the probate court.

(3) Where the proceedings were instituted in two courts and the question of venue is seasonably raised, the court in which the proceeding was first filed has exclusive jurisdiction to resolve the issue (De Borja vs. Tan, 97 Phil. 872).

**Extent of jurisdiction of Probate Court**

1. The main function of a probate court is to settle and liquidate the estates of deceased person either summarily or through the process of administration. The RTC acting 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).

3. As a general rule, the probate court cannot pass upon the issue of ownership arising during the probate proceeding, except in the following cases:
   (a) When the heirs agree to submit the question of determination of ownership of properties to the probate court without prejudice to third persons (Trinidad vs. CA, 1987);
   (b) For purposes of determining whether the property should be included in the inventory, the probate court may decide prima facie the ownership of said property, but the determination is not final and without prejudice to the right of interested parties to ventilate the question of ownership in a proper action (Paz vs. Madrigal [1956]; Pobre vs. Gonong, 148 SCRA).

4. Generally, a probate court may not decide a question of title of ownership, but it may do so if the interested parties are all heirs, or the question is one of collation or advancement, or the parties’ consent to its assumption of jurisdiction and the rights of third parties are not impaired (Munsayac–de Villa vs. CA [2003]).

**Powers and Duties of Probate Court**

1. In probate proceedings, the court:
   (a) Orders the probate of the will of the decedent (Sec. 3, Rule 77);
   (b) Grants letters of administration of the party best entitled thereto or to any qualified applicant (Sec. 5, Rule 79);
   (c) Supervises and controls all acts of administration;
   (d) Hears and approves claims against the estate of the deceased (Sec. 11, Rule 86);
   (e) Orders payment of lawful debts (Sec. 11, Rule 88);
   (f) Authorizes sale, mortgage or any encumbrance of real estate (Sec. 2, Rule 89);
   (g) Directs the delivery of the estate to those entitled thereto (Sec. 1, Rule 90);
(h) Issue warrants and processes necessary to compel the attendance of witnesses or to carry into effect their orders and judgments, and all other powers granted them by law (Sec. 3, Rule 73);

(i) If a person defies a probate order, it may issue a warrant for the apprehension and imprisonment of such person until he performs such order or judgment, or is released (Sec. 3, Rule 73).

(2) The court acts as trustee, and as such, should jealously guard the estate and see to it that it is wisely and economically administered, not dissipated (Timbol vs. Cano, 111 Phil. 923).

Summary Settlement of Estates (Rule 74)

(1) Summary settlement of estate is a judicial proceeding wherein, without the appointment of executor or administrator, and without delay, the competent court summarily proceeds to value the estate of the decedent; ascertain his debts and order payment thereof; allow his will if any; declare his heirs, devisees and legatees; and distribute his net estate among his known heirs, devisees, and legatees, who shall thereupon be entitled to receive and enter into the possession of the parts of the estate so awarded to them, respectively (Sec. 2).

(2) **2001 Bar:** The rules on special proceedings ordinarily require that the estate of the deceased should be judicially administered through an administrator or executor. What are the two exceptions to said requirements (5%)

**Answer:** The two exceptions to said requirements are:

(a) Where the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may without securing letters of administration, divide the estate among themselves by means of public instrument filed in the office of the register of deeds, or should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties or the sole heir shall file in an amount equivalent to the value of the personal property as certified to under oath by the parties and conditioned upon the payment of any just claim that may be filed later. The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the province once a week for three consecutive weeks (Rule 74, Section 1).

(b) Whenever the gross value of the estate of a deceased person whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Regional Trial Court having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than one (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or administrator, to settle the estate (Rule 74, Sec. 2).

(3) **2005 Bar:** Nestor died intestate in 2003, leaving no debts. How may his estate be settled by his heirs who are of legal age and have legal capacity?

**Answer:** If the decedent left no will and no debts, and the heirs are all of age, the parties may, without securing letters of administration, divide the estate among themselves by means of public instrument or by stipulation in a pending action for partition and shall file a bond with the register of deeds in an amount equivalent to the
value of the personal property involved as certified to under oath by the parties concerned. The fact of extrajudicial settlement shall be published in a newspaper of general circulation once a week for three consecutive weeks in the province (Rule 74, Sec. 1).

**Extrajudicial settlement by agreement between heirs, when allowed**

(1) If the decedent left no will and no debts and the heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized for the purpose, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. The parties to an extrajudicial settlement, whether by public instrument or by stipulation in a pending action for partition, or the sole heir who adjudicates the entire estate to himself by means of an affidavit shall file, simultaneously with and as a condition precedent to the filing of the public instrument, or stipulation in the action for partition, or of the affidavit in the office of the register of deeds, a bond with the said register of deeds, in an amount equivalent to the value of the personal property involved as certified to under oath by the parties concerned and conditioned upon the payment of any just claim that may be filed under section 4 of this rule. It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent.

The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation in the manner provided in the next succeeding section; but no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof (Sec. 1).

(2) Extrajudicial partition of the estate shall be valid when the following conditions concur:

(a) The decedent left no will;
(b) The decedent left no debts, or if there were debts left, all had been paid;
(c) The heirs are all of age or if they are minors, the latter are represented by their judicial guardian or legal representative;
(d) The partition was made by means of a public instrument or affidavit duly filed and/or registered with the Register of Deeds; and
(e) The fact of the extrajudicial settlement or administration shall be published in a newspaper of general circulation once a week for three consecutive weeks.

**Judicial proceedings for settlement of estate**

(1) The following is the summary of judicial proceedings for settlement of estate:

(a) Filing of initiatory pleading
(b) Notice of hearing - publication once a week for three consecutive weeks, with notice to heirs, legatees, devisees, interested parties
(c) Allowance of will (probate)
(d) Issuance of letters testamentary or of administration
(e) Filing and approval of claims against the estate
(f) Payments of debts, etc.
(g) Determination of heirs and distribution
(h) Closure - delivery of remaining estate to heirs.
Two-year prescriptive period

(1) It shall be presumed that the decedent left no debts if no creditor files a petition for letters of administration within two (2) years after the death of the decedent (Sec. 1).

(2) If it shall appear at any time within two (2) years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two (2) years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two (2) years after such distribution, notwithstanding any transfers of real estate that may have been made (Sec. 4).

(3) This rule applies only to persons who participated.

Affidavit of Self-adjudication by sole heir

(1) If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds (Sec. 1).

(2) 1998 Bar: A, claiming to be an illegitimate child of the deceased D, instituted an intestate proceeding to settle the estate of the latter. He also prayed that he be appointed administrator of the said estate. S, surviving spouse, opposed the petition and A’s application to be appointed the administrator on the ground that he was not the child of her deceased husband D. The court however appointed A as the administrator of said estate. Subsequently, S, claiming to be the sole heir of D, executed an Affidavit of Adjudication, adjudicating unto herself the entire estate of her deceased husband D. S then sold the entire estate to X.

Was the action of S in adjudicating the entire estate of her late husband to herself legal? (3%) Answer: No. An affidavit of self-adjudication is allowed only if the affiant is the sole heir of the deceased (Rule 74, Sec. 1). In this case, A also claims to be an heir. Moreover, it is not legal because there is already a pending judicial proceeding for the settlement of the estate.

Summary settlement of estates of small value, when allowed

(1) Whenever the gross value of the estate of a deceased person, whether he died testate or intestate, does not exceed ten thousand pesos, and that fact is made to appear to the Court of First Instance having jurisdiction of the estate by the petition of an interested person and upon hearing, which shall be held not less than (1) month nor more than three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province, and after such other notice to interested persons as the court may direct, the court may proceed summarily, without the appointment of an executor or
administrator, and without delay, to grant, if proper, allowance of the will, if any there be, to determine who are the persons legally entitled to participate in the estate, and to apportion and divide it among them after the payment of such debts of the estate as the court shall then find to be due; and such persons, in their own right, if they are of lawful age and legal capacity, or by their guardians or trustees legally appointed and qualified, if otherwise, shall thereupon be entitled to receive and enter into the possession of the portions of the estate so awarded to them respectively. The court shall make such order as may be just respecting the costs of the proceedings, and all orders and judgments made or rendered in the course thereof shall be recorded in the office of the clerk, and the order of partition or award, if it involves real estate, shall be recorded in the proper register's office (Sec. 2).

(2) The court, before allowing a partition, may require the distributees, if property other than real is to be distributed, to file a bond in an amount to be fixed by court, conditioned for the payment of any just claim (Sec. 3).

**Remedies of aggrieved parties after extra-judicial settlement of estate**

1. The creditor may ask for administration of enough property of the estate sufficient to pay the debt, but the heirs cannot prevent such administration by paying the obligation (McMicking vs. Sy Conbieng, 21 Phil. 211);

2. Where the estate has been summarily settled, the unpaid creditor may, within the two-year period, file a motion in the court wherein such summary settlement was had for the payment of his credit. After the lapse of the two-year period, an ordinary action (ten year prescriptive period) may be instituted against the distributees within the statute of limitations, but not against the bond.

3. The action to annul a deed of extrajudicial settlement on the ground of fraud should be filed within four years from the discovery of the fraud (Gerona vs. De Guzman, L-19060, 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. 2006 Bar: Sergio Punzalan, 50 years old, married and residing at Ayala alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him proficiently. He disposed of
his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P 300 Million. He bequethed P 50 Million each to his 3 sons and P 150 Million to his wife. He devised a piece of land worth P 100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond.

1. Is Cancio Vidal, after learning of Sergio’s death, obliged to file with the proper court a petition of probate of the latter’s will and testament? (2%)

2. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court? (2%)

3. Can the probate court appoint the widow as executor of the will? (2%)

4. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? (2%)

5. Can the widow and children initiate a separate petition for partition of the estate pending the probate of the last will and testament? (2%)

Answer:

1. Cancio Vidal is obliged to file a petition for probate and for accepting or refusing the trust within the statutory period of 20 days under Sec. 3, Rule 75.

2. Yes, Cancio can compel Susan to produce the copy in her possession. A person having custody of the will is bound to deliver the same to the court of competent jurisdiction or to the executor, as provided in Sec. 2, Rule 75.

3. Yes, the probate court can appoint the widow as executor of the will if the executor does not qualify, as when he is incompetent, refuses the trust, or fails to give bond (Sec. 6, Rule 75).

4. No, the widow and her children cannot settle the estate extrajudicially because of the existence of the will. No will shall pass either real or personal estate unless it is proved and allowed in the proper court (Sec. 1, Rule 75).

5. No, the widow and children cannot file a separate petition for partition pending the probate of the will. Partition is a mode of settlement of the estate (Sec. 1, Rule 75).

Allowance or Disallowance of Will (Rule 76)

Contents of petition for allowance of will

(1) A petition for the allowance of a will must show, so far as known to the petitioner:
(a) The jurisdictional facts;
(b) The names, ages, and residences of the heirs, legatees, and devisees of the testator or decedent;
(c) The probable value and character of the property of the estate;
(d) The name of the person for whom letters are prayed;
(e) If the will has not been delivered to the court, the name of the person having custody of it.

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed (Sec. 2, Rule 76).

(2) The court shall also cause copies of the notice of the time and place fixed for proving the will to be addressed to the designated or other known heirs, legatees, and devisees
of the testator resident in the Philippines at their places of residence, and deposited in
the post office with the postage thereon prepaid at least twenty (20) days before the
hearing, if such places of residence be known. A copy of the notice must in like manner
be mailed to the person named as executor, if he be not the petitioner; also, to any
person named as co-executor not petitioning, if their places of residence be known.
Personal service of copies of the notice at least ten (10) days before the day of hearing
shall be equivalent to mailing. If the testator asks for the allowance of his own will,
notice shall be sent only to his compulsory heirs (Sec. 4, Rule 76).

Grounds for disallowing a will

(1) The will shall be disallowed in any of the following cases;
   (a) If not executed and attested as required by law;
   (b) If the testator was insane, or otherwise mentally incapable to make a will, at the
time of its execution;
   (c) If it was executed under duress, or the influence of fear, or threats;
   (d) If it was procured by undue and improper pressure and influence, on the part of the
beneficiary, or of some other person for his benefit;
   (e) If the signature of the testator was procured by fraud or trick, and he did not intend
that the instrument should be his will at the time of fixing his signature thereto (Sec.
9, Rule 76).

(2) Grounds under Art. 839, Civil Code:
   (a) If the formalities required by law have not been complied with;
   (b) If the testator was insane, or otherwise mentally incapable of making a will, at the
time of its execution;
   (c) If it was executed through force or duress, or the influence of fear, or threats;
   (d) If it was procured by undue and improper pressure and influence, on the part of the
beneficiary or of some other person;
   (e) If the signature of the testator was procured by fraud;
   (f) If the testator acted by mistake or did not intend that the instrument he signed
should be his will at the time of affixing his signature thereto.

Reprobate; Requisites before will proved outside allowed in the Philippines;
effects of probate

(1) Will proved outside Philippines may be allowed here. Wills proved and allowed in a
foreign country, according to the laws of such country, may be allowed, filed, and
recorded by the proper Court of First Instance in the Philippines (Sec. 1, Rule 77).

(2) When will allowed, and effect thereof. If it appears at the hearing that the will should be
allowed in the Philippines, the court shall so allow it, and a certificate of its
allowance, signed by the judge, and attested by the seal of the court, to which shall be
attached a copy of the will, shall be filed and recorded by the clerk, and the will shall
have the same effect as if originally proved and allowed in such court (Sec. 3, Rule 77).

(3) When a will is thus allowed, the court shall grant letters testamentary, or letters of
administration with the will annexed, and such letters testamentary or of administration,
shall extend to all the estate of the testator in the Philippines. Such estate, after the
payment of just debts and expenses of administration, shall be disposed of according to
such will, so far as such will may operate upon it; and the residue, if any, shall be
dispersed of as is provided by law in cases of estates in the Philippines belonging to
persons who are inhabitants of another state or country (Sec. 4, Rule 77).

(4) Certificate of allowance attached to proved will. To be recorded in the Office of Register
of Deeds. If the court is satisfied, upon proof taken and filed, that the will was duly
executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, and undue influence, or fraud, a certificate of its allowance, signed by the judge, and attested by the seal of the court shall be attached to the will and the will and certificate filed and recorded by the clerk. Attested copies of the will devising real estate and of certificate of allowance thereof, shall be recorded in the register of deeds of the province in which the lands lie (Sec. 13, Rule 76).

(5) The general rule universally recognized is that administration extends only to the assets of the decedent found within the state or country where it was granted, so that an administrator appointed in one state or country has no power over the property in another state or country (Leon & Ghezzi vs. Manufacturer’s Life Ins., 80 Phil. 495). When a person dies intestate owning property in the country of his domicile as well as in foreign country, administration shall be had in both countries. That which is granted in the jurisdiction of the decedent’s domicile is termed the principal administration, while any other administration is termed ancillary administration. The ancillary administration is proper whenever a person dies leaving in a country other than that of his domicile, property to be administered in the nature of assets of the decedent, liable for his individual debts or to be distributed among his heirs (Johannes vs. Harvey, 43 Phil. 175).

Letters Testamentary and of Administration (Rule 78)

(1) Letters testamentary is the appointment issued by a probate court, after the will has been admitted to probate, to the executor named in the will to administer the estate of the deceased testator, provided the executor named in the will is competent, accepts the trust and gives a bond (Sec. 4).

(2) 2008 Bar: Domenico and Gen lived without benefit of marriage for twenty years, during which time they purchased properties together. After Domenico died without a will, Gen filed a petition for letters of administration. Domenico’s siblings opposed the same on the ground that Gen has no legal personality. Decide (4%)

Answer: A petition for letters of administration may be filed by any “interested person” (Rule 79, Sec. 1). Gen would be considered an interested person even if she was not married to Domenico, because she can claim co-ownership of the properties left be him under the property regime of union without marriage under conditions provided in the Family Code (San Luis v. San Luis, GR No. 133743, 02/06/2007).

When and to whom letters of administration granted

(1) No person is competent to serve as executor or administrator who:
(a) Is a minor;
(b) Is not a resident of the Philippines; and
(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude (Sec. 1).

(2) Executor of executor not to administer estate. The executor of an executor shall not, as such, administer the estate of the first testator (Sec. 2).

(3) Married women may serve. A married woman may serve as executrix or administratrix, and the marriage of a single woman shall not affect her authority so to serve under a previous appointment (Sec. 3).
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).

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).

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 by them, 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).
An administrator is a person appointed by the court, in accordance with the governing statute, to administer and settle intestate estate and such testate estate as no competent executor was designated by the testator.

**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).

**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).

**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).

An administrator of an intestate cannot exercise the right of legal redemption over a portion of the property owned in common sold by one of the other co-owners since this is not within the powers of administration (Caro vs. CA, 113 SCRA 10). Where the estate of a deceased person is already the subject of a testate or intestate proceeding, the administrator cannot enter into any transaction involving it without any prior approval of the Court (Estate of Olave vs. Reyes, 123 SCRA 767). The right of an executor or administrator to the possession and management of the real and personal properties of the deceased is not absolute and can only be exercised so long as it is necessary for the payment of the debts and expenses of administration (Manaquil vs. Villegas, 189 SCRA 335).

### Appointment of Special Administrator

(1) When there is delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators appointed (Sec. 1, Rule 80).

(2) Respondent Parreño is not precluded from being appointed as a special administrator in view of petitioner Diosdado’s claim of being the illegitimate son of the deceased. It is well settled that the statutory provisions as to the prior or preferred right of certain persons to the appointment of administrator under Section 1, Rule 81, as well as the statutory provisions as to causes for removal of an executor or administrator under Section 2, Rule 83, do not apply to the selection or removal of special administrator. As the law does not say who shall be appointed as special administrator and the qualifications the appointee must have, the judge or court has discretion in the selection of the person to be appointed, discretion which must be sound, that is, not whimsical or contrary to reason, justice or equity (Manungs vs. Parreño, GR No. 193161, 08/22/2011).
Grounds for removal of administrator

(1) Administration revoked if will discovered. Proceedings thereupon. If after letters of administration have been granted on the estate of a decedent as if he had died intestate, his will is proved and allowed by the court, the letters of administration shall be revoked and all powers thereunder cease, and the administrator shall forthwith surrender the letters to the court, and render his account within such time as the court directs. Proceedings for the issuance of letters testamentary or of administration under the will shall be as hereinbefore provided (Sec. 1, Rule 82).

(2) Court may remove or accept resignation of executor or administrator. Proceedings upon death, resignation, or removal. If an executor or administrator neglects to render his account and settle the estate according to law, or to perform an order or judgment of the court, or a duty expressly provided by these rules, or absconds, or becomes insane, or otherwise incapable or unsuitable to discharge the trust, the court may remove him, or, in its discretion, may permit him to resign. When an executor or administrator dies, resigns, or is removed the remaining executor or administrator may administer the trust alone, unless the court grants letters to someone to act with him. If there is no remaining executor or administrator, administration may be granted to any suitable person (Sec. 2, Rule 82).

Claims Against the Estate (Rule 86)

(1) Administration is for the purpose of liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means the determination of all the assets of the estate and payment of all debts and expenses.

(2) The purpose of presentation of claims against decedents of the estate in the probate court is to protect the estate from the claims of the 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 share, pro rata in the liquidation of the estate of the deceased.

(3) 2002 Bar: A. X filed a claim in the intestate proceedings of D. D’s administrator denied liability and filed a counterclaim against X. X’s claim was disallowed.

(a) Does the probate court still has jurisdiction to allow the claim of D’s administrator by way of offset? Why? (2%)

(b) Suppose the administrator did not allege any claim against X by way of offset, can D’s administrator prosecute the claim in an independent proceeding? Why?

B. A, B and C, the only heirs in D’s intestate proceedings, submitted a project of partition to probate court (RTC-Manila). Upon the court’s approval of the partition, two lots were assigned to C, who immediately entered into possession of the lots. Thereafter, C died and procedures for the settlement of his estate were filed in the RTC-Quezon City. D’s administrator then filed a motion in the probate court (RTC-Manila), praying that one of the lots be turned over to him to satisfy debts corresponding to C’s portion. The motion was opposed by the administrator of C’s estate.

(a) How should the RTC-Manila resolve the motion of D’s administrator? (3%)
(b) Suppose the property of D was declared escheated on July 1, 1990, in escheat proceedings brought to the Solicitor General. Now, X, who claims to be an heir of D, filed an action to recover the escheated property. Is the action viable? Why?

Answer:
(a) No, because since the claim of X was disallowed, there is no amount against which to offset the claim of D’s administrator.
(b) Yes, D’s administrator can prosecute the claim in an independent proceeding since the claim of X was disallowed. If X had a valid claim and D’s administrator did not allege any claim against X by way of offset, his failure to do so would bar his claim forever (Sec. 10, Rule 86).

B. (a) The motion of D’s administrator should be granted. The assignment of the two lots of C was premature because the debts of the state had not been fully paid (Sec. 1, Rule 90).

(b) No, the action is not viable. The action to recover escheated property must be filed within five (5) years or forever barred (Sec. 4, Rule 90).

Time within which claims shall be filed; exceptions

(1) In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve (12) nor less than six (6) months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one (1) month (Sec. 2).

Statute of Non-claims

(1) The rule requires certain creditors of a deceased person to present their claims for examination and allowance within a specified period, the purpose thereof being to settle the estate with dispatch, so that the residue may be delivered to the persons entitled thereto without their being afterwards called upon to respond in actions for claims, which, under the ordinary statute of limitations, have not yet prescribed (Santos vs. Manarang, 27 Phil. 213).

Claim of Executor or administrator against the Estate

(1) If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing, to the court, and the court shall appoint a special administrator, who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of other claims. The court may order the executor or administrator to pay to the special administrator necessary funds to defend such claim (Sec. 8).

Payment of Debts (Rule 88)

(1) If there are sufficient properties, the debts shall be paid, thus:
   (a) All debts shall be paid in full within the time limited for the purpose (Sec. 1);
(b) If the testator makes provision by his will, or designates the estate to be appropriated for the payment of debts they shall be paid according to the provisions of the will, which must be respected (Sec. 2);

(c) If the estate designated in the will is not sufficient, such part of the estate as is not disposed of by will shall be appropriated for the purpose (Sec. 2);

(d) The personal estate not disposed of by will shall be first chargeable with payment of debts and expenses (Sec. 3);

(e) If the personal estate is not sufficient, or its sale would be detrimental to the participants of the estate, the real estate not disposed of by will shall be sold or encumbered for that purpose (Sec. 3);

(f) Any deficiency shall be met by contributions from devisees, legatees and heirs who have entered into possession of portions of the estate before debts and expenses have been paid (Sec. 6);

(g) The executor or administrator shall retain sufficient estate to pay contingent claims when the same becomes absolute (Sec. 4).

(2) If the estate is insolvent, the debts shall be paid in the following manner:

(a) The executor or administrator shall pay the debts in accordance with the preference of credits established by the Civil Code (Sec. 7);

(b) No creditor of any one class shall receive any payment until those of the preceding class are paid (Sec. 8);

(c) If there are no assets sufficient to pay the credits of any one class of creditors, each creditor within such class shall be paid a dividend in proportion to his claim (Sec. 8);

(d) Where the deceased was a nonresident, his estate in the Philippines shall be disposed of in such a way that creditors in the Philippines and elsewhere may receive an equal share in proportion to their respective credits (Sec. 9);

(e) Claims duly proved against the estate of an insolvent resident of the Philippines, the executor or administrator, having had the opportunity to contest such claims, shall 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 payment of debts of the decedent shall be made pursuant to the order of the probate court (Sec. 11).

(3) Time for paying debts and legacies fixed, or extended after notice, within what periods. On granting letters testamentary or administration the court shall allow to the executor or administrator a time for disposing of the estate and paying the debts and legacies of the deceased, which shall not, in the first instance, exceed one (1) year; but the court may, on application of the executor or administrator and after hearing on such notice of the time and place therefor given to all persons interested as it shall direct, extend the time as the circumstances of the estate require not exceeding six (6) months for a single extension nor so that the whole period allowed to the original executor or administrator shall exceed two (2) years (Sec. 15).

(4) Applicable provisions under the Civil Code:

Art. 2241. With reference to specific movable property of the debtor, the following claims or liens shall be preferred:

(1) Duties, taxes and fees due thereon to the State or any subdivision thereof;

(2) Claims arising from misappropriation, breach of trust, or malfeasance by public officials committed in the performance of their duties, on the movables, money or securities obtained by them;
(3) Claims for the unpaid price of movables sold, on said movables, so long as
they are in the possession of the debtor, up to the value of the same; and if
the movable has been resold by the debtor and the price is still unpaid, the
lien may be enforced on the price; this right is not lost by the immobilization
of the thing by destination, provided it has not lost its form, substance and
identity; neither is the right lost by the sale of the thing together with other
property for a lump sum, when the price thereof can be determined
proportionally;

(4) Credits guaranteed with a pledge so long as the things pledged are in the
hands of the creditor, or those guaranteed by a chattel mortgage, upon the
things pledged or mortgaged, up to the value thereof;

(5) Credits for the making, repair, safekeeping or preservation of personal
property, on the movable thus made, repaired, kept or possessed;

(6) Claims for laborers' wages, on the goods manufactured or the work done;

(7) For expenses of salvage, upon the goods salvaged;

(8) Credits between the landlord and the tenant, arising from the contract of
tenancy on shares, on the share of each in the fruits or harvest;

(9) Credits for transportation, upon the goods carried, for the price of the
contract and incidental expenses, until their delivery and for thirty days
thereafter;

(10) Credits for lodging and supplies usually furnished to travellers by hotel
keepers, on the movables belonging to the guest as long as such movables
are in the hotel, but not for money loaned to the guests;

(11) Credits for seeds and expenses for cultivation and harvest advanced to the
debtor, upon the fruits harvested;

(12) Credits for rent for one year, upon the personal property of the lessee
existing on the immovable leased and on the fruits of the same, but not on
money or instruments of credit;

(13) Claims in favor of the depositor if the depositary has wrongfully sold the
thing deposited, upon the price of the sale.

In the foregoing cases, if the movables to which the lien or preference attaches
have been wrongfully taken, the creditor may demand them from any
possessor, within thirty days from the unlawful seizure.

Art. 2242. With reference to specific immovable property and real rights of the
debtor, the following claims, mortgages and liens shall be preferred, and shall
constitute an encumbrance on the immovable or real right:

(1) Taxes due upon the land or building;

(2) For the unpaid price of real property sold, upon the immovable sold;

(3) Claims of laborers, masons, mechanics and other workmen, as well as of
architects, engineers and contractors, engaged in the construction,
reconstruction or repair of buildings, canals or other works, upon said
buildings, canals or other works;

(4) Claims of furnishers of materials used in the construction, reconstruction, or
repair of buildings, canals or other works, upon said buildings, canals or
other works;

(5) Mortgage credits recorded in the Registry of Property, upon the real estate
mortgaged;

(6) Expenses for the preservation or improvement of real property when the law
authorizes reimbursement, upon the immovable preserved or improved;

(7) Credits annotated in the Registry of Property, in virtue of a judicial order, by
attachments or executions, upon the property affected, and only as to later
credits;
(8) Claims of co-heirs for warranty in the partition of an immovable among them, upon the real property thus divided;
(9) Claims of donors or real property for pecuniary charges or other conditions imposed upon the donee, upon the immovable donated;
(10) Credits of insurers, upon the property insured, for the insurance premium for two years.

Art. 2243. The claims or credits enumerated in the two preceding articles shall be considered as mortgages or pledges of real or personal property, or liens within the purview of legal provisions governing insolvency. Taxes mentioned in No. 1, article 2241, and No. 1, article 2242, shall first be satisfied.

Art. 2244. With reference to other property, real and personal, of the debtor, the following claims or credits shall be preferred in the order named:

(1) Proper funeral expenses for the debtor, or children under his or her parental authority who have no property of their own, when approved by the court;
(2) Credits for services rendered the insolvent by employees, laborers, or household helpers for one year preceding the commencement of the proceedings in insolvency;
(3) Expenses during the last illness of the debtor or of his or her spouse and children under his or her parental authority, if they have no property of their own;
(4) Compensation due the laborers or their dependents under laws providing for indemnity for damages in cases of labor accident, or illness resulting from the nature of the employment;
(5) Credits and advancements made to the debtor for support of himself or herself, and family, during the last year preceding the insolvency;
(6) Support during the insolvency proceedings, and for three months thereafter;
(7) Fines and civil indemnification arising from a criminal offense;
(8) Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court;
(9) Taxes and assessments due the national government, other than those mentioned in articles 2241, No. 1, and 2242, No. 1;
(10) Taxes and assessments due any province, other than those referred to in articles 2241, No. 1, and 2242, No. 1;
(11) Taxes and assessments due any city or municipality, other than those indicated in articles 2241, No. 1, and 2242, No. 1;
(12) Damages for death or personal injuries caused by a quasi-delict;
(13) Gifts due to public and private institutions of charity or beneficence;
(14) Credits which, without special privilege, appear in (a) a public instrument; or (b) in a final judgment, if they have been the subject of litigation. These credits shall have preference among themselves in the order of priority of the dates of the instruments and of the judgments, respectively.

Art. 2245. Credits of any other kind or class, or by any other right or title not comprised in the four preceding articles, shall enjoy no preference.

CHAPTER 3
ORDER OF PREFERENCE OF CREDITS

Art. 2246. Those credits which enjoy preference with respect to specific movables, exclude all others to the extent of the value of the personal property to which the preference refers.
Art. 2247. If there are two or more credits with respect to the same specific movable property, they shall be satisfied pro rata, after the payment of duties, taxes and fees due the State or any subdivision thereof.

Art. 2248. Those credits which enjoy preference in relation to specific real property or real rights, exclude all others to the extent of the value of the immovable or real right to which the preference refers.

Art. 2249. If there are two or more credits with respect to the same specific real property or real rights, they shall be satisfied pro rata, after the payment of the taxes and assessments upon the immovable property or real right.

Art. 2250. The excess, if any, after the payment of the credits which enjoy preference with respect to specific property, real or personal, shall be added to the free property which the debtor may have, for the payment of the other credits.

Art. 2251. Those credits which do not enjoy any preference with respect to specific property, and those which enjoy preference, as to the amount not paid, shall be satisfied according to the following rules:

(1) In the order established in article 2244;
(2) Common credits referred to in article 2245 shall be paid pro rata regardless of dates.

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**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 (Guillas vs. Judge of the CFI of Pampanga, 43 SCRA 117), and on the ground of lesion, preterition and fraud (Solivio vs. CA, 99 Phil. 1069).
Instances when probate court may issue writ of execution

(1) The only instances when the probate court may issue a writ of execution are as follows:
   (a) To satisfy the contributive shares of devisees, legatees and heirs in possession of the decedent’s assets (Sec. 6, Rule 88);
   (b) To enforce payment of expenses of partition (Sec. 3, Rule 90); and
   (c) To satisfy the costs when a person is cited for examination in probate proceedings (Sec. 13, Rule 142).

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

<table>
<thead>
<tr>
<th>Trustee</th>
<th>Executor / Administrator</th>
</tr>
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<tbody>
<tr>
<td>An instrument or agent of the <em>cestui que trust</em>, who acquires no beneficial interest in the estate; he merely took the legal estate as the proper execution of the trust required; and, his estate ceases upon the fulfillment of the testator’s wishes, in which case, the same vests absolutely in the beneficiary.</td>
<td>An executor is the person named in the will to administer the decedent’s estate and carry out the provisions thereof. An administrator is the person appointed by the court to administer the estate where the decedent died intestate, or where the will was void and not allowed to probate, or where no executor was named in the will, or the executor named therein is incompetent or refuses to serve as such.</td>
</tr>
<tr>
<td>An association or corporation authorized to conduct the business of a trust company in the Philippines may be appointed as trustee of an estate in the same manner as an individual (Art. 1060, CC).</td>
<td>An association or corporation authorized to conduct the business of a trust company in the Philippines may be appointed as executor or administrator of an estate in the same manner as an individual (Art. 1060, CC).</td>
</tr>
<tr>
<td>Duties are usually governed by the intention of the trustor or the parties if established by a contract. Duties may cover a wider range.</td>
<td>Duties are fixed and/or limited by law (Rule 84).</td>
</tr>
<tr>
<td>Grounds for removal of trustee: (a) Insanity; (b) Incapability of discharging trust or evidently unsuitable therefor (Sec. 8);</td>
<td>Grounds for removal: (a) Neglect to render an account and settle the estate according to law; (b) Neglect to perform an order or</td>
</tr>
</tbody>
</table>
Rule 98); (c) Neglect in the performance of his duties; (d) Breach of trust displaying a want of fidelity, not mere error in the administration of the trust; (e) Abuse and abandonment of the trust; (f) Refusal to recognize or administer the trust; (g) Failure or neglect or impropriety in investment of the trust estate as to give rise to waste of trust property; (h) Failure to file accounts, and failure of one co-trustee to keep himself informed of the conduct of the other in the administration of the trust.

Conditions of the Bond

(1) A trustee appointed by the court is required to furnish a bond and the terms of the trust or a statute may provide that a trustee appointed by a court shall be required to furnish a bond in order to qualify him to administer the trust (54 Am. Jur. 425). However, the court may until further order exempt a trustee under a will from giving a bond when the testator has directed or requested such exemption or when all persons beneficially interested in the trust, being of full age, request the exemption. Such exemption may be cancelled by the court at any time, and the trustee required to forthwith file a bond (Sec. 5). If the trustee fails to furnish a bond as required by the court, he fails to qualify as such. Nonetheless the trust is not defeated by such a failure to give bond.

(2) The following conditions shall be deemed to be a part of the bond whether written therein or not:
   (a) That the trustee will make and return to the court, at such time as it may order, a true inventory of all the real and personal estate belonging to him as trustee, which at the time of the making of such inventory shall have come to his possession or knowledge;
   (b) That he will manage and dispose of all such estate, and faithfully discharge his trust in relation thereto, according to law and the will of the testator or the provisions of the instrument or order under which he is appointed;
   (c) That he will render upon oath at least once a year until his trust is fulfilled, unless he is excused therefrom in any year by the court, a true account of the property in his hands and of the management and disposition thereof, and will render such other accounts as the court may order;
   (d) That at the expiration of his trust he will settle his accounts in court and pay over and deliver all the estate remaining in his hands, or due from him on such settlement, to the person or persons entitled thereto. But when the trustee is appointed as a successor to a prior trustee, the court may dispense with the making and return of an inventory, if one has already been filed, and in such case the condition of the bond shall be deemed to be altered accordingly (Sec. 6).

Requisites for the removal and resignation of a trustee

(1) A trustee may be removed upon petition to the proper RTC of the parties beneficially interested, after due notice to the trustee and hearing, if it appears essential in the interests of the petitioners. The court may also, after due notice to all persons
interested, remove a trustee who is insane or otherwise incapable of discharging his trust or evidently unsuitable therefor. A trustee, whether appointed by the court or under a written instrument, may resign his trust if it appears to the court proper to allow such resignation (Sec. 8).

(2) A trustee whose acts or omissions are such as to show a want of reasonable fidelity will be removed by the court and where trust funds are to be invested by the trustee, neglect to invest constitutes of itself a breach of trust, and is a ground for removal (Gisborn vs. Cavende, 114 US 464).

Grounds for removal and resignation of a trustee

(1) The proper Regional Trial Court may, upon petition of the parties beneficially interested and after due notice to the trustee and hearing, remove a trustee if such removal appears essential in the interests of the petitioners. The court may also, after due notice to all persons interested, remove a trustee who is insane or otherwise incapable of discharging his trust or evidently unsuitable therefor. A trustee, whether appointed by the court or under a written instrument, may resign his trust if it appears to the court proper to allow such resignation (Sec. 8).

(2) A trustee whose acts or omissions are such as to show a want of reasonable fidelity will be removed by the court and where trust funds are to be invested by the trustee, neglect to invest constitutes of itself a breach of trust, and is a ground for removal (Gisborn vs. Cavende, 114 US 464).

Extent of authority of trustee

(1) A trustee appointed by the RTC shall have the same rights, powers, and duties as if he had been appointed by the testator. No person succeeding to a trust as executor or administrator of a former trustee shall be required to accept such trust (Sec. 2).

(2) Such new trustee shall have and exercise the same powers, rights, and duties as if he had been originally appointed, and the trust estate shall vest in him in like manner as it had vested or would have vested, in the trustee in whose place he is substituted; and the court may order such conveyance to be made by the former trustee or his representatives, or by the other remaining trustees, as may be necessary or proper to vest the trust estate in the new trustee, either alone or jointly with the others (Sec. 3).

Escheat (Rule 91)

(1) Escheat is a proceeding whereby the real and personal property of a deceased person in the Philippines, become the property of the state upon his death, without leaving any will or legal heirs (21 CJS, Sec. 1, p. 848).

When to file

(1) When a person dies intestate, seized of real or personal property in the Philippines, leaving no heir or person by law entitled to the same, the Solicitor General or his representative in behalf of the Republic of the Philippines, may file a petition in the Court of First Instance of the province where the deceased last resided or in which he had estate, if he resided out of the Philippines, setting forth the facts, and praying that the estate of the deceased be declared escheated (Sec. 1).
Requisites for filing of petition

(1) In order that a proceeding for escheat may prosper, the following requisites must be present:
   (a) That a person died intestate;
   (b) That he left no heirs or person by law entitled to the same; and
   (c) That the deceased left properties *(City of Manila vs. Archbishop of Manila, 36 Phil. 815)*.

Remedy of respondent against petition; period for filing a claim

(1) When a petition for escheat does not state facts which entitle the petitioner to the remedy prayed for, and even admitting them hypothetically, it is clear that there is no ground for the court to proceed to the inquisition provided by law, an interested party should not be disallowed from filing a motion to dismiss the petition which is untenable from all standpoints. And when the motion to dismiss is entertained upon this ground, the petition may be dismissed unconditionally and the petitioner is not entitled to be afforded an opportunity to amend his petition *(Go Poco Grocery vs. Pacific Biscuit Co., 65 Phil. 443)*.

(2) While the Rules do not in fact authorize the filing of a motion to dismiss the petition presented for that purpose, and the Rules permitting the interposition of a motion to dismiss to the complaint and answer, respectively, are not applicable to special proceedings, nevertheless, there is no reason of a procedural nature which prevents the filing of a motion to dismiss based upon any of the grounds provided for by law for a motion to dismiss the complaint. In such a case, the motion to dismiss plays the role of a demurrer and the court should resolve the legal questions raised therein *(Municipal Council of San Pedro, Laugna vs. Colegio de San Jose, 65 Phil. 318)*.

Guardianship *(Rules 92-97)*

(1) Guardianship is the power of protective authority given by law and imposed on an individual who is free and in the enjoyment of his rights, over one whose weakness on account of his age or other infirmity renders him unable to protect himself *(Cyclopedic Law Dictionary, 908)*. Guardianship may also describe the relation subsisting between the guardian and the ward. It involves the taking of possession of, or management of, the estate of another unable to act for himself.

(2) A guardian is a person lawfully invested with power and charged with the duty of taking care of a person who for some peculiarity or status or defect of age, understanding or self-control is considered incapable of administering his own affairs *(Black’s Law Dictionary, Fifth Edition)*.

(3) Kinds of guardians:
   (a) According to scope or extent
      a) Guardian of the person - one who has been lawfully invested with the care of the person of minor whose father is dead. His authority is derived out of that of the parent;
      b) Guardian of the property - that appointed by the court to have the management of the estate of a minor or incompetent person;
      c) General guardians - those appointed by the court to have the care and custody of the person and of all the property of the ward.
   (b) According to constitution
      1) Legal - those deemed as guardians without need of a court appointment *(Art. 225, Family Court)*;
2) Guardian *ad litem* - those appointed by courts of justice to prosecute or defend a minor, insane or person declared to be incompetent, in an action in court; and
3) Judicial - those who are appointed by the court in pursuance to law, as guardian for insane persons, prodigals, minor heirs or deceased war veterans and other incompetent persons.

(4) Under the Family Courts Act of 1997 (RA 8369), the Family Courts are vested with exclusive original jurisdiction over the following cases:
(a) Criminal 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;

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**Guardianship (Rules 92 - 97)**

**General powers and duties of guardians (Rule 96)**

(1) The powers and duties of a guardian are:
(a) To have care and custody over the person of his ward, and/or the management of his estate (Sec. 1);
(b) To pay the just debts of his ward out of the latter’s estate (Sec. 2);
(c) To bring or defend suits in behalf of the ward, and, with the approval of the court, compound for debts due the ward and give discharges to the debtor (Sec. 3);
(d) To manage the estate frugally and without waste, and apply the income and profits to the comfortable and suitable maintenance of the ward and his family (Sec. 4);
(e) To sell or encumber the real estate of the ward upon being authorized to do so (Sec. 4);
(f) To join in an assent to a partition of real or personal estate held by the ward jointly or in common with others (Sec. 5).

**Conditions of the bond of the guardian**

(1) Under Sec. 1, Rule 94, the conditions for the bond of a guardian are:
(a) To file with the court complete inventory of the estate of the ward within 3 months;
(b) To faithfully execute the duties of his trust to manage and dispose of the estate according to the Rules for the best interests of the ward, and to provide for the proper use, custody, and education of the ward;
(c) To render a true account of all the estate, and of the management and disposition of the same;
(d) To settle his accounts with the court and deliver over all the estate remaining in his hands to the person entitled thereto;
(e) To perform all orders of the court by him to be performed (Sec. 1; Sec. 14, AM 03-02-05-SC).

Rule on Guardianship over Minors (AM 03-02-05-SC)

(1) The father and mother shall jointly exercise legal guardianship over the person and property of their unemancipated common child without the necessity of a court appointment. The Rule shall be suppletory to the provisions of the Family Code on guardianship (Sec. 1).

(2) On grounds authorized by law, any relative or other person on behalf of a minor, or the minor himself if 14 years of age or over, may petition the Family Court for the appointment of a general guardian over the person or property, or both, of such minor. The petition may also be filed by the Secretary of DSWD and of the DOH in the case of an insane minor who needs to be hospitalized (Sec. 1).

(3) Grounds of petition (Sec. 4):
(a) Death, continued absence, or incapacity of his parents;
(b) Suspension, deprivation or termination of parental authority;
(c) Remarriage of his surviving parent, if the latter is found unsuitable to exercise parental authority; or
(d) When the best interest of the minor so requires.

(4) Qualifications of guardians (Sec. 4):
(a) Moral character;
(b) Physical, mental and psychological condition;
(c) Financial status;
(d) Relationship of trust with the minor;
(e) Availability to exercise the powers and duties of a guardian for the full period of the guardianship;
(f) Lack of conflict of interest with the minor; and
(g) Ability to manage the property of the minor.

(5) Order of preference in the appointment of guardian or the person and/or property of minor (Sec. 6):
(a) The surviving grandparent and in case several grandparents survive, the court shall select any of them taking into account all relevant considerations;
(b) The oldest brother or sister of the minor over 21 years of age, unless unfit or disqualified;
(c) The actual custodian of the minor over 21 years of age, unless unfit or disqualified; and
(d) Any other person, who in the sound discretion of the court, would serve the best interests of the minor.

(6) Factors to consider in determining custody:
(a) Any extrajudicial agreement which the parties may have bound themselves to comply with respecting the rights of the minor to maintain direct contact with the non-custodial parent on a regular basis, except when there is an existing threat or danger of physical, mental, sexual or emotional violence which endangers the safety and best interests of the minor;
(b) The desire and ability of one parent to foster an open and loving relationship between the minor and the other parent;
(c) The health, safety and welfare of the minor;
(d) Any history of child or spousal abuse by the person seeking custody or who has had any filial relationship with the minor, including anyone courting the parent;
(e) The nature and frequency of contact with both parents;
(f) Habitual use of alcohol, dangerous drugs or regulated substances;
(g) Marital misconduct;
(h) The most suitable physical, emotional, spiritual, psychological and educational environment for the holistic development and growth of the minor; and
(i) The preference of the minor over 7 years of age and of sufficient discernment, unless the parent chosen is unfit (Sec. 14, AM No. 03-04-04-SC).

(7) The court shall order a social worker to conduct a case study of the minor and all the prospective guardians and submit his report and recommendation to the court for its guidance before the scheduled hearing.

Adoption (Rules 99-100, superseded by AM 02-6-02-SC)

(1) Adoption is a juridical act which creates between two persons a relationship similar to that which results from legitimate paternity (Prasnick vs. Republic, 98 Phil. 669).

(2) Adoption is a juridical act, a proceeding in rem, which creates between the two persons a relationship similar to that which results from legitimate paternity and filiation.

(3) Adoption is not an adversarial proceeding. An adversarial proceeding is one having opposing parties, contested, as distinguished from an ex parte application, one of which the party seeking relief has given legal warning to the other party and afforded the latter an opportunity to contest it excludes an adoption proceeding. In adoption, there is no particular defendant to speak of since the proceeding involves the status of a person it being an action in rem.

Domestic Adoption Act (RA 8552; AM 02-06-02-SC)

Distinguish domestic adoption from inter-country adoption

<table>
<thead>
<tr>
<th>Domestic Adoption</th>
<th>Inter-Country Adoption</th>
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<tbody>
<tr>
<td>Governed by RA 8552, the Domestic Adoption Act of 1998; procedure governed by AM No. 02-06-02-SC, Aug. 22, 2002.</td>
<td>Governed by RA 8043, the Inter-Country Adoption Act of 1995; procedure governed by the Amended Implementing Rules and Regulations on ICAA.</td>
</tr>
<tr>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>Who may be adopted</td>
<td>Who may be adopted</td>
</tr>
<tr>
<td>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</td>
<td>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.</td>
</tr>
</tbody>
</table>
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.

Who may adopt  

<table>
<thead>
<tr>
<th>A. Filipino Citizens</th>
<th>Who may adopt</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Of legal age;</td>
<td>1) Permanent resident of a foreign country;</td>
</tr>
<tr>
<td>2) In possession of full civil capacity and legal rights;</td>
<td>2) Has the capacity to act and assume all rights and responsibilities of parental authority under Philippine laws;</td>
</tr>
<tr>
<td>3) Of good moral character;</td>
<td>3) Has undergone the appropriate counseling from an accredited counselor in country of domicile;</td>
</tr>
<tr>
<td>4) Has not been convicted of any crime involving moral turpitude;</td>
<td>4) Has not been convicted of a crime involving moral turpitude;</td>
</tr>
<tr>
<td>5) Emotionally and psychologically capable of caring for children;</td>
<td>5) Eligible to adopt under Philippine laws;</td>
</tr>
<tr>
<td>6) In a position to support and care for his/her children in keeping with the means of the family;</td>
<td>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;</td>
</tr>
<tr>
<td>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</td>
<td>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;</td>
</tr>
<tr>
<td>8) Permanent resident of the Philippines.</td>
<td>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;</td>
</tr>
</tbody>
</table>

B. Aliens  

| 1) Same qualifications as above, and in addition: | A. Filipino Citizens |
| 2) His/her country has diplomatic relations with the Republic of the Philippines; | 1) Permanent resident of a foreign country; |
| 3) His/her government allows the adoptee to enter his/her country as his/her adopted son/daughter; | 2) Has the capacity to act and assume all rights and responsibilities of parental authority under Philippine laws; |
| 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 | 3) Has undergone the appropriate counseling from an accredited counselor in country of domicile; |
| 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 4th degree of consanguinity or affinity; (b) one seeks to adopt the legitimate son/daughter of his/her Filipina spouse; (c) one who is married to a Filipino citizen and seeks to adopt a relative within the 4th degree of consanguinity or affinity of the Filipina spouse. | 4) Has not been convicted of a crime involving moral turpitude; |
| 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; | 5) Eligible to adopt under Philippine laws; |
| 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; | 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; |
| 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; | 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; |
| 9) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws; | 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; |
| 10) At least 27 years of age at the time of the application; and | 9) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws; |
| 11) At least 16 years older than the child to be adopted at the time of application, unless (a) adopter is the parent by nature of the child to be adopted; or (b) adopter is the spouse of the parent by nature of the child to be adopted. | 10) At least 27 years of age at the time of the application; and |

B. Aliens  

| 1) At least 27 years of age at the time of the application; | 11) At least 16 years older than the child to be adopted at the time of application; |
| 2) At least 16 years older than the child to be adopted at the time of application; |
unless the adopter is the parent by nature of the child to be adopted or the spouse of such parent;
3) Has the capacity to act and assume all rights and responsibilities of parental authority under his national laws;
4) Has undergone the appropriate counseling from an accredited counselor in his/her country;
5) Has not been convicted of a crime involving moral turpitude;
6) Eligible to adopt under his/her national law;
7) In a position to provide the proper care and support and to give the necessary moral values and example to all his children, including the child to be adopted;
8) Agrees to uphold the basic rights of the child as embodied under Philippine laws, the UN Convention on the Rights of the Child, and to abide by the rules and regulations issued to implement the provisions of the ICAA;
9) Comes from a country with whom the Philippines has diplomatic relations and whose government maintains a similarly authorized and accredited agency and that adoption is allowed under his/her national laws; and
10) Possesses all the qualifications and none of the disqualifications provided in the ICAA and in other applicable Philippine laws.

### Requirement of Joint Adoption by Spouses

<table>
<thead>
<tr>
<th>Requirement of Joint Adoption by Spouses</th>
<th>Procedure</th>
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</table>
| General rule: husband and wife shall jointly adopt; otherwise, the adoption shall not be allowed. Exceptions:  
   1) If one spouse seeks to adopt the legitimate son/daughter of the other;  
   2) If one spouse seeks to adopt his/her own illegitimate son/daughter but the other spouse must give his/her consent;  
   3) If the spouses are legally separated from each other. | Where to file application: In the Family Court of the province or city where the prospective parents reside. |
| Rule: if the adopter is married, his/her spouse must jointly file for the adoption. | Where to file application: Either in (a) Family Court having jurisdiction over the place where the child resides or may be found, or (b) Inter-Country Adoption Board (ICAB) through an intermediate agency, whether governmental or an authorized and accredited agency, in the |
After filing: The petition shall not be set for hearing without a case study report by a licensed social worker.

Supervised Trial Custody:
- a) Temporary parental authority is vested in the prospective adopter;
- b) Period is at least 6 months, but may be reduced by the court *motu proprio* upon motion;
- c) If adopter is alien, the law mandatorily requires completion of the 6-month trial custody and may not be reduced, except if: (1) a former Filipino citizen seeks to adopt a relative within 4th degree of consanguinity or affinity; (2) one seeks to adopt the legitimate son/daughter of his/her Filipino spouse; (3) one who is married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the 4th degree of consanguinity or affinity of the Filipino spouse.

Decree of Adoption: Issued by Philippine Family Court.

Consent Required: Written consent of the following to the adoption is required, in the form of affidavit: (1) adoptee, if 10 years of age or over; (2) biological parent/s of the child, if known, or the legal guardian, or the proper government instrumentality which has legal custody of the child; (3) legitimate and adopted sons or daughters, 10 years of age or over, of the adopter/s and adoptee, if any; (4) illegitimate sons/daughters, 10 years of age of over, of the adoptee if living with said adopter and the latter’s spouse, if any; (5) spouse, if any, of the person adopting or to be adopted.

Country of the prospective adoptive parents. After filing: (a) if filed in the FC, court determines sufficiency of petition in respect to form and substance, after which, petition is transmitted to ICAB; (b) if petition is already with ICAB, it conducts matching of the applicant with an adoptive child; (c) after matchmaking, the child is personally fetched by the applicant for the trial custody which takes place outside of the Philippines.

Supervised Trial Custody:
- a) This process takes place outside of the country and under the supervision of the foreign adoption agency;
- b) For a period of 6 months;
- c) If unsuccessful, ICAB shall look for another prospective applicant. Repatriation of the child is to be resorted only as a last resort;
- d) If successful, ICAB transmits a written consent for the adoption to be executed by the DSWD, and the applicant then files a petition for adoption in his/her country.

Decree of Adoption: Issued by a foreign court.

Consent Required:
- (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;
- (2) If a satisfactory pre-adoptive relationship is formed between the applicant and the child, the written consent to the adoption executed by the DSWD is required.

**Effects of adoption**

(1) Transfer of parental authority - except in cases where the biological parent is the spouse of the adopter, the parental authority of the biological parents shall terminate and the same shall be vested in the adopters (*Sec. 16*).
(2) Legitimacy - the adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind (Sec. 17).

(3) Successional rights
(a) In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation (Sec. 18);
(b) However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern (Sec. 18);
(c) Art. 18(3) of the Family Code and Sec. 18, Art V of RA 8552 provide that the adoptee remains an intestate heir of his/her biological parent (Obiter Dictum in In re In the Matter of Adoption of Stephanie Naty Astorga Garcia, 454 SCRA 541).

(4) Issuance of new certificate and first name and surname of adoptee
(a) The adoption decree shall state the name by which the child is to be known (Sec. 13). An amended certificate of birth shall be issued by the Civil Registry attesting to the fact that the adoptee is the child of the adopter(s) by being registered with his/her surname (Sec. 14);
(b) The original certificate of birth shall be stamped “cancelled” with the annotation of the issuance of an amended birth certificate in its place and shall be sealed in the civil registry records. The new birth certificate to be issued to the adoptee shall not bear any notation that it is an amended issue (Sec. 14);
(c) All records, books, and papers relating to the adoption cases in the files of the court, the DSWD, or any other agency or institution participating in the adoption proceedings shall be kept strictly confidential and the court may order its release under the following conditions only: (1) the disclosure of the information to a third person is necessary for purposes connected with or arising out of the adoption; (2) the disclosure will be for the best interest of the adoptee; and (3) the court may restrict the purposes for which it may be used (Sec. 15).

Instances when adoption may be rescinded

(1) Grounds for rescission:
(a) Repeated physical and verbal maltreatment by the adopter(s) despite having undergone counseling;
(b) Attempt on the life of the adoptee;
(c) Sexual assault or violence; or
(d) Abandonment and failure to comply with parental obligations (Sec. 19).

(2) Prescriptive period:
(a) If incapacitated - within five (5) years after he reaches the age of majority;
(b) If incompetent at the time of the adoption - within five (5) years after recovery from such incompetency (Sec. 21, Rule on Adoption).

Effects of rescission of adoption

(1) Parental authority of the adoptee’s biological parent(s), if known, or the legal custody of the DSWD shall be restored if the adoptee is still a minor or incapacitated;
(2) Reciprocal rights and obligations of the adopter(s) and the adoptee to each other shall be extinguished;
(3) Cancellation of the amended certificate of birth of the adoptee and restoration of his/her original birth certificate; and
(4) Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected (Sec. 20).
Inter-Country Adoption (RA 8043)

(1) Inter-Country Adoption refers to the socio-legal process of adopting a Filipino child by a foreigner or a Filipino citizen permanently residing abroad where the petition is filed, the supervised trial custody is undertaken, and the decree of adoption is issued in the Philippines (Sec. 3[a]).

When allowed

(1) Inter-country adoptions are allowed when the same shall prove beneficial to the child’s best interests, and shall serve and protect his/her fundamental rights (Sec. 2).

(2) It is allowed when all the requirements and standards set forth under RA 8043 are complied with.

Functions of the RTC

(1) An application to adopt a Filipino child shall be filed either with the 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 (Ballantine’s Law Dictionary, 2nd Edition; Nava vs. Gatmaitan, 90 Phil. 172).

(2) The writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. The function of the special proceeding of habeas corpus is to inquire into the legality of one’s detention. In all petitions for habeas corpus, the court must inquire into every phase and aspect of the petitioner’s detention from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition and only after such scrutiny can the court satisfy itself that the due process clause of the Constitution has been satisfied. However, once the person detained is duly charged in court, he may no longer question
his detention by a petition for the issuance of a writ of *habeas corpus*. His remedy then is the quashal of the information and/or the warrant of arrest duly issued. The reason for the issuance of the writ even becomes more unavailing when the person detained files a bond for his temporary release (*Sec. 1; Bernarte vs. CA, 75 SCAD 400 [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.

(7) Considering that the writ is made enforceable within a judicial region, petitions for the issuance of the writ of *habeas corpus*, whether they be filed under Rule 102 of the Rules of Court or pursuant to Section 20 of A.M. No. 03-04-04-SC, may therefore be filed with any of the proper RTCs within the judicial region where enforcement thereof is sought. As regards petitioner's assertion that the summons was improperly served, suffice it to state that service of summons, to begin with, is not required in a *habeas corpus* petition,
be it under Rule 102 of the Rules of Court or A.M. No. 03-04-04-SC. As held in Saulo v. Cruz, 105 Phil. 315 (1959), a writ of habeas corpus plays a role somewhat comparable to a summons, in ordinary civil actions, in that, by service of said writ, the court acquires jurisdiction over the person of the respondent. (Tujan-Militante v. Cada-Deapara, GR No. 210636, 07/28/2014).

(8) **2007 Bar**: Husband H files a petition declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife’s petition on the ground of the pendency of the other case. Rule. (10%)

**Answer**: The husband’s motion to dismiss his wife’s petition for habeas corpus should be granted because the case for nullity of marriage constitutes litis pendencia. The custody over the minor child and the action for nullity of the marriage are not separate causes of action. Judgment on the issue of custody in the nullity of marriage case before the RTC of Pasig City, regardless of which party would prevail, would constitute res judicata on the habeas corpus case before the RTC of Pasay City since the former has jurisdiction over the parties and the subject matter. The evidence to support the petition for nullity necessarily involves evidence of fitness to take custody of the child, as the court in the nullity of proceedings has a duty under the Family Code to protect the best interest of the child (Yu vs. Yu, GR No. 164915, 03/10/2006; Sec. 1[e], Rule 16) and Sec. 2, Rule 102).

(9) **2005 Bar**: Mariano was convicted by the RTC for raping Victoria and meted the penalty of reclusion perpetua. While serving sentence at the National Penitentiary, Mariano and Victoria were married. Mariano filed a motion in said court for his release from the penitentiary on his claim that under RA 8353, his marriage to Victoria extinguished the criminal action against him for rape, as well as the penalty imposed on him. However, the court denied the motion on the ground that it had lost jurisdiction over the case after its decision had become final and executory.

**Is the ruling of the court correct? Explain.**

**What remedy/remedies should the counsel of Mariano take to secure his proper and most expeditious release from the National Penitentiary? Explain. (7%)**

**Answer**: No. The court can never lose jurisdiction so long as its decision has not yet been fully implemented and satisfied. Finality of a judgment cannot operate to divest a court of its jurisdiction to execute and enforce the judgment (Echegaray vs. Secretary of Justice, 301 SCRA 96 [1999]). Besides, there is a supervening event which renders execution unnecessary (So vs. CA, 388 SCRA 107 [2002]).

To secure the proper and most expeditious release of Mariano from the National Penitentiary, his counsel should file (a) a petition for habeas corpus regarding the illegal confinement of Mariano, or (b) a motion in the court which convicted him, to nullify the execution of his sentence or the order of his commitment on the ground that a supervening event had despite the finality of the judgment occurred (Melo vs. People, 85 Phil. 766).

(10) **2008 Bar**: After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22, she filed a petition for writ of habeas corpus, citing Vaca vs. CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination on whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Section 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then
ordered her release. In your opinion, is the order of the trial court correct under Rule 102? (2%)

Answer: No, Alma who is already convicted by final judgment, cannot be entitled to bail under Sec. 14, Rule 102. The provision presupposes that she had not been convicted yet. It provides that if she is lawfully imprisoned or restrained for an offense not punishable by death, she may be recommitted to imprisonment or admitted to bail in the discretion of the court or judge. (Rule 102, Section 14; Celeste v. People, 31 SCRA 391; Vicente v. Judge Majaducon, AM No. RTJ-02-1698, 06/23/2005).

(11) 2003 Bar: Widow A and her two children, both girls, aged 8 and 12 years old, reside in Angeles City, Pampanga. A leaves her two daughters in their house at night because she works in a brothel as a prostitute. Realizing the danger to the morals of these two girls, B, the father of the deceased husband of A, files a petition for habeas corpus against A for the custody of the girls in the Family Court in Angeles City. In the said petition, B alleges that he is entitled to the custody of the two girls because their mother is living a disgraceful life. The court issues the writ of habeas corpus. When A learns of the petition and the writ, she brings her two children to Cebu City. At the expense of B, the sheriff of the said Family Court goes to Cebu City and serves the writ on A. A files her comment on the petition raising the following defense: B has no personality to institute the petition. Resolve the petition in the light of the above defense of A. (6%)

Answer: B, father of the deceased husband of A, has the personality to institute the petition for habeas corpus of the two minor girls, because the grandparent has the right of custody against the mother A, who is a prostitute (Sections 2 and 3).

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

<table>
<thead>
<tr>
<th>Peremptory writ</th>
<th>Preliminary citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unconditionally commands the respondent to have the body of the detained person before the court at a time and place therein specified;</td>
<td>Requires the respondent to appear and show cause why the peremptory writ should not be granted</td>
</tr>
<tr>
<td>(Lee Yick Hon vs. Collector of Customs, 41 Phil. 563)</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Writ of Habeas Corpus</th>
<th>Writ of Amparo</th>
<th>Writ of Habeas Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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.</td>
<td>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</td>
</tr>
<tr>
<td>Who may file petition:</td>
<td>Who may file (in order):</td>
<td>Who may file (in order):</td>
</tr>
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</tr>
<tr>
<td>By the party for whose relief it is intended, or by some person on his behalf.</td>
<td>a) Any member of the immediate family: spouse, children and parents of the aggrieved party; b) Any ascendant, descendant or collateral relative of aggrieved party within the 4th civil degree of consanguinity or affinity; c) Any concerned citizen, organization, association or institution, if no known member of immediate family.</td>
<td>a) Any member of the immediate family: spouse, children and parents of the aggrieved party; b) Any ascendant, descendant or collateral relative of aggrieved party within the 4th civil degree of consanguinity or affinity.</td>
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</tbody>
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<tr>
<th>Where to file:</th>
<th>Where to file:</th>
<th>Where to file:</th>
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<tbody>
<tr>
<td>RTC, enforceable within its area of jurisdiction. CA or SC, enforceable anywhere in the Philippines.</td>
<td>RTC, Sandiganbayan, CA, SC; Writ is enforceable anywhere in the Philippines. (No hierarchy of courts)</td>
<td>SC, CA, Sandiganbayan, RTC. Writ is also enforceable anywhere in the Philippines.</td>
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</tbody>
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<tr>
<th>When issued:</th>
<th>When issued:</th>
<th>When issued:</th>
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<tbody>
<tr>
<td>Forthwith when a petition therefor is presented and it appears that the writ ought to issue,</td>
<td>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.</td>
<td>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.</td>
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<tr>
<th>Contents of verified petition:</th>
<th>Contents of verified petition:</th>
<th>Contents of verified petition:</th>
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<tbody>
<tr>
<td>(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</td>
<td>a) Personal circumstances of petitioner and of respondent responsible for the threat, act or omission; b) Violated or threatened right to life, liberty and security of aggrieved party, and how committed with attendance circumstances detailed in supporting affidavits; c) Investigation conducted, specifying names, personal circumstances and addresses of investigating authority or individuals, as well as manner and conduct of investigation together with any report;</td>
<td>a) Personal circumstances of petitioner and respondent; b) The manner the right to privacy is violated or threatened and how it affects the right to life, liberty or security of aggrieved party; c) Actions and recourses taken by petitioner to secure the data or information; d) Location of files, registers or databases, government office, and the person in charge, in possession or in control of the data or information, if known; e) Reliefs prayed for, which may include the updating,</td>
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</table>
detention of such person, if it can be procure
without impairing the efficiency of the remedy; or, if the imprisonment or
restraint is without any legal authority, such fact shall appear

<table>
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<tr>
<th>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;</th>
<th>The relief prayed for.</th>
<th>rectification, suppression or destruction of the database or information or files kept by respondent;</th>
</tr>
</thead>
<tbody>
<tr>
<td>e)</td>
<td>f)</td>
<td>In case of threats, relief may include a prayer for an order enjoining the act complained of; and</td>
</tr>
<tr>
<td>g)</td>
<td>Such other reliefs as are just and equitable.</td>
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**Contents of return:**

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<th>Contents of return:</th>
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<th>Contents of return:</th>
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<tbody>
<tr>
<td>a) Whether he has or has not the party in his custody or power, or under restraint;</td>
<td>a) Lawful defenses;</td>
<td>a) Lawful defenses such as national security, state secrets, privileged communications, confidentiality of source of information;</td>
</tr>
<tr>
<td>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;</td>
<td>b) Steps or actions taken to determine whereabouts of aggrieved party;</td>
<td>b) Disclosure of data/info about petitioner, nature of data/info, purpose of collection;</td>
</tr>
<tr>
<td>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;</td>
<td>c) All relevant information pertaining to threat, act or omission against aggrieved party;</td>
<td>c) Steps or actions taken by respondent to ensure security and confidentiality of data or information;</td>
</tr>
<tr>
<td>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.</td>
<td>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.</td>
<td>d) Currency and accuracy of data or information;</td>
</tr>
<tr>
<td>e)</td>
<td>f)</td>
<td>e) Other allegations relevant to resolution of the proceedings.</td>
</tr>
<tr>
<td>g)</td>
<td>Such other reliefs as are just and equitable.</td>
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* A general denial of the allegations in the petition is not allowed.

**Effects of failure to file return:**

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<th>Effects of failure to file return:</th>
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<tbody>
<tr>
<td>The court, justice or judge shall proceed to hear the petition ex parte.</td>
<td>The court, justice or judge shall proceed to hear the petition ex parte, granting the petitioner such relief as the petition may warrant unless the court in its discretion requires petitioner to submit evidence.</td>
<td>The court, justice or judge shall proceed to hear the petition ex parte.</td>
</tr>
</tbody>
</table>
**Procedure for hearing:**
The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties. The hearing shall be from day to day until completed and given the same priority as petitions for *habeas corpus*.

**Interim reliefs available before final judgment:**
- a) Temporary Protection Order – protected in a government agency by an accredited person or private institution capable of keeping and securing their safety;
- b) Inspection Order - with a lifetime of 5 days which may be extended, may be opposed on the ground of national security or privileged information, allows entry into and inspect, measure, survey or photograph the property;
- c) Production Order – to require respondents to produce and permit inspection, copying or photographing of documents, papers, books, accounts, letters, photographs, objects or tangible things that contain evidence.
- d) Witness protection order.

**Effect of filing criminal action:**
A criminal action first filed excludes the filing of the writ; relief shall be by motion in the criminal case. A criminal case filed subsequently shall be consolidated with the petition for the writ of *amparo*.

**Appeal:**
To the SC under Rule 45, within 48 hours from notice of judgment (*Tan Chin Hui vs.*...)

**Procedure for hearing:**
The hearing on the petition shall be summary. However, the court, justice or judge may call for a preliminary conference to simplify the issues and determine the possibility of obtaining stipulations and admissions from the parties.

**Interim reliefs available before final judgment:**
(Not applicable)

**Effect of filing criminal action:**
A criminal action first filed excludes the filing of the writ; relief shall be by motion in the criminal case; A criminal case filed subsequently shall be consolidated with the petition for the writ of *habeas data*.

**Appeal:**
To the SC under Rule 45, within 5 days from notice of adverse judgment, to be given

To the SC under Rule 45, within 5 days from notice of judgment or final order, to be...
A writ of *habeas corpus* does not lie where petitioner has the remedy of appeal or *certiorari* because it will not be permitted to perform the functions of a writ of error or appeal for the purpose of reviewing mere errors or irregularities in the proceedings of a court having jurisdiction over the person and the subject matter (*Galvez vs. CA, GR 114046, Oct. 24, 1994*).

Quantum of prof

Preponderance of evidence

Quantum of proof: By substantial evidence. Private respondent to prove ordinary diligence was observed in the performance of duty. Public official/employee respondent to prove extraordinary diligence was observed, and cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

Quantum of prof

Substantial evidence

**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).

(7) The petition may be filed with the regular court in the absence of the presiding judge of the Family Court, provided, however, that the regular court shall refer the case to the Family court as soon as its presiding judge returns to duty. Section 20 of AM No. 03-04-04-SC states that the writ shall be enforceable within the judicial region to which the Family Court belongs. Considering that the writ is made enforceable within the judicial region, petitions for the issuance of the writ of habeas corpus, whether they be filed under Rule 102 of the Rules of Court or pursuant to Section 20 of AM No. 03-04-04-SC, may be filed with any of the proper RTC within the regional region where enforcement thereof is sought. Furthermore, service of summons is not required in a habeas corpus petition, be it under Rule 102 of the Rules of Court or AM No. 03-04-04-SC. A writ of habeas corpus plays a role somewhat comparable to a summons in ordinary civil actions, in that, by service of said writ, the court acquires jurisdiction over the person of the respondent (Cada v. Cada-Deapera, GR No. 210636, 07/28/2014).

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.

(2) The Amparo Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are "killings committed without due process of law, i.e., without legal safeguards or judicial proceedings." On the other hand, "enforced disappearances" are "attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of liberty which places such persons outside the protection of law. (Yusa v. Segui, GR No. 193652, 08/05/2014).

(3) It would be inappropriate to apply to writ of Amparo proceedings the Doctrine of Command Responsibility as a form of criminal complicity through omission, for individual respondents' criminal liability, if there be any, is beyond the reach of Amparo. If command responsibility were to be invoked and applied to Amparo proceedings, it should, at most, be only to determine the author who, at the first instance, is accountable for, and has the duty to address, the disappearance and harassments complained of, so as to enable the Court to devise remedial measures that may be
appropriate under the premises to protect rights covered by the writ of *amparo* (*Rubrico, et al. v. Arroyo, GR No. 183871, 02/18/2010*).

### Differences between Amparo and search warrant

<table>
<thead>
<tr>
<th><strong>Writ of Amparo</strong></th>
<th><strong>Search Warrant</strong></th>
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<tbody>
<tr>
<td><strong>SEC. 6. Issuance of the Writ.</strong> - 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.</td>
<td><strong>Sec. 4. Requisites for issuing search warrant.</strong> - 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.</td>
</tr>
</tbody>
</table>

### Omnibus waiver rule

*Defenses Not Pleadede 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.
2. The writ of *habeas data* can be availed of as an independent remedy to enforce one’s right to privacy, more specifically the right to informational privacy. The court still found that the remedy is wrong in this case. The Supreme Court found that there was no reasonable expectation of privacy in cases of Facebook photos being posted specially if there is no evidence to prove that there are only a handful of people who may view the same. Since there is no informational privacy that may be expected on social media, the Court found the petition to be without merit (*Vivares v. St. Theresa’s College, GR No. 202666, 09/29/2014*).

### Instances when petition may be heard in chambers

1. A hearing in chambers may be conducted where the respondent invokes the defense that the release of the data or information in question shall compromise national security or state secrets, or when the data or information cannot be divulged to the public due to its nature or privileged character (Sec. 12).
A Habeas Data Petition is dismissible if it fails to adequately show that there exists a nexus between the right to privacy on the one hand, and the right to life, liberty or security on the other. Moreover, it is equally dismissible if it is not supported by substantial evidence showing an actual or threatened violation of the right to privacy in life, liberty or security of the victim. (Margate Lee v. Ilaga, GR No. 203254, 10/08/2014).

Change of Name (Rule 103)

Differences under Rule 103, RA 9048 and Rule 108

<table>
<thead>
<tr>
<th>Rule 103</th>
<th>RA 9048</th>
<th>Rule 108</th>
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<tbody>
<tr>
<td>Petition should be filed in the RTC where the petitioner resides</td>
<td>Petitions filed with the city or municipal civil registrar, or with consul general for citizens living abroad</td>
<td>Verified petition filed in the RTC where the corresponding Civil Registry is located</td>
</tr>
<tr>
<td>Civil Registrar is not a party. Solicitor General to be notified by service of a copy of petition.</td>
<td>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.</td>
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</tr>
<tr>
<td>Petition is filed by the person desiring to change his name</td>
<td>Verified petition in the form of affidavit is filed by any person having direct and personal interest in the correction</td>
<td>By a person interested in any acts, event, order or decree</td>
</tr>
<tr>
<td>Involves change of name only</td>
<td>Involves first name and nickname</td>
<td>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.</td>
</tr>
</tbody>
</table>
| Involves substantial changes | Involves clerical or typographical errors | Substantial and adversary if change affects the civil status, citizenship or nationality of a party; Summary if involves mere clerical errors (Republic
<table>
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<tr>
<th>Grounds:</th>
<th>Grounds:</th>
<th>Grounds:</th>
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</thead>
<tbody>
<tr>
<td>(a) Name is ridiculous, dishonorable or extremely difficult to write or pronounce;</td>
<td>(a) First name or nickname is found to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;</td>
<td>(a) 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.</td>
</tr>
<tr>
<td>(b) Change is a legal consequence of legitimation or adoption;</td>
<td>(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;</td>
<td></td>
</tr>
<tr>
<td>(c) Change will avoid confusion;</td>
<td>(c) Change will avoid confusion.</td>
<td></td>
</tr>
<tr>
<td>(d) One has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage;</td>
<td>(d) One has continuously used and been known since childhood by a Filipino name and was unaware of alien parentage;</td>
<td></td>
</tr>
<tr>
<td>(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</td>
<td>(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</td>
<td></td>
</tr>
<tr>
<td>(f) Surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose, or that the change of name would prejudice public interest (Republic vs. Hernandez, 68 SCAD 279); Republic vs. Avila, 122 SCRA 483).</td>
<td>(f) Surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose, or that the change of name would prejudice public interest (Republic vs. Hernandez, 68 SCAD 279); Republic vs. Avila, 122 SCRA 483).</td>
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<table>
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<tr>
<th>Order for hearing to be published once a week for three consecutive weeks in a newspaper of general circulation in the province.</th>
<th>Petition shall be published at least once a week for two consecutive weeks in a newspaper of general circulation. Also to be posted in a conspicuous place for ten consecutive days.</th>
<th>Order shall also be published once a week for three consecutive weeks in a newspaper of general circulation in the province, and court shall cause reasonable notice to persons named in the petition.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entry is correct but petitioner desires to change the entry</td>
<td>Entry is incorrect.</td>
<td>Cancellation or correction of correct or incorrect entries</td>
</tr>
<tr>
<td>An appropriate adversary proceeding</td>
<td>An appropriate administrative proceeding.</td>
<td>An appropriate summary or adversary proceeding depending on effects</td>
</tr>
<tr>
<td>Requires judicial order</td>
<td>Does not require judicial order.</td>
<td>Directed or changed by the city or municipal civil registrar or consul general without judicial order</td>
</tr>
<tr>
<td>Service of judgment shall be upon the civil register</td>
<td>Transmittal of decision to civil registrar general</td>
<td>Service of judgment shall be upon the civil register</td>
</tr>
</tbody>
</table>
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).
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 by the petitioner and has been publicly known by that first name or nickname in the community; or the change will avoid confusion (Sec. 4, RA 9048).

(3) Substantial errors in a civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate adversary proceedings. Thus, correcting the entry on Onde's birth certificate that his parents were married on December 23, 1983 in Bicol to "not married" is a substantial correction requiring adversarial proceedings. Said correction is substantial as it will affect his legitimacy and convert him from a legitimate child to an illegitimate one. (Onde v. Office of the Local Civil Registrar of Las Pinas, GR No. 197174, 09/10/2014).

(4) 2007 Bar: B files a petition for cancellation of the birth certificate of her daughter R on the ground of falsified material entries therein made by B's husband as the informant. The RTC sets the case for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was served on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for annulment of judgment before the Court of Appeals saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed, saying that the publication of the court order was sufficient compliance with due process. Rule (5%).

Answer: Jurisdiction of the court over a petition for the cancellation of a birth certificate requires reasonable notice to all interested parties and also publication of the order once a week for three consecutive weeks in a newspaper of general circulation (Rule 108, Sec. 4). In this case, publication of the order is insufficient because R, a directly concerned party, was not given reasonable notice, hence, denied due process. The lower court, therefore, did not acquire jurisdiction. Accordingly, the petition for annulment of judgment before the Court of Appeals should be granted (Cerulla v. Delantar, GR No. 140305, 12/09/2005).

(5) 2005 Bar: Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen. Helen wants her birth certificate corrected by changing her filiation from "legitimate" to "illegitimate" and
her citizenship from Chinese to Filipino because her parents were not married. What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

Answer: A petition to change the record of birth by changing the filiation from "legitimate" to "illegitimate" and petitioner's citizenship from "Chinese" to "Filipino" because her parents were not married, does not involve a simple summary correction of her certificate of birth, which could otherwise be done under the authority of RA 9048. A petition has to be filed in and adversarial proceeding under Rule 108, which has now been interpreted to be adversarial in nature. Procedural requirements include: (a) filing a verified petition; (b) naming as parties all persons who have or claim any interest which could be affected; (c) issuance of an order fixing the time and place of hearing; (d) giving reasonable notice to the parties named in the petition; and (e) publication of the order once a week for three consecutive weeks in a newspaper of general circulation (Co v. The Civil Registrar of Manila, 423 SCRA 420 [2004]).

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 of judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration (Sec. 1).

When to appeal

(1) Appeals in special proceedings necessitate a record on appeal as the original record should remain with the trial court, hence the reglementary period of thirty (30) days is provided for the perfection of appeals in special proceedings.

Modes of appeal

(1) While under the concept in ordinary civil actions some of the orders stated in Sec. 1 may be considered interlocutory, the nature of special proceedings declares them as appealable orders, as exceptions to the provisions of Sec., Rule 41. Thus:
(a) Ordinary appeal. The appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law
or the Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) Petition for review. The appeal to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) Petition for review on certiorari. In all cases where only questions of law are raised or involved, the appeal shall be to the SC by petition for review on certiorari in accordance with Rule 45.

Rule on Advance Distribution

(1) Notwithstanding a pending controversy or appeal in proceedings to settle the estate of a decedent, the court may, in its discretion and upon such terms as it may deem proper and just, permit that such part of the estate as may not be affected by the controversy or appeal be distributed among the heirs or legatees, upon compliance with the conditions set forth in Rule 90 of these rules (Sec. 2).
PART III
RULES OF CRIMINAL PROCEDURE
Rules 110 – 127
General Matters

(1) Criminal proceeding is defined as a proceeding instituted to determine a person’s guilt or innocence or to set a convicted person’s punishment. Proceeding is defined as any procedural means for seeking redress from a tribunal or agency. It is the business conducted by a court or other official body (Heirs of Federico Delgado v. Gonzalez, GR No. 184337, 08/07/2009).

(2) Injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society (Asutilla v. PNB, 225 Phil. 40 [1986]). However, there are certain exceptions (People v. Grey, GR No. 180109, 07/26/2010):

(a) To offer adequate protection to the constitutional rights of the accused (Hernandez v. Albano, L-19272, 01/25/1967);
(b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (Fortun v. Labang, L-38383, 05/27/1981);
(c) When there is a prejudicial question which is sub-judice (De Leon v. Mabanag, 70 Phil. 202);
(d) When the acts of the officer are without or in excess or authority (Planas v. Gil, 67 Phil 62);
(e) Where the prosecution is under an invalid law, ordinance or regulation (Young v. Rafferty, 33 Phil. 556);
(f) When double jeopardy is clearly apparent (Sangalang v. People, 109 Phil. 1140);
(g) Where the court has no jurisdiction over the case (Lopex v. City Judge, L-25795, 10/29/1966);
(h) Where there is a case of persecution rather than prosecution (Rustia v. ocampo, CA-GR No. 4760 [03/25/1960]);
(i) Where the charges are manifestly false and motivated by the lust for vengeance (Recto v. Castelo, 18 LJ [1953]);
(j) When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (Salonga v. Paño, L-59524, 02/18/1985);
(k) Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (Brocka v. Enrile, GR Nos. 69863-65, 12/10/1990).

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

<table>
<thead>
<tr>
<th>Jurisdiction over subject matter</th>
<th>Jurisdiction over person of the accused</th>
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<tbody>
<tr>
<td>Does not depend upon the consent or omission of the parties to the action or any of them; Sometimes made to depend, indirectly at least, on the party’s volition (MRR vs. Atty. General)</td>
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<tr>
<td>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.</td>
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(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. Estiandian, 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

(1) The information charged Antonio Garcia with violation of Article 318 of the Revised Penal Code, which is punishable by arresto mayor, or imprisonment for a period of one (1) month and one (1) day to six (6) months. When the information was filed on September 3, 1990, the law in force was Batas Pambansa Blg. 129 before it was amended by Republic Act No. 7691. Under Section 32 of Batas Pambansa Blg. 129, the Metropolitan Trial Court had jurisdiction over the case. (*Garcia v. Ferro Chemicals, Inc., GR No. 172505, 10/01/2014*).

(2) 2003 Bar: In complex crimes, how is the jurisdiction of a court determined? (4%)

In a complex crime, jurisdiction over the whole complex crime must be lodged with the trial court having jurisdiction to impose the maximum and most serious penalty imposable on an offense forming part of the complex crime (*Cuyos vs. Garcia, 160 SCRA 302 [1988]*).

<table>
<thead>
<tr>
<th>Court</th>
<th>Original</th>
<th>Exclusive Appellate</th>
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<tbody>
<tr>
<td>Supreme Court</td>
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<td>By Appeal:</td>
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<td>a) from the RTC in all criminal cases involving offenses for which the penalty is <em>reclusion perpetua</em> 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;</td>
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<td>b) Automatic review where death penalty is imposed.</td>
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<tr>
<td>Court of Appeals</td>
<td></td>
<td>By Petition for Review on Certiorari:</td>
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<tr>
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<td></td>
<td>a) from the Court of Appeals;</td>
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<td>b) from the Sandiganbayan;</td>
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<td>c) from the RTC where only an error or question of law is involved.</td>
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<td>By Appeal: From the RTC in cases</td>
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<tr>
<td>Court</td>
<td>Authority</td>
<td>Scope</td>
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<tr>
<td>RTC</td>
<td>Concurrent: a) with the SC: petitions for certiorari, prohibition and mandamus against RTC; b) with SC and RTC: petitions for certiorari, prohibition and mandamus against lower courts.</td>
<td>commenced therein, except those appealable to the SC or the Sandiganbayan; By Petition for Review: From the RTC in cases appealed thereto from the lower courts and not appealable to the Sandiganbayan</td>
</tr>
<tr>
<td>Sandiganbayan</td>
<td>Exclusive: a) Violations of RA 3019, as amended, RA 1379, and bribery and corruption offenses under the Revised Penal Code, where one or more of the accused are officials occupying positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense; b) Other offenses or felonies whether simple or complexed with other crimes committed in relation to their office by the public officials and employees mentioned in Sec. 4[a], PD 1606, as amended by RA 7075; b) Criminal cases filed pursuant to and in connection with EO Nos. 1, 2, 14, and 14-A,</td>
<td>By Appeal: 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;</td>
</tr>
<tr>
<td>Regional Trial Courts</td>
<td>All criminal cases which are not within the exclusive jurisdiction of any court, tribunal or body.</td>
<td>All cases decided by lower courts in their respective territorial jurisdictions.</td>
</tr>
<tr>
<td>Metropolitan, Municipal and Municipal Circuit Trial Courts</td>
<td>Original: 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 accessories, punishable with imprisonment of not more than 6 months</td>
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<td>Summary Procedure</td>
<td>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.</td>
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years or where none of the accused holds a position of salary Grade 27 and higher.

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).

(2) Preliminary investigation is required for offenses punishable by at least 4 years, 2 months, and 1 day, unless the accused was lawfully arrested without a warrant, in which case, an inquest must have been conducted (Sections. 1 and 7, Rule 112).

Who may file them, crimes that cannot be prosecuted de oficio

(1) All criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in the Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.
The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if they are both alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction, and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents or guardian, unless she is incompetent or incapable of doing so.

Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party.

The prosecution of complaints for violation of special laws shall be governed by their provisions thereof (Sec. 5).

(2) Art. 344 of the Revised Penal Code refers to crimes that cannot be prosecuted de oficio:
These are private crimes, namely:

(a) Adultery and concubinage - to be prosecuted upon a complaint filed by the offended spouse, impleading both guilty parties, if both alive, unless he shall have consented or pardoned the offenders;

(b) Seduction, abduction, or acts 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 fro the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to EO 1, 2, 14 and 14-A, issued in 1986."

(4) Founded on the power of supervision and control over his subordinates, the Secretary of Justice did not act with grave abuse of discretion when he took cognizance of BBB’s letter and treated it as a petition for review from the provincial prosecutor’s resolution. *(Department of Justice v. Alaon, GR No. 189596, 04/23/2014).*

(5) **1999 Bar:** Distinguish a Complaint from Information. (2%)

**Answer:** In criminal procedure, a complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other peace officer charged with the enforcement of the law violated *(Rule 110, Sec. 3)*, while information is an accusation in writing charging a person with an offense subscribed by the prosecutor and filed with the court *(Sec. 4).*

### Sufficiency of Complaint or Information

1. A complaint or information is sufficient if it states:
   a. The name of the accused;
   b. The designation of the offense given by the statute;
   c. The acts or omissions complained of as constituting the offense;
   d. The name of the offended party;
   e. The approximate date of the commission of the offense; and
   f. The place 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.

3. It is true that the gravamen of the crime of estafa under Article 315, paragraph 1, subparagraph (b) of the RPC is the appropriation or conversion of money or property received to the prejudice of the owner and that the time of occurrence is not a material ingredient of the crime, hence, the exclusion of the period and the wrong date of the occurrence of the crime, as reflected in the Information, do not make the latter fatally defective. Therefore, Corpuz’s argument that the Information filed against him is formally defective because the Information does not contain the period when the pieces of jewelry were supposed to be returned and that the date when the crime occurred was different from the one testified to by private complainant Tangcoy is untenable. *(Corpus v. People, GR No. 180016, 04/29/2014).*

4. In crimes where the date of commission is not a material element, like murder, it is not necessary to allege such date with absolute specificity or certainty in the information. The Rules of Court merely requires, for the sake of properly informing an accused, that the date of commission be approximated. As such, the allegation in an information of a date of commission different from the one eventually established during the trial would not, as a rule, be considered as an error fatal to prosecution. In such cases, the erroneous allegation in the information is just deemed supplanted by the evidence presented during the trial or may even be corrected by a formal amendment of the information.

   However, variance in the date of commission of the offense as alleged in the information and as established in evidence becomes fatal when such discrepancy is so great that it induces the perception that the information and the evidence are no longer pertaining to one and the same offense. In this event, the defective allegation in the information is not deemed supplanted by the evidence nor can it be amended but must
be struck down for being violative of the right of the accused to be informed of the specific charge against him. *(People v. Delfin, GR No. 201572, 07/09/2014).*

(5) As a general rule, a complaint or information must charge only one offense; otherwise, the same is defective. The rationale behind this rule prohibiting duplicitous complaints or informations is to give the accused the necessary knowledge of the charge against him and enable him to sufficiently prepare for his defense. The State should not heap upon the accused two or more charges which might confuse him in his defense. Non-compliance with this rule is a ground for quashing the duplicitous complaint or information under Rule 117 of the Rules on Criminal Procedure and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived. The accused herein, however, cannot avail of this defense simply because they did not file a motion to quash questioning the validity of the Information during their arraignment. Thus, they are deemed to have waived their right to question the same. Also, where the allegations of the acts imputed to the accused are merely different counts specifying the acts of perpetration of the same crime, as in the instant case, there is no duplicity to speak of. *(People v. Court of Appeals, GR No. 183652, 02/25/2015).*

(6) The remedies for insufficient complaint or information are: (a) Bill of Particular; and (b) Motion to Quash.

(7) An information is an accusation in writing filed by the prosecutor, need not be under oath, but must be signed and subscribed by him. A complaint (private crimes) is an accusation in writing under oath, filed by either an offended party, any peace officer, other public officer charged with enforcement of the law violated.

### 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 whether a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made, and when any evidence the accused might have, would be inapplicable to the complaint or information (People vs. Montenegro, 159 SCRA 236).

(3) Amendment and substitution distinguished:
(a) Amendment may involve either formal or substantial changes; substitution necessarily involves a substantial change from the original charge;
(b) Amendment before plea has been entered can be effected without leave of court; substitution of information must be with leave of court, as the original information has to be dismissed;
(c) Where the amendment is only as to form, there is no need for another preliminary investigation and the retaking of the plea of the accused; in substitution of information, another preliminary investigation is entailed and the accused has to plead anew to the new information; and
(d) An amended information refers to the same offense charged in the original information or to an offense which necessarily includes or is necessarily included in the original charge; hence substantial amendments to the information after the plea has been taken cannot be made over the objection of the accused, for if the original information would be withdrawn, the accused could invoke double jeopardy. Substitution requires or presupposes that the new information involves different offense which does not include or is not necessarily included in the original charge, hence the accused cannot claim double jeopardy (Teehankee vs. Madayag, 207 SCRA 685).
(e) In substitution under the second paragraph of Sec. 14, where the new information charges an offense distinct and different from the one initially charged, due to mistake in charging the proper offense, there is need for a new preliminary investigation and another arraignment (People vs. Jaralba, 226 SCRA 602).

(4) Amendments that do not charge another offense different from that charged in the original one; or do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume are considered merely as formal amendments. (Mendez v. People, GR No. 179962, 06/11/2014).

(5) 2001 Bar: Armando was charged with frustrated homicide. Before he entered his plea and upon the advice of his counsel, he manifested his willingness to admit having committed the offense of serious physical injuries. The prosecution then filed an amended information for serious physical injuries against Armando. What steps or action should the prosecution take so that the amended information against Armando which downgrades the nature of the offense could be validly made? Why? (5%)

Answer: In order that the amended information which downgrades the nature of the offense could be validly made, the prosecution should file a motion to ask for leave of court with notice to the offended party (Rule 110, Sec. 14). The new rule is for the
protection of the interest of the offended party and to prevent possible abuse by the prosecution.

**Venue of criminal actions**

1. Place where action is to be instituted:
   (a) Subject to existing laws, the criminal action shall be instituted and tried in the court of the municipality or territory where the offense was committed or where any of its essential ingredients occurred.
   (b) Where an offense is committed in a train, aircraft, or other public or private vehicle in the course of its trip, the criminal action shall be instituted and tried in the court of any municipality or territory where said train, aircraft or other vehicle passed during its trip, including the place of its departure and arrival.
   (c) Where an offense is committed on board a vessel in the course of its voyage, the criminal action shall be instituted and tried in the court of the first port of entry or of any municipality or territory where the vessel passed during such voyage, subject to the generally accepted principles of international law.
   (d) Crimes committed outside of the Philippines but punishable under Article 2 of the Revised Penal Code shall be cognizable by the court where the criminal action is first filed (Sec. 15).
   (e) Where the statute provides especially for venue where action shall be instituted.

**Intervention of offended party**

1. Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense (Sec. 16).
2. Sec. 16 of Rule 110 of the Revised Rules of Criminal Procedure expressly allows an offended party to intervene by counsel in the prosecution of the offense for the recovery of civil liability where the civil action for the recovery of civil liability arising from the offense charged is instituted with the criminal action. The civil action shall be deemed instituted with the criminal action, except when the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action. In this case, the CA found no such waiver from or reservation made by Chan. The fact that Chan, who was already based abroad, had secured the services of an attorney in the Philippines reveals her willingness and interest to participate in the prosecution of the bigamy case and to recover civil liability from the petitioners. Thus, the RTC should have allowed, and should not have disqualified, Atty. Atencia from intervening in the bigamy case as Chan, being the offended party, is afforded by law the right to participate through counsel in the prosecution of the offense with respect to the civil aspect of the case. (Villalon v. Chan, GR No. 196508, 09/24/2014).

**Prosecution of Civil Action (Rule 111)**

**Rule on implied institution of civil action with criminal action**

1. The general rule is that the institution or filing of the criminal action includes the institution therein of the civil action for recovery of civil liability arising from the offense charged, except in the following cases:
   (a) The offended party waives the civil action;
(b) He reserves his right to institute the civil action separately; or
(c) He institutes the civil action prior to the criminal action.

(2) The exception to the reservation requirement is a claim arising out of a dishonored check under BP 22, where no reservation to file such civil action separately shall be allowed, which means that the filing of the criminal action for violation of BP 22 shall be deemed to include the corresponding civil action and that unless a separate civil action has been filed before the institution of the criminal action, no such civil action can be instituted after the criminal action has been filed as the same has been included therein.

(3) Another instance where no reservation shall be allowed and where a civil action filed prior to the criminal action has to be transferred to the subsequently filed criminal action for joint hearing is a claim arising from an offense which is cognizable by the Sandiganbayan.

(4) 2001 Bar: Saturnino filed a criminal action against Alex for the latter’s bouncing check. On the date of the hearing after its arraignment, Saturnino manifested to the court that he is reserving his right to file a separate civil action. The court allowed Saturnino to file a civil action separately and proceeded to hear the criminal case. Alex filed a motion for reconsideration contending that the civil action is deemed included in the criminal case. The court reconsidered its order and ruled that Saturnino could not file a separate civil action. Is the court’s order granting the motion for reconsideration correct? Why? (5%)

Answer: Yes, the court’s order granting the motion for reconsideration is correct. The rules provide that the criminal action for violation of BP 22 shall be deemed to include the corresponding civil action, and that no reservation to file such civil action separately shall be allowed (Rule 111, Section 1b).

(5) 2002 Bar: Delia sued Victor for personal injuries which she allegedly sustained when she was struck by a car driven by Victor. May the court receive in evidence, over proper and timely objection by Delia, a certified true copy of a judgment of acquittal in a criminal prosecution charging Victor with hit-and-run driving in connection with Delia’s injuries? Why? (3%)

Answer: If the judgment of acquittal in the criminal case finds that the act or omission from which the civil liability may arise does not exist, the court may receive it in evidence over the objection by Delia (Rule 111, section 2).

When civil action may proceed independently

(1) In the cases provided for in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action (Sec. 3).

(2) Civil Code provisions on the matter:

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.
The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.

Art. 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

Art. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.

Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant.

(3) Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. However, even if respondent was acquitted because the prosecution failed to prove his guilt beyond reasonable doubt, his guilt was not proven by preponderance of evidence that would make him liable to civil liability. (Castillo v. Salvador, GR No. 191240, 07/30/2014).

When separate civil action is suspended

(1) After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.
During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled. The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict may be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which civil liability may arise did not exist (Sec. 2).

(2) Effect of criminal action on separate civil action

(a) If criminal action has been commenced earlier - separate civil action cannot be instituted until final judgment has been entered in the criminal action.

(b) If the criminal action is filed after the separate civil action has already been instituted -
   i. Civil action suspended, in whatever stage it may be found before judgment on the merits, until final judgment is rendered in the criminal action.
   ii. Civil action may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action
      1. Evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action.
      2. Without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and the parties to present additional evidence.
   iii. The consolidated criminal and civil actions shall be tried and decided jointly.

(c) During the pendency of the criminal action, the running of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

Effect of the death of accused or convict on civil action

(1) The death of the accused after arraignment and during the pendency of the criminal action shall extinguish the civil liability arising from the delict. However, the independent civil action instituted under section 3 of this Rule or which thereafter is instituted to enforce liability arising from other sources of obligation may be continued against the estate or legal representative of the accused after proper substitution or against said estate, as the case may be. The heirs of the accused may be substituted for the deceased without requiring the appointment of an executor or administrator and the court may appoint a guardian ad litem for the minor heirs. The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice. A final judgment entered in favor of the offended party shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of the deceased.

If the accused dies before arraignment, the case shall be dismissed without prejudice to any civil action the offended party may file against the estate of the deceased (Sec. 4).

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.

(2) It is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability. However, the recovery of civil liability subsists as the same is not based on delict but by contract and the reckless imprudence he was guilty of under Article 365 of the Revised Penal Code. For this reason, a separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based, and in accordance with Section 4, Rule 111 of the Rules on Criminal Procedure. (Cabugao v. People, GR No. 163879, 07/30/2014).

(3) Actions that may not be brought against executor or administrator: (a) claims for recovery of money; and (b) claims for recovery of debt or interest.

Prejudicial Question

(1) A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed in
court for trial, the petition to suspend shall be filed in the same criminal action at any
time before the prosecution rests (Sec. 6).

(2) The elements of a prejudicial question are: (a) the previously instituted civil action
involves an issue similar or intimately related to the issue raised in the subsequent
criminal action, and (b) the resolution of such issue determines whether or not the
criminal action may proceed (Sec. 7).

(3) General Rule: Criminal action takes precedence over civil actions.
Exceptions:
   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 is that which arises in a case the resolution of which is a logical
antecedent of the issues involved in said cases, and the cognizance of which pertains to
another tribunal (Lu Hayco vs. CA, 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 (Nilial vs. Badayog, GR 133778, March 14, 2000).

(8) 2000 Bar: CX is charged with Estafa in court for failure to remit to MM sums of money
collected by him (CX’s) for MM in payment for goods purchased form MM, by depositing
the amounts in his personal bank account. CX files a motion to suspend proceedings
pending resolution of a civil case earlier filed in court by CX against MM for accounting
and damages involving the amounts subject of the criminal case. As the Prosecutor in
the criminal case, briefly discuss your ground in support of your opposition to the motion
to suspend proceedings. (5%)

Answer: As the prosecutor, I will argue that the motion to suspend is not in order for the
following reasons:
   a. The civil case filed by CX against MM for accounting and damages does not involve
an issue similarly or intimately related to the issue of Estafa raised in a criminal
action.
   b. The resolution of the issue in the civil case for accounting will not determine whether
or not the criminal action for Estafa may proceed (Rule 111, Section 5).
Rule on Filing Fees in civil action deemed instituted with the criminal action

(1) When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages. Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon filing thereof in court. Except as otherwise provided in these Rules, no filing fees shall be required for actual damages (Sec. 1).

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).

(5) Agdeppa's assertion that he had been denied due process is misplaced, bearing in mind that the rights to be informed of the charges, to file a comment to the complaint, and to participate in the preliminary investigation, belong to Junia. Clearly, the right to preliminary investigation is a component of the right of the respondent/accused to substantive due process. A complainant cannot insist that a preliminary investigation be held when the complaint was dismissed outright because of palpable lack of merit. It goes against the very nature and purpose of preliminary investigation to still drag the respondent/accused through the rigors of such an investigation so as to aid the complainant in substantiating an accusation/charge that is evidently baseless from the very beginning. (Agdeppa v. Office of the Ombudsman, GR No. 146376, 04/23/2014).
(6) **1999 Bar**: If the information is not accompanied by a certificate that a preliminary investigation has been conducted, is the Information void? (3%)

**Answer**: No, the certification which provided in Sec. 4, Rule 112, is not an indispensable part of the information (*People v. Lapura, 255 SCAR 85*).

(7) **1999 Bar**: A filed with the Office of the Fiscal a Complaint for Estafa against B. after the preliminary investigation, the Fiscal dismissed the complaint for lack of merit. May the Fiscal be compelled by mandamus to file the case in court? Explain. (2%)

**Answer**: No. The public prosecutor may not be compelled by mandamus to file the case in court because the determination of probable cause is within the discretion of the prosecution. The remedy is an appeal to the Secretary of Justice (Rule 112, Sec. 4).

(8) **2003 Bar**: After the requisite proceedings, the Provincial Prosecutor filed an Information for homicide against X. The latter, however, timely filed a Petition for Review of the Resolution of the Provincial Prosecutor with the Secretary of Justice who, in due time, issued a Resolution reversing the resolution of the Provincial Prosecutor and directing him to withdraw the Information.

Before the Provincial Prosecutor could comply with the directive of the Secretary of Justice, the court issued a warrant of arrest against X. The Public Prosecutor filed a Motion to Quash the Warrant of Arrest and to Withdraw the Information, attaching to it the Resolution of the Secretary of Justice. The court denied the motion. Was there a legal basis for the court to deny the motion? (6%)

**Answer**: Yes, there is a legal basis for the court to deny the motion to quash the warrant of arrest and to withdraw the information. The court is not bound by the Resolution of the Secretary of Justice (*Crespo v. Mogul, 151 SCRA 462 [1987]*).

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### 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 charge 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;
   - (c) To determine the amount of bail, if the offense is bailable (*Arula vs. Espino, 28 SCRA 540 [1969]*).

4. The preliminary investigation is not yet a trial on the merits, for its only purpose is to determine whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof. The scope of the investigation does not approximate that of a trial before the court; hence, what is required is only that the evidence be sufficient to establish probable cause that the accused committed the crime charged, not that all reasonable doubt of the guilt of the accused be removed. As the MTC and RTC rightly held, the presentation of the medical certificates to prove the duration of the victims’ need for medical attendance or of their incapacity should take
place only at the trial, not before or during the preliminary investigation. (Enrile v. Manalastas, GR No. 166414, 10/22/2014).

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).

(4) While the determination of probable cause charge a person of a crime is the sole function of the prosecutor, the trial court may, in the prosecution of one's fundamental right to liberty, dismiss the case, if upon a personal assessment of the evidence, it finds that the evidence does not establish probable cause. Hence, while the information filed by the Prosecutor was valid, Judge Umal still had the discretion to make her own finding of whether probable cause existed to order the arrest of the accused and proceed with trial. (Mendoza v. People, GR No. 197293, 04/21/2014).

(5) Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely not on evidence establishing absolute certainty of guilt. It implies probability of guilt and requires more than bare suspicion but less than evidence which would justify conviction. However, Agdeppa’s accusations were mere suspicions that do not support a finding of probable cause to criminally charge Jarlos-Martin, Laurezo, and Junia under Section 3(a), (e), (f), and (j) of Republic Act No. 3019. (Agdeppa v. Office of the Ombudsman, GR No. 146376, 04/23/2014).

(6) A person who induced another to invest his money to a corporation which does not exist or dissolved shall be liable for estafa. And when the said corporation was made to solicit from the public, the offense shall be syndicated estafa. (Hao v. People, GR No. 183345, 09/17/2014).

(7) It must be stressed that in our criminal justice system, the public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and the courts must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor. In this case, there is no question that the Information filed against the respondents was sufficient to hold them liable for the crime of Theft because it was compliant with Section 6, Rule 110 of the Rules of Court. Moreover, a review of the resolutions of the MCTC, the Provincial
Prosecutor, the RTC, and the CA shows that there is substantial basis to support finding of probable cause against the respondents. Hence, as the Information was valid on its face and there was no manifest error or arbitrariness on the part of the MCTC and the Provincial Prosecutor, the RTC and the CA erred when they overturned the finding of probable cause against the respondents. (People v. Yecyec, GR No. 183551, 11/12/2014).

(8) Respondents assailed the Ombudsman’s finding of probable cause and the filing of plunder case against them. People maintains that the preliminary investigation conducted by the Office of the Ombudsman is an executive, not a judicial function. As such, it asserts that respondent Sandiganbayan should have given deference to the finding and determination of probable cause in their preliminary investigation. People is correct. It is well settled that courts do not interfere with the discretion of the Ombudsman to determine the presence or absence of probable cause believing that a crime has been committed and that the accused is probably guilty thereof necessitating the filing of the corresponding information with the appropriate courts. This rule is based not only on respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. (People v. Borje, Jr., GR No. 170046, 12/10/2014).

**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).
(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) **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. If the judge 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*).  

### Inquest

1. Inquest is the informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether or not said persons should remain under custody and correspondingly be charged in court. Such proceedings must terminate within the period prescribed under Art. 125 of the Revised Penal Code.

### Arrest (Rule 113)

1. Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense (*Sec. 1*).
(2) **2004 Bar**: RP and State XX have a subsisting Extradition Treaty. Pursuant thereto RP’s Secretary of Justice (SOJ) filed a Petition for Extradition before the MM Regional Trial Court alleging that Juan Kwan is the subject of an arrest warrant duly issued by the proper criminal court of State XX in connection with criminal case for tax evasion and fraud before his return to RP as a balikbayan. Petitioner prays that Juan be extradited and delivered to proper authorities of State XX for trial, and that to prevent Juan’s flight in the interim, a warrant for his immediate arrest be issued. Before the RTC could act on the petition for extradition, Juan filed before it an urgent motion, in sum praying (1) that SOJ’s application for an arrest warrant be set for hearing and (2) that Juan be allowed to post bail in the event the court would issue an arrest warrant. Should the court grant or deny Juan’s prayer? Reason. (5%)

**Answer**: Under the Extradition Treaty Law, the application of the secretary of Justice for a warrant of arrest need not be set for hearing, and Juan cannot be allowed to post bail if the court would issue a warrant of arrest. The provision in the Rules of Court on arrest and bail are not applicable (*Government of the United States of America v. Puruganan, 389 SCRA 623 [2002]).

### Arrest, how made

1. An arrest is made by an actual restraint of a person to be arrested, or by his submission to the custody of the person making the arrest. No violence or unnecessary force shall 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).

2. Any irregularity attending the arrest of an accused should be timely raised in a motion to quash the Information at any time before arraignment, failing which, he is deemed to have waived his right to question the regularity of his arrest. (*People v. Cunanan, GR No. 198024, 03/16/2015*).

### Arrest without warrant, when lawful

1. A peace officer or a private person may, without a warrant, arrest a person:
   (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
   (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
   (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
   In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112 (Sec. 5).

2. For a warrantless arrest of an accused caught in flagrante delicto under paragraph (a) of the afore-quoted Rule, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. In this case, the arrest of appellant was effected under paragraph (a) or what is termed "in flagrante delicto." For a warrantless arrest of an accused caught in flagrante delicto under paragraph (a) of the afore-quoted Rule, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit
a crime; and (2) such overt act is done in the presence or within the view of the arresting officer. *(People v. Endaya, GR No. 205741, 07/23/2014).*

(4) A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In such an instance, the violator is caught in flagrante delicto and the police officers conducting the operation are not only authorized but duty-bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. Hence, a warrant of arrest is not needed to make a valid buy-bust operation. *(People v. Adriano, GR No. 208169, 10/08/2014).*

(5) The probable cause to justify warrantless arrest ordinarily signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged, or an actual belief or reasonable ground of suspicion, based on actual facts. In light of the discussion above on the developments of Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure and our jurisprudence on the matter, we hold that the following must be present for a valid warrantless arrest: 1) the crime should have been just committed; and 2) the arresting officer's exercise of discretion is limited by the standard of probable cause to be determined from the facts and circumstances within his personal knowledge. The requirement of the existence of probable cause objectifies the reasonableness of the warrantless arrest for purposes of compliance with the Constitutional mandate against unreasonable arrests. Hence, for purposes of resolving the issue on the validity of the warrantless arrest of the present petitioners, the question to be resolved is whether the requirements for a valid warrantless arrest under Section 5(b), Rule 113 of the Revised Rules of Criminal Procedure were complied with, namely: 1) has the crime just been committed when they were arrested? 2) did the arresting officer have personal knowledge of facts and circumstances that the petitioners committed the crime? and 3) based on these facts and circumstances that the arresting officer possessed at the time of the petitioners' arrest, would a reasonably discreet and prudent person believe that the attempted murder of Atty. Generoso was committed by the petitioners? We rule in the affirmative. *(Pastillos v. Generoso and People, GR No. 182601, 11/10/2014).*

(6) A waiver of an illegal arrest, however, is not a waiver of an illegal search. While the accused has already waived his right to contest the legality of his arrest, he is not deemed to have equally waived his right to contest the legality of the search. *(Villanueva v. People, GR No. 199042, 11/17/2014).*

(7) An accused cannot assail any irregularity in the manner of his arrest after arraignment. Objections to a warrant of arrest or the procedure by which the court acquired jurisdiction over the person of the accused must be manifested prior to entering his plea. Otherwise, the objection is deemed waived. *(People v. Araza, GR No. 190623, 11/17/2014).*

(8) **2007 Bar:** On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station is? Explain briefly.

**Answer:** No. Under the Rules on Criminal Procedure, it is the duty of the officer executing the warrant to arrest the accused and to deliver him to the nearest police station or jail without unnecessary delay. This rule equally applies to situations of warrantless arrest *(Rule 113, Sec. 3).*

(b) In the course of serving the search warrant, the police finds an unlicensed firearm. Can the police take the firearm even if it is not covered by the search warrant? If the warrant is subsequently quashed, is the police required to return the firearm? Explain briefly.
Answer: Yes. The police can take the unlicensed firearm even if it was not covered by the search warrant following judicial precedent that prohibited articles may be seized for as long as the search warrant is valid. If the warrant is subsequently quashed, the police are not required to return the firearm because it is unlicensed. It can, in fact, be ordered forfeited by the court. The search warrant does not refer to the unlicensed firearm (People v. Mendi, GR Nos. 112978-81, 02/19/2001).

(9) 2004 Bar: AX swindled RY in the amount of P10,000 sometime in mid-2003. On the strength of the sworn statement given by RY personally to SP01 Juan Ramos sometime in mid-2004, and without securing a warrant, the police officer arrested AX. Forthwith the police officer filed with the City Prosecutor of Manila a complaint for Estafa supported by ZY’s sworn statement and other documentary evidence. After due inquest, the prosecutor filed the requisite information with the MM Regional Trial Court. No preliminary investigation was conducted either before or after the filing of the information and the accused at no time asked for such as investigation. However, before arraignment, the accused moved to quash the information on the ground that the prosecutor suffered from a want of authority to file the information because of his failure to conduct a preliminary investigation before filing the information, as required by the Rules of Court.

Is the warrantless arrest of AX valid? Is he entitled to a preliminary investigation before the filing of the information? Explain. (5%)

Answer: No. The warrantless arrest is not valid because the alleged offense has not just been committed. The crime was allegedly committed one year before the arrest (Rule 113, Sec. 5b).

Yes, he is entitled to a preliminary investigation because he was not lawfully arrested without a warrant (Rule 113, Sec. 7). He can move for reinvestigation.

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).
(1) All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required (*Sec. 13, Art. III, The Constitution*).

(2) Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance (*Sec. 1*).

(3) Bail is the security required by the court and given by the accused to ensure that the accused appear before the proper court at the scheduled time and place to answer the charges brought against him. It is awarded to the accused to honor the presumption of innocence until his guilt is proven beyond reasonable doubt, and to enable him to prepare his defense without being subject to punishment prior to conviction (*Cortes vs. Catral, 279 SCRA 1*). Its main purpose is to relieve an accused from the rigors of imprisonment until his conviction and secure his appearance at the trial (*Paderanga vs. CA, 247 SCRA 741*).

(4) The person seeking provisional release need not wait for a formal complaint or information to be filed against him as it is available to all persons where the offense is bailable, so long as the applicant is in the custody of the law (*Paderanga vs. CA, 247 SCRA 741*).

(5) Kinds of bail:
   (a) Corporate bond — one issued by a corporation licensed to provide bail subscribed jointly by the accused and an officer duly authorized by its board of directors (*Sec. 10*).
   (b) Property bond — an undertaking constituted as a lien on the real property given as security for the amount of the bond (*Sec. 11*).
   (c) Recognizance — an obligation of record entered into usually by the responsible members of the community before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual act being to assure the appearance of the accused for trial (*People vs. Abner, 87 Phil. 566*).
   (d) Cash deposit — the money deposited by the accused or any person acting on his behalf, with the nearest collector of internal revenue, or provincial, city or municipal treasurer. Considered as bail, it may be applied to the payment of any fees and costs, and the excess, if any, shall be returned to the accused or to whoever made the deposit (*Sec. 14*).

(6) **2002 Bar**: If an information was filed in the RTC-Manila charging D with homicide and he was arrested in Quezon City, in what court or courts may he apply for bail? (4%)

**Answer**: D may apply for bail in the RTC-Manila where the information was filed or in the RTC-Quezon City where he was arrested, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein (*Rule 114, Sec. 17*).

(7) **2002 Bar**: D was charged with murder, a capital offense. After arraignment, he applied for bail. The trial court ordered the prosecution to present its evidence in full on the ground that only on the basis of such presentation could it determine whether the evidence of D’s guilt was strong for purposes of bail. Is the ruling correct? Why? (3%)
Answer: No, the prosecution is only required to present as much evidence as is necessary to determine whether the evidence of D's guilt is strong for purposes of bail (Rule 114, Sec. 8).

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 one is charged is punishable by reclusion perpetua. The exception to this rule, however, is even if a person is charged with a capital offense where the evidence of guilt is strong, if the accused has failing health, hence, for humanitarian reasons, he may be admitted to bail, but that is discretionary on the part of the court (De La Ramos vs. People’s Court, 77 Phil. 461; Catiis vs. CA, 487 SCRA 71).

(4) 2006 Bar: When is bail a matter of right and when is it a matter of discretion? (5%) Answer: Bail is a matter of right (a) before or after conviction by the inferior courts; (b) before conviction by the RTC of an offense not punishable by death, reclusion perpetua of life imprisonment, when the evidence of guilt is not strong (Rule 114, Sec. 4). Bail is discretionary: Upon conviction by the RTC of an offense not punishable by death, reclusion perpetua or life imprisonment (Rule 114, Sec. 5).

(5) 2003 Bar: After the requisite proceedings, the Provincial Prosecutor filed an information for homicide against X. The latter, however, timely filed a petition for review of the resolution of the Provincial Prosecutor with the Secretary of Justice (SOJ) who, in due time, issued a resolution reversing the resolution of the provincial prosecutor and directing him to withdraw the information. Before the provincial prosecutor could comply with the directive of the Secretary of Justice, the court issued a warrant of arrest against X. The public prosecutor filed a motion to quash the warrant of arrest and to withdraw the information, attaching to it the resolution of the SOJ. The court denied the motion. If you were the counsel for the accused, what remedies, if any, would you pursue? (6%) Answer: If I were the counsel for the accused, I would surrender the accused and apply for bail because the offense is merely homicide, a non-capital offense. At the pre-trial, I would make a stipulation of facts with the prosecution which would show that no offense was committed.

(6) 2008 Bar: After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22 (BP 22), she filed a for a writ of habeas corpus, citing Vaca v. CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released from detention. In the alternative, she prayed that pending determination of whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec. 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense
not punishable by death, he may be admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of the trial court correct under the Rules of Criminal Procedure? (2%)  

Answer: Under the Rules of Criminal Procedure, Rule 114, Sec. 24 clearly prohibits the grant of bail after conviction by final judgment and after the convict has started to serve sentence. In the present case, Alma had already started serving her sentence. She cannot, therefore, apply for bail. (Peo v. Fitzgerald, GR No. 149723, 10/27/2006).  

When a matter of discretion

(1) Upon conviction by the Regional Trial Court of an offense not punishable by death, 

reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.  

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.  

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:  

(a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;  
(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;  
(c) That he committed the offense while under probation, parole, or under conditional pardon;  
(d) That the circumstances of his case indicate the probability of flight if released on bail; or  
(e) That there is undue risk that he may commit another crime during the pendency of the appeal.  

The appellate court may, motu proprio or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case (Sec. 5, Rule 114).  

(2) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or on appeal (Sec. 17[a]).  

(3) The discretion lies in the determination of whether the evidence of guilt is strong. If it is determined that it is not strong, then bail is a matter of right. There is no more discretion of the court in denying the bail, the moment there is a determination that the evidence of guilt is not strong.  

Hearing of application for bail in capital offenses

(1) A bail application in capital offense does not only involve the right of the accused to temporary liberty, but likewise the right of the State to protect the people and the peace of the community from dangerous elements. Accordingly, the prosecution must be given ample opportunity to show that the evidence of guilt is strong, because, by the very nature of deciding applications for bail, it is on the basis of such evidence that judicial
discretion is exercised in determining whether the evidence of guilt is strong is a matter of judicial discretion. Though not absolute nor beyond control, the discretion within reasonable bounds (People vs. Antona, GR No. 137681, 01/31/2002).

(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, 04/18/1995).

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, 01/28/2003).

**Hold Departure Order & Bureau of Immigration Watchlist**

(1) Supreme Court Cir. No. 39-97 dated June 19, 1997 limits the authority to issue hold departure orders to the RTCs in criminal cases within their exclusive jurisdiction. Consequently, MTC judges have no authority to issue hold-departure orders, following the maxim, express mention implies the exclusion. Neither does he have authority to cancel one which he issued (Huggland vs. Lantin, AM MTJ-98-1153, Feb. 29, 2000).

(2) A 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** *(Rule115)*

**Rights of accused at the trial**

(1) In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.

(b) To be informed of the nature and cause of the accusation against him.

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his bail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without any justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him;

(e) To be exempt from being compelled to be a witness against himself.

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or cannot with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative,
involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

(h) To have speedy, impartial and public trial.

(i) To appeal in all cases allowed and in the manner prescribed by law (Sec. 1).

(2) A dismissal grounded on the denial of the right of the accused to speedy trial has the effect of acquittal that would bar the further prosecution of the accused for the same offense. *(Bonsubre v. Yerro, GR No. 205952, 02/11/2015)*.

(3) Speedy trial is a relative term and necessarily a flexible concept. In determining whether the accused's right to speedy trial was violated, the delay should be considered in view of the entirety of the proceedings. The factors to balance are the following: (a) duration of the delay; (b) reason therefor; (c) assertion of the right or failure to assert it; and (d) prejudice caused by such delay. Surely, mere mathematical reckoning of the time involved would not suffice as the realities of everyday life must be regarded in judicial proceedings which, after all, do not exist in a vacuum, and that particular regard must be given to the facts and circumstances peculiar to each case. While the Court recognizes the accused's right to speedy trial and adheres to a policy of speedy administration of justice, we cannot deprive the State of a reasonable opportunity to fairly prosecute criminals. Unjustified postponements which prolong the trial for an unreasonable length of time are what offend the right of the accused to speedy trial. *(Co v. New Prosperity Plastic Products, GR No. 183994, 06/30/2014)*.

(4) The variance between the allegations in the Information and the evidence offered by the prosecution does not of itself entitle the accused to an acquittal, more so if the variance relates to the designation of offended party, a mere formal defect, which does not prejudice the substantial rights of the accused.

Furthermore, the rule is that if the subject matter of the offense is generic and not identifiable, an error in the designation of the offended party is fatal and would result in the acquittal of the accused. However, if the subject matter of the offense is specific and identifiable, an error in the designation of the offended party is immaterial. Here, the subject matter of the offense is specific and identifiable, i.e., the various pieces of jewelry as enumerated and specified in the Trust Receipt Agreement. Thus, the error in the designation of the offended party is immaterial. Consequently, petitioner has not been denied of her constitutional right to be informed of the nature and cause of the accusation against her and it was proper for the lower courts to convict her as charged *(Senador v. People, GR No. 201620, 06/06/2013)*.

**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 of 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;
   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).

3. **2002 Bar:** D was charged with theft of an article worth P15,000. Upon being arraigned, he pleaded not guilty to the offense charged. Thereafter, before trial commenced, he asked the court to allow him to charge his plea of not guilty to a plea of guilty but only to Estafa involving P5,000. Can the court allow D to charge his plea? Why? (2%)
Answer: No, because a plea of guilty to a lesser offense may be allowed if the lesser offense is necessarily included in the offense charged (Rule 116, Sec. 2). Estafa involving P5,000 is not necessarily included in theft of an article worth P15,000.

Accused 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 lengthy of imprisonment under the law and the certainty that he will serve at the national penitentiary or a penal colony (People vs. Pastor, GR 140208, 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).

(2) Arraignment was suspended pending the resolution of the Motion for Reconsideration before the DOJ. However, the lapse of almost 1 year and 7 months warranted the application of the limitation of the period for suspending arraignment. While the pendency of a petition for review is a ground for suspension of the arraignment, the aforesaid provision limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment. (Aguinaldo v. Ventus, GR No. 176033, 03/112015).

**Motion to Quash (Rule 117)**

(1) A motion to quash is a hypothetical admission of the facts alleged in the information, hence the court in resolving the motion cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information, except those admitted by the prosecution (People vs. Navarro, 75 Phil. 516).

(2) The motion to quash must be filed before the arraignment. Thereafter, no motion to quash can be entertained by the court, the only exceptions being those in Sec. 9 which adopts the omnibus motion rule, subject to said exceptions. Sec. 3 has been amended to separately refer to lack of jurisdiction over the offense, not over the person of the accused since, by filing a motion to quash on other grounds, the accused has submitted himself to the jurisdiction of the court.

(3) It is clearly provided by the Rules of Criminal Procedure that if the motion to quash is based on an alleged defect in the information which can be cured by amendment, the court shall order the amendment to be made. In the present case, the RTC judge outrightly dismissed the cases without giving the prosecution an opportunity to amend the defect in the Informations. Thus, the RTC and the CA, by not giving the State the opportunity to present its evidence in court or to amend the Informations, have effectively curtailed the State’s right to due process. (People v. Andrade, GR No. 187000, 11/24/2014).

(4) 2002 Bar: D was charged with slight physical injuries in MTC. He pleaded not guilty and went to trial. After the prosecution had presented its evidence, the trial court set the continuation of the hearing on another date. On the date scheduled for hearing, the prosecutor failed to appear, whereupon the court, on motion of D, dismissed the case. A few minutes later, the prosecutor arraigned and opposed the dismissal of the case. The court reconsidered its order and directed D to present his evidence. Before the next date of trial came, however, D moved that the last order be set aside on the ground that the reinstatement of the case had placed him twice in double jeopardy. Acceding to this motion, the court again dismissed the case. The prosecutor then filed an information in the RTC, charging D with direct assault based on the same facts alleged in the information for slight physical injuries but with the added allegation that D inflicted the injuries out of resentment for what the complainant had done in the performance of his duties as chairman of the board or election inspectors. D moved to quash the second information on the ground that its filing had placed him in double jeopardy.

a. How would D’s motion to quash be resolved? (4%)

b. In a prosecution for robbery against D, the prosecutor moved for the postponement of the first scheduled hearing on the ground that he had lost his records of the case. The court granted the motion but, when the new date of trial arrived, the prosecutor, alleging that he could not locate his witnesses, moved for the provisional dismissal of the case.
If D’s counsel does not object, may the court grant the motion of the prosecutor? Why? (3%)

c. D was charged with murder, a capital offense. After arraignment, he applied for bail. The trial court ordered the prosecution to present its evidence in full on the ground that only on the basis of such presentation could it determine whether the evidence of D’s guilt was strong for purposes of bail. Is the ruling correct? Why? (3%)

Answers:

a. D’s motion to quash should be granted on the ground of double jeopardy because the first offense charged is necessarily included in the second offense charged (Draculan v. Donato, 140 SCRA 425 [1985])

b. No, because a case cannot be provisionally dismissed except upon the express consent of the accused and with notice to the offended party (Rule 117, Sec. 8).

c. No. The prosecution is only required to present as much evidence as is necessary to determine whether the evidence of D’s guilt is strong for purposes of bail.

5 2005 Bar: Rodolfo is charged with possession of unlicensed firearms in an Information filed in the Regional Trial Court. It was alleged therein that Rodolfo was in possession of two unlicensed firearms: a .45 caliber and a .32 caliber. Under R.A. No. 8294, possession of an unlicensed .45 caliber gun is punishable by prison mayor in its minimum period and a fine of P30,000.00 while possession of an unlicensed .32 caliber gun is punishable by prison correccional in its minimum period a fine of not less than P15,000.00. As counsel of the accused, you intend to file a motion to quash the Information. What ground or grounds should you invoke? Explain. (4%)

Answer: The ground for the motion to quash is that more than one offense is charged in the Information (Sec. 3[f], Rule 117). Likewise, the RTC has no jurisdiction over the second offense of possession of an unlicensed .32 caliber gun, punishable by prison correccional in its minimum period and a fine of not less than P15,000.00. It is the MTC that has exclusive and original jurisdiction over offenses punishable by imprisonment not exceeding six years.

6 2005 Bar: Police operatives of the Western Police District, Philippine National Police, applied for a search warrant in the Regional Trial Court for the search of the house of Juan Santos and the seizure of an undetermined amount of shabu. The team arrived at the house of Santos but failed to find him there. Instead, the team found Roberto Co. The team conducted a search in the house of Santos in the presence of Roberto Co and barangay officials and found ten (10) grams of shabu. Roberto Co was charged in court with illegal possession of ten grams of shabu.

Before his arraignment, Roberto Co filed a motion to quash the search warrant on the following grounds: (a) he was not the accused named in the search warrant; and (b) the warrant does not describe the article to be seized with sufficient particularity. Resolve the motion with reasons. (4%)

Answer: The motion to quash should be denied. The name of the person in the search warrant is not important. It is not even necessary that a particular person be implicated, so long as the search is conducted in the place where the search warrant is served. Moreover, it is sufficient to describe the shabu in an undetermined amount. Notably, what is to be seized is a particular drug and an undetermined amount thereof particularizes the things to be seized (Mantaring v. Roman, 259 SCRA 158 [1996]).

7 2005 Bar: For the multiple stab wounds sustained by the victim, Noel was charged with frustrated homicide in the Regional Trial Court. Upon arraignment, he entered a plea of guilty to said crime. Neither the court nor the prosecution was aware that the victim had died two days earlier on account of his stab wounds.
Because of his guilty plea, Noel was convicted of frustrated homicide and meted the corresponding penalty. When the prosecution learned of the victim's death, it filed within fifteen (15) days therefrom a motion to amend the information to upgrade the charge from frustrated homicide to consummated homicide. Noel opposed the motion claiming that the admission of the amended information would place him in double jeopardy.

Resolve the motion with reasons. (4%)

**Answer:** Amending the information from frustrated homicide to consummated homicide does not place the accused in double jeopardy. The conviction of the accused shall be a bar to another prosecution for an offense of which necessarily includes the offense charged in the former complaint or information when (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge; or (b) the facts constituting the graver offense became known or were discovered only after plea was entered in the former complaint or information (Sec. 7, Rule 117). Here, when the plea to frustrated homicide was made, neither the court nor the prosecution was aware that the victim had died two days earlier on account of stab wounds.

The case falls under (b), since the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information.

(8) 2003 Bar: Before the arraignment for the crime of murder, the private complainant executed an Affidavit of Desistance stating that she was not sure if the accused was the man who killed her husband. The public prosecutor filed a Motion to Quash the Information on the ground that with private complainant's desistance, he did not have evidence sufficient evidence to convict the accused. On 02 January 2001, the court without further proceedings granted the motion and provisionally dismissed the case. The accused gave his express consent to the provisional dismissal of the case. The offended party was notified of the dismissal but she refused to give her consent.

Subsequently, the private complainant urged the public prosecutor to refile the murder charge because the accused failed to pay the consideration which he had promised for the execution of the Affidavit of Desistance. The public prosecutor obliged and refilled the murder charge against the accused on 01 February 2003. The accused filed a Motion to Quash the Information on the ground that the provisional dismissal of the case had already become permanent. Resolve the motion to quash. (4%)

**Answer:** The motion to quash the information should be denied because, while the provisional dismissal had already become permanent, the prescriptive period for filing the murder charge had not prescribed. There was no double jeopardy because the first case was dismissed before the accused had pleaded the charge (Sec. 7, Rule 117).

**Grounds**

1. The accused may move to quash the complaint or information on any of the following grounds:
   (a) That the facts charged do not constitute an offense;
   (b) That the court trying the case has no jurisdiction over the offense charged;
   (c) That the court trying the case has no jurisdiction over the person of the accused;
   (d) That the officer who filed the information had no authority to do so;
   (e) That it does not conform substantially to the prescribed form;
   (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
   (g) That the criminal action or liability has been extinguished;
i. By the death of the convict, as to the personal penalties; as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

ii. By service of the sentence;

iii. By amnesty, which completely extinguishes the penalty and all its effects;

iv. By absolute pardon;

v. By prescription of the crime;

vi. By prescription of the penalty;

vii. By the marriage of the offended woman in

1. Seduction
2. Abduction or
3. Acts of lasciviousness (Art. 344 RPC)

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent (Sec. 3).

(2) Grounds that are not waived even if not alleged:

(a) Failure to charge an offense;

(b) Lack of jurisdiction;

(c) Extinction of criminal action or liability;

(d) Double jeopardy (People vs. Leoparte, 187 SCRA 190).

Distinguish from demurrer to evidence

<table>
<thead>
<tr>
<th>Grounds</th>
<th>Motion to Quash</th>
<th>Demurer to Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 117</td>
<td>Section 23, Rule 119</td>
<td></td>
</tr>
<tr>
<td>When filed</td>
<td>At any time before accused enters plea</td>
<td>After the prosecution rests its case</td>
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<tr>
<td>(1) Insufficiency of evidence</td>
<td>(a) That the facts charged do not constitute an offense;</td>
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<td></td>
<td>(b) That the court trying the case has no jurisdiction over the offense charged;</td>
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<td></td>
<td>(c) That the court trying the case has no jurisdiction over the person of the accused;</td>
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<td></td>
<td>(d) That the officer who filed the information had no authority to do so;</td>
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<td></td>
<td>(e) That it does not conform substantially to the prescribed form;</td>
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<td></td>
<td>(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;</td>
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<td></td>
<td>(g) That the criminal action or liability has been extinguished;</td>
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<td></td>
<td>(h) That it contains averments which, if true, would constitute a legal excuse or justification; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or</td>
<td></td>
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</table>
otherwise terminated without his express consent (Sec. 3).

**Effect if granted**

If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody of another charge (Sec. 5). The remedy of prosecution is to amend the information to correct the defects thereof, except on the grounds of (g) and (j); of the prosecution may appeal the quashal of information or complaint

If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within 10 days from receipt of the motion.

**Effect if denied**

The usual course to take is for the accused to proceed with trial, and in case of conviction, to appeal therefrom and assign as error the denial of the motion to quash (Lalican vs. Vergara, 276 SCRA 518).

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 (De Carlos vs. CA, 312 SCRA 397).

**Remedies if denied**

The order denying the motion to quash is interlocutory and therefore not appealable, nor can it be the subject of a petition for certiorari.

The order denying the motion for leave of court to file demurrer to evidence or to demur itself shall not be reviewable by appeal or certiorari before judgment.

(1) A special civil action may lie against an order of denial of a motion to quash, as an exception to the general rule, in any of the following instances:

(a) Where there is necessity to afford protection to the constitutional rights of the accused;

(b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

(c) Where there is prejudicial question which is sub judice;

(d) When the acts of the officer are without or in excess of authority;

(e) Where the prosecution is under an invalid law, ordinance or regulation;

(f) When double jeopardy is clearly apparent;

(g) Where the court has no jurisdiction over the offense;

(h) Where it is a case of persecution rather than prosecution;

(i) Where the charges are manifestly false and motivated by the lust for vengeance;

(j) When there is clearly no prima facie case against the accused; and

(k) To avoid multiplicity of actions (Brocka vs. Enrile, 192 SCRA 183).
Effects of sustaining the motion to quash

(1) If the motion to quash is sustained, the court may order that another complaint or information be filed except as provided in section 6 of this rule. If the order is made, the accused, if in custody, shall not be discharged unless admitted to bail. If no order is made or if having been made, no new information is filed within the time specified in the order or within such further time as the court may allow for good cause, the accused, if in custody, shall be discharged unless he is also in custody of another charge (Sec. 5).

Exception to the rule that sustaining the motion is not a bar to another prosecution

(1) An order sustaining the motion to quash is not a bar to another prosecution for the same offense unless the motion was based on the grounds specified in Sec. 3(g) and (i) - that the criminal action or liability has been extinguished and that the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged (Sec. 6).

(2) An order denying a motion to quash is interlocutory and not appealable (People vs. Macandog, L-18601, 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).

(3) When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

However, the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:
   (a) the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;
   (b) the facts constituting the graver charge became known or were discovered only after a plea was entered in the former complaint or information; or
   (c) the plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in section 1(f) of Rule 116.
In any of the foregoing cases, where the accused satisfies or serves in whole or in part the judgment, he shall be credited with the same in the event of conviction for the graver offense (Sec. 7).

(4) Double jeopardy shall not attach when the court that declared the revival of the case has no jurisdiction to the same. When the court does not have jurisdiction over the case, all subsequent issuances or decisions of the said court related to the pending case shall be null and void. (Quiambao v. People, GR No. 185267, 09/17/2014).

### 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. Lacosana, 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, 5th Ed.).

### Matters to be considered during pre-trial

(1) In all criminal cases cognizable by the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court and Municipal Circuit Trial Court, the court shall, after arraignment and within thirty (30) days
from the date the court acquires jurisdiction over the person of the accused, unless a shorter period is provided for in special laws or circulars of the Supreme Court, order a pre-trial conference to consider the following:
(a) plea bargaining;
(b) stipulation of facts;
(c) marking for identification of evidence of the parties;
(d) waiver of objections to admissibility of evidence;
(e) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and
(f) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case (Sec. 1).

What the court should do when prosecution and offended party agree to the plea offered by the accused

(1) The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court (Sec. 2).

Pre-trial agreement

(1) All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The agreements covering the matters referred to in section 1 of this Rule shall be approved by the court (Sec. 2).

(2) **2004 Bar:** Mayor TM was charged of malversation through falsification of official documents. Assisted by Atty. OP as counsel de parte during pre-trial, he signed together with Ombudsman Prosecutor TG a “Joint Stipulation of Facts and Documents” which was presented to the Sandiganbayan. Before the court could issue a pre-trial order but after some delay caused by Atty. OP, he was substituted by Atty. QR as a defense counsel. Atty. QR forthwith filed a motion to withdraw the “Joint Stipulation” alleging that it is prejudicial to the accused because it contains, inter alia, the statement that the “Defense admitted all the documentary evidence of the Prosecution,” thus leaving the accused little or no room to defend himself, and violating his right against self-incrimination.

Should the court grant or deny QR’s motion? Reason. (5%)

**Answer:** The court should deny QR’s motion. If in the pre-trial agreement signed by the accused and his counsel, the accused admits the documentary evidence of the prosecution, it does not violate his right against self-incrimination. His lawyer cannot file a motion to withdraw. A pre-trial order is not needed. The admission of such documentary evidence is allowed by the rules (Sec. 2, Rule 118; Bayas v. Sandiganbayan, 392 SCRA 415 [2002]).

Non-appearance during pre-trial

(1) If the counsel for the accused or the prosecutor does not appear at the pre-trial conference and does not offer an acceptable excuse for his lack of cooperation, the court may impose proper sanctions or penalties (Sec. 3).

(2) The rule is intended to discourage dilatory moves or strategies as these would run counter to the purposes of pre-trial in criminal cases, more specifically those intended to protect the right of the accused to fair and speedy trial.
Pre-trial order

(1) After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice (Sec. 4).

Referral of some cases for Court Annexed and Mediation and Judicial Dispute Resolution (AM 11-1-6-SC-PHILJA)

Concept of court diversion of pending cases

(1) The diversion of pending court cases both to Court-Annexed Mediation (CAM) and to Judicial Dispute Resolution (JDR) is plainly intended to put an end to pending litigation through a compromise agreement of the parties and thereby help solve the ever-pressing problem of court docket congestion. It is also intended to empower the parties to resolve their own disputes and give practical effect to the State Policy expressly stated in the ADR Act of 2004 (R.A. No. 9285), to wit:

“to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangement to resolve disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and de-clog court dockets.”

(2) The following cases shall be 1) referred to Court-Annexed Mediation (CAM) and 2) be the subject of Judicial Dispute Resolution (JDR) proceedings:

(1) All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except those which by law may not be compromised;
(2) Special proceedings for the settlement of estates;
(3) All civil and criminal cases filed with a certificate to file action issued by the Punong Barangay or the Pangkat ng Tagapagkasundo under the Revised Katarungang Pambarangay Law (Chapter 7, RA 7160);
(4) The civil aspect of Quasi-Offenses under Title 14 of the Revised Penal Code;
(5) The civil aspect of less grave felonies punishable by correctional penalties not exceeding 6 years imprisonment, where the offended party is a private person;
(6) The civil aspect of estafa, theft and libel;
(7) All civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (1) of the Judiciary Reorganization Act of 1980 (A.M. No. 08-9-10-SC-PHILJA);
(8) All cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par. (2) of the Judiciary Reorganization Act of 1980;
(9) All civil cases involving title to or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts under Section 33, par.(3) of the Judiciary Reorganization Act of 1980; and
(10) All habeas corpus cases decided by the first level courts in the absence of the Regional Trial Court judge, that are brought up on appeal from the special jurisdiction granted to the first level courts under Section 35 of the Judiciary Reorganization Act of 1980.
(3) The following cases shall not be referred to CAM and JDR:
1. Civil cases which by law cannot be compromised (Article 2035, New Civil Code);
2. Other criminal cases not covered under paragraphs 3 to 6 above;
3. Habeas Corpus petitions;
4. All cases under Republic Act No. 9262 (Violence against Women and Children); and
5. Cases with pending application for Restraining Orders/Preliminary Injunctions.

(4) However, in cases covered under 1, 4 and 5 where the parties inform the court that they have agreed to undergo mediation on some aspects thereof, e.g., custody of minor children, separation of property, or support pendente lite, the court shall refer them to mediation.

Procedure:
Judicial proceedings shall be divided into two stages:
(1) From the filing of a complaint to the conduct of CAM and JDR during the pre-trial stage, and
(2) pre-trial proper to trial and judgment. The judge to whom the case has been originally raffled, who shall be called the JDR Judge, shall preside over the first stage. The judge, who shall be called the trial judge, shall preside over the second stage.

At the initial stage of the pre-trial conference, the JDR judge briefs the parties and counsels of the CAM and JDR processes. Thereafter, he issues an Order of Referral of the case to CAM and directs the parties and their counsels to proceed to the PMCU bringing with them a copy of the Order of Referral. The JDR judge shall include in said Order, or in another Order, the pre-setting of the case for JDR not earlier than forty-five (45) days from the time the parties first personally appear at the PMCU so that JDR will be conducted immediately if the parties do not settle at CAM.

All incidents or motions filed during the first stage shall be dealt with by the JDR judge. If JDR is not conducted because of the failure of the parties to appear, the JDR judge may impose the appropriate sanctions and shall continue with the proceedings of the case.

If the parties do not settle their dispute at CAM, the parties and their counsels shall appear at the preset date before the JDR judge, who will then conduct the JDR process as mediator, neutral evaluator and/or conciliator in order to actively assist and facilitate negotiations among the parties for them to settle their dispute. As mediator and conciliator, the judge facilitates the settlement discussions between the parties and tries to reconcile their differences. As a neutral evaluator, the judge assesses the relative strengths and weaknesses of each party's case and makes a non-binding and impartial evaluation of the chances of each party's success in the case. On the basis of such neutral evaluation, the judge persuades the parties to a fair and mutually acceptable settlement of their dispute.

The JDR judge shall not preside over the trial of the case when the parties did not settle their dispute at JDR.

CRIMINAL CASES:
If settlement is reached on the civil aspect of the criminal case, the parties, assisted by their respective counsels, shall draft the compromise agreement which shall be submitted to the court for appropriate action.

Action on the criminal aspect of the case will be determined by the Public Prosecutor, subject to the appropriate action of the court.

If settlement is not reached by the parties on the civil aspect of the criminal case, the JDR judge shall proceed to conduct the trial on the merits of the case should the parties file a joint written motion for him to do so, despite confidential information that may have been divulged during the JDR proceedings. Otherwise, the JDR Judge shall turn over
the case to a new judge by re-raffle in multiple sala courts or to the originating court in single sala courts, for the conduct of pretrial proper and trial.

Pre-trial Proper:
Where no settlement or only a partial settlement was reached, and there being no joint written motion submitted by the parties, as stated in the last preceding paragraphs, the JDR judge shall turn over the case to the trial judge, determined by re-raffle in multiple sala courts or to the originating court in single sala courts, as the case may be, to conduct pre-trial proper, as mandated by Rules 18 and 118 of the Rules of Court.

<table>
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<tr>
<th>Trial (Rule 119)</th>
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<tr>
<td>(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).</td>
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**Instances when presence of accused is required by law**

<table>
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<tr>
<th>(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:</th>
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<tr>
<td>(a) On arraignment;</td>
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<tr>
<td>(b) On promulgation of judgment except for light offenses;</td>
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<td>(c) For identification purposes;</td>
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<td>(d) When the court with due notice requires so (Marcos vs. Ruiz, Sept. 1, 1992).</td>
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**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**

<table>
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<tr>
<th>(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:</th>
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<tr>
<td>(a) The accused has been arraigned;</td>
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<td>(b) He has been duly notified of the trial; and</td>
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<tr>
<td>(c) His failure to appear is justified (People vs. Agbulos, 222 SCRA 196).</td>
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</tbody>
</table>
(2) The waiver of the accused of appearance or trial *in absentia* does not mean that the prosecution is thereby deprived of its right to require the presence of the accused for purposes of identification by the witnesses which is vital for conviction of the accused, except where he unqualifiedly admits in open court after his arraignment that he is the person named as defendant in the case on trial. Such waiver does not mean a release of the accused from his obligation under the bond to appear in court whenever required. The accused may waive his right but he cannot disregard his duty or obligation to the court. He can still be subpoenaed to appear for identification purposes, without violating his right against self-incrimination as he will not take the stand to testify but merely to be present in court, where the prosecution witness may, while in the witness stand, point to him as the accused *(Carredo vs. People, 183 SCRA 273)*.

**Remedy when accused is not brought to trial within the prescribed period**

(1) If the accused is not brought to trial within the time limit required by Section 1(g), Rule 116 and Section 1, as extended by Section 6 of this rule, the information may be dismissed on motion of the accused on the ground of denial of his right to speedy trial. The accused shall have the burden of proving the motion but the prosecution shall have the burden of going forward with the evidence to establish the exclusion of time under section 3 of this rule. The dismissal shall be subject to the rules on double jeopardy. Failure of the accused to move for dismissal prior to trial shall constitute a waiver of the right to dismiss under this section *(Sec. 9)*.

(2) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period *(Sec. 1[g], Rule 116)*.

**Requisites for discharge of accused to become a state witness**

(1) When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence *(Sec. 17)*.

(2) Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the program (to be a state witness) whenever the following circumstances are present:
(a) The offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
(b) There is absolute necessity for his testimony;
(c) There is no other direct evidence available for the proper prosecution of the offense committed;
(d) His testimony can be substantially corroborated on its material points;
(e) He does not appear to be most guilty; and
(f) He has not at any time been convicted of any crime involving moral turpitude (Sec. 10, RA 6981, the Witness Protection Law).

(3) 2006 Bar: As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take?
Answer: As counsel of an accused charged with homicide, I would ask the prosecutor to recommend that the accused be made a state witness. It is the prosecutor who must recommend and move for the acceptance of the accused as a state witness. The accused may also apply under the Witness Protection Program.

Effects of Discharge of accused as state witness

(1) The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless:
(a) The accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for his discharge (Sec. 18);
(b) If he was granted immunity and fails to keep his part of the agreement, his confession of his participation in the commission of the offense is admissible in evidence against him (People vs. Berberino, 79 SCRA 694).

(2) The court shall order the discharge and exclusion of the said accused from the information. Admission into such Program shall entitle such State Witness to immunity from criminal prosecution for the offense or offenses in which his testimony will be given or used (Sec. 12, RA 6981).

(3) When an accused did not have any direct participation with the killing of the victim, he may be discharged as a state witness. The basis of the phrase “not most guilty” is the participation of the person in the commission of the crime and not the penalty imposed such that a person with direct participation shall be considered as the most guilty. (Jimenez, jr. v. People, GR No. 09/17/2014).

Demurrer to Evidence (Rule 118, Section 23)

(1) After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.
If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)
The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
If leave of court is granted, the accused shall file the demurrer to evidence within a non-
extendible period of ten (10) days from notice. The prosecution may oppose the
demurrer to evidence within a similar period from its receipt.

The order denying the motion for leave of court to file demurrer to evidence or the
demurrer itself shall not be reviewable by appeal or by certiorari before judgment (Sec. 23).

(2) The power of courts to grant demurrer in criminal cases should be exercised with great
care, because not only the rights of the accused - but those of the offended party and
the public interest as well - are involved. Once granted, the accused is acquitted and the
offended party may be left with no recourse. Thus, in the resolution of demurrers,
judges must act with utmost circumspection and must engage in intelligent deliberation
and reflection, drawing on their experience, the law and jurisprudence, and delicately
evaluating the evidence on hand. (People v. Go, GR No. 191015, 08/06/2014).

(3) 2004 Bar: AX, a Makati-bound paying passenger of PBU, a public utility bus, died on
board the bus on account of the fatal head wounds he sustained as a result of the
strong impact of the collision between the bus and a dump truck that happened while
the bus was still travelling on EDSA towards Makati. The foregoing facts, among
others, were duly established on evidence-in-chief by the plaintiff TY, sole heir of AX, in
TY’s action against the subject common carrier for breach of contract of carriage. After
TY had rested his case, the common carrier filed a demurrer to evidence, contending
that plaintiff’s evidence is insufficient because it did not show (1) that defendant was
negligent and (2) that such negligence was the proximate cause of the collision.

Should the court grant or deny defendant’s demurrer to evidence? Reason briefly. (5%)

Answer: No. The court should not grant defendant’s demurrer to evidence because the
case is for breach of contract of carriage. Proof that the defendant was negligent and
that such negligence was the proximate cause of the collision is not required (Articles
1170 and 2201, Civil Code; Batangas Transportation Co. v. Caguimbal, 22 SCRA 171
[1968]; Aboitiz v. Court of Appeals, 129 SCRA 95 [1984]).

(4) 2003 Bar: Compare the effects of a denial of demurrer to evidence in a civil case with
those of a denial of demurrer to evidence in a criminal case. (4%)

Answer: In a civil case, the defendant has the right to file a demurrer to evidence
without leave of court. If his demurrer is denied, he has the right to present evidence. If
his demurrer is granted and on appeal by the plaintiff, the appellate court reverses the
order and renders judgment for the plaintiff, the defendant loses his right to present
evidence (Rule 33).

In a criminal case, the accused has to obtain leave of court to file a demurrer to
evidence. If he obtains leave of court and his demurrer to evidence is denied, he has
the right to present evidence in his defense. If his demurrer to evidence is granted, he
is acquitted and the prosecution cannot appeal.

If the accused does not obtain leave of court and his demurrer to evidence is denied, he
waives his right to present evidence and the case is decided on the basis of the
evidence for the prosecution.

The court may also dismiss the action on the ground of insufficiency of evidence on its
own initiative after giving the prosecution the opportunity to be heard (Sec. 23, Rule
119).

(5) 2004 Bar: AX was charged before the YY Regional Trial Court with theft of jewelry
valued at P20,000, punishable with imprisonment of up to 10 years of prision mayor
under the Revised Penal Code. After trial, he was convicted of the offense charged, not
withstanding that the material facts duly established during the trial showed that the
offense committed was estafa, punishable by imprisonment of up to 8 years of prision
mayor under the said Code. No appeal having been taken therefrom, said judgment of conviction became final.

Is the judgment of conviction valid? Is said judgment reviewable thru a special civil action for certiorari? Reason. (5%)

**Answer:** Yes, the judgment of conviction for theft upon and information for theft is valid because the court had jurisdiction to render judgment. However, the judgment was grossly and blatantly erroneous. The variance between the evidence and the judgment of conviction is substantial since the evidence is one for estafa while the judgment is one for theft. The elements of the two crimes are not the same. One offense does not necessarily include or is included in the other (sec. 5, Rule 120; Lauro Santos v. People, 181 SCRA 487).

The judgment of conviction is reviewable by certiorari even if no appeal had been taken, because the judge committed grave abuse of discretion tantamount to lack or excess of his jurisdiction in convicting the accused of theft and in violating due process and his right to be informed of the nature of the accusation against him, which make the judgment void. With the mistake in charging the proper offense, the judge should have directed the filing of the proper information and thereafter dismissed the original information (Sec. 19, Rule 119).

(6) **2003 Bar:** In an action for violation of Batas Pambansa Blg. 22, the court granted the accused’s demurrer to evidence which he filed without leave of court. Although he was acquitted of the crime charged, he however was required by the court to pay the private complainant the face value of the check. The accused filed a Motion for Reconsideration regarding the order to pay the face value of the check on the following ground: The demurrer to evidence applied only to the criminal aspect of the case. Resolve the motion for reconsideration. (6%)

**Answer:** The Motion for Reconsideration should be denied. The ground that the demurrer to evidence applied only to the criminal aspect of the case was not correct because the criminal action for violation of BP 22 included the corresponding civil action (Sec. 1[b], Rule 111).

(7) **2004 Bar:** The information for the illegal possession of firearm filed against the accused specifically alleged that he had no license or permit to possess the caliber .45 pistol mentioned therein. In its evidence-in-chief, the prosecution established the fact the subject firearm was lawfully seized by the police from the possession of the accused, that is, while the pistol was tucked at his waist in plain view, without the accused being able to present any license or permit to possess the firearm. The prosecution of such evidence rested his case and within the period of five days therefrom, the accused filed a demurrer to evidence, in sum contending that the prosecution evidence has not established the guilt of the accused beyond reasonable doubt, and so prayed that he be acquitted of the offense charged.

The trial court denied the demurrer to evidence and deemed the accused as having waived his right to present evidence and submitted the case for judgment on the basis of the prosecution evidence. In due time, the court rendered judgment finding the accused guilty of the offense charged beyond reasonable doubt and accordingly imposing on him the penalty described therefor.

Is the judgment of the trial court valid and proper? Reason. (5%)

**Answer:** Yes, the judgment of the trial court is valid. The accused did not ask for leave to file the demurrer to evidence. He is deemed to have waived his right to present evidence (Sec. 23, Rule 119). However, the judgment is not proper or is erroneous because there was no showing from the proper office like the Firearms and Explosive Unit of the Philippine National Police that the accused has a permit to own or possess the firearm, which is fatal to the conviction of the accused (People v. Flores, 269 SCRA 62 [1997]).
(8) **2007 Bar**: Distinguish the effect of filing of a demurrer to evidence in a criminal case and its filing in a civil case. *(5%)*

(9) **2007 Bar**: What is reverse trial and when may it be resorted to? Explain briefly. *(5%)*  
   **Answer**: A reverse trial is a trial where the accused presents his evidence first before the prosecution submits its evidence. It may be resorted to when the accused admits the act or omission charged in the complaint or information but interposes a lawful or affirmative defense (*Sec. 11(e), Rule 119*). In civil cases, reverse trial may be resorted to by agreement of the parties or when the defendant sets up an affirmative defense.

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**Judgment (Rule 120)**

(1) **Judgment** means the adjudication by the court that the accused is guilty or is not guilty of the offense charged, and the imposition of the proper penalty and civil liability provided for by law on the accused (*Sec. 1*).

(2) **Memorandum decision** is one in which the appellate court may adopt by reference, the findings of facts and conclusions of law contained in the decision appealed from (*Sec. 24, Interim Rules and Guidelines*).

(3) **2003 Bar**: When a criminal case is dismissed on *nolle prosequi*, can it later be refilled? *(4%)*  
   **Answer**: As a general rule, when a criminal case is dismissed on *nolle prosequi* before the accused is placed on trial and before he is called on to plead, this is not equivalent to an acquittal and does not bar a subsequent prosecution for the same offense (*Galves v. Court of Appeals, 237 SCRA 686 [1994]*).

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**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*).

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**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 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.

(3) Section 6, Rule 120, of the Rules of Court provides that it is incumbent upon the accused to appear on the scheduled date of promulgation, because it determines the availability of their possible remedies against the judgment of conviction. When the accused fail to present themselves at the promulgation of the judgment of conviction, they lose the remedies of filing a motion for a new trial or reconsideration (Rule 121) and an appeal from the judgment of conviction (Rule 122). It is among the rules of procedure which the Supreme Court is competent to adopt pursuant to its rule-making power under Article VIII, Section 5(5) of the Constitution. As such, said rules do not take away, repeal or alter the right to file a motion for reconsideration as said right still exists. The Supreme Court merely laid down the rules on promulgation of a judgment of conviction done in absentia in cases when the accused fails to surrender and explain his absence within 15 days from promulgation. Clearly, the said provision does not take away substantive rights; it merely provides the manner through which an existing right may be implemented. Hence, it does not take away per se the right of the convicted accused to avail of the remedies under the Rules. It is the failure of the accused to appear without justifiable cause on the scheduled date of promulgation of the judgment of conviction that forfeits their right to avail themselves of the remedies against the judgment. Moreover, it also provides the remedy by which the accused who were absent during the promulgation may reverse the forfeiture of the remedies available to them against the judgment of conviction. (Jaylo v. Sandiganbayan First Division, GR Nos. 183152-54, 01/21/2015).

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)**

<table>
<thead>
<tr>
<th>MNT or MR in Criminal Cases (R121)</th>
<th>MNT or MR in Civil Cases (R37)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Either on motion of accused, or the court motu proprio with consent of the accused</td>
<td>Must be upon motion of a party, can't be motu proprio</td>
</tr>
<tr>
<td>Grounds for MNT: Errors of law or irregularities prejudicial to the substantial rights of the accused committed during the trial, or newly discovered evidence</td>
<td>Grounds for MNT: Extrinsic fraud, accident, mistake of fact, or excusable negligence which ordinary prudence could not have guarded against; or newly discovered evidence</td>
</tr>
<tr>
<td>Ground for MR: error of law or of fact</td>
<td>Grounds for MR: Excessive damages, insufficient evidence, or decision is contrary to law</td>
</tr>
<tr>
<td>Filed any time before judgment of conviction becomes final</td>
<td>Filed within the period for taking an appeal</td>
</tr>
<tr>
<td>When granted, the original judgment is always set aside or vacated and a new judgment rendered</td>
<td>There may be partial grant</td>
</tr>
</tbody>
</table>

**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).

2. Rule 121 of the Rules of court allows the conduct of a new trial before a judgment of conviction becomes final when new and material evidence has been discovered which
the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

In this case, although the documents offered by petitioners are strictly not newly discovered, it appeared to the Supreme Court that petitioners were mistaken in their belief that its production during trial was unnecessary. In their Supplemental Motion and/or Motion for New Trial, they stressed that they no longer presented the evidence of payment of RATA because Balabaran testified that the subject of the charge was the nonpayment of benefits under the 1999 budget, without mention of the RATA nor the 1998 reenacted budget. It seems that they were misled during trial. They were precluded from presenting pieces of evidence was confined to alleged nonpayment of rata under the 1999 budget. Under the foregoing circumstances, the Court was thus inclined to give a more lenient interpretation of Rule 121, Sec. 2 on new trial in view of the special circumstances sufficient to cast doubt as to the truth of the charges against petitioners. The situation of the petitioners is peculiar, since they were precluded from presenting exculpatory evidence during trial upon the honest belief that they were being tried for nonpayment of RATA under the 1999 budget. This belief was based on no less than the testimony of the prosecution's lone witness, COA Auditor Balabaran.

Hence, petitioners should be allowed to prove the authenticity of the vouchers they submitted and other documents that may absolve them (Estino v. People, GR No. 163957-58, 04/07/2009).

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.

**Effect of an Appeal**

(1) Upon perfection of the appeal, the execution of the judgment or order appealed from is stayed as to the appealing party (Sec. 11[c]). The civil appeal of the offended party does not affect the criminal aspect of the judgment or order appealed from.

(2) Upon perfection of the appeal, the trial court loses jurisdiction over the case (Syquia vs. Concepcion, 60 Phil. 186), except:
   (a) To issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal;
   (b) To approve compromises offered by the parties prior to the transmission of the records on appeal to the appellate court (Sec. 9, Rule 41).

(3) An appeal in a criminal case opens the entire case for review on any question including one not raised by the parties, and the accused waives the constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render such judgment as law and justice dictate. Thus, when petitioners appealed the trial court's judgment of conviction for Less Serious Physical Injuries, they are deemed to have abandoned their right to invoke the prohibition on double jeopardy since it becomes the duty of the appellate court to correct errors as may be found in the assailed judgment. Petitioners could not have been placed twice in jeopardy when the CA set aside the ruling of the RTC by finding them guilty of Violation of Domicile as charged in the Information instead of Less Serious Physical Injuries. (Geroche v. People, GR No. 179080, 11/26/2014).

(4) The Regional Trial Court (RTC) dismissed the appeal by the accused on the ground of his failure to submit his memorandum on appeal. The failure to file the memorandum on appeal is a ground for the RTC to dismiss the appeal only in civil cases. The same rule does not apply in criminal cases, because Section 9(c), supra, imposes on the RTC the duty to decide the appeal "on the basis of the entire record of the case and of such memoranda or briefs as may have been filed" upon the submission of the appellate memoranda or briefs, or upon the expiration of the period to file the same. (Sanico v. People, GR No. 198753, 03/25/2015).

**Where to appeal**

(1) The appeal may be taken as follows:
   (a) To the Regional Trial Court, in cases decided by the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court;
   (b) To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and
   (c) To the Supreme Court, in cases decided by the Court of Appeals (Sec. 2).
### How appeal 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 possessions (Villanueva vs. Querubin, 48 SCRA 345). The overriding function of the constitutional guarantee is to protect personal privacy and human dignity against unwarranted intrusion by the State. It is deference to one’s personality that lies at the core of his right, but it could also be looked upon as a recognition of a constitutionally protected area primarily one’s house, but not necessarily thereto confined. What is sought to be guarded is a man’s
prerogative to choose who is allowed entry to his residence. In that haven of refuge, his individuality can assert itself not only in the choice of who shall be welcome but likewise in the kind of objects he wants around him. Thus is outlawed any unwarranted intrusion by government, which is called upon to refrain from any intrusion of his dwelling and to respect the privacies of his life (Schmerber vs. California, 384 US 757).

(2) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized (Sec. 2, Art. III, Constitution).

(3) An application for a search warrant is a "special criminal process," rather than a criminal action. Proceedings for applications of search warrants are not criminal in nature and thus, the rule that venue is jurisdictional does not apply thereto. Evidently, the issue of whether the application should have been filed in RTC-Iriga City or RTC-Naga, is not one involving jurisdiction because, the power to issue a special criminal process is inherent in all courts. (Pilipinas Shell Petroleum Corp. v. Romars International Gases Corp., GR No. 189669, 02/16/2015).

(4) Section 12, Chapter V of A.M. No. 03-8-02-SC allows the Manila and Quezon City RTCs to issue warrants to be served in places outside their territorial jurisdiction for as long as the parameters under the said section have been complied with, as in this case. As in ordinary search warrant applications, they "shall particularly describe therein the places to be searched and/or the property or things to be seized as prescribed in the Rules of Court." "The Executive Judges of these RTCs and, whenever they are on official leave of absence or are not physically present in the station, the Vice-Executive Judges" are authorized to act on such applications and "shall issue the warrants, if justified, which may be served in places outside the territorial jurisdiction of the said courts." The Court observes that all the above-stated requirements were complied with in this case. As the records would show, the search warrant application was filed before the Manila-RTC by the PNP and was endorsed by its head, PNP Chief Jesus Ame Versosa, particularly describing the place to be searched and the things to be seized in connection with the heinous crime of Murder. Finding probable cause therefor, Judge Peralta, in his capacity as 2nd Vice-Executive Judge, issued Search Warrant which, as the rules state, may be served in places outside the territorial jurisdiction of the said RTC. (Laud v. People, GR No. 199032, 11/19/2014, En Banc).

Distinguish from warrant of arrest

<table>
<thead>
<tr>
<th>Search Warrant (Rule 126)</th>
<th>Warrant of Arrest (Rule 113)</th>
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</thead>
<tbody>
<tr>
<td>A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court (Sec. 1, Rule 126).</td>
<td>Arrest is the taking of a person into custody in order that he may be bound to answer for the commission of an offense (Sec. 1, Rule 113).</td>
</tr>
<tr>
<td><strong>Requisites:</strong></td>
<td><strong>Requisites for arrest warrant issued by RTC judge under Sec. 5, Rule 112:</strong></td>
</tr>
</tbody>
</table>
| 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 | (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. |
the place to be searched and the things to be seized which may be anywhere in the Philippines (Sec. 4, Rule 126).

(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

<table>
<thead>
<tr>
<th>Search or seizure without warrant, when lawful:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Consented search;</td>
</tr>
<tr>
<td>(b) As an incident to a lawful arrest;</td>
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<tr>
<td>(c) Searches of vessels and aircrafts for violation of immigration, customs and drug laws;</td>
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<tr>
<td>(d) Searches of moving vehicles;</td>
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<tr>
<td>(e) Searches of automobiles at borders or constructive borders;</td>
</tr>
<tr>
<td>(f) Where the prohibited articles are in plain view;</td>
</tr>
<tr>
<td>(g) Searches of buildings and premises to enforce fire, sanitary and building regulations;</td>
</tr>
<tr>
<td>(h) “Stop and frisk” operations;</td>
</tr>
<tr>
<td>(i) Exigent and emergency circumstances (in times of war and within the area of military operation)</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Arrest without warrant, when lawful:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;</td>
</tr>
<tr>
<td>(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</td>
</tr>
<tr>
<td>(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 (Sec. 5, Rule 113).</td>
</tr>
</tbody>
</table>

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 (20th 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).

(4) Section 4, Rule 126 of the Rules of court states that a search warrant shall not be issued except upon probable cause in connection with one specific offense. Probable cause for a search warrant is defined as such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with offense are in the place sought to be searched. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused (Laud v. People, GR No. 199032, 11/19/2014, En Banc).

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. Salanguit, 356 SCRA 683).

Personal property to be seized

(1) Personal property to be seized. - A search warrant may be issued for the search and seizure of personal property:
(a) Subject of the offense;
(b) Stolen or embezzled and other proceeds, or fruits of the offense; or
(c) Used or intended to be used as the means of committing an offense (Sec. 3).
(2) It is not necessary that the property to be searched or seized should be owned by the person against whom the search is issued; it is sufficient that the property is under his control or possession (People vs. Dichoso, 223 SCRA 174).

(3) **2003 Bar:** In a buy-bust operation, the police operatives arrested the accused and seized from him a sachet of shabu and an unlicensed firearm. The accused was charged in two informations, one for violation of the Dangerous Drugs Act, as amended, and another for illegal possession of firearms.

The accused filed an action for recovery of the firearm in another court against the police officers with an application for the issuance of a writ of replevin. He alleged in his Complaint that he was a military informer who had been issued a written authority to carry said firearm. The police officers moved to dismiss the complaint on the ground that the subject firearm was in *custodia legis*. The court denied the motion and instead issued the writ of replevin.

(a) Was seizure of the firearm valid?
(b) Was the denial of the motion to dismiss proper?

**Answer:**
(a) Yes, the seizure of the firearm was valid because it was seized in the course of a valid arrest in a buy-bust operation (Sec. 12 and 13, Rule 126). A search warrant was not necessary.
(b) The denial of the motion to dismiss was not proper. The court had no authority to issue the writ of replevin whether the firearm was in *custodia legis* or not. The motion to recover the firearm should be filed with the court where the action is pending.

### Exceptions to search warrant requirement

(1) In a case (People vs. Abriol, 367 SCRA 327), the Court added other exceptions to the prohibition against warrantless search, thus:

- (a) Consented search;
- (b) As an incident to a lawful arrest;
- (c) Searches of vessels and aircrafts for violation of immigration, customs and drug laws;
- (d) Searches of moving vehicles;
- (e) Searches of automobiles at borders or constructive borders;
- (f) Where the prohibited articles are in plain view;
- (g) Searches of buildings and premises to enforce fire, sanitary and building regulations;
- (h) “Stop and frisk” operations;
- (i) Exigent and emergency circumstances (People vs. Valez, 304 SCRA 140).

### 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).

It is important to note that the presumption that official duty has been regularly performed, and the corresponding testimony of the arresting officers on the buy-bust transaction, can only be overcome through clear and convincing evidence showing either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive. (People v. Tancinco, GR No. 200598, 06/18/2014).

The accused cannot claim that the evidence obtained from a search conducted incident to an arrest is inadmissible because it is violative of the plain view doctrine. The plain view doctrine only applies to cases where the arresting officer is not searching for evidence against the accused, but nonetheless inadvertently comes across an incriminating object. (People v. Calantiao, GR No. 203984, 06/18/2014).

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 Anig, 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 is 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 ground; (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
| **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 (Sec. 2208). A dwelling house may be entered or searched only upon warrants issued by judge upon sworn application showing probable cause and particularly describing the placed to be searched and person or things to be searched (Sec. 220).

Remedies from unlawful search and seizure

(1) A motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court (Sec. 14).

(2) If a search warrant is issued and it is attacked, a motion to quash is the remedy or a motion to suppress the evidence seized pursuant to the search warrant would be available. Replevin may also be proper if the objects are legally possessed.

(3) Alternative remedies of the accused adversely affected by a search warrant are the following:
   (a) Motion to quash the search warrant with the issuing court; or
   (b) Motion 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 authorized under Rule 127.

Grounds upon which attachment may issue. -- At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:
(a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;
(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer or a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;
(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorized person;
(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;
(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or
(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication (Sec. 2, Rule 57).
PART IV
RULES ON 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 duces tecum. Evidence is also secured by resorting to modes of discoveries, such as:
   (a) Taking of depositions of any person, oral or written (Rule 23);
   (b) Serving of interrogatories to parties (Rule 25);
   (c) Serving of requests for admission by the adverse party (Rule 25);
   (d) Production and inspection of documents (Rule 27); and
   (e) Examination of physical and mental conditions of persons (Rule 28).

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

(4) The basis of evidence is the adaptation to the successful development of the truth; and a rule of evidence at one time though necessary to the ascertainment of truth should yield to the experience of a succeeding generation whenever that experience has clearly demonstrated the fallacy or unwisdom of the old rule (Funk vs. US, 391).

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

<table>
<thead>
<tr>
<th>Evidence in Civil Cases</th>
<th>Evidence in Criminal Cases</th>
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<tbody>
<tr>
<td>The party having the burden of proof must prove his claim by a preponderance of evidence (Sec. 1, Rule 133).</td>
<td>The guilt of the accused has to be proven beyond reasonable doubt (Sec. 2, Rule 133).</td>
</tr>
<tr>
<td>An offer of compromise is not an admission of any liability, and is not admissible in evidence against the offeror (Sec. 27, Rule 130).</td>
<td>Except those involving quasi-offenses (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt (Sec. 27, Rule 133).</td>
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<tr>
<td>Generally, there is no presumption for or against a party. Exception: in some civil cases such as in a contractual suit against the carrier, there exists a presumption against the defendant.</td>
<td>The accused enjoys the presumption of innocence.</td>
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<tr>
<td>These differences constitute exceptions to the rule that the rules of evidence shall be the same in all courts and in all proceedings (Sec. 2, Rule 128).</td>
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Proof versus Evidence

<table>
<thead>
<tr>
<th>Evidence</th>
<th>Proof</th>
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<tr>
<td>Medium of proof</td>
<td>Effect and result of evidence</td>
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<tr>
<td>Means to the end</td>
<td>End result</td>
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Factum Probans Versus Factum Probandum

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<tr>
<th>Factum probandum</th>
<th>Factum Probans</th>
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<tr>
<td>Proposition to be established</td>
<td>Material evidencing the proposition</td>
</tr>
<tr>
<td>Conceived of as hypothetical; that which one party affirms and the other denies</td>
<td>Conceived of for practical purposes as existent, and is offered as such for the consideration of the court</td>
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Admissibility of Evidence

(1) Two axioms of admissibility (*Wigmore on Evidence, Secs. 9, 10*):

(a) None but facts having rational probative value are admissible. - It assumes no particular doctrine as to the kind of ratiocination implied—whether practical or scientific, coarse and ready or refined and systematic. It prescribes merely that whatever is presented as evidence shall be presented on the hypothesis that it is calculated, according to the prevailing standards of reasoning, to effect rational persuasion.

(b) All facts having rational probative value are admissible. - This axioms expresses the truth that legal proof, though it has peculiar rules of its own, does not intend to vary without cause from what is generally accepted in the rational processes of life; and that of such variations some vindication may, in theory, always be demanded.

(2) 2002 Bar: Acting on a tip by an informant, police officers stopped a car being driven by D and ordered him to open the trunk. The officers found a bag containing several kilos of cocaine. They seized the car and the cocaine as evidence. Without advising him of his right to remain silent and to have the assistance of an attorney, they questioned him regarding the cocaine. In reply, D said, "I don't know anything about it. It isn't even in my car." D was charged with illegal possession of cocaine, a prohibited drug. Upon motion of D, the court suppressed the use of cocaine as evidence and dismissed the charges against him. D commenced proceedings against the police for the recovery of his car. In his direct examination, D testified that he owned the car but had registered it in the name of his friend for convenience. On cross-examination, the attorney representing the police asked, "After your arrest, did you not tell the arresting officers that it wasn't your car?" If you were D's attorney, would you object to the question? Why? (5%)

Answer: Yes, because his admission made when he was questioned after he was placed under arrest was in violation of his constitutional rights to be informed of his right to remain silent and to have a competent and independent counsel of his own choice. Hence, it is inadmissible in evidence (*Art. III, Sec. 12, 1987 Constitution; People vs. Mahinay, 302 SCREA 455*).

(3) A lie detector test is based on the theory that an individual will undergo physiological changes, capable of being monitored by sensors attached to his body, to detect when he is not telling the truth. The result of a lie detector test is not given faith credit.
inasmuch as it has not been accepted by the scientific community as an accurate means of ascertaining truth or deception (People v. Carpo [2000]).

(4) Photographs are admissible in evidence in motor vehicle accidents cases when they appear to have been accurately taken and are proved to be a faithful and clear representation of the subject, which cannot itself be produced. And are of such nature as to throw light upon a disputed point. Before a photograph may be admitted in evidence, however, its accurateness or correctness must be proved, and it must first be authenticated or verified (Macalinao v. Ong [2005]).

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<tr>
<th>Admissibility of evidence</th>
<th>Weight of evidence</th>
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<tbody>
<tr>
<td>Pertains to the ability of the evidence to be allowed and accepted subject to its relevancy and competence</td>
<td>Pertains to the effect of evidence admitted</td>
</tr>
<tr>
<td>Substantive essence or characteristic feature of evidence as would make it worthy of consideration by the court before its admission</td>
<td>The probative value of evidence which the court may give to admit after complying with the rules of relevancy and competency</td>
</tr>
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Requisites for admissibility of evidence

(1) In order that evidence may be admissible, two requisites must concur, namely:
(a) That it is relevant to the issue; and
(b) That it is competent, that is, that it does not belong to that class of evidence which is excluded by the law or the rules.

(2) Admissibility is determined, first, by relevancy—an affair of logic and not of law; second, but only indirectly, by the law of evidence which, in strictness, only declares whether matter which is logically probative is excluded (Presumptions and the Law of Evidence, 3 Harv. L. Rev. 13-14).

(3) Relevant evidence—evidence which has a relation to the fact in issue as to induce belief in its existence or non-existence; evidence which tends in any reasonable degree to establish the probability or improbability of the fact in issue.

Relevance of evidence and collateral matters

(1) Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence. Evidence on collateral matters shall not be allowed, except when it tends in any reasonable degree to establish the probability or improbability of the fact in issue (Sec. 4, Rule 128).

(2) Evidence is relevant when it has a relation to the fact in issue as to induce belief in its existence or non-existence. Relevant evidence is one which tends in any reasonable degree to establish the probability or improbability of the fact in issue.

(3) Tests of Relevancy:
(a) Every fact or circumstance tending to throw light on the issue is relevant;
(b) Evidence is relevant from which the fact in issue is logically inferable;
(c) Any circumstance is relevant which tends to make the proposition at issue more or less probable, or which is calculated to explain or establish facts pertinent to the inquiry;
(d) The test is whether the evidence conduces to the proof of a pertinent hypothesis, such hypothesis being one which, if sustained, would logically influence the issue;
(e) The facts are relevant if they fairly tend to prove the offense charged (Underhill's Criminal Evidence, 5th Ed., Vol. I).
(4) Collateral matters are those other than the facts in issue and which are offered as basis for inference as to the existence or non-existence of the facts in issue (1 Wigmore 432).
   (a) Prospectant collateral matters - those preceding of the fact in issue but pointing forward to it, like moral character, motive, conspiracy;
   (b) Concomitant collateral matters - those accompanying the fact in issue and pointing to it, like alibi, or opportunity and incompatibility;
   (c) Retrospectant collateral matters - those succeeding the fact in issue but pointing backward to it, like flight and concealment, behavior of the accused upon being arrested, fingerprints or footprints, articles left at the scene of the crime which may identify the culprit (1 Wigmore 442-43).

**Multiple admissibility**

(1) When a fact is offered for one purpose, and is admissible in so far as it satisfies all rules applicable to it when offered for that purpose, its failure to satisfy some other rule which would be applicable to it if offered for another purpose does not exclude it (Wigmore's Code of Evidence, 3rd Ed., p. 18).

**Conditional admissibility**

(1) Where two or more evidentiary facts are so connected under the issues that the relevancy of one depends upon another not yet evidenced, and the party is unable to introduce them both at the same moment, the offering counsel may be required by the court, as a condition precedent (a) to state the supposed connecting facts; and (b) to promise to evidence them later. If a promise thus made is not fulfilled, the court may strike out the evidence thus conditionally admitted, if a motion is made by the opposite party. Thus, evidence of facts and declarations may not become material or admissible until shown to be those of an agent of the other party, and a copy of a writing may not become competent evidence until the original is proven to be lost or destroyed (Wigmore on Evidence).

(2) Evidence which appears to be immaterial is admitted by the court subject to the condition that its connection with other facts subsequently to be proved will be established (People vs. Yatco, 97 Phil. 940).

**Curative admissibility**

(1) Where an inadmissible fact has been offered by one party and received without objection, and the opponents afterwards, for the purpose of negativing or examining or otherwise counteracting it, offers a fact similarly inadmissible, such fact is admissible if it serves to remove an unfair effect upon the court which might otherwise ensue from the original fact. If the opponent made a timely objection at the time the inadmissible evidence was offered, and his objection was erroneously overruled in the first instance, the claim to present similar inadmissible facts would be untenable since his objection would save him, on appeal, from any harm which may accrue (McCormick on Evidence, p. 35).

(2) Evidence, otherwise improper, is admitted to contradict improper evidence introduced by the other party (1 Wigmore 304-309).

**Direct and circumstantial evidence**

(1) Direct evidence is that which proves the fact in dispute without the aid of any inference or presumption.
(2) Circumstantial evidence is the proof of facts from which, taken collectively, the existence of the particular fact in dispute may be inferred as a necessary or probable consequence.

(3) "Circumstantial evidence is sufficient for conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt." In this case, it is beyond doubt that all the circumstances taken together point to the singular conclusion that appellant Solano, to the exclusion of all others, committed the crime. As found by the trial court and affirmed by the appellate court, the victim was last seen in the presence of the appellant Solano. Edwin Jr. saw appellant Solano chasing the victim. Nestor also saw appellant Solano dragging the motionless body of "AAA." The body of the victim was eventually found buried in the mud near the place where she was last seen with Solano. Solano admitted holding a grudge against the family of "AAA" because he believes that a relative of "AAA" had raped his sister. The autopsy report showed that "AAA" was raped and strangled. Likewise, Solano could not ascribe any ill-motive on the part of prosecution witnesses Edwin Jr., Edwin Sr. and Nestor whom he even considered as friends. (People v. Solano, Jr., GR No. 199871, 06/02/2014).

(4) Although based on the evidence adduced by both parties, no direct evidence points to Almojuela as the one who stabbed Quejong. A finding of guilt is still possible despite the absence of direct evidence. Conviction based on circumstantial evidence may result if sufficient circumstances, proven and taken together, create an unbroken chain leading to the reasonable conclusion that the accused, to the exclusion of all others, was the author of the crime. (Almojuela v. People, GR No. 183202, 06/02/2014).

(5) Under the Doctrine of Independently Relevant Statement, if the purpose of placing the statement on the record is merely to establish the fact that the statement, or the tenor of such statement, was made. Regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown. Thus, the statement of an NBI Agent that a witness confided to him that the latter heard the accused in a murder case tell the other suspect that "ayoko nang abutin pa ng bukas yang si [victim]", while they were armed with firearms and boarding a car, is independently relevant and proves what the witness heard, and not the truthfulness or falsity of the statement. Conviction based on circumstantial evidence can be upheld provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person. Thus, the court may convict the accused in a murder case on the basis of the 1.) independently relevant statement of the NBI Agent that a witness heard the accused utter statements as to the killing of the victim, 2.) the getaway vehicle was properly identified by the previous owner, 3.) the statement of the medico-legal officer that high-powered firearms were used in the killing of the victim, and 4.) the escape from detention of the accused. (Espineli v. People, GR No. 179535, 06/09/2014).

(6) Circumstantial evidence is sufficient to sustain a conviction if (i) there is more than one circumstance; (ii) the facts from which the inference is derived are proven; and (iii) the combination of all circumstances is such as to produce conviction beyond reasonable doubt. While no prosecution witness has actually seen the commission of the crime, it has been settled that direct evidence of the crime is not the only matrix from which a trial court may draw its conclusion and finding of guilt. The lack of direct evidence does not ipso facto bar the finding of guilt against the appellant. As long as the prosecution establishes accused’s participation in the crime through credible and sufficient circumstantial evidence that leads to the inescapable conclusion that he committed the imputed crime, the latter should be convicted. (People v. Consorte, GR No. 194068, 07/09/2014).
(7) Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. It consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. (People v. Estonilo, GR No. 201565, 10/13/2014).

(8) To sustain a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. The circumstantial evidence must exclude the possibility that some other person has committed the crime. Unfortunately, in the case at bar, the Supreme Court finds that the prosecution failed to present sufficient circumstantial evidence to convict the Zabala of the offense charged. We find that the pieces of evidence presented before the trial court fail to provide a sufficient combination of circumstances, as to produce a conviction beyond reasonable doubt. (Zabala v. People, GR No. 210760, 01/26/2015).

Positive and negative evidence

(1) Testimony is positive when the witness affirms that a fact did or did not exist; and it is negative when he says that he did not see or know of the factual occurrence (Tanala vs. NLRC, 252 SCRA 314). Positive evidence is entitled to greater weight, the reason being that he who denies a certain fact may not remember exactly the circumstances on which he bases his denial (People vs. Mendoza, 236 SCRA 666).

Competent and credible evidence

(1) Competent evidence is one that is not excluded by law or the rules. In the law of evidence, competency means the presence of those characteristics, or the absence of those disabilities, which render a witness legally fit and qualified to give testimony in a court of justice; which is applied, in the same sense, to documents or other written evidence (Black's Law Dictionary). Exclusionary rule makes evidence illegally obtained as inadmissible in evidence, hence, not competent.

(2) A witness may be competent, and yet give incredible testimony; he may be incompetent, and yet his evidence, if received, be perfectly credible.

(3) Trial courts may allow a person to testify as a witness upon a given matter because he is competent, but may thereafter decide whether to believe or not to believe his testimony. Credibility depends on the appreciation of his testimony and arises from the brief conclusion of the court that said witness is telling the truth (Gonzales vs. CA, 90 SCRA 183).

<table>
<thead>
<tr>
<th>Competent evidence</th>
<th>Credible evidence</th>
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</thead>
<tbody>
<tr>
<td>Competency is a question which arises before considering the evidence given by the witness; the personal qualification of the witness</td>
<td>Credibility concerns the degree of credit to be given to his testimony; denotes the veracity of the testimony</td>
</tr>
</tbody>
</table>

Burden of Proof and Burden of Evidence

(1) Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law (Sec. 1, Rule 131).
(2) The presumption of regularity obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. But where the official act in question is irregular on its face, an adverse presumption arises as a matter of course. Thus, when it is clear that the police officers were remiss in showing that they preserved the chain of custody when they failed to present the testimony of the inspector who had the only keys to the evidence locker where the sachet of shabu was kept, the presumption of regularity shall not apply. (People v. Abetong, GR No. 209785, 06/04/2014).

(3) It is a settled rule that, as in other civil cases, the burden of proof rests upon the party who, as determined by the pleadings or the nature of the case, asserts an affirmative issue. Contentions must be proved by competent evidence and reliance must be had on the strength of the party’s own evidence and not upon the weakness of the opponent’s defense. This principle holds true especially when the latter has had no opportunity to present evidence because of a default order, as in the present case. The petitioner is not automatically entitled to the relief prayed for. The pieces of documents presented by BDO are not only self-serving but are not supported by sufficient and credible evidence. BDO failed to meet its burden of proving its claims by preponderance of evidence. (Banco de Oro Unibank, Inc. v. Sps. Locsin, GR No. 190445, 07/23/2014).

(4) As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. The fact of forgery can only be established by a comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized to have been forged. (Gepulle-Garbo v. Sps. Garabato, GR No. 200013, 01/14/2015).

<table>
<thead>
<tr>
<th>Burden of proof</th>
<th>Burden of evidence</th>
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<tbody>
<tr>
<td>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.</td>
<td>Means the necessity of going forward with the evidence to meet the prima facie case created against him.</td>
</tr>
<tr>
<td>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.</td>
<td>It shifts from side to side as the trial of the case progresses and evidence is introduced by the respective parties.</td>
</tr>
</tbody>
</table>

**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).
Conclusive presumptions -- The following are instances of conclusive presumptions:

(a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it:

(b) The tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation of landlord and tenant between them (Sec. 2, Rule 131).

Disputable presumptions (Juris tantum) -- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence (Sec. 3, Rule 131):

(a) That a person is innocent of crime or wrong;
(b) That an unlawful act was done with an unlawful intent;
(c) That a person intends the ordinary consequences of his voluntary act;
(d) That a person takes ordinary care of his concerns;
(e) That evidence willfully suppressed would be adverse if produced;
(f) That money paid by one to another was due to the latter;
(g) That a thing delivered by one to another belonged to the latter;
(h) That an obligation delivered up to the debtor has been paid;
(i) That prior rents or installments had been paid when a receipt for the later ones is produced;
(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him;
(k) That a person in possession of an order on himself for the payment of the money, or the delivery of anything, has paid the money or delivered the thing accordingly;
(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]).

<table>
<thead>
<tr>
<th>Proof beyond reasonable doubt</th>
<th>Preponderance of evidence</th>
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<td>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]).</td>
<td>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]).</td>
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**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 otherwise ([Manalo vs. Roldan-Confessor, supra]).

**Clear and convincing evidence** - refers to that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established; it is more than preponderance but not to the extent of such moral certainty as is required beyond reasonable doubt as in criminal cases ([Black’s Law Dictionary, 5th Ed., 1979]). It is often said that to overcome a disputable presumption of law, clear and convincing evidence is required. For instance, to contradict the presumption of validity and regularity in favor of a notarial or public document, there must be evidence that is clear, convincing and more than preponderant ([Yuralde vs. Azurin, 28 SCRA 407 [1969]]. The presumption that law enforcers have regularly performed their duties requires that proof of frame-up, which can be made with ease, must be strong, clear and convincing ([People vs. Tranca, 235 SCRA 455 [1994]]. An accused who invokes self-defense must prove it by clear and convincing evidence ([People vs. Sazon, 189 SCRA 700 [1990]].

(2) It has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. It should be noted that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. As testified by Lujeco, he was at the public market of Don Carlos, Bukidnon. Undoubtedly, it was not impossible for him to be at the crime scene. ([People v. Lujeco, GR No. 198059, 04/07/2014].

(3) In administrative proceedings, the quantum of proof required to establish a respondent’s malfeasance is not proof beyond reasonable doubt but substantial evidence, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. Faced with conflicting versions of complainant and respondent, the Court gives more weight to the allegations and testimony of the complainant and her witnesses who testified clearly and consistently before the Investigating Judge. In the instant case, the strongest corroborative evidence to support complainant Emilie’s allegations was the exchange of text messages between her and respondent Pecaña regarding the dinner meeting. These text messages were admitted by respondent Pecaña. ([Sison-Barias v. Judge Rubia, AM No. RTJ-14-2388, 06/10/2014].

(4) In administrative cases against lawyers, the quantum of proof required is preponderance of evidence. When the complainant adduced preponderant evidence that his signature was indeed forged in an affidavit which the respondent notarized and submitted to the COMELEC, respondent should be held administratively liable for his action. ([Sultan v. Atty. Macabanding, AC No. 7919, 10/08/2014].

(5) The term “reasonable doubt” is not equivalent to the phrase “the act from which criminal responsibility may arise did not at all exist.” Although both have the force of acquittal,
the latter provides connotes that the accused have not committed the offense. *(Daluraya v. Oliva, GR No. 210148, 12/08/2014).*

(6) **2003 Bar**: Distinguish preponderance of evidence from substantial evidence. (4%)

**Answer**: Preponderance of evidence means that the evidence as a whole adduced by one side is superior to that of the other. This is applicable in civil cases *(Sec. 1, Rule 133; Municipality of Moncada v. Cajuigan, 21 Phil. 184 [1912]).*

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. This is applicable in cases filed before administrative or quasi-judicial bodies *(Sec. 5, Rule 133).*

## II. Judicial Notice and Judicial Admissions

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

<table>
<thead>
<tr>
<th>Matters of Judicial Notice</th>
<th>Mandatory</th>
<th>Discretionary</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 <em>(Sec. 1, Rule 129).</em></td>
<td>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 <em>(Sec. 2, Rule 129).</em></td>
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**Judicial Admissions** -- An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made *(Sec. 4, Rule 129).*

(1) Judicial admissions are those so made in the pleadings filed or in the progress of a trial *(Jones on Evidence, Sec. 894).*

(2) Judicial admissions are conclusive upon the party making them, while extrajudicial admissions or other admissions are, as a rule, and where the elements of estoppels are not present, disputable.

(3) Judicial admissions may be verbal or those verbally made in the course of the trial or they may be written, such as those stated in a pleading. They may be express or implied, implied admissions by a defendant of material facts alleged in a complaint include (a) keeping silent on such material facts, (b) denying such material facts without setting forth the matters upon which he relies to support his denial, and (c) asserting lack of knowledge or information of the truth of the material allegations when the same is plainly and necessarily within the knowledge of defendant.

**Effect of judicial admissions** - Under the Rules, a judicial admission cannot be contradicted unless previously shown to have been made

**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).

(1) The allegation of the assessed value of the realty must be found in the complaint, if the action (other than forcible entry or unlawful detainer) involves title to or possession of the realty, including quieting of title of the realty. If the assessed value is not found in the complaint, the action should be dismissed for lack of jurisdiction because the trial court is not thereby afforded the means of determining from the allegations of the basic pleading whether jurisdiction over the subject matter of the action pertains to it or to another court. Courts cannot take judicial notice of the assessed or market value of the realty (Penta Pacific Realty Corporation v. Ley Corporation [2014]).

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 be 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, subject to a mandatory judicial notice.

(5) MTCs must take judicial notice of municipal ordinances in force in the municipality in which they sit (US vs. Blanco, 37 Phil. 126). RTCs should also take judicial notice of municipal ordinances in force in the municipalities within their jurisdiction but only when so required by law. For instance, the charter of City of Manila requires all courts sitting therein to take judicial notice of all ordinances passed by the city council (City of Manila vs. Garcia, 19 SCRA 413). Such court must take judicial notice also of municipal ordinances on appeal to it from the inferior court in which the latter took judicial notice (US vs. Hernandez, 31 Phil. 542). The Court of Appeals may take judicial notice of municipal ordinances because nothing in the Rules prohibits it from taking cognizance of an ordinance which is capable of unquestionable demonstration (Gallego vs. People, 8 SCRA 813).
(6) **Doctrine of Presumed Identity approach of Processual Presumption.** It is hornbook principle that the party invoking the applicable of a foreign law has the burden of proving the law. In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign. The foreign laws are treated as a question of fact to be properly pleaded and proved as the judge or labor arbiter cannot take judicial notice of foreign law. He is presumed to know only domestic or forum law. Where a foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours *(ATCI Overseas Corporation v. Echin [2010])*.

(7) As held in *Garcia v. Recio, 418 Phil. 723-735 [2001]*, divorce obtained abroad is proven by divorce decree itself. Indeed the best evidence of a judgment is the judgment itself. The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country. It is well-settled in our jurisdiction that our courts take judicial notice of foreign laws. Like any other facts, they must be alleged and proved. The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative *(Enriquez Vda. De Catalan v. Catalan-Lee [2012])*.

(8) It is well settled that foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court. Under the rules of private international law, a foreign law must be properly pleaded and proved as a fact. In the absence of pleading and proof, the laws of the foreign country or state will be presumed to be the same as our local or domestic law. This is known as processual presumption. While the foreign law was properly pleaded in the case at bar, it was, however, proven not in the manner provided by Section 24, Rule 132 of the Revised Rules of Court. While a photocopy of the foreign statute relied upon by the court a quo to relieve the common carrier from liability, was presented as evidence during the trial, the same however was not accompanied by the required attestation and certification. *(Nedlloyd Lijnen BV Rotterdam and the East Asiatic Co., Ltd. V. Glow Laks Enterprises, Ltd., GR No. 156330, 11/19/2014)*.
III. Rules of Admissibility (Rule 130)

A. Object (Real) Evidence

<table>
<thead>
<tr>
<th>Nature of Object Evidence</th>
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<tbody>
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<td>(2) Real evidence refers to the thing or fact or material or corporate object or human body parts thereof, which can be viewed or inspected by the court and which a party may present in evidence. Real evidence is also called autoptic preference, which is inspection by the court of a thing itself and its conditions, to enable the court to effectively exercise its judicial power of receiving and weighing the evidence (Tiglao vs. Comelec, 34 SCRA 456). It is knowledge acquired by the court from inspection or by direct self-perception or autopsy of the evidence (Calde vs. CA, 233 SCRA 376).</td>
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<tr>
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<td>(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;</td>
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<tr>
<td>(b) The object must be competent - It should not be excluded by law or the rules;</td>
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<td>(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;</td>
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<td>(d) The authentication must be made by a competent witness; and</td>
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<td>(e) The object must be formally offered in evidence.</td>
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<th>Categories of Object Evidence</th>
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<td>(1) For purposes of authentication of an object or for laying the foundation for the exhibit, object evidence may be classified into the following:</td>
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<tr>
<td>(a) Object that have readily identifiable marks (unique objects);</td>
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<td>(b) Objects that are made readily identifiable (objects made unique); and</td>
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<tr>
<td>(c) Objects with no identifying marks and cannot be marked (non-unique objects).</td>
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2005 Bar: May a private document be offered and admitted in evidence both as documentary evidence and as object evidence? Explain.
**Answer:** Yes. A private document may be offered and admitted in evidence both as documentary and as object evidence. A document can also be considered as an object for purposes of the case. Objects as evidence are those addressed to the senses of the court (Sec. 1, Rule 130). Documentary evidence consists of writings or any material containing letters, words, numbers, figures, symbols, or other modes of written expressions offered as proof of their contents (Sec. 2, Rule 130). A tombstone may be offered in evidence to prove what is written on it and if the same tombstone is found on the tomb, then it is object to evidence. It can be considered as both documentary and object evidence.

**Demonstrative Evidence**

(1) Demonstrative evidence is tangible evidence that merely illustrates a matter of importance in the litigation. Common types of demonstrative evidence include photographs, motion pictures and recordings, x-ray pictures, scientific tests, demonstrations and experiments, maps, diagrams, models, summaries, and other materials created especially for the litigation.

(2) In contrast to demonstrative evidence, object evidence is a tangible object that played some actual role in the matter that gave rise to the litigation. For instance, the knife used in the altercation that forms the basis for the lawsuit. The distinction between object and demonstrative evidence is important because it helps determine the standards that the evidence must meet to be admissible. In particular, the foundation that must be laid for object evidence is generally somewhat different from that needed for demonstrative evidence.

(3) The foundation for demonstrative evidence does not involve showing that the object was the one used in the underlying event. Rather, the foundation generally involves showing that the demonstrative object fairly represents or illustrates what it is alleged to illustrate.

**View of an Object or Scene**

(1) Objects as evidence are those addressed to the senses of the court. When an object is relevant to the fact in issue, it may be exhibited to, examined or viewed by the court (Sec. 1, Rule 130).

(2) The inspection may be made inside or outside the courtroom. An inspection or view outside the courtroom should be made in the presence of the parties or at least with previous notice to them. It is error for the judge for example, to go alone to the land in question, or to the place where the crime was committed and take a view without the previous knowledge of the parties. Such inspection or view is part of the trial since evidence is thereby being received (Moran, Comments on the Rules of Court, Vols. 5, 78-79).

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

(1) The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
(a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(b) Within 24 hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within 24 hours after the receipt of the subject item/s: Provided, that when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next 24 hours;

(d) After the filing of the criminal case, the Court shall, within 72 hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within 24 hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, that those item/s of unlawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided further, that a representative sample, duly weighed and recorded is retained;

(e) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board; and

(f) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within 71 hours before the actual burning or destruction or the evidence in question, the SOJ shall appoint a member of the PAO to represent the former;

(g) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within 24 hours from receipt of the same.

(2) Noncompliance with the Chain of Custody Rule under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. What is essential is ‘the preservation of the integrity and the
evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. *(People v. Prajes, GR No. 206770, 04/02/2014)*.

(3) Crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The records in the present case do not show that the police marked the seized plastic sachet immediately upon confiscation, or at the police station. Notably, the members of the buy-bust team did not also mention that they marked the seized plastic sachet in their Joint Affidavit of Arrest. *(People v. Sabdula, GR No. 184758, 04/21/2014)*.

(4) In the prosecution of a case for sale of illegal drugs punishable under Section 5, Article II of Republic Act No. 9165, noncompliance with the procedure set forth in Section 21 of the law is not necessarily fatal as to render an accused's arrest illegal or the items confiscated from him inadmissible as evidence of his guilt, if, nonetheless, the integrity and evidentiary value of the confiscated items is preserved, there will yet be basis for the establishment of the guilt of the accused. *(People v. Bulotano, GR No. 190177, 06/11/2014)*.

(5) The Court stresses that what Section 21 of the IRR of R.A. No. 9165 requires is "substantial" and not necessarily "perfect adherence," as long as it can be proven that the integrity and the evidentiary value of the seized items are preserved as the same would be utilized in the determination of the guilt or innocence of the accused. *(People v. Salvidar, GR No. 207664, 06/25/2014)*.

(6) Corollarily, the prosecution's failure to comply with Section 21, Article II of R.A. No. 9165, and with the chain of custody requirement of this Act, compromised the identity of the item seized, leading to the failure to adequately prove the corpus delicti of the crime charged. Although the Court has recognized that minor deviations from the procedures under R.A. No. 9165 would not automatically exonerate an accused, the Court have also declared that when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. No. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. *(People v. Edano, GR No. 188133, 07/07/2014)*.

(7) The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence. The facts in the case persuasively proved that the three plastic sachets of ephedrine presented in court were the same items seized from the Villarta and Cabiles during the buy-bust operation. The integrity and evidentiary value thereof were duly preserved. *(People v. Villarta, GR No. 205610, 07/30/2014)*.

(8) A proviso was added in the implementing rules that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. *(People v. Cerdon, GR No. 201111, 08/06/2014)*.

(9) "Immediate confiscation" has no exact definition. Thus, in People v. Gum-Oyen, testimony that included the marking of the seized items at the police station and in the presence of the accused was sufficient in showing compliance with the rules on chain of custody. Marking upon immediate confiscation contemplates even marking at the
nearest police station or office of the apprehending team. *(People v. Balaquit, GR No. 206366, 08/13/2014).*

(10) Truly, objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal. *(People v. Cabrera, GR No. 190175, 11/12/2014).*

(11) The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. As long as the evidentiary value and integrity of the illegal drug are properly preserved, strict compliance of the requisites under Section 21 of RA 9165 may be disregarded. Though there were deviations from the required procedure, i.e., making physical inventory and taking of photograph of the seized item, still, the integrity and evidentiary value of the dangerous drug seized from appellants were duly proven by the prosecution to have been properly preserved; its identity, quantity and quality remained unimpaired. *(People v. Datsgandawali, GR No. 193385, 12/01/2014).*

(12) In the prosecution of illegal sale, what is essential is to prove that the transaction or sale actually took place, coupled with the presentation in court of evidence of the corpus delicti. The consummation of sale is perfected the moment the buyer receives the drug from the seller. In this case, the prosecution failed to prove that the four sachets which tested positive for shabu and eventually presented in court were the same ones confiscated by the police officers due to its non-marking at the place where the buy-bust operation was committed at the police station. This non-marking violated the measures defined under Section 21(1) of Republic Act No. 9165 and Section 21(a) of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 which are also known as the Rule on Chain of Custody. *(People v. Dacumay, GR No. 205889, 02/04/2015).*

(13) The chain of custody rule requires that the admission of an exhibit must be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness’ possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. In the case at bar, the failure of the prosecution to offer any justification on why the procedure was not complied with and the failure of Inspector Lorilla to testify are fatal to the prosecution’s case *(People v. Abetong, GR No. 204029, 06/04/2014).*

**Rule on DNA Evidence (A.M. No. 06-11-5-SC)**

<table>
<thead>
<tr>
<th>a. Meaning of DNA</th>
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<tr>
<td>(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 <em>(Sec. 3).</em></td>
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<td>(2) DNA evidence constitutes the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples.</td>
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<tr>
<td>(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;</td>
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<tr>
<td>(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</td>
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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 biological sample exists that is relevant to the case;
   - 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;
   - The DNA testing uses a scientifically valid technique;
   - The DNA testing has the scientific potential to produce new information that is relevant to the proper resolution of the case; and
   - The existence of other factors, if any, which the court may consider as potentially affecting the accuracy of integrity of the DNA testing. This rule shall not preclude a DNA testing, without need of prior court order, at the behest of any party, including law enforcement agencies, before a suit or proceeding is commenced (Sec. 4).

### c. Post-conviction DNA testing; remedy

1. Post-conviction DNA testing may be available, without need of prior court order, to the prosecution or any person convicted by final and executory judgment provided that (a) a biological sample exists, (b) such sample is relevant to the case, and (c) the testing would probably result in the reversal or modification of the judgment of conviction (Sec. 6).

2. Remedy if the results are favorable to the convict. — The convict or the prosecution may file for a writ of *habeas corpus* in the court of origin if the results of the post-conviction DNA testing are favorable to the convict. In the case the court, after due hearing finds the petition to be meritorious, it shall reverse or modify the judgment of conviction and order the release of the convict, unless continued detention is justified for a lawful cause (Sec. 10).

### d. Assessment of probative value of DNA evidence and admissibility

1. In assessing the probative value of the DNA evidence presented, the court shall consider the following:
   - The chair of custody, including how the biological samples were collected, how they were handled, and the possibility of contamination of the samples;
   - 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;
   - 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
   - The reliability of the testing result, as herein after provided.
The provisions of the Rules of Court concerning the appreciation of evidence shall apply suppletorily (Sec. 7).

e. Rules on evaluation of reliability of the DNA testing Methodology

(1) In evaluating whether the DNA testing methodology is reliable, the court shall consider the following:
   (a) The falsifiability of the principles or methods used, that is, whether the theory or technique can be and has been tested;
   (b) The subjection to peer review and publication of the principles or methods;
   (c) The general acceptance of the principles or methods by the relevant scientific community;
   (d) The existence and maintenance of standards and controls to ensure the correctness of data generated;
   (e) The existence of an appropriate reference population database; and
   (f) The general degree of confidence attributed to mathematical calculations used in comparing DNA profiles and the significance and limitation of statistical calculations used in comparing DNA profiles (Sec. 8).

(1) 2004 Bar: At the scene of a heinous crime, police recovered a man’s shorts with blood stains and strands of hair. Shortly afterwards, a warrant was issued and police arrested the suspect, AA. During his detention, a medical technician extracted blood sample from his finger and cut a strand from his hair, despite AA’s objections.

During AA’s trial for rape with murder, the prosecution sought to introduce DNA (deoxyribonucleic acid) evidence against AA, based on forensic laboratory matching of the materials found at the crime scene and AA’s hair and blood samples. AA’s counsel objected, claiming that DNA evidence is inadmissible because the materials taken from AA were in violation of his constitutional right against self-incrimination as well as his right of privacy and personal integrity.

Should the DNA evidence be admitted or not? Reason. (5%)

Answer: Yes. The DNA evidence should be admitted. It is not in violation of the constitutional right against self-incrimination or his right of privacy and personal integrity. The right against self-incrimination is applicable only to testimonial evidence. Extracting a blood sample and cutting a stand from the hair of the accused are purely mechanical acts that do not involve his discretion nor reque his intelligence (Tijing v. Court of Appeals, 354 SCRA 17 [2001]).

(2) The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of the integrity and evidentiary value of the seized items, and (2) the removal of unnecessary doubts as to the identity of the evidence. The law recognizes that, while the presentation of a perfect unbroken chain is ideal, the realities and variables of actual police operation usually makes an unbroken chain impossible. With this implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement, substantial compliance is sufficient as long as as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers (People v. Morate [2014]).

(3) As a matter of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about
every link in the chain, from the moment the item was picked up to the time it is offered
to evidence, in such a way that every person who touched the exhibit would describe
how and from whom it was received, where it was and what happened to it while in the
witness’ possession, the condition in which it was received and the condition in which it
was delivered to the next link in the chain. These witnesses would then describe the
precautions taken to ensure there had been no change in the condition of the item
and no opportunity for someone not in the chain to have possession of the same
(People v. Quesido [2013]).

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

(1) The requisites for admissibility of documentary evidence are as follows:
(a) The object must be relevant to the fact in issue - There must be a logical connection
between the evidence and the point at which it is offered;
(b) The object must be competent - It should not be excluded by law or the rules;
(c) The object must be authenticated before it is admitted - Authentication normally
consists of showing that the object is the object that was involved in the underlying
event;
(d) The authentication must be made by a competent witness; and
(e) The object must be formally offered in evidence.

Best Evidence Rule

(1) In Country Bankers Insurance Corporation v. Lagman, the Court set down the
requirements before a party may present secondary evidence to prove the contents of
the original document whenever the original copy has been lost: Before a party is
allowed to adduce secondary evidence to prove the contents of the original, the offeror
must prove the following: (1) the existence or due execution of the original; (2) the loss
and destruction of the original or the reason for its non-production in court; and (3) on
the part of the offeror, the absence of bad faith to which the unavailability of the original
can be attributed. The correct order of proof is as follows: existence, execution, loss,
and contents. In the instant case, the CA correctly ruled that the above requisites are
present. Both the CA and the RTC gave credence to the testimony of Peregrino that the original Contract in the possession of Monark has been lost and that diligent efforts were exerted to find the same but to no avail. Such testimony has remained uncontroverted. As has been repeatedly held by this Court, “findings of facts and assessment of credibility of witnesses are matters best left to the trial court. Hence, the Court will respect the evaluation of the trial court on the credibility of Peregrino. MCMP, to note, contends that the Contract presented by Monark is not the contract that they entered into. Yet, it has failed to present a copy of the Contract even despite the request of the trial court for it to produce its copy of the Contract. Normal business practice dictates that MCMP should have asked for and retained a copy of their agreement. (MCMP Construction Corp. v. Monark Equipment Corp., GR No. 201001, 11/10/2014).

a. Meaning of the rule

(1) The best evidence rule is that rule which requires the highest grade of evidence obtainable to prove a disputed fact (Wharton’s Criminal Evidence, 11th Ed.). It cannot be invoked unless the contents of a writing is the subject of judicial inquiry, in which case the best evidence is the original writing itself.

(2) The best evidence refers to that which the law or the rules consider as the best evidence to prove the fact in dispute. The best evidence is the evidence which the case in its nature is susceptible and which is within the power of the party to produce. Evidence cannot be received which indicates on its face that it is secondary, that is, merely substitutionary in its nature, and that the original source of information is in existence and accessible. The underlying purpose is the prevention of fraud (29 Am. Jur. 508).

b. When applicable - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office (Sec. 3, Rule 130).

c. Meaning of original -

(1) Wigmore states that the original does not necessarily mean the one first written; its meaning is relative only to the particular issue. The original is the document whose contents are to be proved.

(2) Sec. 4, Rule 130 has clarified what constitutes the original of a document:

(a) The original of a document is one the contents of which are the subject of inquiry;

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals; and

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

d. Requisites for introduction of secondary evidence

(1) Before the contents of the original may be proved by secondary evidence satisfactory proof must be made of the following:
(a) The execution or existence of the original;
(b) The loss and destruction of the original or its nonproduction in court;
(c) Unavailability of the original is not due to bad faith on the part of the offeror
   (Bautista vs. CA, 165 SCRA 507).

(2) Requisites for introduction of secondary evidence are stated under Sec. 3:
   (a) When the original has been lost or destroyed, or cannot be produced in court,
       without bad faith on the part of the offeror;
   (b) When the original is in the custody or under the control of the party against whom
       the evidence is offered, and the latter fails to produce it after reasonable notice;
   (c) When the original consists of numerous accounts or other documents which cannot
       be examined in court without great loss of time and the fact sought to be
       established from them is only the general result of the whole; and
   (d) When the original is a public record in the custody of a public officer or is recorded
       in a public office (Sec. 3, Rule 130).

(3) The procedure before secondary evidence may be introduced is:
   (a) The offeror should present evidence that he original document has been lost or
       destroyed and is therefore not available;
   (b) He should prove the due execution or existence of said document, in accordance
       with Sec. 20 of Rule 132;
   (c) He must show proof of the contents of the document by a copy, or by a recital of its
       contents in some authentic document, or by the testimony of witnesses in the order
       stated.

(4) When original document is unavailable. - When the original document has been lost or
   destroyed, or cannot be produced in court, the offeror, upon proof of its execution or
   existence and the cause of its unavailability without bad faith on his part, may prove its
   contents by a copy, or by a recital of its contents in some authentic document, or by the
   testimony of witnesses in the order stated (Sec. 5).

(5) When original document is in adverse party's custody or control. - If the document is in
   the custody or under the control of the adverse party, he must have reasonable notice to
   produce it. If after such notice and after satisfactory proof of its existence, he fails to
   produce the document, secondary evidence may be presented as in the case of its loss
   (Sec. 6).

(6) Evidence admissible when original document is a public record. - When the original of a
   document is in the custody of a public officer or is recorded in a public office, its
   contents may be proved by a certified copy issued by the public officer in custody
   thereof (Sec. 7).

(1) Section 3 of Rule 130 provides that when the subject of inquiry is the contents of a
   document, no evidence shall be admissible other than the original document itself, except in
   the following cases" (a) When the original has been lost or destroyed, or
   cannot be produced in court, without bad faith on the part of the offeror; (b) when the
   original is in the custody or under the control of the party against whom the evidence is
   offered, and the latter fails to produce it after reasonable notice. Before a party is
   allowed to adduce secondary evidence to prove the contents of the original, the offeror
   must prove the following: (1) the existence or due execution of the original; (2) the loss
   and destruction of the original or the reason for its non-production in court; and (3) on
   the part of the offeror, the absence of bad faith to which the unavailability of the original
   can be attributed. The correct order of proof is as follows: existence, execution, loss,
   and contents (MCMP Construction Corp. v. Monark Equipment Corp., GR No. 201001,
   11/10/2014).
a. Meaning of electronic evidence; electronic data massage

(1) Electronic evidence is that which use of electronic data message as evidence.

(2) Electronic data message refers to information generated, sent, received or stored by electronic, optical or similar means (Sec. 1(g), Rule 2).

b. Probative value of electronic documents or evidentiary weight; method of proof

(1) Electronic documents as functional equivalent of paper-based documents. Whenever a rule of evidence to the term of writing, document, record, instrument, memorandum or any other form of writing, such term shall be deemed to include an electronic document (Sec. 1, Rule 3).

(2) Admissibility. An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules and related laws and is authenticated in the manner prescribed by the Rules on Electronic Evidence (Sec. 2, Rule 3).

(3) Factors for assessing evidentiary weight. In assessing the evidentiary weight of an electronic document, the following factors may be considered:
   (a) The reliability of the manner or method in which it was generated, stored or communicated, including but not limited to input and output procedures, controls, tests and checks for accuracy and reliability of the electronic data message or document, in the light of all the circumstances as well as any relevant agreement;
   (b) The reliability of the manner in which its originator was identified;
   (c) The integrity of the information and communication system in which it is recorded or stored, including but not limited to the hardware and computer programs or software used as well as programming errors;
   (d) The familiarity of the witness or the person who made the entry with the communication and information system;
   (e) The nature and quality of the information which went into the communication and information system upon which the electronic data message or electronic document was based; or
   (f) Other factors which the court may consider as affecting the accuracy or integrity of the electronic document or electronic data message (Sec. 1, Rule 7).

(4) Method of proof: affidavit of evidence. All matters relating to the admissibility and evidentiary weight of an electronic document may be established by an affidavit stating facts of direct personal knowledge of the affiant or based on authentic records. The affidavit must affirmatively show the competence of the affiant to testify on the matters contained therein (Sec. 1, Rule 9).

(5) Method of proof: cross-examination of deponent. The affiant shall be made to affirm the contents of the affidavit in open court and may be cross-examined as a matter of right by the adverse party (Sec. 2, Rule 9).

c. Authentication of electronic documents and electronic signatures

(1) Burden of proving authenticity. The person seeking to introduce an electronic document in any legal proceeding has the burden of proving its authenticity in the manner provided in this Rule (Sec. 1, Rule 5).

(2) Manner of authentication. Before any private electronic document offered as authentic is received in evidence, its authenticity must be proved by any of the following means:
   (a) By evidence that it had been digitally signed by the person purported to have signed the same;
   (b) By evidence that other appropriate security procedures or devices as may be authorized by the Supreme Court or by law for authentication of electronic
documents were applied to the document; or

(c) By other evidence showing its integrity and reliability to the satisfaction of the judge (Sec. 2, Rule 5).

(3) Proof of electronically notarized document. A document electronically notarized in accordance with the rules promulgated by the Supreme Court shall be considered as a public document and proved as a notarial document under the Rules of Court (Sec. 3, Rule 5).

(4) Electronic signature. An electronic signature or a digital signature authenticated in the manner prescribed hereunder is inadmissible in evidence as the functional equivalent of the signature or a person on a written document (Sec. 1, Rule 6).

(5) Authentication of electronic signatures. An electronic signature may be authenticated in any of the following manners:

(a) By evidence that a method or process was utilized to establish a digital signature and verify the same;
(b) By any other means provided by law; or
(c) By any other means satisfactory to the judge as establishing the genuineness of the electronic signature (Sec. 2, Rule 6).

(6) Disputable presumptions relating to electronic signature. Upon the authentication of an electronic signature, it shall be presumed that:

(a) The electronic signature is that of the person to whom it correlates;
(b) The electronic signature was affixed by that person with the intention of authenticating or approving the electronic document to which it is related or to indicate such person's consent to the transaction embodied therein; and
(c) The methods or processes utilized to affix or verify the electronic signature without error or fault (Sec. 3, Rule 6).

(7) Disputable presumptions relating to digital signatures. Upon the authentication of a digital signature, it shall be presumed, in addition to those mentioned in the immediately preceding section, that:

(a) The information contained in a certificate is correct;
(b) The digital signature was created during the operational period of a certificate;
(c) The message associated with a digital signature has not been altered from the time it was signed; and
(d) A certificate had been issued by the certification authority indicated therein (Sec. 4, Rule 6).

d. Electronic documents and the hearsay rule

(1) Electronic document refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be proved and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It includes digitally signed documents and any print-out or output, readable by sight or other means, which accurately reflects the electronic data message or electronic document. For purposes of these Rules, the term “electronic document” may be used interchangeably with electronic data message (Sec. 1(h), Rule 2).

(2) Original of an electronic document. An electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately (Sec. 1, Rule 4).

(3) Copies as equivalent to the originals. When a document is in two or more copies executed at or about the same time with identical contents, or is a counterpart produced by the same impression as the original, or from the same matrix, or by mechanical or
electronic re-recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduces the original, such copies or duplicates shall be regarded as the equivalent of the original.

Notwithstanding the foregoing, copies or duplicates shall not be admissible to the same extent as the original if:
(a) A genuine question is raised as to the authenticity of the original; or
(b) In the circumstances it would be unjust or inequitable to admit a copy in lieu of the original (Sec. 2, Rule 4).

(4) Inapplicability of the hearsay rule. A memorandum, report, record or data compilation of acts, events, conditions, opinions, or diagnoses, made by electronic, optical or other similar means at or near the time of or from transmission or supply of regular course of conduct of a business activity, and such was the regular practice to make the memorandum, report, record, or data compilation by electronic, optical or similar means, all of which are shown by the testimony of the custodian or other qualified witnesses, is excepted from the rule on hearsay evidence (Sec. 1, Rule 8).

(5) Overcoming the presumption. The presumption provided for in Sec. 1, Rule 8, may be overcome by evidence of the untrustworthiness of the source of information or the method or circumstances of the preparation, transmission or storage thereof (Sec. 2, Rule 8).

e. Audio, photographic, video and ephemeral evidence

(1) Audio, photographic and video evidence of events, acts or transactions shall be admissible provided it shall be shown, presented or displayed to the court and shall be identified, explained or authenticated by the person who made the recording or by some other person competent to testify on the accuracy thereof (Sec. 1, Rule 11).

(2) Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

A recording of the telephone conversation or ephemeral electronic communication shall be covered by the immediately preceding section.

If the foregoing communications are recorded or embodied in an electronic document, then the provisions of Rule 5 (authentication of electronic documents) shall apply (Sec. 2, Rule 11).

(3) Ephemeral electronic communication refers to telephone conversations, text messages, chatroom sessions, streaming audio, streaming video, and other electronic forms of communication the evidence of which is not recorded or retained (Sec. 1(k), Rule 2).

(1) 2003 Bar: State the rule on the admissibility of an electronic evidence. (4%)
Answer: Whenever a rule of evidence refers to the term writing, document, record, instrument, memorandum, or any other form of writing, such term shall be deemed to include an electronic document as defined in these Rules (Sec. 1).

An electronic document is admissible in evidence if it complies with the rules on admissibility prescribed by the Rules of Court and related laws and is authenticated in the manner prescribed these Rules (Sec. 2). The authenticity of any private electronic document must be proved by evidence that it had been digitally signed and other appropriate security measures hav been applied (Sec. 2, Rule 5).

(2) Before a tape recording is admissible in evidence and given probative value, the following requisites must first be established:
(a) A showing that the recording device was capable of taking testimony;
(b) A showing that the operator of the device was competent;
(c) Establishment of the authenticity and correctness of the recording;
(d) A showing that changes, additions, or deletions have not been made;
(e) A showing of the manner of the preservation of the tape recording;
(f) Identification of the speakers; and
(g) A showing that the testimony elicited was voluntarily made without any kind of inducement.

The party seeking the introduction in evidence of a tape recording bears the burden of going forth with sufficient evidence to show that the recording is an accurate reproduction of the conversation recorded. These requisites were laid down precisely to address the criticism of susceptibility of tampering of recordings. (Torralba v. People [2005]).

**Parol Evidence Rule (Rule 130)**

**Application of the parol evidence rule**

1. The parol evidence rule is a rule which states that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon, and there can be between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement. It seeks to preserve what the parties have reduced in writing and prohibits evidence alliunde or oral testimonial evidence from being presented to vary the terms of, or add stipulations to, the written agreement (Gaw vs. IAC, 220 SCRA 405). In other words, any oral evidence of an agreement should be excluded when the existing agreement is already in writing (Congregations of the Religious of the Virgin Mary vs. CA, 291 SCRA 385).

2. Parol evidence forbids any addition to or contradiction of the terms of a written instrument by testimony purporting to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties (Goldband vs. Allen, 245 Mass. 143). Oral testimony cannot prevail over a written agreement of the parties, the purpose being to give stability to written agreements and to remove the temptation and possibility of perjury, which would be afforded if parol evidence were admissible.

3. The rule is based on the presumption that the parties have made the written instrument the only repository and memorial of the truth and whatever is not found in the instrument must have been waived and abandoned by the parties. Hence, parol evidence cannot serve the purpose of incorporation into the contract additional contemporaneous conditions which are not mentioned at all in the writing, unless the case falls under any of the exceptions to the rule (Cu vs. CA, 195 SCRA 647).

4. Contrary to the claim of the respondents, it is not error for the trial court to rely on parol evidence, i.e., the oral testimonies of witnesses Simeon Juan Tong and Jose Juan Tong, to arrive at the conclusion that an implied resulting trust exists. Because an implied trust is neither dependent upon an express agreement nor required to be evidenced by writing, Article 1457 of our Civil Code authorizes the admission of parol evidence to prove their existence. Parol evidence that is required to establish the existence of an implied trust necessarily has to be trustworthy and it cannot rest on loose, equivocal or indefinite declarations. (Tong v. Go Tiat Kun, GR No. 196023, 04/21/2014).
When parol evidence can be introduced

(1) Introducing parol evidence means offering extrinsic or extraneous evidence that would modify, explain or add to the terms of the written agreement. Parol evidence can be introduced as long as the pleader puts in issue in the pleading any of the matters set forth in the rule such as:
   (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
   (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
   (c) The validity of the written agreement; or
   (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
   The terms “agreement” includes wills.

Distinctions between the best evidence rule and parol evidence rule

<table>
<thead>
<tr>
<th>Best Evidence Rule</th>
<th>Parol Evidence Rule</th>
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<tbody>
<tr>
<td>The issue is contents of a writing.</td>
<td>There is no issue as to contents of a writing.</td>
</tr>
<tr>
<td>Secondary evidence is offered to prove the contents of a writing, which is not allowed unless the case falls under any of the exceptions.</td>
<td>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.</td>
</tr>
<tr>
<td>Establishes preference for the original document over a secondary evidence thereof.</td>
<td>Not concerned with the primacy of evidence but presupposes that the original is available.</td>
</tr>
<tr>
<td>Precludes the admission of secondary evidence if the original document is available.</td>
<td>Precludes the admission of other evidence to prove the terms of a document other than the contents of the document itself.</td>
</tr>
<tr>
<td>Can be invoked by any litigant to an action whether or not said litigant is a party to the document involved.</td>
<td>Can be invoked only by the parties to the document and their successors in interest.</td>
</tr>
<tr>
<td>Applies to all forms of writing.</td>
<td>Applies to written agreements (contracts) and wills.</td>
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Authentication and Proof of Documents (Rule 132)

Meaning of authentication

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

Public and private documents

<table>
<thead>
<tr>
<th>Public document</th>
<th>Private document</th>
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<tbody>
<tr>
<td>Admissible in evidence without further proof of their due execution or genuineness.</td>
<td>Must be proved as to their due execution and authenticity before they may be received as evidence.</td>
</tr>
<tr>
<td>Evidence even against a third person of the fact which gave rise to their due execution and to the date of the latter.</td>
<td>Bind only the parties who executed them or their privies, insofar as due execution and date of the document are concerned.</td>
</tr>
</tbody>
</table>
Certain agreements require that they should be in a public instrument (in writing and notarized) to be valid and effective, such as sale of real property. Valid as to agreement between parties, unless otherwise disallowed by law.

Public documents include the written official acts, or records. Every deed or instrument executed by a private person, without the intervention of a public notary or other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth.

When a private writing requires authentication; proof of a private writing

(1) Proof of private document. - Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:
   (a) By anyone who saw the document executed or written; or
   (b) By evidence of the genuineness of the signature or handwriting of the maker. Any other private document need only be identified as that which it is claimed to be (Sec. 20).

(2) A private document or writing is one which is executed by the parties without the intervention of a public notary or a duly authorized public official, by which some disposition or agreement is proved, evidenced or set forth. Being a private document, its due execution and authenticity must first be established, by one of the parties thereto, by the testimony of any one who saw the writing executed, by evidence of the genuineness of the handwriting of the maker thereof (Ong vs. People, 342 SCRA 372).

When evidence of authenticity of a private writing is not required (ancient documents)

(1) When evidence of authenticity of private document not necessary. - Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given (Sec. 21).

(2) Private documents whose due execution and authenticity need not be proved, and may thus be presented in evidence like public documents, include the following:
   (a) Ancient documents as provided for in Sec. 21; and
   (b) Documents admitted by the adverse party (Chua vs. CA, 206 SCRA 339).

(3) An ancient document is one that is:
   (a) More than thirty (30) years old;
   (b) Found in the proper custody;
   (c) Unblemished by any alteration or by any circumstance of suspicion; and
   (d) It must on its face appear to be genuine (Cequena vs. Bolante, 330 SCRA 216).

How to prove genuineness of a handwriting

(1) How genuineness of handwriting proved. - The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge (Sec. 22, Rule 132).
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).

The test of genuineness ought to be the resemblance, not the formation of letters in some other specimens but to the general character of writing, which is impressed on it as the involuntary and unconscious result of constitution, habit or other permanent course, and is, therefore, itself permanent. The identification of handwriting should not rest, therefore, on the apparent similarity or dissimilarity of one feature but should be based on the examination of all the basic characteristics of the handwriting under study (People vs. Agresor, 320 SCRA 302).

Public documents as evidence; proof of official record

(1) Public documents are:
(a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
(b) Documents acknowledged before a notary public except last wills and testaments; and
(c) Public records, kept in the Philippines, of private documents required by law to be entered therein (Sec. 19).

(2) Public documents as evidence. - Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter (Sec. 23). Public documents are of two classes:
(a) Those issued by competent public officials by reason of their office, and
(b) Those executed by private individuals which are authenticated by notaries public (Intestate Estate of Pareja vs. Pareja, 95 Phil. 167).

(3) Proof of official record. - The record of public documents referred to in paragraph (a) of Section 19 (official acts), when admissible for any purpose, may be evidenced (a) by an official publication thereof or (b) by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office (Sec. 24).

Attestation of a copy

(1) What attestation of copy must state. - Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court (Sec. 25).
Public record of a private document

(1) **Public record of a private document.** - An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody (Sec. 27).

Proof of lack of record

(1) **Proof of lack of record.** - A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry (Sec. 28).

How a judicial record is impeached

(1) **How judicial record impeached.** - Any judicial record may be impeached by evidence of:
(a) want of jurisdiction in the court or judicial officer, (b) collusion between the parties, or (c) fraud in the party offering the record, in respect to the proceedings (Sec. 29).

(2) Judicial proceedings are presumed to be regular and should be given full faith and credit, and that all steps required by law had been taken. It is also presumed that a court or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction. To impeach judicial record, there must therefore be evidence of want of jurisdiction, collusion between the parties or fraud on the part of the party offering the record, which must be clear, convincing and more than merely preponderant, in order to overcome the presumption of regularity in the performance of official duties and the presumption of regularity of judicial proceedings, and the burden of proof lies on the part of the party who challenges the validity of judicial records.

(3) Under section 29, rule 132, a written statement signed by an officer having the custody of an official record or by his deputy that after diligent search, no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate to that effect, is admissible as evidence that the records of his office contain no such record or entry. Thus, the certification of the MCR, who is undeniably the custodian of marriage licenses issued in their jurisdictions, to the effect that no such marriage license was issued by the registry to the parties herein as admissible and sufficient evidence to prove that the marriage of the parties was celebrated without such license.

Furthermore, as custodians of public documents such as marriage licenses, civil registrars are public officers who enjoy the presumption of regularity in the performance of their duties, absent contradiction or other evidence to the contrary pursuant to Sec. 3(m), Rule 131 of the Rules of Court. Here, respondent failed to present proof that the MCR was lax in performing her duty of checking the records of their office, thus the presumption must stand (Abbas v. Abbas, GR No. 183896, 01/30/2013).

Proof of notarial documents

(1) **Proof of notarial documents.** - Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved (Sec. 30).

(2) Notarization is not an empty routine. It converts a private document into a public document and renders it admissible in court without further proof of its authenticity. A
A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined (Coronado vs. Felonco, 344 SCRA 565).

**How to explain alterations in a document**

1. Alterations in document, how to explain. - The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that the document shall not be admissible in evidence (Sec. 31).

**Documentary evidence in an unofficial language**

1. Documentary evidence in an unofficial language. - Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial (Sec. 33).

**C. Testimonial Evidence**

**Qualifications of a Witness**

1. Except as provided in the next succeeding section, all persons who can perceive, and perceiving, can make known their perception to others, may be witnesses. Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification (Sec. 20, Rule 130).

2. A person is qualified or is competent to be a witness, if (a) he is capable of perceiving, and (b) he can make his perception known. It should be noted however, that loss of the perceptive sense after the occurrence of the fact does not affect the admissibility of the testimony. Hence, a blind man can testify to what he saw prior to his blindness or a deaf man, to what he heard prior to his deafness. But a person incapable of perception is _pro tanto_ incapable of testifying (Wharton’s Criminal Evidence).

3. A witness may have been capable of perceiving, yet incapable of narration. He may have no powers of speech, and have no means of expressing himself by signs. He may have become insane since the occurrence he is called upon to relate. A person incapable of narration is _pro tanto_ incapable of testifying (ibid.).

**Competency Versus Credibility of a Witness**

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<tr>
<th>Competency</th>
<th>Credibility</th>
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<tr>
<td>Means the legal fitness or ability of a witness to be heard on the trial of a cause (Bouvier's Law Dictionary).</td>
<td>Means a witness’s disposition and intention to tell the truth in the testimony that he has given.</td>
</tr>
<tr>
<td>As a general rule, when a witness takes the</td>
<td>Reflects upon the integrity and believability of</td>
</tr>
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*ELMER P. BRABANTE * REMEDIAL LAW REVIEWER 2016  Page 369
stand to testify, the law, on grounds of public policy, presumes that he is competent. Hence, if the evidence is in equipoise, the witness should be permitted to testify. The court certainly cannot reject the witness if there is no proof of his incompetency. The burden is therefore upon the party objecting to the competency of a witness to establish the grounds of incompetency (Wharton’s Criminal Evidence).

The decision of competency of a witness rests primarily with the trial judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath (US vs. Buncad, 25 Phil. 530). Depends on the appreciation of a witness’s testimony and arises from the belief and conclusion of the court that said witness is telling the truth (Gonzales vs. CA, 90 SCRA 183).

(1) It is settled that the assessment of the credibility of witnesses is within the province and expertise of the trial court. In this case, we find no cogent reason to depart from the findings of the trial court. The court below categorically found that Relecita had no ill motive to testify against appellant. She has no reason to impute on him the heinous crime of murder had she not witnessed the actual killing of the victim. Similarly, the appellate court found Relecita to have positively identified the appellant as the perpetrator of the crime. Also, the failure of Relecita to warn the victim of the appellant’s impending attack should not be taken against her. Neither should it be taken as a blemish to her credibility. (People v. Abaigar, GR No. 199442, 04/07/2014).

(2) Inconsistencies and discrepancies in details which are irrelevant to the elements of the crime are not grounds for acquittal. As long as the inaccuracies concern only minor matters, the same do not affect the credibility of witnesses. Truth-telling witnesses are not always expected to give error-free testimonies considering the lapse of time and treachery of human memory. Inaccuracies may even suggest that the witnesses are telling the truth and have not been rehearsed. (People v. Paras, GR No. 192912, 06/04/2014).

(3) Jurisprudence instructs that when the credibility of a witness is of primordial consideration, as in this case, the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect. This is because the trial court has had the unique opportunity to observe the demeanor of a witness and was in the best position to discern whether they were telling the truth. (People v. Dela Cruz, GR No. 192820, 06/04/2014).

(4) AAA’s mental condition may have prevented her from delving into the specifics of the assault in her testimony almost three years later, unlike the way she narrated the same when she was asked at the barangay outpost merely minutes after the incident. However, as we have ruled in a litany of cases, when a woman, more so if she is a minor, says she has been raped, she says, in effect, all that is necessary to prove that rape was committed. Youth and, as is more applicable in the case at bar, immaturity are generally badges of truth. Furthermore, the report of PC/Insp. Chua that the findings of the physical examination were consistent with recent sexual intercourse, provide additional corroboration to the testimonies of AAA and BBB. It should be noted that this report was stipulated upon by the prosecution and the defense. (People v. Silvano, GR No. 196315, 07/28/2014).
Disqualifications of Witnesses

(1) Absolute disqualification:
   (a) Those who cannot perceive (Sec. 20);
   (b) Those who can perceive but cannot make their perception known (Sec. 20);
   (c) Mentally incapacity - Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others (Sec. 21);
   (d) Mentally immaturity - Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully (Sec. 21);
   (e) Marital disqualification - During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants (Sec. 22).
   (f) Parental and filial privilege -- No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants (Sec. 25).

(2) Relative disqualifiaction:
   (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,
A 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).

### Disqualification by reason of marriage (spousal immunity)

1. During their marriage, neither the husband nor the wife may testify for or against the other without the consent of the affected spouse, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter’s direct descendants or ascendants (Sec. 22).

2. The spouses must be legally married to each other to invoke the benefit of the rule; it does not cover an illicit relationship (People vs. Francisco, 78 Phil. 694). When the marriage is dissolved on the grounds provided for by law like annulment or declaration of nullity, the rule can no longer be invoked. A spouse can already testify against the other despite an objection being interposed by the affected spouse. If the testimony for or against the other spouse is offered during the existence of the marriage, it does not matter if the facts subject of the testimony occurred before the marriage. It only matters that the affected spouse objects to the offer of testimony.
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).

2006 Bar: Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel their neighbor. She was temporarily living with her sister in Pasig City.

For unknown reasons, the house of Leticia’s sister was burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later he was charged with arson in an Information filed with the Regional Trial Court, Pasig City.

During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson.

Can Leticia testify over the objection of her husband on the ground of marital privilege? (5%)

Answer: No, Leticia cannot testify over the objection of her husband, not under marital privilege which is inapplicable and which can be waived, but she would be barred under Sec. 22 of Rule 130, which prohibits her from testifying and which cannot be waived (Alvarez v. Ramirez, GR No. 143439, 10/14/2005).

2004 Bar: XYZ, an alien, was criminally charged of promoting and facilitating child prostitution and other sexual abuses under RA No. 7610. The principal witness against him was his Filipina wife, ABC. Earlier, she had complained that XYZ’s hotel was being used as a center for sex tourism and child trafficking. The defense counsel for XYZ objected to the testimony of ABC at the trial of the child prostitution case and the introduction of the affidavits she executed against her husband as a violation of espousal confidentiality and marital privilege rule. It turned out the DEF, the minor daughter of ABC by her first husband who was a Filipino, was molested by XYZ earlier. Thus, ABC had filed for legal separation from XYZ since last year.

May the court admit the testimony and affidavits of the wife, ABC, against her husband XYZ, in the criminal case involving child prostitution? Reason. (5%)

Answer: Yes. The court may admit the testimony and affidavits of the wife against her husband in the criminal case involving child prostitution. It is not covered by the marital privilege rule. One exception thereof is where the crime is committed by one against the other or the latter’s direct descendants or ascendants (Sec. 22, Rule 130). A crime by the daughter is a crime against the wife and directly attacks or vitally impairs the conjugal relation (Ordondo v. Daquigan, 62 SCRA 270 [1975]).

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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.

<table>
<thead>
<tr>
<th>Marital Disqualification (Sec. 22)</th>
<th>Marital Privilege (Sec. 24)</th>
</tr>
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<tbody>
<tr>
<td>Can be invoked only if one of the spouses is a party to the action;</td>
<td>Can be claimed whether or not the spouse is a party to the action;</td>
</tr>
<tr>
<td>Applies only if the marriage is existing at the time the testimony is offered;</td>
<td>Can be claimed even after the marriage has been dissolved;</td>
</tr>
<tr>
<td>Ceases upon the death or either spouse;</td>
<td>Continues even after the termination of the marriage;</td>
</tr>
<tr>
<td>Constitutes a total prohibition against any testimony for or against the spouse of the witness;</td>
<td>Applies only to confidential communications between the spouses.</td>
</tr>
<tr>
<td>The prohibition is a testimony for or against the other.</td>
<td>The prohibition is the examination of a spouse as to matters related in confidence to the other spouse.</td>
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</table>

**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 i(8 Wigmore
587). However, if the communications were not made for the purpose of creating that
relationship, they will not be covered by the privilege even if thereafter the lawyer
becomes the counsel of the party in a case involving said statements (People vs.
Enriquez, 256 Phil. 221).
(4) The communications covered by the privilege include verbal statements and documents or papers entrusted to the attorney, and of facts learned by the attorney through the act or agency of his client.

(5) The privilege does not apply to communications which are:
   (a) Intended to be public;
   (b) Intended to be communicated to others;
   (c) Intended for an unlawful purpose;
   (d) Received from third persons not acting on behalf of or as agents of the client; or
   (e) Made in the presence of third parties who are strangers to the attorney-client relationship.

(6) **2008 Bar**: On August 15, 2008, Edgardo committed estafa against Petronilo in the amount of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyer twice, the first time on August 14, 2008, and the second time on August 26, 2008; and that both visits concerned the swindling of Petronilo. During the trial of Edgardo, the RTC issued a subpoena **ad testificandum** to Edgardo’s lawyer for him to testify on the conversations during their first and second meetings. May the subpoena be quashed on the ground of privileged communication? Explain fully. (4%)

**Answer**: Yes. The mantle of privileged communication based on lawyer-client relationship protects the communication between a lawyer and his client against any adverse party as in this case. The subpoena requiring the lawyer to testify can be quashed on the ground of privileged communication (*Regala v. Sandiganbayan, GR No. 105938, 09/20/1996*). Sec. 24 of Rule 130 provides that an attorney cannot, without the consent of his client, be examined on any communication made to him by his client, or his advice given thereon, including his secretary, stenographer, or clerk, concerning any fact the knowledge of which has been acquired in such capacity. However, where the subject matter of the communication involves the commission of a crime, in which the lawyer himself is a participant or conspirator, then the same is not covered by the privilege. Moreover, if the substance of the communication can be established by independent evidence, the lawyer maybe compelled to testify.

### Disqualification by reason of privileged communications between Physician and Patient

(1) A person authorized to practice medicine, surgery or obstetrics cannot in a civil case, without the consent of the patient, be examined as to any advice or treatment given by him or any information which he may have acquired in attending such patient in a professional capacity, which information was necessary to enable him to act in that capacity, and which would blacken the reputation of the patient (Sec. 24).

(2) For the disqualification to apply, it is necessary that:
   (a) The physician is authorized to practice medicine, surgery or obstetrics;
   (b) The information was acquired or the advice or treatment was given by him in his professional capacity for the purpose of treating and curing the patient;
   (c) The information, advice or treatment, if revealed, would blacken the reputation of the patient; and
   (d) The privilege is invoked in a civil case, whether the patient is a party thereto or not.

(3) The privilege does not apply where:
   (a) The communication was not given in confidence;
   (b) The communication is irrelevant to the professional employment;
   (c) The communication was made for an unlawful purpose, as when it is intended for the commission or concealment of a crime;
   (d) The information was intended to be made public; or
   (e) There was a waiver of the privilege either by the provisions of contract or law.

**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.

**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).

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<thead>
<tr>
<th>Examination Type</th>
<th>Description</th>
<th>Purpose</th>
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<tbody>
<tr>
<td>Direct examination</td>
<td>Direct examination is the examination-in-chief of a witness by the party presenting him on the facts relevant to the issue (Sec. 5).</td>
<td>Purpose is to build up the theory of the case by eliciting facts about the client's cause of action or defense.</td>
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<tr>
<td>Cross examination</td>
<td>Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue (Sec. 6).</td>
<td>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.</td>
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<tr>
<td>Re-direct examination</td>
<td>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.</td>
<td>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</td>
</tr>
<tr>
<td><strong>Re-cross examination</strong></td>
<td><strong>Upon the conclusion of the re-direct examination, the adverse party may re-cross-examine the witness on matters stated in his re-direct examination, and also on such other matters as may be allowed by the court in its discretion (Sec. 8).</strong></td>
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<tr>
<td><strong>Recalling the witness</strong></td>
<td><strong>After the examination of a witness by both sides has been concluded, the witness cannot be recalled without leave of the court. The court will grant or withhold leave in its discretion, as the interests of justice may require (Sec. 9).</strong></td>
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(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, 5th Ed., Vol I);
(f) By showing interest (Wigmore on Evidence);
(g) By showing intent and motive (US vs. Lamb, 26 Phil. 423).

(4) The credibility of a witness may be attacked by proof of his bias, interest or hostility; by contradictory evidence; by evidence that his general reputation for truth, honesty or integrity is bad; by evidence that he has made at other times statements inconsistent with his present testimony; and by the testimony of other witness that the facts about which he has testified are otherwise than he as stated (58 Am. Jur. 370).

(5) Party may not impeach his own witness. - Except with respect to witnesses referred to in paragraphs (d) and (e) of Section 10, the party producing a witness is not allowed to impeach his credibility. A witness may be considered as unwilling or hostile only if so declared by the court upon adequate showing of his adverse interest, unjustified reluctance to testify, or his having misled the party into calling him to the witness stand. The unwilling or hostile witness so declared, or the witness who is an adverse party, may be impeached by the party presenting him in all respects as if he had been called by the adverse party, except by evidence of his bad character. He may also be impeached and cross-examined by the adverse party, but such cross examination must only be on the subject matter of his examination-in-chief (Sec. 12).

How the witness is impeached by evidence of inconsistent statements
(Laying the Predicate)

(1) Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, (a) the statements must be related to him, with the circumstances of the times and places and the persons present, and (b) he must be asked whether he made such statements, and if so, allowed to explain them. If the statements be in writing they must be shown to the witness before any question is put to him concerning them (Sec. 13).

(2) A witness cannot be impeached by evidence of contradictory or prior inconsistent statements until the proper foundation or predicate has been laid by the party against whom said witness was called (People vs. De Guzman, 288 SCRA 346). Laying the predicate means that it is the duty of a party trying to impugn the testimony of a witness by means of prior or subsequent inconsistent statements, whether oral or in writing, to give the witness a 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, 2nd Ed., Sec. 2411).

Evidence of the good character of a witness

(1) Evidence of the good character of a witness is not admissible until such character has been impeached (Sec. 14, Rule 132). This rule that evidence of a good character of a witness is not admissible until such character has been impeached is the logical result of the other one, that the law presumes every person to be reputedly truthful until evidence shall have been produced to the contrary (Johnson vs. State, 129 Wis. 146).

(2) Character evidence not generally admissible; exceptions. -
   (a) In Criminal Cases:
      (1) The accused may prove his good moral character which is pertinent to the moral trait involved in the offense charged.
      (2) Unless in rebuttal, the prosecution may not prove his bad moral character which is pertinent to the moral trait involved in the offense charged.
         Note that in criminal cases, the prosecution goes first. Hence, it cannot present evidence on the bad moral character of the accused on its evidence in chief.
      (3) The good or bad moral character of the offended party may be proved if it tends to establish in any reasonable degree the probability or improbability of the offense charged.
   (b) In Civil Cases:
      Evidence of the moral character of a party in a civil case is admissible only when pertinent to the issue of character involved in the case.
   (c) In the case provided for in Rule 132, Section 14 (Sec. 51, Rule 130).

Judicial Affidavit Rule (AM No. 12-8-8-SC)

Section 1. Scope. - (a) This Rule shall apply to all actions, proceedings, and incidents requiring the reception of evidence before:
   (1) The Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts, and the Shari’a Circuit courts but shall not apply to small claims cases unde AM No. 08-8-7-SC;
   (2) The Regional Trial Courts and the Shari’a District Courts;
   (3) The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari’a Appellate Courts;
   (4) The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippines (IBP); and
   (5) The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.

   (b) For the purpose of brevity, the above courts, quasi-judicial bodies, or investigating officers shall be uniformly referred to here as the “court.”

Sec. 2. Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies. - (a) The
parites shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

1. The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
2. The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Sec. 3. Contents of Judicial Affidavits. - A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness;
(b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;
(c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;
(d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:
   (1) Show the circumstances under which the witness acquired the facts upon which he testifies;
   (2) Elicit from him those facts which are relevant to the issues that the case presents; and
   (3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;
(e) The signature of the witness over his printed name; and
(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

Sec. 4. Sworn attestation of the lawyer. - (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

1. He faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and
2. Neither he nor other person then present or assisting him coached the witness regarding the latter's answers.

(b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.

Sec. 5. Subpoena. - If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself or the issuance of a subpoena ad testificandum or duces tecum under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to
the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be *ex parte*.

**Sec. 6. Offer and objections to testimony in judicial affidavit.** - The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

**Sec. 7. Examination of the witness on his judicial affidavit.** - The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him as on re-direct. In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit answers that it needs for resolving the issues.

**Sec. 8. Oral offer and objections to exhibits.** - (a) Upon the determination of the testimony of his last witness, a party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.

(b) After each piece of exhibits is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.

(c) Since the documentary or object exhibits form part of the judicial affidavits that describe and authenticate them, it is sufficient that such exhibits are simply cited by their markings during the offers, the objections, and the rulings, dispensing with the description of each exhibit.

**Sec. 9. Application of rule to criminal actions.** - (a) This rule shall apply to all criminal actions:  

(1) Where the maximum of the imposable penalty does not exceed six years;  
(2) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or  
(3) With respect to the civil aspect of the actions, whatever the penalties involved are.

(b) The prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-trial, serving copies of the same upon the accused. The complainant or public prosecutor shall attach to the affidavits such documentary or object evidence as he may have, marking them as Exhibits A, B, C, and so on. No further judicial affidavit, documentary or object evidence shall be admitted at the trial.

(c) If the accused desires to be heard on his defense after receipt of the judicial affidavits of the prosecution, he shall have the option to submit his judicial affidavit as well as those of his witnesses to the court within ten days from receipt of such affidavits and serve a copy of each object evidence previously marked as Exhibits 1, 2, 3, and so on. These affidavits shall serve as direct testimonies of the accused and his witnesses when they appear before the court to testify.

**Sec. 10. Effect of non-compliance with the Judicial Affidavit Rule.** - (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

(b) The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client’s right to confront by cross-examination
the witnesses there present.

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the complaint replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than P1,000.00 nor more than P5,000.00, at the discretion of the court.

[Rule took effect on January 1, 2013.]

Admissions and Confessions (Rule 130)

Judicial Admissions

(1) An admission, verbal or written, made by party in the course of the proceedings in the same case does not require proof. It may be made:
   (a) In the pleadings filed by the parties;
   (b) In the course of the trial either by verbal or written manifestations or stipulations; or
   (c) In other stages of judicial proceedings, as in the pre-trial of the case.
   When made in the same case in which it is offered, “no evidence is needed to prove the same and it cannot be contradicted unless it is shown to have been made through palpable mistake or when no such admission was made.” The admission becomes conclusive on him, and all proof submitted contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not (Republic v. Estate of Hans Menzi [2012]).

(2) The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 24, Rule 129, a judicial admission requires no proof. The admission may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made. The Supreme Court cannot lightly set aside a judicial admission especially when the opposing party relied upon the same and accordingly dispensed with further proof of the fact already admitted. An admission made by a party in the course of the proceedings does not require proof (Toshiba Information Equipment (Phils.), Inc. v. Commissioner of Internal Revenue [2010]).

(3) A judicial admission conclusively binds the party making it, he cannot thereafter take a position contradictory to, or inconsistent with his pleadings. Acts or facts admitted do not require proof and cannot be contradicted unless it is shown that the admission was made through palpable mistake or that no such admission was made (Cahilig v. Hon. Terencio [2010]).

(4) The extrajudicial confession or admission of one accused is admissible only against said accused, but is inadmissible against the other accused. But if the declarant or admitter repeats in court his extrajudicial admission, during the trial and the other accused is accorded the opportunity to cross-examine the admitter, the admission is admissible against both accused because then it is transposed into a judicial admission (Enriquez v. Sandiganbayan [2012]).
(5) Judicial admissions are not be contradicted by the admitter who is the party and binds the person who makes the same, and absent any showing that this was maden thru palpable mistake or that no such admission was made, no amount of realization can offset it (Sps. Manzanilla v. Waterfields Industries Corporation [2014]).

(6) Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one the instances of judicial admissions explicitly provided for under Section 7, Rule 18, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. Under Section 4, Rule 129 of the Rules of Court, a judicial admission requires no proof (Eastern Shipping Lines, Inc. v, BPI/MS Insurance Corporation [2015]).

<table>
<thead>
<tr>
<th>Admission</th>
<th>Confession</th>
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<tbody>
<tr>
<td>An act, declaration or omission of a party as to a relevant fact (Sec. 26, Rule 130).</td>
<td>The declaration of an accused acknowledging his guilt of the offense charged, or of any offense necessarily included therein (Sec. 33, Rule 130).</td>
</tr>
<tr>
<td>It is a voluntary acknowledgment made by a party of the existence of the truth of certain facts which are inconsistent with his claims in an action (Black’s Law Dictionary, 5th Ed.).</td>
<td>It is a statement by the accused that he engaged in conduct which constitutes a crime (29 Am. Jur. 708).</td>
</tr>
<tr>
<td>Broader than confession.</td>
<td>Specific type of admission which refers only to an acknowledgment of guilt</td>
</tr>
<tr>
<td>May be implied like admission by silence.</td>
<td>Cannot be implied, but should be a direct and positive acknowledgment of guilt.</td>
</tr>
<tr>
<td>May be judicial or extrajudicial.</td>
<td>May be judicial or extrajudicial.</td>
</tr>
<tr>
<td>May be adoptive, which occurs when a person manifests his assent to the statements of another person (Estrada vs. Desierto, 356 SCRA 108).</td>
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</tr>
</tbody>
</table>

(1) **2008 Bar**: Bembol was charged with rape. Bembol’s father, Ramil, approached Artemon, the victim’s father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

(a) During the trial, the prosecution presented Artemon to testify on Ramil’s offer and thereby establish an implied admission of guilt. Is Ramil’s offer to settle admissible in evidence? (3%)

(b) During the pre-trial, Bembol personally offered to settle the case for P1 Million to the private prosecutor, who immediately put the offer on record in the presence of the trial judge. Is Bembol’s offer a judicial admission of his guilt? (3%)

**Answer:**

(a) Yes. The offer to settle by the father of the accused, is admissible in evidence as an implied admission of guilt (Peo v. Salvador, GR No. 136870-72, 01/28/2003).

(b) Yes. Bembol’s offer is an admission of guilt (Sec. 33, Rule 130). If it was repeated by the prosecutor in the presence of the judge at pre-trial, the extrajudicial confession becomes transposed into a judicial confession. There is no need for the assistance of counsel (Peo v. Buntag GR No. 123070, 04/14/2004).

**Presumptions**
(1) Under the Doctrine of Estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party may not go back to his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing to be true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it (Sps. Manzanilla v. Waterfields Industries Corporation [2014]).

(2) In “estoppel,” a person who by his deed or conduct has induced another to act in a particular manner, is barred from adopting an inconsistent position, attitude or course of conduct that thereby causes loss or injury to another. It further bars him from denying the truth of a fact which has, in the contemplation of the law, become settled by the acts and proceeding of a judicial or legislative officer or by the act of the party himself, either by conventional writing or by representations, express or implied or in pais (Adolfo v. Adolfo [2015]).

(3) Suppression of testimony. Under Section 3(3), Rule 131, the rule that “evidence suppressed would be adverse if produced” does not apply if:

(a) The evidence is at the disposal of both parties;

(b) The suppression was not willful;

(c) It is merely corroborative or cumulative; and

(d) The suppression is an exercise of a privilege.

Plainly, there was no suppression of evidence in this case. First, the defense had the opportunity to subpoena Rowena even if the prosecution did not present her as a witness; instead, the defense failed to call her to the witness stand. Second, Rowena was certified to be suffering from “Acute Psychotic Depressive Condition” and thus “cannot stand judicial proceedings yet.” The non-presentation, therefore, of Rowena was not willful. Third, in any case, while Rowena was the victim, Nimfa was also present and in fact witnessed the violation committed on her sister (People v. Padrigone [2002]).

(4) Disputable presumption that official duties have been regularly performed. As regards affidavits, including Answers to interrogatories which are required to be sworn to by the person making them, the only portion thereof executed by the person authorized to take oaths is the jurat. The presumption that official duty has been regularly performed therefor applies only to the latter portion, where the notary public merely attests that the affidavit was subscribed and sworn to before him or her on the date mentioned thereon. Thus, even though affidavits are notarized documents, affidavits are self-serving and must be received with caution (Philippine Trust Company v. Court of Appeals [2010]).

Res Inter Alios Acta Rule

(1) Res inter alios acta alteri nocere debit means that “things done to strangers ought not to injure those who are not parties to them” (Black’s Law Dictionary, 5th Ed.). It has two branches, namely:

(a) The rule that the rights of a party cannot be prejudiced by the father of the 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.

(4) An extrajudicial confession is binding only on the confessant. It cannot be admitted against his or her co-accused and is considered as hearsay against them. It would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts
of strangers, neither ought their acts or conduct be used as evidence against him. The exception provided under Sec. 30, Rule 130 of the Rules of Court to the rule allowing the admission of a conspirator requires the prior establishment of the conspiracy by evidence other than the confession (Salapuddin v. CA, GR No. 184681, 02/25/2013).

## Admission by privies

1. Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former (Sec. 31).

2. Privity means mutual succession of relationship to the same rights of property. Privies are those who have mutual or successive relationship to the same right of property or subject matter, such as personal representatives, heirs, devisees, legatees, assigns, voluntary grantees or judgment creditors or purchasers from them with notice of the facts.

3. Three exceptions are recognized to the rule that declarations of the transferor, made subsequent to the transfer, are inadmissible:
   (a) Where the declarations are made in the presence of the transferee, and he acquiesces in the statements, or asserts no rights where he ought to speak;
   (b) Where there has been a prima facie case of fraud established, as where the thing after the sale or transfer, remains with the seller or transferor;
   (c) Where the evidence establishes a continuing conspiracy to defraud, which conspiracy exists between the vendor and the vendee (Jones on Evidence, Sec. 912).

## Admission by silence

1. An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him to do so, may be given in evidence against him (Sec. 32).

2. The rule that the silence of a party against whom a claim or right is asserted may be construed as an admission of the truth of the assertion rests on that instinct of our nature, which leads us to resist an unfounded demand. The common sense of mankind is expressed in the popular phrase, silence gives consent which is but another form of expressing the maxim of the law, qui tacet cosentire videtur (Perry vs. Johnson, 59 Ala. 648).

3. Before the silence of a party can be taken as an admission of what is said, the following requisites must concur:
   (a) Hearing and understanding of the statement by the party;
   (b) Opportunity and necessity of denying the statements;
   (c) Statement must refer to a matter affecting his right;
   (d) Facts were within the knowledge of the party; and
   (e) Facts admitted or the inference to be drawn from his silence would be material to the issue.

## 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).
Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(a) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited;

(b) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him (Sec. 12, Art. III, Constitution).

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.

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. Orencienda 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

(1) Testimony generally confined to personal knowledge; hearsay excluded. - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules (Sec. 36 Rule 130).

Meaning of hearsay

(1) Evidence is called hearsay when its probative force depends in whole or in part on the competency and credibility of some persons other than the witness by whom it is sought to produce it (31 CJS 919). It also means the evidence not of what the witness himself knows but of what he has heard from others (Woodroffes Law on Evidence, 9th Ed.).

(2) 2003 Bar: X and Y were charged with murder. Upon application of the prosecution, Y was discharged from the Information to be utilized as a state witness but forgot to state the purpose of his testimony much less offer it in evidence establishing the guilt of X. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thoroughly cross-examined by the defense counsel. After the prosecution rested its case, the defense filed a motion for demurrer to evidence based on the following grounds: Y’s testimony is not admissible against X pursuant to the rule on “res inter alios acta”.

Rule on the motion for demurrer to evidence on the above ground.

Answer: The res inter alios acta rule does not apply because Y testified in open court and was subjected to cross examination.

(3) 2002 Bar: Pomeo sued for injuries suffered by the plaintiff in a vehicular accident. Julieta, a witness in court, testifies that Romeo told her (Julieta) that he (Romeo) heard Antonio, a witness to the accident, had given an excited account of the accident immediately after its occurrence. Is Julieta’s testimony admissible against Romeo over proper and timely objection? Why? (5%)

Answer: No. Julieta’s testimony is not admissible in evidence against Romeo, because while the excited account of Antonio, a witness to the accident, was told to Romeo, it was only Romeo who told Julieta about it, which makes it hearsay.

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: (DEVLECT'D WI-CAP)
   (a) Dying declaration (Sec. 37);
   (b) Entries in the course of business (Sec. 43);
   (c) Verbal acts (Sec. 42);
   (d) Family reputation or tradition regarding pedigree (Sec. 40);
   (e) Learned treatises (Sec. 46);
   (f) Entries in official records (Sec. 44);
   (g) Common reputation (Sec. 41);
   (h) Testimony or deposition at a former proceeding (Sec. 47);
   (i) Declaration against interest (Sec. 38);
   (j) Waiver;
   (k) Independently relevant evidence (Estrada vs. Desierto, 356 SCRA 108);
   (l) Commercial lists and the like (Sec. 45);
   (m) Act or declaration about pedigree (Sec. 39); and
   (n) Part of res gestae (Sec. 42).

(2) The statements from which the facts in issue may be inferred may be testified to by
   witnesses without violating the hearsay rule. Of this kind are:
   (a) Statements of a person showing his state of mind, that is his mental condition,
       knowledge, belief, intention, ill-will and other emotion (US vs. Enriquez, 1 Phil. 241);
   (b) Statements of a person whish show his physical condition, as illness and the like
       (Steely vs. Central, 88 Vt. 178);
   (c) Statements of a person from which an inference may be made as to the state of
       mind of another, that is, knowledge, belief, motive, good or bad faith, etc. of the
       latter (Roles vs. Lizarraga Hermanos, 42 Phil. 584);
   (d) Statements which may identify the date,, place, and person in question (State vs.
       Dunn, 109 la. 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.

<table>
<thead>
<tr>
<th>Admission by privies</th>
<th>Declaration against interest</th>
</tr>
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<tbody>
<tr>
<td>One of 3 exceptions to res inter alios acta</td>
<td>Exception to hearsay</td>
</tr>
<tr>
<td>Evidence against the successor in interest of the admittter</td>
<td>Evidence against even the declarant, his successor in interest, or 3rd persons</td>
</tr>
<tr>
<td>Admitter need not be dead or unable to testify</td>
<td>Declarant is dead or unable to testify</td>
</tr>
<tr>
<td>Relates to title to property</td>
<td>Relates to any interest</td>
</tr>
<tr>
<td>Admission need not be against the admittter's interest</td>
<td>Declaration must be against the interest of the declarant</td>
</tr>
</tbody>
</table>

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 reputation must have been formed previous to the controversy; and
(b) The 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; and
(b) That it was formed ante litem motam.

(5) Character refers to the inherent qualities of the person, rather than to any opinion that may be formed or expressed of him by others. Reputation applies to the opinion which others may have formed and expressed of his character.

Part of the res gestae

(1) Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae (Sec. 42).

(2) Res gestae is from the Latin meaning “things done” and includes the circumstances, facts and declarations incidental to the main fact or transaction, necessary to illustrate its character, and also includes acts, words and declarations which are so closely connected therewith as to constitute a part of the transaction. As applied to a crime, res gestae means the complete criminal transaction from its beginning or starting point in the act of the accused until the end is reached.

(3) The test for the admissibility of evidence as part of the res gestae is whether the act, declaration or exclamation is so intimately interwoven or connected with the principal fact or event which it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negative any premeditation or purpose to manufacture testimony (32 CJS 21).

(4) The general classes of declarations to which the term res gestae is usually applied are (a) spontaneous statements, and (b) verbal acts.
(5) The test of admissibility of evidence as a part of the res gestae is, therefore, whether the act, declaration, or exclamation, is so interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony.

When Januario gave the identity of the assailants to SPO3 Mendoza, he was referring to a startling occurrence which is the stabbing by appellant and his co-accused. At that time, Januario and the witness were in the vehicle that would bring him to the hospital, and thus, had no time to contrive his identification of the assailant. His utterance about appellant and his co-accused having stabbed him, in answer to the question of SPO3 Mendoza, was made in spontaneity and only in reaction to the startling occurrence. Definitely, the statement is relevant because it identified the accused as the authors of the crime. Verily, the killing of Januario, perpetrated by appellant, is adequately proven by the prosecution. (People v. Gatarin, GR No. 198022, 04/07/2014).

(6) There is no doubt that a sudden attack on a group peacefully eating lunch on a school campus is a startling occurrence. Considering that the statements of the bystanders were made immediately after the startling occurrence, they are, in fact, admissible as evidence given in res gestae. (People v. Feliciano, GR No. 196735, 05/05/2014).

(7) *Res gestae* means the “things done.” It refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.” There are then three essential requisites to admit evidence as part of the res gestae, namely: (1) that the principal act, the res gestae, be a startling occurrence; (2) the statements were made before the declarant had the time to contrive or devise a falsehood; and (3) that the statements must concern the occurrence in question and its immediate attending circumstances.

In this case, AAA’s statements to the barangay tanod and the police do not qualify as part of res gestae in view of the missing element of spontaneity and the lapse of an appreciable time between the rape and the declarations which afforded her sufficient opportunity for reflection. (People v. Estibal, GR No. 208749, 11/26/2014).

<table>
<thead>
<tr>
<th>Spontaneous statements</th>
<th>Verbal acts</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>The <em>res gestae</em> is the startling occurrence;</td>
<td>The <em>res gestae</em> is the equivocal act;</td>
</tr>
<tr>
<td>Spontaneous exclamation may be prior to, simultaneous with, or subsequent to the startling occurrence.</td>
<td>Verbal act must be contemporaneous with or must accompany the equivocal act to be admissible.</td>
</tr>
<tr>
<td>Reason for admissibility: Trustworthiness and necessity—because statements are made instinctively, and because said natural and spontaneous utterances are more convincing than the</td>
<td>Reason for admissibility: The motive, character and object of an act are frequently indicated by what was said by the person engaged in the act.</td>
</tr>
</tbody>
</table>
Requisites for admissibility:
(a) There must be a startling occurrence;
(b) The statement must relate to the circumstances of the startling occurrence;
(c) The statement must be spontaneous;

Requisites for admissibility:
(a) Act or occurrence characterized must be equivocal;
(b) Verbal acts must characterize or explain the equivocal act;
(c) Equivocal act must be relevant to the issue;
(d) Verbal acts must be contemporaneous with equivocal act.

Factors to consider to determine whether statements offered in evidence as part of res gestae have been made spontaneous or not:
(a) The time that has elapsed between the occurrence of the act or transaction and the making of the statement;
(b) The place where the statement was made;
(c) The condition of the declarant when he made the statement;
(d) The presence or absence of intervening occurrences between the occurrence and the statement relative thereto;
(e) The nature and circumstances of the statement itself.

Entries in the course of business

(1) Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as prima facie evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty (Sec. 43).

(2) Requisites for admissibility:
(a) Entries must have been made at or near the time of the transaction to which they refer;
(b) Entrant must have been in a position to know the facts stated in the entries;
(c) Entries must have been made by entrant in his professional capacity or in the performance of his duty;
(d) Entries were made in the ordinary or regular course of business of duties;
(e) Entrant must be deceased or unable to testify.

Entries in official records

(1) Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated (Sec. 44).

(2) Requisites for admissibility:
(a) That it was made by a public officer, or by another persons specially enjoined by law to do so;
(b) It was made by a public officer in the performance of his duty, of by another person in the performance of a duty specially enjoined by law;
(c) The public officer or the other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.
Commercial lists and the like

(1) Evidence of statements of matters of interest, to persons engaged in an occupation contained in a list, register, periodical, or other published compilation is admissible as tending to prove the truth of any relevant matter so stated if that compilation is published for use by persons engaged in that occupation and is generally used and relied upon by them therein (Sec. 45).

(2) Requisites for admissibility:
   (a) The commercial list is a statement of matters of interest to persons engaged in an occupation;
   (b) Such statement is contained in a list, register, periodical or other published compilation;
   (c) Said compilation is published for the use of persons engaged in that occupation; and
   (d) It is generally used and relied upon by persons in the same occupation (PNOC Shipping and Transport Co. vs. CA, 297 SCRA 402).

Learned treaties

(1) A published treatise, periodical or pamphlet on a subject of history, law, science or art is admissible as tending to prove the truth of a matter stated therein if the court takes judicial notice, or a witness expert in the subject testifies that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject (Sec. 46).

(2) Requisites for admissibility:
   (a) The court takes judicial notice that the writer of the statement in the treatise, periodical or pamphlet, is recognized in his profession or calling as expert in the subject; or
   (b) A witness, expert in the subject testifies that the writer of the statement in the treatise, periodical or pamphlet is recognized in his profession or calling as expert in the subject (Wigmore on Evidence).

Testimony or deposition at a former trial

(1) The testimony or deposition of a witness deceased or unable to testify, given in a former case or proceeding, judicial or administrative, involving the same parties and subject matter, may be given in evidence against the adverse party who had the opportunity to cross-examine him (Sec. 47).

(2) Requisites for admissibility:
   (a) The witness whose testimony is offered in evidence is either dead, unable to testify, insane, mentally incapacitated, lost his memory through old age or disease, physically disabled, kept away by contrivance of the opposite party and despite diligent search cannot be found;
   (b) Identity of parties in the previous and the present case or proceeding;
   (c) Identity of issues;
   (d) Opportunity of cross-examination of witness.

(3) If the witness has been subjected to cross-examination in a former trial, the rule is satisfied, and the former testimony may now be used. In applying this proposition, the following details may arise for settlement:
   (a) Was the testimony given before a court allowing cross-examination by adverse parties and having power to compel answer? If not, the testimony cannot be used.
If the testimony was given as a deposition, was the opponent given reasonable notice and opportunity to attend and cross-examine?

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.

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 or a person, if the witness is sufficiently acquainted with the former or if the latter is an expert witness;

(d) On the emotion, behavior, condition or appearance of a person which he has observed; and

(e) On ordinary matters known to all men of common perception, such as the value of ordinary household articles (Galian vs. State Assurance Co., 29 Phil. 413).

(3) The reason is that it is for the court to form an opinion concerning the facts in proof of which evidence is offered. This in turn is based upon the fact that even when witnesses are limited in their statements to detailed facts, their bias, ignorance, and disregard of the truth are obstacles which too often hinder in the investigation of the truth, so that if witnesses might be allowed to state the opinions they might entertain about the facts in issue, the administration of justice would become little less than a farce (Jones, Commentaries on Evidence, 2nd Ed.).

Opinion of expert witness

(1) The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence (Sec. 49).

(2) An expert is a person who is so qualified, either by actual experience or by careful study, as to enable him to form a definite opinion of his own respecting any division of science, branch of art, or department of trade about which persons having no particular training or special study are incapable of forming accurate opinions or of deducing correct conclusions 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, 11th Ed.).

(5) Form of the question on direct examination of an expert witness:
   (a) Opinion based on facts known personally by the expert;
   (b) Opinion based on facts of which he has personal knowledge.

(6) How may the opinion of an expert witness be impeached:
   (a) He may be contradicted by others in his own class or by any competent witness, or by use of exhibits;
   (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,

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**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).

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**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 cases, the good or bad moral character of the offended party may always be proved by either party as long as such evidence tends to establish the probability or improbability of the offense charged.
   (c) In civil cases, the moral character of either party thereto cannot be proved unless it is pertinent to the issue of character involved in the case.
   (d) In both civil and criminal cases, the bad moral character of a witness may always be proved by either party (Sec. 11, Rule 132), but not evidence of his good character, unless it has been impeached (Sec. 14, Rule 132).

(3) With respect to the nature or substance of the character evidence which may be admissible, the rules require that:
   (a) With respect to the accused, such character evidence must be pertinent to the moral trait involved in the offense charged;
   (b) With respect to the offended person, it is sufficient that such character evidence may establish in any reasonable degree the probability or improbability of the offense charged, as in prosecutions for rape or consented abduction wherein the victim’s chastity may be questioned, and in prosecution for homicide wherein the pugnacious, quarrelsome or trouble-seeking character of the victim is a proper subject of inquiry; and
   (c) With respect to witnesses, such character evidence must refer to his general reputation for truth, honesty or integrity, that is, as affecting his credibility (Regalado, Remedial Law Compendium, Vol. II).

(4) 2002 Bar: D was prosecuted for homicide for allegedly beating up V to death with an iron pipe.
   a. May the prosecution introduce evidence that V had a good reputation for peacefulness and non-violence? Why? (2%)  
   b. May D introduce evidence of specific violent acts by V? Why? (3%)

Answer:
   a. The prosecution may introduce evidence of the good or even bad moral character of the victim if it tends to establish in any reasonable degree the probability or improbability of the offense charged (Sec. 50 a, Rule 130). In this case, the evidence is not relevant.
   b. Yes, D may introduce evidence of specific violent acts by V. Evidence that one did not do a certain thing at one time is not admissible to prove that he did or did not do the same or similar thing at another time; but it maybe received to prove a specific intent, or knowledge, identity, plan, system, scheme, habit, customs, or usage, and the like (Sec. 34, Rule 130).
Rule on Examination of a Child Witness (A.M. No. 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 severe 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).*

(2) **2003 Bar:** X and Y were charged with murder. Upon application of the prosecutor, Y was discharged from the Information to be utilized as a state witness. The prosecutor presented Y as witness but forgot to state the purpose of his testimony much less offer it in evidence. Y testified that he and X conspired to kill the victim but it was X who actually shot the victim. The testimony of Y was the only material evidence establishing the guilt of X. Y was thoroughly cross-examined by the defense counsel. After the prosecution rested its case, the defense filed a motion for demurrer to evidence based on the following grounds: *(6%)*

The testimony should be excluded because its purpose was not initially stated and it was not formally offered in evidence as required by Section 34, Rule 132. Rule on the motion.

**Answer:** The demurrer to evidence must be denied because:

The testimony of Y should not be excluded because the defense counsel did not object to his testimony despite the fact that the prosecutor forgot to state its purpose or offer it in evidence. Moreover, the defense counsel thoroughly cross-examined Y and thus waived the objection.

(3) **2003 Bar:** X was charged with robbery. On the strength of a warrant of arrest issued by the court, X was arrested by police operatives. They seized from his person a handgun. A charge for illegal possession of firearm was also filed against him. In a press conference called by the police, X admitted that he had robbed the victim of jewelry valued at P500,000.00.

The robbery and illegal possession of firearm cases were tried jointly. The prosecution presented in evidence a newspaper clipping of the report to the reporter who was present during the press conference stating that X admitted the robbery. It likewise presented a certification of the PNP Firearms and Explosive Office attesting that the accused had no license to carry any firearm. The certifying officer, however, was not presented as a witness. Both pieces of evidence were objected to by the defense.

Is the certification of the PNP Firearms and Explosive Office without the certifying officer testifying on it admissible in evidence against X? *(6%)*

**Answer:** Yes. The certification is admissible in evidence against X because a written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry *(Sec. 28, Rule 132).*

(4) **2007 Bar:** G files a complaint for recovery of possession and damages against F. In the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. F then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F’s evidence. Was the court correct? Explain briefly. *(5%)*

**Answer:** Yes. The court shall consider no evidence which has not been formally offered. The trial court rendered judgment considering only the evidence offered by F.
The offer is necessary because it is the duty of the judge to rest his findings of fact and his judgment only and strictly upon the evidence offered by the parties at the trial and because the purpose for which the evidence is offered must be specified (Sec. 34, Rule 132). However, there had been exceptional instances when the Court allowed exhibited documents which were not offered but duly identified by testimony and incorporated in the records of the case (People v. Pecardal, GR No. 71381, 11/24/1986; People v. Mate, L-34754, 03/21/1981).

**When to Make an Offer**

1. As regards the testimony of a witness, the offer must be made at the time the witness is called to testify. Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing (Sec. 35).

2. It is the duty of each contending party to lay before the court the facts in issue fully and fairly; i.e., to present to the court all the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party, by clever and adroit manipulation of the technical rules of pleading and evidence, from also presenting all the facts within his knowledge. Republic's failure to offer a plausible explanation for its concealment of the main bulk of its exhibits even when it was under a directive to produce them and even as the defendants were consistently objecting to the presentation of the concealed documents gives rise to a reasonable inference that the Republic, at the very outset, had no intention whatsoever of complying with the directive of this Court. (Republic v. Sandiganbayan, GR No. 188881, 04/21/2014).

**Objection**

1. Objection to evidence offered orally must be made immediately after the offer is made. Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent. An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court. In any case, the grounds for the objections must be specified (Sec. 36).

2. Grounds for objection:
   (a) Hearsay
   (b) Argumentative
   (c) Leading
   (d) Misleading
   (e) Incompetent
   (f) Irrelevant
   (g) Best evidence rule
   (h) Parole evidence rule
   (i) Question has no basis

3. The established doctrine is that when a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. According to Corpuz, the CA erred in affirming the ruling of the trial court, admitting in evidence a receipt dated May 2, 1991 marked as Exhibit "A" and its submarkings, although the same was merely a photocopy, thus, violating the best evidence rule. However, the records show that Corpuz never objected to the admissibility of the said evidence at the time it was identified, marked and testified upon in court by private complainant. The CA also correctly pointed out that Corpuz also
failed to raise an objection in his Comment to the prosecution's formal offer of evidence and even admitted having signed the said receipt. *(Corpuz v. People, GR No. 180016, 04/29/2014).*

(4) Pursuant to Section 34, Rule 132 of the Rules of Court, the RTC as the trial court could consider only the evidence that had been formally offered; towards that end, the offering party must specify the purpose for which the evidence was being offered. In the case at bar, The RTC could not take the declaration of Villas into consideration because Villas' extra-judicial sworn statement containing the declaration had not been offered and admitted as evidence by either side. The CA stressed that only evidence that was formally offered and made part of the records could be considered; and that in any event, the supposed contradiction between the extra-judicial sworn statement and the court testimony should be resolved in favor of the latter. *(Barut v. People, GR No. 167454, 09/24/2014).*

(5) Section 34 of Rule 132 of our Rules on Evidence provides that the court cannot consider any evidence that has not been formally offered. This rule, however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted. Jurisprudence enumerated the requirements so that evidence, not previously offered, can be admitted, namely: first, the evidence must have been duly identified by testimony duly recorded and, second, the evidence must have been incorporated in the records of the case. *(Sabay v. People, GR No. 192150, 10/01/2014).*

**Repetition of an Objection**

(1) *When repetition of objection unnecessary.* - When it becomes reasonably apparent in the course of the examination of a witness that the questions being propounded are of the same class as those to which objection has been made, whether such objection was sustained or overruled, it shall not be necessary to repeat the objection, it being sufficient for the adverse party to record his continuing objection to such class of questions *(Sec. 37).*

**Ruling**

(1) The ruling of the court must be given immediately after the objection is made, unless the court desires to take a reasonable time to inform itself on the question presented; but the ruling shall always be made during the trial and at such time as will give the party against whom it is made an opportunity to meet the situation presented by the ruling. The reason for sustaining or overruling an objection need not be stated. However, if the objection is based on two or more grounds, a ruling sustaining the objection on one or some of them must specify the ground or grounds relied upon *(Sec. 38).*

**Striking Out of an Answer**

(1) Should a witness answer the question before the adverse party had the opportunity to voice fully its objection to the same, and such objection is found to be meritorious, the court shall sustain the objection and order the answer given to be stricken off the record. On proper motion, the court may also order the striking out of answers which are incompetent, irrelevant, or otherwise improper *(Sec. 39).*
(1) If documents or things offered in evidence are excluded by the court, the offeror may have the same attached to or made part of the record. If the evidence excluded is oral, the offeror may state for the record the name and other personal circumstances of the witness and the substance of the proposed testimony (Sec. 40).
PART V
REVISED RULES ON SUMMARY PROCEDURE

Cases covered by the Rule

The Rules shall govern the summary procedure in the MeTC, MTC and MCTC in the following cases falling within their jurisdiction:

(1) Civil cases
   (a) All cases of forcible entry and unlawful detainer irrespective of the amount of damages or unpaid rentals sought to be recovered, and where attorney's fees awarded do not exceed P20,000;
   (b) All other cases, except probate proceedings where the total amount of the plaintiff's claim does not exceed P100,000 outside, or P200,000 in Metro Manila (as amended by AM 02-11-09-SC).

(2) Criminal cases
   (a) Violation of traffic laws, rules and regulations;
   (b) Violations of rental laws;
   (c) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding 6 months or a fine not exceeding P1,000 or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom; and in offenses involving damages to property through criminal negligence, where the imposable fine does not exceed P1,000.
   (d) The Rule shall not apply in a civil case where the cause of action is pleaded with another cause of action subject to the ordinary procedure, nor to criminal case where the offense charged is necessary related to another criminal case subject to the ordinary procedure (Sec. 1).

Effect of failure to answer

(1) Should the defendant fail to answer the complaint within 10 days from service of summons, the court shall motu 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).
(1) Not later than 30 days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of the Rule. The failure of the plaintiff to appear in the preliminary conference shall be cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6. All cross-claims shall be dismissed. If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Sec. 6. The Rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference (Sec. 7).

(2) If the extension for the filing of pleadings cannot be allowed, it is illogical and incongruous to admit a pleading that is already filed late. To admit a late answer is to put a premium on dilatory measures, the very mischief that the Rules seek to redress (Tereña vs. Desagun, GR No. 152131, 04/29/2009).

(3) Failure of one party to submit his position paper does not bar at all the MTC from issuing a judgment on the ejectment complaint. In such a case, what would be extant in the record and the bases for the judgment would be the complaint, answer, and the record of the preliminary conference (Tereña vs. Desagun, supra).

(4) If a sole defendant shall fail to appear in the preliminary conference, the plaintiff shall be entitled to judgment in accordance with Section 6 of the Rule, that is, the court shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein (Sec. 7). However, this rule shall "not apply where one of two or more defendants sued under a common cause of action, who had pleaded a common defense, shall appear at the preliminary conference". The Supreme Court held that the afore-quoted provision does not apply in the case where petitioner is not a co-defendant in the same case but actually sued in a separate case for ejectment (Soriente vs. Estate of Concepcion, GR No. 160239, 11/25/2009).
PART VI
KATARUNGANG PAMBARANGAY
(Sec. 399-422, Local Government Code)

Cases covered

(1) Except those enumerated as exceptions under Sec. 408, RA 7160, the following cases are cognizable with the Katarungang Pambarangay:
   (a) Disputes between persons actually residing in the same barangay;
   (b) Those involving actual residents of different barangays within the same city or municipality;
   (c) All disputes involving real property or any interest therein where the real property or the larger portion thereof is situated;
   (d) Those arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, where such workplace or institution is located.

Subject matter for amicable settlement

(1) The lupon of each barangay shall have authority to bring together the parties actually residing in the same municipality or city for amicable settlement of all disputes except:
   (a) Where one party is the government or any subdivision or instrumentality thereof;
   (b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
   (c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000;
   (d) Offenses where there is no private offended party;
   (e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;
   (f) Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;
   (g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;
   (h) Any complaint by or against corporations, partnerships, or juridical entities. The reason is that only individuals shall be parties to barangay conciliation proceedings either as complainants or respondents;
   (i) Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specially the following:
      a) A criminal case where the accused is under police custody or detention;
      b) A petition for habeas corpus by a person illegally detained or deprived of his liberty or one acting in his behalf;
      c) Actions coupled with provisional remedies, such as preliminary injunction, attachment, replevin and support pendente litem;
      d) Where the action may be barred by the statute of limitations;
(j) Labor disputes or controversies arising from employer-employee relationship (Montoya vs. Escayo, 17 SCRA 442);

(k) Where the dispute arises from the Comprehensive Agrarian Reform Law (Secs. 46 and 47, RA 6657);

(l) Actions to annul judgment upon a compromise which can be filed directly in court (Sanchez vs. Tupas, 158 SCRA 459).

The court in which non-criminal cases not falling within the authority of the lupon under the Code are filed may, at any time before trial, motu proprio refer the case to the lupon concerned for amicable settlement (Sec. 408, RA 7160).

(2) The presiding judge was penalized for referring the case back to the barangay for conciliation during the preliminary conference, despite the manifestation of the plaintiff's counsel that there was already a prior unsuccessful barangay conciliation as shown by the certificate to file action. There was no reason anymore to refer the case back to the barangay for the sole purpose of amicable settlement, because Sections 7 and 8 of the RSP provided already for such action (Diaz vs. MTC Naga Cebu, AM No. MTJ-11-1786, 06/22/2011).

**Venue**

(1) Rule on venue under Sec. 409, RA 7160:

(a) Disputes between persons actually residing in the same barangay shall be brought for amicable settlement before the lupon of said barangay.

(b) Those involving actual residents of different barangays within the same city or municipality shall be brought in the barangay where the respondent or any of the respondents actually resides, at the election of the complainant.

(c) All disputes involving real property or any interest therein shall be brought in the barangay where the real property or the larger portion thereof is situated.

(d) Those arising at the workplace where the contending parties are employed or at the institution where such parties are enrolled for study, shall be brought in the barangay where such workplace or institution is located. Objections to venue shall be raised in the mediation proceedings before the punong barangay, or unless the same shall be deemed waived. Any legal question which may confront the punong barangay in resolving objections to venue herein referred to may be submitted to the Secretary of Justice, or his duly designated representative, whose ruling thereon shall be binding (Sec. 409).

**When parties may directly go to court**

(1) Sec. 411 of RA 7160 provides:

(a) Pre-condition to filing of complaint in court. - No complaint, petition, action, or proceeding involving any matter within the authority of the lupon shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the lupon chairman or the pangkat, and that no conciliation or settlement has been reached as certified by the lupon secretary or pangkat chairman as attested by the lupon or pangkat chairman or unless the settlement has been repudiated by the parties thereto.

(b) Where parties may go directly to court. - The parties may go directly to court in the following instances:

1) Where the accused is under detention;

2) Where a person has otherwise been deprived or personal liberty calling for habeas corpus proceedings;
3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support *pendente lite*; and

4) Where the action may otherwise be barred by the statute of limitations.

**Execution**

(1) The amicable settlement or arbitration award may be enforced by execution by the *lupon* within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court *(Sec. 417, RA 7160).*

**Repudiation**

(1) Any party to the dispute may, within ten (10) days from the date of the settlement, repudiate the same by filing with the *lupon* chairman a statement to that effect sworn to before him, where the consent is vitiated by fraud, violence, or intimidation. Such repudiation shall be sufficient basis for the issuance of the certification for filing a complaint as hereinabove provided *(Sec. 418 RA 7160).*
PART VII
RULE OF PROCEDURE
FOR SMALL CLAIMS CASES
(AM No. 08-8-7-SC, as amended)

Scope and applicability of the Rule

(1) SEC. 2. Scope.—This Rule shall govern the procedure in actions before the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos (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.

Commencement of small claims action; Response

(1) Commencement of Small Claims Action.—A small claims action is commenced by filing with the court an accomplished and verified Statement of Claim (Form 1-SCC) in duplicate, accompanied by a Certification of Non-forum Shopping (Form 1-A, SCC), and two (2) duly certified photocopies of the actionable document/s subject of the claim, as well as the affidavits of witnesses and other evidence to support the claim. No evidence shall be allowed during the hearing which was not attached to or submitted together with the Claim, unless good cause is shown for the admission of additional evidence. No formal pleading, other than the Statement of Claim described in this Rule, is necessary to initiate a small claims action (Sec. 5).
(2) **Response.** – The defendant shall file with the court and serve on the plaintiff a duly accomplished and verified Response within a non-extendible period of ten (10) days from receipt of summons. The response shall be accompanied by certified photocopies of documents, as well as affidavits of witnesses and other evidence in support thereof. No evidence shall be allowed during the hearing which was not attached to or submitted together with the Response, unless good cause is shown for the admission of additional evidence. The grounds for the dismissal of the claim, under Rule 16 of the Rules of Court, should be pleaded (Sec. 11).

(3) **Effect of Failure to File Response.** – Should the defendant fail to file his Response within the required period, and likewise fail to appear at the date set for hearing, the court shall render judgment on the same day, as may be warranted by the facts. Should the defendant fail to file his Response within the required period but appears at the date set for hearing, the court shall ascertain what defense he has to offer and proceed to hear, mediate or adjudicate the case on the same day as if a Response has been filed (Sec. 12).

### Prohibited pleadings and motions

(1) **Prohibited Pleadings and Motions.** – The following pleadings, motions, or petitions shall not be allowed in the cases covered by this Rule:
   
   (a) Motion to dismiss the complaint;
   
   (b) Motion for a bill of particulars;
   
   (c) Motion for new trial, or for reconsideration of a judgment, or for reopening of trial;
   
   (d) Petition for relief from judgment;
   
   (e) Motion for extension of time to file pleadings, affidavits, or any other paper;
   
   (f) Memoranda;
   
   (g) Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court;
   
   (h) Motion to declare the defendant in default;
   
   (i) Dilatory motions for postponement;
   
   (j) Reply;
   
   (k) Third-party complaints; and
   
   (l) Interventions (Sec. 14).

### Appearances

(1) **Appearance.** – The parties shall appear at the designated date of hearing personally. Appearance through a representative must be for a valid cause. The representative of an individual-party must not be a lawyer, and must be related to or next-of-kin of the individual-party. Juridical entities shall not be represented by a lawyer in any capacity. The representative must be authorized under a Special Power of Attorney (Form 5-SCC) to enter into an amicable settlement of the dispute and to enter into stipulations or admissions of facts and of documentary exhibits (Sec. 16).

(2) **Appearance of Attorneys Not Allowed.** – No attorney shall appear in behalf of or represent a party at the hearing, unless the attorney is the plaintiff or defendant. If the court determines that a party cannot properly present his/her claim or defense and needs assistance, the court may, in its discretion, allow another individual who is not an attorney to assist that party upon the latter’s consent (Sec. 17).

(3) **Non-appearance of Parties.** – Failure of the plaintiff to appear shall be cause for the dismissal of the claim without prejudice. The defendant who appears shall be entitled to judgment on a permissive counterclaim. Failure of the defendant to appear shall have the same effect as failure to file a Response under Section 12 of this Rule. This shall not
apply where one of two or more defendants who are sued under a common cause of action and have pleaded a common defense appears at the hearing. Failure of both parties to appear shall cause the dismissal with prejudice of both the claim and counterclaim (Sec. 18).

**Hearing; duty of the judge**

1. *Duty of the Court.* — At the beginning of the court session, the judge shall read aloud a short statement explaining the nature, purpose and the rule of procedure of small claims cases (Sec. 20).

2. *Hearing.* — At the hearing, the judge shall exert efforts to bring the parties to an amicable settlement of their dispute. Any settlement (*Form 7-SCC*) or resolution (*Form 8-SCC*) of the dispute shall be reduced into writing, signed by the parties and submitted to the court for approval (*Form 12-SCC*). Settlement discussions shall be strictly confidential and any reference to any settlement made in the course of such discussions shall be punishable by contempt (Sec. 21).

**Finality of judgment**

1. *Decision.* — After the hearing, the court shall render its decision on the same day, based on the facts established by the evidence (*Form 13-SCC*). The decision shall immediately be entered by the Clerk of Court in the court docket for civil cases and a copy thereof forthwith served on the parties. The decision shall be final and unappealable (Sec. 23).
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[fb], Rule 1, Part 1).

3. Sec. 5, Rule 3 encourages parties to reach an agreement regarding settlement through a consent decree, which gives emphasis to the public interest aspect in the assertion of the right to a balances and healthful ecology.
Prohibited Pleadings and Motions (Sec. 2, Rule 2)

(1) The following pleadings or motions shall not be allowed:
   (a) Motion to dismiss the complaint;
   (b) Motion for a bill of particulars;
   (c) Motion for extension of time to file pleadings, except to file answer, the extension not to exceed fifteen (15) days;
   (d) Motion to declare the defendant in default;
   (e) Reply and rejoinder; and
   (f) Third party complaint.

(2) While the enumeration have been adopted in part from the Rule on Summary Procedure in response to the question of delay which often accompanies regular cases, summary procedure is not adopted in its entirety given the complex and wide range of environmental cases. Procedural safeguards have been introduced for truly complex cases which may necessitate further evaluation from the court. Among these the exclusion of the motions for postponement, new trial and reconsideration, as well as the petition for relief from the prohibition.

(3) Motion for postponement, motion for new trial and petition for relief from judgment shall only be allowed in certain conditions of highly meritorious cases or to prevent a manifest miscarriage of justice. The satisfaction of these conditions is required since these motions are prone abuse during litigation.

(4) Motion for intervention is permitted in order to allow the public to participate in the filing and prosecution of environmental cases, which are imbued with public interest. Petitions for certiorari are likewise permitted since these raise fundamentally questions of jurisdiction. Under the Constitution, the SC may not be deprived of its certiorari jurisdiction.

Temporary Environmental Protection Order (TEPO)

(1) Issuance of Temporary Environmental Protection Order (TEPO).—If it appears from the verified complaint with a prayer for the issuance of an Environmental Protection Order (EPO) that the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of the multiple sala court before raffle or the presiding judge of a single-sala court as the case may be, may issue ex parte a TEPO effective for only seventy-two (72) hours from date of the receipt of the TEPO by the party or person enjoined. Within said period, the court where the case is assigned, shall conduct a summary hearing to determine whether the TEPO may be extended until the termination of the case. The court where the case is assigned, shall periodically monitor the existence of acts that are the subject matter of the TEPO even if issued by the executive judge, and may lift the same at any time as circumstances may warrant. The applicant shall be exempted from the posting of a bond for the issuance of a TEPO (Sec. 8, Rule 2).

(2) The Rules provide that an applicant who files for the issuance of a TEPO is exempt from the posting of a bond, but the Rules also provide for safeguards for the possible pernicious effects upon the party or person sought to be enjoined by the TEPO:
   (a) A TEPO may only be issued in matters of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the TEPO effective for only 72 hours; and
   (b) The court should periodically monitor the existence of acts which are the subject matter of the TEPO, the TEPO can be lifted anytime as the circumstances may warrant.
(3) While the TEPO may be issued *ex parte*, this is more of the exception. The general rule on the conduct of a hearing pursuant to due process remains.

### Judgment and Execution (Rule 5)

(1) Any judgment directing the performance of acts for the protection, preservation or rehabilitation of the environment shall be executory pending appeal unless restrained by the appellate court (*Sec.*).

(2) A judgment rendered pursuant to these Rules is immediately executable. 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*. The petition may be filed before the Supreme Court or the Court of Appeals.

(6) *Exemption from payment of docket fees*. The exemption from payment of docket fees is consistent with the character of the reliefs available under the writ, which excludes damages for personal injuries. This exemption also encourages public participation in availing of the remedy.

(7) Under Section 1 of Rule 7, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. The Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis. Hence, we sustain the appellate court’s findings that the Casiño Group failed to establish the alleged grave environmental damage which will be
caused by the construction and operation of the power plant. *(Paje v. Casino, GR No. 207257, 02/03/2015)*.

### 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
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.

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.

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.

Exemption from docket fees. The application for either petition is exempted from the payment of docket fees.

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.

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.

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) **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 counsel 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 counsel.
(7) *Pre-trial order.* The court shall issue a pre-trial order within ten (10) days after the termination of the pre-trial, setting forth the actions taken during the pre-trial conference, the facts stipulated, the admissions made, evidence marked, the number of witnesses to be presented and the schedule of trial. The order shall bind the parties and control the course of action during the trial.

**Subsidiary Liability (Rule 18)**

(1) In case of conviction of the accused and subsidiary liability is allowed by law, the court may, by motion of the person entitled to recover under judgment, enforce such subsidiary liability against a person or corporation subsidiarily liable under Article 102 and Article 103 of the Revised Penal Code.

**SLAPP in Criminal Cases (Rule 19)**

(1) *Motion to dismiss.* Upon the filing of an information in court and before arraignment, the accused may file a motion to dismiss on the ground that the criminal action is a SLAPP.

(2) *Summary hearing* The hearing on the defense of a SLAPP shall be summary in nature. The parties must submit all the available evidence in support of their respective positions. The party seeking the dismissal of the case must prove by substantial evidence that his acts for the enforcement of environmental law are a legitimate action for the protection, preservation and rehabilitation of the environment. The party filing the action assailed as a SLAPP shall prove by preponderance of evidence that the action is not a SLAPP.

(3) *Resolution.* The court shall grant the motion if the accused establishes in the summary hearing that the criminal case has been filed with intent to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. If the court denies the motion, the court shall immediately proceed with the arraignment of the accused.

**E. Evidence**

**Precautionary Principle (Rule 20)**

(1) *Definition.* Precautionary principle states that when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat *(Sec. 4[f], Rule 1, Part 1).*

(2) The adoption of the precautionary principle as part of these Rules, specifically relating to evidence, recognizes that exceptional cases may require its application. The inclusion of a definition of this principle is an integral part of Part V, Rule on Evidence in environmental cases in order to ease the burden of the part of ordinary plaintiffs to prove their cause of action. In its essence, precautionary principle calls for the exercise of caution in the face of risk and uncertainty. While the principle can be applied in any setting in which risk and uncertainty are found, it has evolved predominantly in and today remains most closely associated with the environmental arena.
(3) **Applicability.** When there is a lack of full scientific certainty in establishing a causal 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*).

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**Documentary Evidence (Rule 21)**

(1) Photographic, video and similar evidence of events, acts, transaction of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof (*Sec. 1*).

(2) Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in performance of a duty especially enjoined by law, are *prima facie* evidence of the facts therein stated (*Sec. 2*).

(3) These provisions seek to address specific evidentiary concerns in environmental litigation, where evidence is often difficult to obtain and preserve. They supplement the main Rules on Evidence, which shall have full applicability to environmental cases.

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JUDICIAL AFFIDAVIT RULE
A.M. No. 12-8-8-SC

Whereas, case congestion and delays plague most courts in cities, given the huge volume of cases filed each year and the slow and cumbersome adversarial system that the judiciary has in place;

Whereas, about 40% of criminal cases are dismissed annually owing to the fact that complainants simply give up continuing to court after repeated postponements;

Whereas, few foreign businessmen make long-term investments in the Philippines because its courts are unable to provide ample and speedy protection to their investments, keeping its people poor;

Whereas, in order to reduce the time needed for completing the testimonies of witnesses in cases under litigation, on February 21, 2012 the Supreme Court approved for piloting by trial courts in Quezon City the compulsory use of judicial affidavits in place of the direct testimonies of witnesses;

Whereas, it is reported that such piloting has quickly resulted in reducing by about two-thirds the time used for presenting the testimonies of witnesses, thus speeding up the hearing and adjudication of cases;

Whereas, the Supreme Court Committee on the Revision of the Rules of Court, headed by Senior Associate Justice Antonio T. Carpio, and the Subcommittee on the Revision of the Rules on Civil Procedure, headed by Associate Justice Roberto A. Abad, have recommended for adoption a Judicial Affidavit Rule that will replicate nationwide the success of the Quezon City experience in the use of judicial affidavits; and

Whereas, the Supreme Court En Banc finds merit in the recommendation;

NOW, THEREFORE, the Supreme Court En Banc hereby issues and promulgates the following:

Section 1. Scope. - (a) This Rule shall apply to all actions, proceedings, and incidents requiring the reception of evidence before:

1. The Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, the Municipal Circuit Trial Courts, and the Shari'a Circuit Courts but shall not apply to small claims cases under A.M. 08-8-7-SC;

2. The Regional Trial Courts and the Shari'a District Courts;

3. The Sandiganbayan, the Court of Tax Appeals, the Court of Appeals, and the Shari'a Appellate Courts;

4. The investigating officers and bodies authorized by the Supreme Court to receive evidence, including the Integrated Bar of the Philippine (IBP); and

5. The special courts and quasi-judicial bodies, whose rules of procedure are subject to disapproval of the Supreme Court, insofar as their existing rules of procedure contravene the provisions of this Rule.

(b) For the purpose of brevity, the above courts, quasi-judicial bodies, or investigating officers shall be uniformly referred to here as the "court."
Section 2. Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies. - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

(1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and

(2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

Section 3. Contents of judicial Affidavit. - A judicial affidavit shall be prepared in the language known to the witness and, if not in English or Filipino, accompanied by a translation in English or Filipino, and shall contain the following:

(a) The name, age, residence or business address, and occupation of the witness;

(b) The name and address of the lawyer who conducts or supervises the examination of the witness and the place where the examination is being held;

(c) A statement that the witness is answering the questions asked of him, fully conscious that he does so under oath, and that he may face criminal liability for false testimony or perjury;

(d) Questions asked of the witness and his corresponding answers, consecutively numbered, that:

(1) Show the circumstances under which the witness acquired the facts upon which he testifies;

(2) Elicit from him those facts which are relevant to the issues that the case presents; and

(3) Identify the attached documentary and object evidence and establish their authenticity in accordance with the Rules of Court;

(e) The signature of the witness over his printed name; and

(f) A jurat with the signature of the notary public who administers the oath or an officer who is authorized by law to administer the same.

Section 4. Sworn attestation of the lawyer. - (a) The judicial affidavit shall contain a sworn attestation at the end, executed by the lawyer who conducted or supervised the examination of the witness, to the effect that:

(1) He faithfully recorded or caused to be recorded the questions he asked and the corresponding answers that the witness gave; and

(2) Neither he nor any other person then present or assisting him coached the witness regarding the latter's answers.

(b) A false attestation shall subject the lawyer mentioned to disciplinary action, including disbarment.
Section 5. Subpoena. - If the government employee or official, or the requested witness, who is neither the witness of the adverse party nor a hostile witness, unjustifiably declines to execute a judicial affidavit or refuses without just cause to make the relevant books, documents, or other things under his control available for copying, authentication, and eventual production in court, the requesting party may avail himself of the issuance of a subpoena ad testificandum or duces tecum under Rule 21 of the Rules of Court. The rules governing the issuance of a subpoena to the witness in this case shall be the same as when taking his deposition except that the taking of a judicial affidavit shall be understood to be ex parte.

Section 6. Offer of and objections to testimony in judicial affidavit. - The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility. The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

Section 7. Examination of the witness on his judicial affidavit. - The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same. The party who presents the witness may also examine him as on re-direct. In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit the answers that it needs for resolving the issues.

Section 8. Oral offer of and objections to exhibits. - (a) Upon the termination of the testimony of his last witness, a party shall immediately make an oral offer of evidence of his documentary or object exhibits, piece by piece, in their chronological order, stating the purpose or purposes for which he offers the particular exhibit.

(b) After each piece of exhibit is offered, the adverse party shall state the legal ground for his objection, if any, to its admission, and the court shall immediately make its ruling respecting that exhibit.

(c) Since the documentary or object exhibits form part of the judicial affidavits that describe and authenticate them, it is sufficient that such exhibits are simply cited by their markings during the offers, the objections, and the rulings, dispensing with the description of each exhibit.

Section 9. Application of rule to criminal actions. - (a) This rule shall apply to all criminal actions:

(1) Where the maximum of the imposable penalty does not exceed six years;
(2) Where the accused agrees to the use of judicial affidavits, irrespective of the penalty involved; or
(3) With respect to the civil aspect of the actions, whatever the penalties involved are.

(b) The prosecution shall submit the judicial affidavits of its witnesses not later than five days before the pre-trial, serving copies if the same upon the accused. The complainant or public prosecutor shall attach to the affidavits such documentary or object evidence as he may have, marking them as Exhibits A, B, C, and so on. No further judicial affidavit, documentary, or object evidence shall be admitted at the trial.

(c) If the accused desires to be heard on his defense after receipt of the judicial affidavits of the prosecution, he shall have the option to submit his judicial affidavit as well as those of his witnesses to the court within ten days from receipt of such affidavits and serve a copy of each on the public and private prosecutor, including his documentary and object evidence previously
marked as Exhibits 1, 2, 3, and so on. These affidavits shall serve as direct testimonies of the accused and his witnesses when they appear before the court to testify.

**Section 10. Effect of non-compliance with the judicial Affidavit Rule.** - (a) A party who fails to submit the required judicial affidavits and exhibits on time shall be deemed to have waived their submission. The court may, however, allow only once the late submission of the same provided, the delay is for a valid reason, would not unduly prejudice the opposing party, and the defaulting party pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00 at the discretion of the court.

(b) The court shall not consider the affidavit of any witness who fails to appear at the scheduled hearing of the case as required. Counsel who fails to appear without valid cause despite notice shall be deemed to have waived his client's right to confront by cross-examination the witnesses there present.

(c) The court shall not admit as evidence judicial affidavits that do not conform to the content requirements of Section 3 and the attestation requirement of Section 4 above. The court may, however, allow only once the subsequent submission of the compliant replacement affidavits before the hearing or trial provided the delay is for a valid reason and would not unduly prejudice the opposing party and provided further, that public or private counsel responsible for their preparation and submission pays a fine of not less than ₱1,000.00 nor more than ₱5,000.00, at the discretion of the court.

**Section 11. Repeal or modification of inconsistent rules.** - The provisions of the Rules of Court and the rules of procedure governing investigating officers and bodies authorized by the Supreme Court to receive evidence are repealed or modified insofar as these are inconsistent with the provisions of this Rule.

The rules of procedure governing quasi-judicial bodies inconsistent herewith are hereby disapproved.

**Section 12. Effectivity.** - This rule shall take effect on January 1, 2013 following its publication in two newspapers of general circulation not later than September 15, 2012. It shall also apply to existing cases.
EFFICIENT USE OF PAPER RULE  
A.M. No. 11-9-4-SC

Whereas, to produce 500 reams of paper, twenty trees are cut and 100,000 liters of water are used, water that is no longer reusable because it is laden with chemicals and is just released to the environment to poison our rivers and seas;

Whereas, there is a need to cut the judicial system's use of excessive quantities of costly paper, save our forests, avoid landslides, and mitigate the worsening effects of climate change that the world is experiencing; Whereas, the judiciary can play a big part in saving our trees, conserving precious water, and helping mother earth;

NOW, THEREFORE, the Supreme Court En Bane hereby issues and promulgates the following:

Sec. 1. Title of the Rule. - This rule shall be known and cited as the Efficient Use of Paper Rule.

Sec. 2. Applicability. - This rule shall apply to all courts and quasijudicial bodies under the administrative supervision of the Supreme Court.

Sec. 3. Format and Style. - a) All pleadings, motions, and similar papers intended for the court and quasi-judicial body's consideration and action (court-bound papers) shall be written in single space with a one-and-a-half space between paragraphs, using an easily readable font style of the party's choice, of 14-size font, and on a 13-inch by 8.5-inch white bond paper; and

b) All decisions, resolutions, and orders issued by courts and by quasi-judicial bodies under the administrative supervision of the Supreme Court shall comply with these requirements. Similarly covered are the reports submitted to the courts and transcripts of stenographic notes.

Sec. 4. Margins and Prints. - The parties shall maintain the following margins on all court-bound papers: a left hand margin of 1.5 inches from the edge; an upper margin of 1.2 inches from the edge; a right hand margin of 1.0 inch from the edge; and a lower margin of 1.0 inch from the edge. Every page must be consecutively numbered.

Sec. 5. Copies to be Filed. - Unless otherwise directed by the court, the number of court-bound papers that a party is required or desires to file shall be as follows:

a. In the Supreme Court, one original (properly marked) and four copies, unless the case is referred to the Court En Bane, in which event, the parties shall file ten additional copies. For the En Bane, the parties need to submit only two sets of annexes, one attached to the original and an extra copy. For the Division, the parties need to submit also two sets of annexes, one attached to the original and an extra copy. All members of the Court shall share the extra copies of annexes in the interest of economy of paper.

Parties to cases before the Supreme Court are further required, on voluntary basis for the first six months following the effectivity of this Rule and compulsorily afterwards unless the period is extended, to submit, simultaneously with their court-bound papers, soft copies of the same and their annexes (the latter in PDF format) either by email to the Court's e-mail address or by compact disc (CD). This requirement is in preparation for the eventual establishment of an e-filing paperless system in the judiciary.

b. In the Court of Appeals and the Sandiganbayan, one original (properly marked) and two copies with their annexes;
c. In the Court of Tax Appeals, one original (properly marked) and two copies with annexes. On appeal to the En Bane, one original (properly marked) and eight copies with annexes; and
d. In other courts, one original (properly marked) with the stated annexes attached to it.

Sec. 6. Annexes Served on Adverse Party. - A party required by the rules to serve a copy of his court-bound paper on the adverse party need not enclose copies of those annexes that based on the record of the court such party already has in his possession. In the event a party requests a set of the annexes actually filed with the court, the party who filed the paper shall comply with the request within five days from receipt.

Sec. 7. Date of Effectivity. - This rule shall take effect on January 1, 2013 after publication in two newspapers of general circulation in the Philippines.
Lender extended to Borrower a PhP100,000.00 loan covered by a promissory note. Later, Borrower obtained another PhP100,000.00 loan again covered by a promissory note. Still later, Borrower obtained a PhP300,000.00 loan secured by a real estate mortgage on his land valued at PhP500,000.00. Borrower defaulted on his payments when the loans matured. Despite demand to pay the PhP500,000.00 loan, Borrower refused to pay. Lender, applying the totality rule, filed against Borrower with the Regional Trial Court (RTC) of Manila, a collection suit for PhP500,000.00.

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

At the trial, Borrower's lawyer, while cross-examining Lender, successfully elicited an admission from the latter that the two promissory notes have been paid. Thereafter, Borrower's lawyer filed a motion to dismiss the case on the ground that as proven only PhP300,000.00 was the amount due to Lender and which claim is within the exclusive original jurisdiction of the Metropolitan Trial Court. He further argued that lack of jurisdiction over the subject matter can be raised at any stage of the proceedings.

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

Circe filed with the RTC a complaint for the foreclosure of real estate mortgage against siblings Scylla and Charybdis, co-owners of the property and co-signatories to the mortgage deed. The siblings permanently reside in Athens, Greece. Circe tipped off Sheriff Pluto that Scylla is on a balikbayan trip and is billeted at the Century Plaze Hotel in Pasay City. Sheriff Pluto went to the hotel and personally served Scylla the summons, but the latter refused to receive summons for Charybdis as she was not authorized to do so. Sheriff Pluto requested Scylla for the email address and fax number of Charybdis which the latter readily gave. Sheriff Pluto, in his return of the summons, stated that “Summons for Scylla was served personally as shown by her signature on the receiving copy of the summons. Summons to Charybdis was served pursuant to the amendment of Rule 14 by facsimile transmittal of the summons and complaint on defendant's fax number as evidenced by the fax machine indicating that it was received by the fax number to which it was sent on the date and time indicated therein.” Circe, sixty (60) days after her receipt of Sheriff Pluto’s return, filed a Motion to Declare Charybdis in default as Charybdis did not file any respective pleading.

a) Should the court declare Charybdis in default? (2%)

Scylla seasonably filed her answer setting forth therein as a defense that Charybdis had paid the mortgage debt.
b) On the premise that Charybdis was properly declared in default, what is the effect of Scylla's answer to the complaint? (92%)

III

Juliet invoking the provisions of the rule on Violence Against Women and their Children filed with the RTC designated as a Family court a petition for issuance of a Temporary Protection Order (TPO) against her husband, Romeo. The Family court issued a 30-day TPO against Romeo. A day before the expiration of the TPO, Juliet filed a motion for extension. Romeo in his opposition raised, among others, the constitutionality of RA 9262, (the VAWC Law) arguing that the law authorizing the issuance of a TPO violates the equal protection and due process clauses of the 1987 Constitution. The Family Court judge, in granting the motion for extension of the TPO, declined to rule on the constitutionality of RA 9262. The Family Court judge reasoned that Family Courts are without jurisdiction to pass upon constitutional issues, being a special court of limited jurisdiction and RA 8369, the law creating the Family Courts, does not provide for such jurisdiction. Is the Family Court judge correct when he declined to resolve the constitutionality of RA 9262? (3%)

IV

Strauss filed a complaint against Wagner for cancellation of title. Wagner moved to dismiss the complaint because Grieg, to whom he mortgaged the property as duly annotated in the TCT, was not impleaded as defendant.

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

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

V

Ernie filed a petition for guardianship over the person and properties of his father, Ernesto. Upon receipt of the notice of hearing, Ernesto filed an opposition to the petition. Ernie, before the hearing of the petition, filed a motion to order Ernesto to submit himself for mental and physical examination which the court granted.

After Ernie's lawyer completed the presentation of evidence in support of the petition and the court's ruling on the formal offer of evidence, Ernesto's lawyer filed a demurrer to evidence.

Ernesto's lawyer objected on the ground that a demurrer to evidence is not proper in a special proceeding.

a) Was Ernie's counsel's objection proper? (2%)

b) If Ernesto defies the court's order directing him to submit to physical and mental examinations, can the court order his arrest? (2%)

VI

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

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

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

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

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

VII

Plaintiff sued defendant for collection of P1 million based on the latter’s promissory note. The complaint alleges, among others:

1. Defendant borrowed P1 million from plaintiff as evidenced by a duly executed promissory note;

2. The promissory note reads:

   “Makati, Philippines
   Dec. 30, 2014

   For value received from plaintiff, defendant promises to pay plaintiff P1 million, twelve (12) months from the above indicated date without necessity of demand.

   Signed
   Defendant

   A copy of the promissory note is attached as Annex “A”.

Defendant, in his verified answer, alleged among others:

1) Defendant specifically denies the allegation in paragraphs 1 and 2 of the complaint, the truth being defendant did not execute any promissory note in favor of plaintiff, or

2) Defendant has paid the P1 million claimed in the promissory note (Annex “A” of the Complaint) as evidenced by an “Acknowledgment Receipt” duly executed by plaintiff on January 30, 2015 Manila with his spouse signing as witness.

   A copy of the “Acknowledgment Receipt” is attached as annex “1” hereof.

   Plaintiff filed a motion for judgment on the pleadings on the ground that defendant’s answer failed to tender an issue as the allegations therein on his defense are sham for being inconsistent; hence, no defense at all. Defendant filed an opposition claiming his answer tendered an issue.

a) Is judgment on the pleading proper? (3%)

Defendant filed a motion for summary judgment on the ground that there are no longer any triable genuine issues of facts.

b) Should the court grant defendant’s motion for summary judgment? (3%)
VIII

Aldrin entered into a contract to sell with Neil over a parcel of land. The contract stipulated a P500,000.00 downpayment upon signing and the balance payable in twelve (12) monthly installments of P100,000.00. Aldrin paid the down payment and had paid three (3) monthly installments when he found out that Neil had sold the same property to Yuri for P1.5 million paid in cash. Aldrin sued Neil for specific performance with damages with the RTC. Yuri, with leave of court, filed an answer-in-intervention as he had already obtained a TCT in his name. After trial, the court rendered judgment ordering Aldrin to pay all the installments due, the cancellation of Yuri’s title, and Neil to execute a deed of sale in favor of Aldrin. When the judgment became final and executor, Aldrin paid Neil all the installments but the latter refused to execute the deed of sale in favor of the former.

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

a) Should the court grant Neil’s Motion to Dismiss? (3%)

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

b) What is Aldrin’s remedy? (2%)

IX

Hades, an American citizen, through a dating website, got acquainted with Persephone, a Filipina. Hades came to the Philippines and proceeded to Baguio City where Persephone resides. Hades and Persephone contracted marriage, solemnized by the Metropolitan Trial Court judge of Makati City. After the wedding, Hades flew back to California, United States of America, to wind up his business affairs. On his return to the Philippines, Hades discovered that Persephone had an illicit affair with Phanes. Immediately, Hades returned to the United States and was able to obtain a valid divorce decree from the Superior Court of the County of San Mateo, California, a court of competent jurisdiction against Persephone. Hades desires to marry Hestia, also a Filipina, whom he met at Baccus Grill in Pasay City.

a) As Hades lawyer, what petition should you file in order that your client can avoid prosecution for bigamy if he desires to marry Hestia? (2%)

b) In what court should file the petition? (1%)

c) What is the essential requisite that you must comply with for the purpose of establishing jurisdictional facts before the court can hear the petition? (3%)

X

An information for murder was filed against Rapido. The RTC judge, after personally evaluating the prosecutor’s resolution, documents and parties’ affidavits submitted by the prosecutor, found probable cause and issued a warrant of arrest. Rapido’s lawyer examined the rollo of the case and found that it only contained the copy of the information, the submissions of the prosecutor and a copy of the warrant of arrest. Immediately, Rapido’s counsel filed a motion to quash the arrest warrant for being void, citing as grounds:

1) The judge before issuing the warrant did not personally conduct a searching examination of the prosecution witnesses in violation of his client’s constitutionally-mandated rights;
2) There was no prior order finding probable cause before the judge issued the arrest warrant.

May the warrant of arrest be quashed on the grounds cited by Rapido’s counsel? State which ground. (4%)

XI

The Ombudsman found probable cause to charge with plunder the provincial governor, vice governor, treasurer, budget officer, and accountant. An Information for plunder was filed with the Sandiganbayan against the provincial officials except for the treasurer who was granted immunity when he agreed to cooperate with the Ombudsman in the prosecution of the case. Immediately, the governor filed with the Sandiganbayan a petition for certiorari against the Ombudsman claiming there was grave abuse of discretion in excluding the treasurer from the Information.

a) Was the remedy taken by the governor correct? (2%)

b) Will the writ of mandamus lie to compel the Ombudsman to include the treasurer in the Information?

c) Can the Special Prosecutor move for the discharge of the budget officer to corroborate the testimony of the treasurer in the course of presenting its evidence? (2%)

XII

Paz was awakened by the commotion coming from a condo unit next to hers. Alarmed, she called up the nearby police station. PO1 Ramus and PO2 Romulus proceeded to the condo unit identified by Paz. PO1 Remus knocked at the door and when a man opened the door, PO1 Remus and his companions introduced themselves as police officers. The man readily identified himself as Oasis Jung and gestured to them to come in. Inside, the police officers saw a young lady with her nose bleeding and face swollen. Asked by PO2 Romulus what happened, the lady responded that she was beaten up by Oasis Jung. The police officers arrested Oasis Jung and brought him and the young lady back to the police station. PO1 Remus took the young lady’s statement who identified herself as AA. She narrated that she is a sixteen-year-old high school student; that previous to the incident, she had sexual intercourse with Oasis Jung at least five times on different occasions and she was paid P5,000.00 each time and it was the first time that Oasis Jung physically hurt her. PO2 Romulus detained Oasis Jung at the station’s jail. After the inquest proceeding, the public prosecutor filed an information for Violation of RA 9262 (the VAWC Law) for physical violence and five separate informations for violation of RA 7610 (the Child Abuse Law). Oasis Jung’s lawyer filed a motion to be admitted to bail but the court issued an order that approval of his bail bond shall be made only after his arraignment.

a) Did the court properly impose the bail condition? (3%)

Before arraignment, Oasis Jung’s lawyer moved to quash the other four separate informations for violation of the Child Abuse Law invoking the single larceny rule.

b) Should the motion to quash be granted? (2%)

c) After his release from detention on bail, can Oasis Jung still question the validity of his arrest? (2%)

XIII

Jaime was convicted for murder by the Regional Trial Court of Davao City in a decision promulgated on September 30, 2015. On October 5, 2015, Jaime filed a Motion for New Trial on the ground that errors of law and irregularities prejudicial to his rights were committed during his trial. On October 7, 2015, the private prosecutor, with the conformity of the public
prosecutor, filed an Opposition to Jaime’s motion. On October 12, 2015, the public prosecutor filed a motion for reconsideration. The court issued an Order dated October 16, 2015 denying the public prosecutor’s motion for reconsideration. The public prosecutor received his copy of the order of denial on October 20, 2015 while the private prosecutor received his copy on October 26, 2015.

a) What is the remedy available to the prosecution from the court’s order granting Jaime’s motion for new trial? (3%)
b) In what court and within what period should a remedy be availed of? (1%)
c) Who should pursue the remedy? (2%)

XIV

Pedro was charged with theft for stealing Juan’s cellphone worth P20,000.00. Prosecutor Marilag at the pre-trial submitted the judicial affidavit of Juan attaching the receipt for the purchase of the cellphone to prove civil liability. She also submitted the judicial affidavit of Mario, an eyewitness who narrated therein how Pedro stole Juan’s cellphone.

At the trial, Pedro’s lawyer objected to the prosecution’s use of judicial affidavits of her witnesses considering the imposable penalty on the offense with which his client was charged.

a) Is Pedro’s lawyer correct in objecting to the judicial affidavit of Mario? (2%)
b) Is Pedro’s lawyer correct in objecting to the judicial affidavit of Juan? (2%)

At the conclusion of the prosecution’s presentation of evidence, Prosecutor Marilag orally offered the receipt attached to Juan’s judicial affidavit, which the court admitted over the objection of Pedro’s lawyer.

After Pedro’s presentation of his evidence, the court rendered judgment finding him guilty as charged and holding him civilly liable for P20,000.00.

Pedro’s lawyer seasonably filed a motion for reconsideration of the decision asserting that the court erred in awarding the civil liability on the basis of Juan’s judicial affidavit, a documentary evidence which Prosecutor failed to orally offer.

c) Is the motion for reconsideration meritorious? (2%)

XV

Water Builders, a construction company based in Makati City, entered into a construction agreement with Super Powers, Inc., an energy company based in Manila, for the construction of a mini hydro electric plant. Water Builders failed to complete the project within the stipulated duration. Super Powers cancelled the contract. Water Builders filed a request for arbitration with the Construction Industry Arbitration Commission (CIAC). After due proceedings, CIAC rendered judgment in favor of Super Powers, Inc. ordering Water Builders to pay the former liquidated damages. Dissatisfied with the CIAC’s judgment, Water Builders, pursuant to the Special Rules of Court on Alternative Dispute Resolution (ADR Rules) filed with the RTC of Pasay City a petition to vacate the arbitral award. Super Powers, Inc., in its opposition, moved to dismiss the petition, invoking the ADR Rules, on the ground of improper venue as neither of the parties were doing business in Pasay City.

Should Water Builder’s petition be dismissed? (3%)

XVI

AA, a twelve-year-old girl, while walking alone met BB, a teenage boy who befriended her. Later, BB brought AA to a nearby shanty where he raped her. The Information for rape filed against BB states:
“On or about October 30, 2015, in the City of S.P. and within the jurisdiction of this Honorable Court, the accused, a minor, fifteen (15) years old with lewd design and by means of force, violence and intimidation, did then and there, willfully, unlawfully and feloniously had sexual intercourse with AA, a minor, twelve (12) years old against the latter’s will and consent.”

At the trial, the prosecutor called to the witness stand AA as his first witness and manifested that he be allowed to ask leading questions in conducting his direct examination pursuant to the Rule on the Examination of a Child Witness. BB’s counsel objected on the ground that the prosecutor has not conducted a competency examination on the witness, a requirement before the rule cited can be applied in the case.

a) Is BB's counsel correct? (3%)

In order to obviate the counsel's argument on the competency of AA as prosecution witness, the judge motu proprio conducted his *voir dire* examination on AA.

b) Was the action taken by the judge proper? (2%)

After the prosecution had rested its case, BB’s counsel filed with leave a demurrer to evidence, seeking the dismissal of the case on the ground that the prosecutor failed to present any evidence on BB’s minority as alleged in the Information.

c) Should the court grant the demurrer? (3%)

**XVII**

Hercules was walking near a police station when a police officer signaled for him to approach. As soon as Hercules came near, the police officer frisked him but the latter found no contraband. The police officer told Hercules to get inside the police station. Inside the police station, Hercules asked the police officer, “Sir, may problema po ba?” Instead of replying, the police officer locked up Hercules inside the police station jail.

a) What is the remedy available to Hercules to secure his immediate release from detention? (2%)

b) If Hercules filed with the Ombudsman a complaint for warrantless search, as counsel for the police officer, what defense will you raise for the dismissal of the complaint? (3%)

c) If Hercules opts to file a civil action against the police officer, will he have a cause of action? (3%)

**XVII**

The residents of Mt. Aho hoy, headed by Masigasig, formed a non-governmental organization—Alyansa Laban sa Minahan sa Aho hoy (ALMA) to protest the mining operations of Oro Negro Mining in the mountain. ALMA members picketed daily at the entrance of the mining site blocking the ingress and egress of trucks and equipment of Oro Negro, hampering its operations. Masigasig had an altercation with Mapusok arising from the complaint of the mining engineer of Oro Negro that one of their tracks was destroyed by ALMA members. Mapusok is the leader of the Association of Peace Keepers of Aho hoy (APKA), a civilian volunteer organization serving auxiliary force of the local police to maintain peace and order in the area. Subsequently, Masigasig disappeared. Mayumi, the wife of Masigasig, and the members of ALMA searched for Masigasig, but all their efforts proved futile. Mapagmatyag, a member of ALMA, learned from Maingay, a member of APKA, during their binge drinking that Masigasig was abducted by other members of APKA, on order of Mapusok. Mayumi and ALMA sought the assistance of the local police to search for Masigasig, but they refused to extend their cooperation.
Immediately, Mayumi filed with the RTC, a petition for the issuance of the writ of amparo against Mapusok and APKA. ALMA also filed a petition for the issuance of the writ of amparo with the Court of Appeals against Mapusok and APKA. Respondents Mapusok and APKA, in their Return filed with the RTC, raised among their defenses that they are not agents of the State; hence, cannot be impleaded as respondents in amparo petition.

a) Is their defense tenable? (3%)

Respondents Mapusok and APKA, in their Return filed with the Court of Appeals, raised as their defense that the petition should be dismissed on the ground that ALMA cannot file the petition because of the earlier petition filed by Mayumi with the RTC.

b) Are respondents correct in raising their defense? (3%)

c) Mayumi later filed separate criminal and civil actions against Mapusok. How will the cases affect the amparo petition she earlier filed? (1%)

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2014 BAR EXAMS QUESTIONS AND MY ALTERNATIVE ANSWERS

I.

Ludong, Balatong, and Labong were charged with murder. After trial, the court announced that the case was considered submitted for decision. Subsequently, the Clerk of Court issued the notices of promulgation of judgment which were duly received. On promulgation day, Ludong and his lawyer appeared. The lawyers of Balatong and Labong appeared but without their clients and failed to satisfactorily explain their absence when queried by the court. Thus, the judge ordered the Clerk of Court to proceed with the reading of the judgment convicting all the accused. With respect to Balatong and Labong, the judge ordered that the judgment be entered in the criminal docket and copies be furnished their lawyers. The lawyers of Ludong, Balatong, and Labong filed within the reglementary period a Joint Motion for Reconsideration. The court favorably granted the motion of Ludong downgrading his conviction from murder to homicide but denied the motion as regards Balatong and Labong. (4%)

(A)

Was the court correct in taking cognizance of the Joint Motion for Reconsideration?

No, the court was not correct in taking cognizance of the Joint Motion for Reconsideration.

Under the Rules of Criminal Procedure, if the judgment is for conviction and the failure of the accused to appear was without justifiable cause, the accused shall lose the available remedies. However, the accused may surrender within 15 days from promulgation of the judgment and file a motion for leave of court to avail of the remedies.

Here, Balatong and Labong neither appeared during the promulgation of their judgment, presented a justifiable cause nor surrender within the 15-day period, losing all the available remedies provided in the Rules. Hence, the court has exceeded its jurisdiction when it allowed the Joint Motion for Reconsideration.

(B)
Can Balatong and Labong appeal their conviction in case Ludong accepts his conviction for homicide?

No, Balatong and Labong cannot appeal their conviction in case Ludong accepts his conviction.

Under the Rules of Criminal Procedure, when an accused fails to appear during the promulgation of the judgment of conviction without justifiable cause, he loses all available remedies in the Rules including the remedy of appeal.

Hence, Balatong and Labong are not allowed by the Rules to appeal their conviction.

II.

McJolly is a trouble-maker of sorts, always getting into brushes with the law. In one incident, he drove his Humvee recklessly, hitting a pedicab which sent its driver and passengers in different directions. The pedicab driver died, while two (2) of the passengers suffered slight physical injuries. Two (2) Informations were then filed against McJolly. One, for Reckless Imprudence Resulting in Homicide and Damage to Property, and two, for Reckless Imprudence Resulting in Slight Physical Injuries. The latter case was scheduled for arraignment earlier, on which occasion McJolly immediately pleaded guilty. He was meted out the penalty of public censure. A month later, the case for reckless imprudence resulting in homicide was also set for arraignment. Instead of pleading, McJolly interposed the defense of double jeopardy. Resolve.

McJolly may not quash the information on the ground of double jeopardy.

Settled is the doctrine that prior conviction or acquittal of reckless imprudence bars the subsequent prosecution for the same quasi-offense regardless of its various resulting acts; otherwise, prosecution of the second quasi-offense would place the accused in double jeopardy. In such a case, the accused may move to quash the information for the second quasi-offense.

Hence, McJolly may move to quash the information for Reckless Imprudence Resulting in Homicide on the ground of double jeopardy.

III.

While passing by a dark uninhabited part of their barangay, PO2 Asintado observed shadows and heard screams from a distance. PO2 Asintado hid himself behind the bushes and saw a man beating a woman whom he recognized as his neighbor, Kulasa. When Kulasa was already in agony, the man stabbed her and she fell on the ground. The man hurriedly left thereafter.

PO2 Asintado immediately went to Kulasa's rescue. Kulasa, who was then in a state of hysteria, kept mentioning to PO2 Asintado “Si Rene, gusto akong patayin! Sinaksak niya ako!” When PO2 Asintado was about to carry her, Kulasa refused and said “Kaya ko. Mababaw lang to. Habulin mo si Rene.”

The following day, Rene learned of Kulasa's death and, bothered by his conscience, surrendered to the authorities with his counsel. As his surrender was broadcasted all over media, Rene opted to release his statement to the press which goes:

“I believe that I am entitled to the presumption of innocence until my guilt is proven beyond reasonable doubt. Although I admit that I performed acts that may take one's life away, I hope and pray that justice will be served the right way. God bless us all. (Sgd.) Rene”
The trial court convicted Rene of homicide on the basis of PO2 Asintado’s testimony, Kulasa’s statements, and Rene’s statement to the press. On appeal, Rene raises the following errors:

1. The trial court erred in giving weight to PO2 Asintado’s testimony, as the latter did not have any personal knowledge of the facts in issue, and violated Rene’s right to due process when it considered Kulasa’s statements despite lack of opportunity for her cross-examination.

2. The trial court erred in holding that Rene’s statement to the press was a confession which, standing alone, would be sufficient to warrant conviction. Resolve. (4%)

Rene’s contentions have no legs to stand on.

Under the Rules of Evidence, testimonies based on personal knowledge and part of res gestae are given probative value to convict the accused. Personal knowledge pertains to a witness’ testimony derived from is own perception of the criminal acts, while part of res gestae which is an exception to the hearsay rule pertains to a statement made by a victim before, during or immediately after the commission of a crime by the accused. On the other hand, confessions to be taken as mitigating circumstance must be made with the acknowledgment of the confessant’s guilt.

Here, PO2 Asintado’s testimonies were based on personal knowledge as well as a part of res gestae, hence sufficient to convict Rene. On the other hand, the press release cannot be considered as a confession absent Rene’s acknowledgment of guilt. Hence, Rene’s contentions should be denied.

IV.

An order of the court requiring a retroactive re-dating of an order, judgment or document filing be entered or recorded in a judgment is: (1%)

(A) pro hac vice
(B) non pro tunc
(C) confession relict a verificazione
(D) nolle prosequi

B

V.

Landlord, a resident of Quezon City, entered into a lease contract with Tenant, a resident of Marikina City, over a residential house in Las Piñas City. The lease contract provided, among others, for a monthly rental of P25,000.00, plus ten percent (10%) interest rate in case of non-payment on its due date. Subsequently, Landlord migrated to the United States of America (USA) but granted in favor of his sister Maria, a special power of attorney to manage the property and file and defend suits over the property rented out to Tenant. Tenant failed to pay the rentals due for five (5) months.

Maria asks your legal advice on how she can expeditiously collect from Tenant the unpaid rentals plus interests due. (6%)

(A)
What judicial remedy would you recommend to Maria?

Pursuant to the Rules on Civil Procedure, I would recommend to Maria to send the Tenant a demand for the payment of the rentals plus interests, then file for an Unlawful Detainer five days from the Tenant’s receipt of the demand and failure to make a payment.

(B)

Where is the proper venue of the judicial remedy which you recommended?

Applying the Rules of Ejectment to this case, the complaint for Unlawful Detainer shall be filed before the Municipal Trail Court (MTC) where the real property involved is situated, hence in Las Pinas City.

(C)

If Maria insists on filing an ejectment suit against Tenant, when do you reckon the one (1)-year period within which to file the action?

Under Rule 70 of the Rules of Civil Procedure, the one-year period is reckoned from the date of demand and failure to make a payment.

VI.

As a rule, courts may not grant an application for provisional remedy without complying with the requirements of notice and hearing. These requirements, however, may be dispensed with in an application for: (1)

(A) writ of preliminary injunction
(B) writ for preliminary attachment
(C) an order granting support pendente lite
(D) a writ of replevin

D

VII.

Co Batong, a Taipan, filed a civil action for damages with the Regional Trial Court (RTC) of Parañaque City against Jose Penduko, a news reporter of the Philippine Times, a newspaper of general circulation printed and published in Parañaque City. The complaint alleged, among others, that Jose Penduko wrote malicious and defamatory imputations against Co Batong; that Co Batong’s business address is in Makati City; and that the libelous article was first printed and published in Parañaque City. The complaint prayed that Jose Penduko be held liable to pay P200,000.00, as moral damages; P150,000.00, as exemplary damages; and P50,000.00, as attorney’s fees.

Jose Penduko filed a Motion to Dismiss on the following grounds:

1. The RTC is without jurisdiction because under the Totality Rule, the claim for damages in the amount of P350,000.00 fall within the exclusive original jurisdiction of the Metropolitan Trial Court (MeTC) of Parañaque City.
2. The venue is improperly laid because what the complaint alleged is Co Batong's business address and not his residence address.

Are the grounds invoked in the Motion to Dismiss proper? (4%) 

No, the grounds of lack of jurisdiction and improper venue invoked in the Motion to Dismiss are not proper.

Settled is the rule that in cases where the claim for damages is the main action, the claim comprises all kinds of damages, including attorney's fees. On the other hand, the venue for the complaint for damages arising from Libel is the RTC of the province where the libelous material was published.

Here, the total jurisdictional amount of claim for damages including attorney's fees falls within the jurisdiction of the RTC, and the libelous material was published in Paranaque City. Hence, the case was properly filed in the RTC of Paranaque City.

VIII.

Johnny, a naturalized citizen of the United States of America (USA) but formerly a Filipino citizen, executed a notarial will in accordance with the laws of the State of California, USA. Johnny, at the time of his death, was survived by his niece Anastacia, an American citizen residing at the condominium unit of Johnny located at Fort Bonifacio, Taguig City; a younger brother, Bartolome, who manages Johnny's fish pond in Lingayen, Pangasinan; and a younger sister, Christina, who manages Johnny's rental condominium units in Makati City. Johnny's entire estate which he inherited from his parents is valued at P200 million. Johnny appointed Anastacia as executrix of his will. (4%)

(A) Can Johnny's notarial will be probated before the proper court in the Philippines?

Yes, Johnny's notarial will can be probated before the proper court in the Philippines.

Under the Rule of Special Proceedings, a will of a non-resident alien who left an estate in the Philippines may be probated before the RTC of the province or city where the estate is located.

Here, the testator Johnny was a non-resident alien who left some estates in the Taguig City, Makati City, and Pangasinan. Hence, his will can be probated before the RTC of any of these cities and province in the Philippines.

(B) Is Anastacia qualified to be the executrix of Johnny's notarial will?

Yes, Anastacia is qualified to be the executrix of Johnny’s notarial will.

Under the Rules of Special Proceedings, any executor named in a will and who is not incompetent—minor, non-resident, or unfit to execute the trust—is qualified to serve as executor or executrix.

Here, Anastacia is the person named in the will; she is not incompetent to serve. Hence, Anastacia is qualified to be the executrix of Johnny's will.

IX.

Bayani, an overseas worker based in Dubai, issued in favor of Agente, a special power of attorney to sell his house and lot. Agente was able to sell the property but failed to remit the proceeds to Bayani, as agreed upon. On his return to the Philippines, Bayani, by way of a
demand letter duly received by Agente, sought to recover the amount due him. Agente failed to return the amount as he had used it for the construction of his own house. Thus, Bayani filed an action against Agente for sum of money with damages. Bayani subsequently filed an ex-parte motion for the issuance of a writ of preliminary attachment duly supported by an affidavit. The court granted the ex-parte motion and issued a writ of preliminary attachment upon Bayani’s posting of the required bond. Bayani prayed that the court’s sheriff be deputized to serve and implement the writ of attachment. On November 19, 2013, the Sheriff served upon Agente the writ of attachment and levied on the latter’s house and lot. On November 20, 2013, the Sheriff served on Agente summons and a copy of the complaint. On November 22, 2013, Agente filed an Answer with Motion to Discharge the Writ of Attachment alleging that at the time the writ of preliminary attachment was issued, he has not been served with summons and, therefore, it was improperly issued. (4%)

(A) Is Agente correct?

Yes, Agente is correct in moving for the discharge of the writ of attachment. Under the Rules of Criminal Procedure, the party whose property has been ordered attached may file a motion to discharge the attachment on the ground that the writ was improperly enforced, such as when the rule on prior or contemporaneous service of summons was not observed.

Here, the writ of attachment was enforced prior to instead of subsequent or contemporaneous with the service of summons upon the defendant Agente. Hence, the writ of attachment should be discharged on the ground of improper enforcement of the writ of attachment.

(B) Was the writ of preliminary attachment properly executed?

No, the writ of preliminary attachment was not properly executed. Pursuant to the Rules on Civil Procedure, no levy on attachment shall be enforced unless it is preceded or contemporaneous accompanied by service of summons together with a copy of the complaint.

Here, the writ of preliminary attachment was served and levied prior to the service of summons with a copy of the complaint. Hence, the writ was improperly executed.

X.

Prince Chong entered into a lease contract with King Kong over a commercial building where the former conducted his hardware business. The lease contract stipulated, among others, a monthly rental of P50,000.00 for a four (4)-year period commencing on January 1, 2010. On January 1, 2013, Prince Chong died. Kin Il Chong was appointed administrator of the estate of Prince Chong, but the former failed to pay the rentals for the months of January to June 2013 despite King Kong’s written demands. Thus, on July 1, 2013, King Kong filed with the Regional Trial Court (RTC) an action for rescission of contract with damages and payment of accrued rentals as of June 30, 2013. (4%)

(A) Can Kin Il Chong move to dismiss the complaint on the ground that the RTC is without jurisdiction since the amount claimed is only P300,000.00?

No, Kin Il Chong cannot move to dismiss the complaint on the ground of lack of jurisdiction.

Settled is the rule in Civil Procedure that an action for specific performance and damages is incapable of pecuniary estimation that falls under the jurisdiction of the RTC.
Here, the action is for specific performance and damages which is incapable of pecuniary estimation. Thus, the complaint falls squarely within the jurisdiction of the RTC, rendering the motion to dismiss without merit.

(B) If the rentals accrued during the lifetime of Prince Chong, and King Kong also filed the complaint for sum of money during that time, will the action be dismissible upon Prince Chong’s death during the pendency of the case?

Yes, the complaint will be dismissible if it is for sum of money only in the amount of P300,000.

The Supreme Court has held several times that the totality of the amount claimed is determinative of what court has jurisdiction; where the total amount of the claim is only P300,000, the jurisdiction is with the MTC.

Hence, the motion to dismiss on the ground of lack of jurisdiction will be untenable insofar as the total amount of the claim is P300,000.

XI.

A search warrant was issued for the purpose of looking for unlicensed firearms in the house of Ass-asin, a notorious gun for hire. When the police served the warrant, they also sought the assistance of barangay tanods who were assigned to look at other portions of the premises around the house. In a nipa hut thirty (30) meters away from the house of Ass-asin, a barangay tanod came upon a kilo of marijuana that was wrapped in newsprint. He took it and this was later used by the authorities to charge Ass-asin with illegal possession of marijuana. Ass-asin objected to the introduction of such evidence claiming that it was illegally seized. Is the objection of Assasin valid? (4%)

Yes, the objection of Ass-asin is valid.

It is basic hornbook doctrine in Criminal Procedure that articles that are seized illegally are inadmissible in evidence, based on the constitutional guideline that articles to be seized should be particularly described in the search warrant.

Here, the kilo of marijuana seized was not particularly described in the search warrant. Therefore, the seized kilo of marijuana is inadmissible in evidence, and the objection is valid.

XII.

Mary Jane met Shiela May at the recruitment agency where they both applied for overseas employment. They exchanged pleasantries, including details of their personal circumstances. Fortunately, Mary Jane was deployed to work as front desk receptionist at a hotel in Abu Dhabi where she met Sultan Ahmed who proposed marriage, to which she readily accepted. Unfortunately for Shiela May, she was not deployed to work abroad, and this made her envious of Mary Jane.

Mary Jane returned to the Philippines to prepare for her wedding. She secured from the National Statistics Office (NSO) a Certificate of No Marriage. It turned out from the NSO records that Mary Jane had previously contracted marriage with John Starr, a British citizen, which she never did. The purported marriage between Mary Jane and John Starr contained all the required pertinent details on Mary Jane. Mary Jane later on learned that Shiela May is the best friend of John Starr.

As a lawyer, Mary Jane seeks your advice on her predicament. What legal remedy will you avail to enable Mary Jane to contract marriage with Sultan Ahmed? (4%)

I will advise Mary Jane to avail of Rule 108 to cancel the fake certificate of marriage.
Under the Rule 103, Rules of Special Proceedings, any interested party may file for the cancellation of entry of marriage before the RTC in the province where the corresponding civil registry is located. The Supreme Court has held that there is no need to file a petition for declaration of nullity of marriage since there was no marriage to speak of in the first place.

Hence, Mary Jane should file a petition for the cancellation of entry of marriage before the RTC of the province where the local civil registry is located.

XIII.

A foreign dog trained to sniff dangerous drugs from packages, was hired by FDP Corporation, a door to door forwarder company, to sniff packages in their depot at the international airport. In one of the routinary inspections of packages waiting to be sent to the United States of America (USA), the dog sat beside one of the packages, a signal that the package contained dangerous drugs. Thereafter, the guards opened the package and found two (2) kilograms of cocaine. The owner of the package was arrested and charges were filed against him. During the trial, the prosecution, through the trainer who was present during the incident and an expert in this kind of field, testified that the dog was highly trained to sniff packages to determine if the contents were dangerous drugs and the sniffing technique of these highly trained dogs was accepted worldwide and had been successful in dangerous drugs operations. The prosecution moved to admit this evidence to justify the opening of the package. The accused objected on the grounds that: (i) the guards had no personal knowledge of the contents of the package before it was opened; (ii) the testimony of the trainer of the dog is hearsay; and (iii) the accused could not cross-examine the dog. Decide. (4%) 

The seized dangerous drugs are admissible in evidence against the owner of the package.

Well-entrenched is the doctrine that articles seized during an airport search is an exception to the rule on illegal searches and therefore admissible in evidence.

Here, the dangerous drugs were seized in an airport search setting. Ergo, such articles are admissible in evidence against the owner of the package where the articles were seized.

XIV.

When a Municipal Trial Court (MTC), pursuant to its delegated jurisdiction, renders an adverse judgment in an application for land registration, the aggrieved party’s remedy is: (1%) 

(A) ordinary appeal to the Regional Trial Court
(B) petition for review on certiorari to the Supreme Court
(C) ordinary appeal to the Court of Appeals
(D) petition for review to the Court of Appeals

XV.

The Ombudsman, after conducting the requisite preliminary investigation, found probable cause to charge Gov. Matigas in conspiracy with Carpintero, a private individual, for violating Section 3(e) of Republic Act (RA) No. 3019 (Anti-Graft and Corrupt Practices Act, as amended). Before the information could be filed with the Sandiganbayan, Gov. Matigas was killed in an ambush. This, notwithstanding, an information was filed against Gov. Matigas and Carpintero.
At the Sandiganbayan, Carpintero through counsel, filed a Motion to Quash the Information, on the ground of lack of jurisdiction of the Sandiganbayan, arguing that with the death of Gov. Matigas, there is no public officer charged in the information. Is the motion to quash legally tenable? (4%)

No, the motion to quash is not legally tenable.

Under the Rules of Criminal Procedure, the Sandiganbayan has jurisdiction over a private individual who conspired with a public official in committing any of the prohibited acts under RA 3019.

Hence, the Sandiganbayan can prosecute Carpintero for the criminal acts he committed under RA 3019 notwithstanding the death of his co-conspirator public official, rendering the motion to quash without merit.

XVI.

Plaintiff filed a complaint denominated as accion publiciana, against defendant. In his answer, defendant alleged that he had no interest over the land in question, except as lessee of Z. Plaintiff subsequently filed an affidavit of Z, the lessor of defendant, stating that Z had sold to plaintiff all his rights and interests in the property as shown by a deed of transfer attached to the affidavit. Thus, plaintiff may ask the court to render: (1%)

(A) summary judgment
(B) judgment on the pleadings
(C) partial judgment
(D) judgment by default

A

XVII.

A was charged before the Sandiganbayan with a crime of plunder, a non-bailable offense, where the court had already issued a warrant for his arrest. Without A being arrested, his lawyer filed a Motion to Quash Arrest Warrant and to Fix Bail, arguing that the allegations in the information did not charge the crime of plunder but a crime of malversation, a bailable offense. The court denied the motion on the ground that it had not yet acquired jurisdiction over the person of the accused and that the accused should be under the custody of the court since the crime charged was nonbailable. The accused’s lawyer counter-argued that the court can rule on the motion even if the accused was at-large because it had jurisdiction over the subject matter of the case. According to said lawyer, there was no need for the accused to be under the custody of the court because what was filed was a Motion to Quash Arrest and to Fix Bail, not a Petition for Bail.

(A) If you are the Sandiganbayan, how will you rule on the motion? (3%)

I will deny the motion to quash and fix bail.

The Rules of Criminal Procedure is clear that a motion to quash can be availed of only when a ground or grounds set therein are available as when the facts charged do not constitute an offense. Moreover, an application for bail sets in only when the accused has already acquired custody of the accused.

Here, the information charges an offense which is the nonbailable crime of plunder. Besides, the warrant of arrest has yet to be filed, meaning that A is not yet under the custody of the court. Therefore, the motion to quash and fix bail has no basis hence should be denied.
(B) If the Sandiganbayan denies the motion, what judicial remedy should the accused undertake? (2%)

If the Sandiganbayan denies the motion, the accused should proceed to trial.
Under the Rules of Criminal Procedure, an order denying a motion to quash is an interlocutory order which is neither appealable nor subject to a petition for certiorari.
Therefore, the remedy of the accused is to proceed to trial, await its judgment, then appeal an unfavorable judgment.

XVIII.

A was charged with murder in the lower court. His Petition for Bail was denied after a summary hearing on the ground that the prosecution had established a strong evidence of guilt. No Motion for Reconsideration was filed from the denial of the Petition for Bail. During the reception of the evidence of the accused, the accused reiterated his petition for bail on the ground that the witnesses so far presented by the accused had shown that no qualifying aggravating circumstance attended the killing. The court denied the petition on the grounds that it had already ruled that: (i) the evidence of guilt is strong; (ii) the resolution for the Petition for Bail is solely based on the evidence presented by the prosecution; and (iii) no Motion for Reconsideration was filed from the denial of the Petition for Bail. (6%)

(A) If you are the Judge, how will you resolve the incident?
I will deny the petition for bail.
Basic is the hornbook doctrine that bail is not a matter of right nor discretion when the offense charged is punishable by reclusion perpetua and the evidence of guilt is strong.
Here, the offense charged is non-bailable, and the prosecution has established a strong evidence of A’s guilt. Thus, A is not entitled to bail.

(B) Suppose the accused is convicted of the crime of homicide and the accused filed a Notice of Appeal, is he entitled to bail?

No, A is not entitled to bail even pending appeal.
The standing rule is that if the penalty imposed by the trial court is imprisonment exceeding six years, the application for bail pending appeal shall be denied.
Here, the imposable penalty for homicide to which A has been convicted is imprisonment exceeding six years, and hence not entitled to bail pending appeal.

XIX.

A vicarious admission is considered an exception to the hearsay rule. It, however, does not cover: (1%)

(A) admission by a conspirator
(B) admission by a privy
(C) judicial admission
(D) adoptive admission

C
XX.

Tom Wallis filed with the Regional Trial Court (RTC) a Petition for Declaration of Nullity of his marriage with Debi Wallis on the ground of psychological incapacity of the latter. Before filing the petition, Tom Wallis had told Debi Wallis that he wanted the annulment of their marriage because he was already fed up with her irrational and eccentric behaviour. However, in the petition for declaration of nullity of marriage, the correct residential address of Debi Wallis was deliberately not alleged and instead, the residential address of their married son was stated. Summons was served by substituted service at the address stated in the petition. For failure to file an answer, Debi Wallis was declared in default and Tom Wallis presented evidence ex-parte. The RTC rendered judgment declaring the marriage null and void on the ground of psychological incapacity of Debi Wallis. Three (3) years after the RTC judgment was rendered, Debi Wallis got hold of a copy thereof and wanted to have the RTC judgment reversed and set aside. If you are the lawyer of Debi Wallis, what judicial remedy or remedies will you take? Discuss and specify the ground or grounds for said remedy or remedies. (5%) 

I will file for annulment of judgment on the ground of extrinsic fraud.

Under Rule 47 of the Rules of Civil Procedure, a petition for annulment of judgment on the ground of extrinsic fraud may be filed with the Court of Appeals within four years from the discovery of the extrinsic fraud, when the other remedies are no longer available available. Here, the other remedies are no longer available insofar as three years had lapsed since the promulgation of the judgment, leaving Debi with annulment of judgment as the remaining available remedy. Hence, the filing of a petition for annulment of judgment on the ground of extrinsic fraud shall be properly taken.

XXI.

Goodfeather Corporation, through its President, Al Pakino, filed with the Regional Trial Court (RTC) a complaint for specific performance against Robert White. Instead of filing an answer to the complaint, Robert White filed a motion to dismiss the complaint on the ground of lack of the appropriate board resolution from the Board of Directors of Goodfeather Corporation to show the authority of Al Pakino to represent the corporation and file the complaint in its behalf. The RTC granted the motion to dismiss and, accordingly, it ordered the dismissal of the complaint. Al Pakino filed a motion for reconsideration which the RTC denied. As nothing more could be done by Al Pakino before the RTC, he filed an appeal before the Court of Appeals (CA). Robert White moved for dismissal of the appeal on the ground that the same involved purely a question of law and should have been filed with the Supreme Court (SC). However, Al Pakino claimed that the appeal involved mixed questions of fact and law because there must be a factual determination if, indeed, Al Pakino was duly authorized by Goodfeather Corporation to file the complaint. Whose position is correct? Explain. (4%) 

Al Pakino’s position is correct.

Pursuant to the Rules of Civil Procedure, appeals involving questions of law and of fact shall be filed with the Court of Appeals. The appeal in this case involves determination of the authority of Al Pakino to file a complaint which is a question of fact. Hence, the appeal should properly be with the Court of Appeals.

XXII.

Which of the following decisions may be appealed directly to the Supreme Court (SC)? (Assume that the issues to be raised on appeal involve purely questions of law) (1%)
(A) Decision of the Regional Trial Court (RTC) rendered in the exercise of its appellate jurisdiction
(B) Decision of the RTC rendered in the exercise of its original jurisdiction
(C) Decision of the Civil Service Commission
(D) Decision of the Office of the President

XXIII.

Mr. Humpty filed with the Regional Trial Court (RTC) a complaint against Ms. Dumpty for damages. The RTC, after due proceedings, rendered a decision granting the complaint and ordering Ms. Dumpty to pay damages to Mr. Humpty. Ms. Dumpty timely filed an appeal before the Court of Appeals (CA), questioning the RTC decision. Meanwhile, the RTC granted Mr. Humpty’s motion for execution pending appeal. Upon receipt of the RTC’s order granting execution pending appeal, Ms. Dumpty filed with the CA another case, this time a special civil action for certiorari assailing said RTC order. Is there a violation of the rule against forum shopping considering that two (2) actions emanating from the same case with the RTC were filed by Ms. Dumpty with the CA? Explain. (4%)

No, there is no violation of the rule against forum shopping.

The settled rule in Civil Procedure is that forum shopping applies only when what is filed are complaints or initiatory pleadings.

Here, the appeal and petition for certiorari are neither complaints nor initiatory pleadings. Thus, the proscription against forum shopping does not apply.

XXIV.

Solomon and Faith got married in 2005. In 2010, Solomon contracted a second marriage with Hope. When Faith found out about the second marriage of Solomon and Hope, she filed a criminal case for bigamy before the Regional Trial Court (RTC) of Manila sometime in 2011. Meanwhile, Solomon filed a petition for declaration of nullity of his first marriage with Faith in 2012, while the case for bigamy before the RTC of Manila is ongoing. Subsequently, Solomon filed a motion to suspend the proceedings in the bigamy case on the ground of prejudicial question. He asserts that the proceedings in the criminal case should be suspended because if his first marriage with Faith will be declared null and void, it will have the effect of exculpating him from the crime of bigamy. Decide. (4%)

The motion to suspend the proceeding in the case for bigamy should be denied.

The established rule in Criminal Procedure is that prejudicial question exists when a civil action has been filed prior to a criminal action, and the resolution of the civil action is determinative of whether the criminal action should proceed. Moreover, the crime of bigamy is committed by the mere contracting of a second marriage during the subsistence of a first marriage with a different spouse notwithstanding the voidness of the previous of subsequent marriage.

Here, the civil action for the declaration of nullity of marriage was filed not prior but subsequent to the criminal case for bigamy. Importantly, Solomon had contracted a second marriage during the subsistence of his first marriage with another spouse. Hence, there exists no prejudicial question that merits the suspension of the criminal prosecution for bigamy.
XXV.

Mr. Boaz filed an action for ejectment against Mr. Jachin before the Metropolitan Trial Court (MeTC). Mr. Jachin actively participated in every stage of the proceedings knowing fully well that the MeTC had no jurisdiction over the action. In his mind, Mr. Jachin was thinking that if the MeTC rendered judgment against him, he could always raise the issue on the jurisdiction of the MeTC. After trial, the MeTC rendered judgment against Mr. Jachin. What is the remedy of Mr. Jachin? (1%)

(A) File an appeal
(B) File an action for nullification of judgment
(C) File a motion for reconsideration
(D) File a petition for certiorari under Rule 65

B

XXVI.

Parole evidence is an: (1%)

(A) agreement not included in the document
(B) oral agreement not included in the document
(C) agreement included in the document
(D) oral agreement included in the document

A

XXVII.

Mr. Avenger filed with the Regional Trial Court (RTC) a complaint against Ms. Bright for annulment of deed of sale and other documents. Ms. Bright filed a motion to dismiss the complaint on the ground of lack of cause of action. Mr. Avenger filed an opposition to the motion to dismiss. State and discuss the appropriate remedy/remedies under each of the following situations: (6%)

(A) If the RTC grants Ms. Bright’s motion to dismiss and dismisses the complaint on the ground of lack of cause of action, what will be the remedy/remedies of Mr. Avenger?

Mr. Avenger can re-file the case pursuant to Rule 16 of the Rules of Civil Procedure.

(B) If the RTC denies Ms. Bright’s motion to dismiss, what will be her remedy/remedies?

Applying Rule 16, Ms. Bright can file an answer within the balance of the period but not less than 5 days, or file a petition for certiorari under Rule 65 predicated on a grave abuse of discretion amounting to lack or in excess of jurisdiction.

(C) If the RTC denies Ms. Bright’s motion to dismiss and, further proceedings, including trial on the merits, are conducted until the RTC renders a decision in favor of Mr. Avenger, what will be the remedy/remedies of Ms. Bright?

Ms. Bright can file for a motion for reconsideration and in case of the denial thereof to file an appeal from the judgment or final order, likewise pursuant to Rule 16.
XXVIII.

A was adopted by B and C when A was only a toddler. Later on in life, A filed with the Regional Trial Court (RTC) a petition for change of name under Rule 103 of the Rules of Court, as he wanted to reassume the surname of his natural parents because the surname of his adoptive parents sounded offensive and was seriously affecting his business and social life. The adoptive parents gave their consent to the petition for change of name. May A file a petition for change of name? If the RTC grants the petition for change of name, what, if any, will be the effect on the respective relations of A with his adoptive parents and with his natural parents? Discuss. (4%)  

Yes, A may file a petition for change of name. 

Under the Rules of Summary Proceedings, a petition for change of name (surname) may be filed with the RTC on the grounds that the name is ridiculous, dishonorable or extremely difficult to write or pronounce, and the change is a legal consequence of adoption.  

Hence, A may file a petition for change of name insofar as the grounds are available to him.

XXIX.

Estrella was the registered owner of a huge parcel of land located in a remote part of their barrio in Benguet. However, when she visited the property after she took a long vacation abroad, she was surprised to see that her childhood friend, John, had established a vacation house on her property. Both Estrella and John were residents of the same barangay.

To recover possession, Estrella filed a complaint for ejectment with the Municipal Trial Court (MTC), alleging that she is the true owner of the land as evidenced by her certificate of title and tax declaration which showed the assessed value of the property as P21,000.00. On the other hand, John refuted Estrella's claim of ownership and submitted in evidence a Deed of Absolute Sale between him and Estrella. After the filing of John's answer, the MTC observed that the real issue was one of ownership and not of possession. Hence, the MTC dismissed the complaint for lack of jurisdiction.

On appeal by Estrella to the Regional Trial Court (RTC), a full-blown trial was conducted as if the case was originally filed with it. The RTC reasoned that based on the assessed value of the property, it was the court of proper jurisdiction. Eventually, the RTC rendered a judgment declaring John as the owner of the land and, hence, entitled to the possession thereof. (4%)

(A) Was the MTC correct in dismissing the complaint for lack of jurisdiction? Why or why not?

No, the MTC was not correct in dismissing the complaint for lack of jurisdiction. 

Under the Rules on Ejectment, the action for ejectment is within the exclusive and original jurisdiction of the MTC irrespective of total amount of the claims. 

Hence, it was erroneous for the MTC to dismiss the complaint for ejectment as it falls properly within its jurisdiction.

(C) Was the RTC correct in ruling that based on the assessed value of the property, the case was within its original jurisdiction and, hence, it may conduct a full-blown trial of the appealed case as if it was originally filed with it? Why or why not?

No, the RTC ruling based on the assessed value is not correct.
The Supreme Court in applying the Rules has held that what determines jurisdiction of the court as conferred by law is the nature of the action pleaded as appearing from the allegations in the complaint. The averments therein and the character of the relief sought are the ones to be consulted.

Here, the jurisdiction over ejectment cases is conferred by law exclusively and originally upon the MTC. Necessarily, the nature of the action is alleged by the facts in the complaint herein. Hence, the RTC should have remanded the case to the MTC since it is the latter that has jurisdiction over the case.

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2013 BAR EXAMS QUESTIONS

I.

Alfie Bravo filed with the Regional Trial Court of Caloocan, a complaint for a sum of money against Charlie Delta. The claim is for Php1.5 Million. The complaint alleges that Charlie borrowed the amount from Alfie and duly executed a promissory note as evidence of the loan. Charlie’s office secretary, Esther, received the summons at Charlie’s office.

Charlie failed to file an answer within the required period, and Alfie moved to declare Charlie in default and to be allowed to present evidence ex parte. Ten days later, Charlie filed his verified answer, raising the defense of full payment with interest.

(A) Was there proper and valid service of summons on Charlie? (3%)
(B) If declared in default, what can Charlie do to obtain relief? (4%)

II.

Yvonne, a young and lonely OFW, had an intimate relationship abroad with a friend, Percy. Although Yvonne comes home to Manila every six months, her foreign posting still left her husband Dario lonely so that he also engaged in his own extramarital activities. In one particularly exhilarating session with his girlfriend, Dario died. Within 180 days from Dario’s death, Yvonne gives birth in Manila to a baby boy. Irate relatives of Dario contemplate criminally charging Yvonne for adultery and they hire your law firm to handle the case.

(A) Is the contemplated criminal action a viable option to bring? (3%)
(B) Is a civil action to impugn the paternity of the baby boy feasible, and if so, in what proceeding may such issue be determined? (5%)

III.

While in his Nissan Patrol and hurrying home to Quezon City from his work in Makati, Gary figured in a vehicular mishap along that portion of EDSA within the City of Mandaluyong. He was bumped from behind by a Ford Expedition SUV driven by Horace who was observed using his cellular phone at the time of the collision. Both vehicles - more than 5 years old - no longer carried insurance other than the compulsory third party liability insurance. Gary suffered physical injuries while his Nissan Patrol sustained damage in excess of Php500,000.
(A) As counsel for Gary, describe the process you need to undertake starting from the point of the incident if Gary would proceed criminally against Horace, and identify the court with jurisdiction over the case. (3%)

(B) If Gary chooses to file an independent civil action for damages, explain briefly this type of action: its legal basis; the different approaches in pursuing this type of action; the evidence you would need; and types of defenses you could expect. (5%)

IV.

At the Public Attorney’s Office station in Taguig where you are assigned, your work requires you to act as public defender at the local Regional Trial Court and to handle cases involving indigents.

(A) In one criminal action for qualified theft where you are the defense attorney, you learned that the woman accused has been in detention for six months, yet she has not been to a courtroom nor seen a judge.

What remedy would you undertake to address the situation and what forum would you use to invoke this relief? (3%)

(B) In another case, also for qualified theft, the detained young domestic helper has been brought to court five times in the last six months, but the prosecution has yet to commence the presentation of its evidence. You find that the reason for this is the continued absence of the employer-complainant who is working overseas.

What remedy is appropriate and before which forum would you invoke this relief? (3%)

(C) Still in another case, this time for illegal possession of dangerous drugs, the prosecution has rested but you saw from the records that the illegal substance allegedly involved has not been identified by any of the prosecution witnesses nor has it been the subject of any stipulation.

Should you now proceed posthaste to the presentation of defense evidence or consider some other remedy? Explain the remedial steps you propose to undertake. (3%)

(D) In one other case, an indigent mother seeks assistance for her 14-year old son who has been arrested and detained for malicious mischief.

Would an application for bail be the appropriate remedy or is there another remedy available? Justify your chosen remedy and outline the appropriate steps to take. (3%)

V.

The spouses Juan reside in Quezon City. With their lottery winnings, they purchased a parcel of land in Tagaytay City for P100,000.00. In a recent trip to their Tagaytay property, they were surprised to see hastily assembled shelters of light materials occupied by several families of informal settlers who were not there when they last visited the property three (3) months ago.

To rid the spouses’ Tagaytay property of these informal settlers, briefly discuss the legal remedy you, as their counsel, would use; the steps you would take; the court where you would file your remedy if the need arises; and the reason/s for your actions. (7%)
VI.

While leisurely walking along the street near her house in Marikina, Patty unknowingly stepped on a garden tool left behind by CCC, a construction company based in Makati. She lost her balance as a consequence and fell into an open manhole. Fortunately, Patty suffered no major injuries except for contusions, bruises and scratches that did not require any hospitalization. However, she lost self-esteem, suffered embarrassment and ridicule, and had bouts of anxiety and bad dreams about the accident. She wants vindication for her uncalled for experience and hires you to act as counsel for her and to do whatever is necessary to recover at least Php100,000 for what she suffered.

What action or actions may Patty pursue, against whom, where (court and venue), and under what legal basis? (7%)

VII.

You are the defense counsel of Angela Bituin who has been charged under RA 3019 (Anti-Graft and Corrupt Practices Act) before the Sandiganbayan. While Angela has posted bail, she has yet to be arraigned. Angela revealed to you that she has not been investigated for any offense and that it was only when police officers showed up at her residence with a warrant of arrest that she learned of the pending case against her. She wonders why she has been charged before the Sandiganbayan when she is not in government service.

(A) What "before-trial" remedy would you invoke in Angela's behalf to address the fact that she had not been investigated at all, and how would you avail of this remedy? (4%)

(B) What "during-trial" remedy can you use to allow an early evaluation of the prosecution evidence without the need of presenting defense evidence; when and how can you avail of this remedy? (4%)

VIII.

On his way to the PNP Academy in Silang, Cavite on board a public transport bus as a passenger, Police Inspector Masigasig of the Valenzuela Police witnessed an on-going armed robbery while the bus was traversing Makati. His alertness and training enabled him to foil the robbery and to subdue the malefactor. He disarmed the felon and while frisking him, discovered another handgun tucked in his waist. He seized both handguns and the malefactor was later charged with the separate crimes of robbery and illegal possession of firearm.

(A) Where should Police Inspector Masigasig bring the felon for criminal processing? To Silang, Cavite where he is bound; to Makati where the bus actually was when the felonies took place; or back to Valenzuela where he is stationed? Which court has jurisdiction over the criminal cases? (3%)

(B) May the charges of robbery and illegal possession of firearm be filed directly by the investigating prosecutor with the appropriate court without a preliminary investigation? (4%)

IX.

For over a year, Nenita had been estranged from her husband Walter because of the latter's suspicion that she was having an affair with Vladimir, a barangay kagawad who lived in nearby
Mandaluyong. Nenita lived in the meantime with her sister in Makati. One day, the house of Nenita’s sister inexplicably burned almost to the ground. Nenita and her sister were caught inside the house but Nenita survived as she fled in time, while her sister tried to save belongings and was caught inside when the house collapsed.

As she was running away from the burning house, Nenita was surprised to see her husband also running away from the scene. Dr. Carlos, Walter’s psychiatrist who lived near the burned house and whom Walter medically consulted after the fire, also saw Walter in the vicinity some minutes before the fire. Coincidentally, Fr. Platino, the parish priest who regularly hears Walter’s confession and who heard it after the fire, also encountered him not too far away from the burned house.

Walter was charged with arson and at his trial, the prosecution moved to introduce the testimonies of Nenita, the doctor and the priest-confessor, who all saw Walter at the vicinity of the fire at about the time of the fire.

(A) May the testimony of Nenita be allowed over the objection of Walter? (3%)

(B) May the testimony of Dr. Carlos, Walter’s psychiatrist, be allowed over Walter’s objection? (3%)

(C) May the testimony of Fr. Platino, the priest-confessor, be allowed over Walter’s objection? (3%)

X.

As a new lawyer, Attorney Novato limited his practice to small claims cases, legal counseling and the notarization of documents. He put up a solo practice law office and was assisted by his wife who served as his secretary/helper. He used a makeshift hut in a vacant lot near the local courts and a local transport regulatory agency. With this practice and location, he did not have big-time clients but enjoyed heavy patronage assisting walk-in clients.

(A) What role can Attorney Novato play in small claims cases when lawyers are not allowed to appear as counsel in these cases? (3%)

(B) What legal remedy, if any, may Attorney Novato pursue for a client who loses in a small claims case and before which tribunal or court may this be pursued? (4%)

MULTIPLE CHOICE QUESTIONS

I. In a complaint filed by the plaintiff, what is the effect of the defendant’s failure to file an answer within the reglementary period? (1%)

(A) The court is allowed to render judgment motu proprio in favor of the plaintiff.
(B) The court motu proprio may declare the defendant in default, but only after due notice to the defendant.
(C) The court may declare the defendant in default but only upon motion of the plaintiff and with notice to the defendant.
(D) The court may declare the defendant in default but only upon motion of the plaintiff, with notice to the defendant, and upon presentation of proof of the defendant’s failure to answer.
(E) The above choices are all inaccurate.

II. Which of the following is admissible? (1%)

(A) The affidavit of an affiant stating that he witnessed the execution of a deed of sale but the affiant was not presented as a witness in the trial.
(B) The extra judicial admission made by a conspirator against his co-conspirator after the conspiracy has ended.
(C) The testimony of a party’s witness regarding email messages the witness received from the opposing party.
(D) The testimony of a police officer that he had been told by his informants that there were sachets of shabu in the pocket of the defendant.
(E) None of the above.

III. Leave of court is required to amend a complaint or information before arraignment if the amendment __________. (1%)

(A) upgrades the nature of the offense from a lower to a higher offense and excludes any of the accused
(B) upgrades the nature of the offense from a lower to a higher offense and adds another accused
(C) downgrades the nature of the offense from a higher to a lower offense or excludes any accused
(D) downgrades the nature of the offense from a higher to a lower offense and adds another accused
(E) All the above choices are inaccurate.

IV. A Small Claims Court __________. (1%)

(A) has jurisdiction over ejectment actions
(B) has limited jurisdiction over ejectment actions
(C) does not have any jurisdiction over ejectment actions
(D) does not have original, but has concurrent, jurisdiction over ejectment actions
(E) has only residual jurisdiction over ejectment actions

V. Character evidence is admissible __________. (1%)

(A) in criminal cases – the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged
(B) in criminal cases – the prosecution may prove the bad moral character of the accused to prove his criminal predisposition
(C) in criminal cases under certain situations, but not to prove the bad moral character of the offended party
(D) when it is evidence of the good character of a witness even prior to his impeachment as witness
(E) In none of the given situations above.

VI. When the court renders judgment in a judicial foreclosure proceeding, when is the mortgaged property sold at public auction to satisfy the judgment? (1%)

(A) After the decision has become final and executory.
(B) At any time after the failure of the defendant to pay the judgment amount.
(C) After the failure of the defendant to pay the judgment amount within the period fixed in the decision, which shall not be less than ninety (90) nor more than one hundred twenty (120) days from entry of judgment.

(D) The mortgaged property is never sold at public auction.

(E) The mortgaged property may be sold but not in any of the situations outlined above.

VII. The signature of counsel in the pleading constitutes a certification that __________. (1%)

(A) both client and counsel have read the pleading, that to the best of their knowledge, information and belief there are good grounds to support it, and that it is not interposed for delay

(B) the client has read the pleading, that to the best of the client’s knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay

(C) the counsel has read the pleading, that to the best of the client’s knowledge, information and belief, there are good grounds to support it, and that it is not interposed for delay

(D) the counsel has read the pleading, that based on his personal information, there are good grounds to support it, and that it is not interposed for delay

(E) The above choices are not totally accurate.

VIII. Which among the following is a requisite before an accused may be discharged to become a state witness? (1%)

(A) The testimony of the accused sought to be discharged can be substantially corroborated on all points.

(B) The accused does not appear to be guilty.

(C) There is absolute necessity for the testimony of the accused whose discharge is requested.

(D) The accused has not at any time been convicted of any offense.

(E) None of the above.

IX. Which of the following distinguishes a motion to quash from a demurrer to evidence? (1%)

(A) A motion to quash a complaint or information is filed before the prosecution rests its case.

(B) A motion to quash may be filed with or without leave of court, at the discretion of the accused.

(C) When a motion to quash is granted, a dismissal of the case will not necessarily follow.

(D) The grounds for a motion to quash are also grounds for a demurrer to evidence.

(E) The above choices are all wrong.

X. Which among the following is not subject to mediation for judicial dispute resolution? (1%)

(A) The civil aspect of B.P. Blg. 22 cases.

(B) The civil aspect of theft penalized under Article 308 of the Revised Penal Code.

(C) The civil aspect of robbery.

(D) Cases cognizable by the Lupong Tagapamayapa under the Katarungang Pambarangay Law.

(E) None of the above.

XI. What is the effect of the pendency of a special civil action under Rule 65 of the Rules of Court on the principal case before the lower court? (1%)
(A) It always interrupts the course of the principal case.
(B) It interrupts the course of the principal case only if the higher court issues a temporary restraining order or a writ of preliminary injunction against the lower court.
(C) The lower court judge is given the discretion to continue with the principal case.
(D) The lower court judge will continue with the principal case if he believes that the special civil action was meant to delay proceedings.
(E) Due respect to the higher court demands that the lower court judge temporarily suspend the principal case.

XII. Findings of fact are generally not disturbed by the appellate court except in cases ________. (1%)

(A) where the issue is the credibility of the witness
(B) where the judge who heard the case is not the same judge who penned the decision
(C) where the judge heard several witnesses who gave conflicting testimonies
(D) where there are substantially overlooked facts and circumstances that, if properly considered, might affect the result of the case
(E) None of the above.

XIII. Contempt charges made before persons, entities, bodies and agencies exercising quasi-judicial functions against the parties charged, shall be filed with the Regional Trial Court of the place where the _________. (1%)

(A) person, entity or agency exercising quasi-judicial function is located
(B) person who committed the contemptuous act resides
(C) act of contempt was committed
(D) party initiating the contempt proceeding resides
(E) charging entity or agency elects to initiate the action

XIV. When may a party file a second motion for reconsideration of a final judgment or final order? (1%)

(A) At anytime within 15 days from notice of denial of the first motion for reconsideration.
(B) Only in the presence of extraordinarily persuasive reasons and only after obtaining express leave from the ruling court.
(C) A party is not allowed to file a second motion for reconsideration of a final judgment or final order.
(D) A party is allowed as a matter of right to file a second motion for reconsideration of a judgment or final order.
(E) None of the above.

XV. In an original action for certiorari, prohibition, mandamus, or quo warranto, when does the Court of Appeals acquire jurisdiction over the person of the respondent? (1%)

(A) Upon the service on the respondent of the petition for certiorari, prohibition, mandamus or quo warranto, and his voluntary submission to the jurisdiction of the Court of Appeals.
(B) Upon service on the respondent of the summons from the Court of Appeals.
(C) Upon the service on the respondent of the order or resolution of the Court of Appeals indicating its initial action on the petition.
(D) By respondent’s voluntary submission to the jurisdiction of the Court of Appeals.
(E) Under any of the above modes.
XVI. Extra-territorial service of summons is proper in the following instances, except ___________. (1%)

(A) when the non-resident defendant is to be excluded from any interest on a property located in the Philippines
(B) when the action against the non-resident defendant affects the personal status of the plaintiff and the defendant is temporarily outside the Philippines
(C) when the action is against a non-resident defendant who is formerly a Philippine resident and the action affects the personal status of the plaintiff
(D) when the action against the non-resident defendant relates to property within the Philippines in which the defendant has a claim or lien
(E) All of the above.

XVII. When is attachment improper in criminal cases? (1%)

(A) When the accused is about to abscond from the Philippines.
(B) When the criminal action is based on a claim for money or property embezzled or fraudulently misapplied or converted to the use of the accused who is a broker, in the course of his employment as such.
(C) When the accused is about to conceal, remove, or dispose of his property.
(D) When the accused resides outside the jurisdiction of the trial court.

XVIII. Maria was accused of libel. While Maria was on the witness stand, the prosecution asked her to write her name and to sign on a piece of paper, apparently to prove that she authored the libelous material. Maria objected as writing and signing her name would violate her right against self-incrimination. Was Maria’s objection proper? (1%)

(A) No, she can be cross examined just like any other witness and her sample signature may be taken to verify her alleged authorship of the libelous statements.
(B) No, her right against self-incrimination is waived as soon as she became a witness.
(C) No, this privilege may be invoked only by an ordinary witness and not by the accused when she opts to take the witness stand.
(D) The objection was improper under all of A, B, and C.
(E) The objection was proper as the right to self-incrimination is a fundamental right that affects liberty and is not waived simply because the accused is on the witness stand.

XIX. Danny filed a complaint for damages against Peter. In the course of the trial, Peter introduced evidence on a matter not raised in the pleadings. Danny promptly objected on the ground that the evidence relates to a matter not in issue. How should the court rule on the objection? (1%)

(A) The court must sustain the objection.
(B) The court must overrule the objection.
(C) The court, in its discretion, may allow amendment of the pleading if doing so would serve the ends of substantial justice.
(D) The court, in its discretion, may order that the allegation in the pleadings which do not conform to the evidence presented be stricken out.
(E) The matter is subject to the complete discretion of the court.

XX. The Labor Arbiter, ruling on a purely legal question, ordered a worker’s reinstatement and this ruling was affirmed on appeal by the NLRC whose decision, under the Labor Code, is final. The company’s recourse under the circumstances is to ___________. (1%)
(A) file a motion for reconsideration and if denied, file a petition for review with the Court of Appeals on the pure legal question the case presents.
(B) file a motion for reconsideration and if denied, appeal to the Secretary of Labor since a labor policy issue is involved.
(C) file a motion for reconsideration and if denied, file a petition for certiorari with the Court of Appeals on the ground of grave abuse of discretion by the NLRC.
(D) file a motion for reconsideration and if denied, file a petition for review on certiorari with the Supreme Court since a pure question of law is involved.
(E) directly file a petition for certiorari with the Court of Appeals since a motion for reconsideration would serve no purpose when a pure question of law is involved.

2012 BAR EXAMS QUESTIONS

I

a) After an information for rape was filed in the RTC, the DOJ Secretary, acting on the accused’s petition for review, reversed the investigating prosecutor’s finding of probable cause. Upon order of the DOJ Secretary, the trial prosecutor filed a Motion to Withdraw Information which the judge granted. The order of the judge stated only the following:

“Based on the review by the DOJ Secretary of the findings of the investigating prosecutor during the preliminary investigation, the Court agrees that there is no sufficient evidence against the accused to sustain the allegation in the information. The motion to withdraw information is, therefore, granted.”

If you were the private prosecutor, what should you do? Explain. (5%)

b) A was charged with a non-bailable offense. At the time when the warrant of arrest was issued, he was confined in the hospital and could not obtain a valid clearance to leave the hospital. He filed a petition for bail saying therein that he be considered as having placed himself under the jurisdiction of the court. May the court entertain his petition? Why or why not? (5%)

II

a) Discuss the “Chain of custody” principle with respect to evidence seized under R.A. 9165 or the Comprehensive Dangerous Drugs Act of 2002. (2%)

b) What do you understand about the “precautionary principle” under the Rules of Procedure for Environmental Cases? (5%)

III

a) Distinguish error of jurisdiction from error of judgment. (5%)

b) A, a resident of Quezon city, wants to file an action against B, a resident of Pasay, to compel the latter to execute a Deed of Sale covering a lot situated in Marikina and that transfer of title be issued to him claiming ownership of the land. Where should A file the case?
IV

a) A bought a Volvo Sedan from ABC Cars for P5.0M. ABC Cars, before delivering to A, had the car rust proofed and tinted by XYZ Detailing. When delivered to A, the car’s upholstery was found to be damaged. ABC Cars and XYZ Detailing both deny any liability. Who can A sue and on what cause(s) of action? Explain. (5%)

b) Mr. Sheriff attempts to enforce a Writ of Execution against X, a tenant in a condominium unit, who lost in an ejectment case. X does not want to budge and refuses to leave. Y, the winning party, moves that X be declared in contempt and after hearing, the court held X guilty of indirect contempt. If you were X’s lawyer, what would you do? Why? (5%)

V

a) X was arrested, en flagrante, for robbing a bank. After an investigation, he was brought before the office of the prosecutor for inquest, but unfortunately no inquest prosecutor was available. May the bank directly file the complaint with the proper court? If in the affirmative, what document should be filed? (5%)

VI

A PDEA asset/informant tipped the PDEA Director Shabunot that a shabu laboratory was operating in a house at Sta. Cruz, Laguna, rented by two (2) Chinese nationals, Ho Pia and Sio Pao. PDEA Director Shabunot wants to apply for a search warrant, but he is worried that if he applies for a search warrant in any Laguna court, their plan might leak out.

a) Where can he file an application for search warrant? (2%)

b) What documents should he prepare in his application for search warrant? (2%)

c) Describe the procedure that should be taken by the judge on the application. (2%)

Suppose the judge issues the search warrant worded this way:

PEOPLE OF THE
PHILIPPINES
Plaintiff

versus

Criminal Case No. 007
for
Violations of R.A. 9165

Ho Pia and Sio Pao,
Accused

TO ANY PEACE OFFICER
Greetings:

It appearing to the satisfaction of the undersigned after examining under oath PDEA Director Shabunot that there is probable cause to believe the violations of Section 18 and 16 of RA 9165 have been committed and that there are good and sufficient reasons to believe that Ho Pia and Sio Pao have in their possession or control, in a two (2) door apartment with an iron gate located at Jupiter St., Sta. Cruz, Laguna, an undetermined amount of “shabu” and drug manufacturing implements and paraphernalia which should be seized and brought to the undersigned,

You are hereby commanded to make an immediate search, at any time in the day or
night, of the premises above described and forthwith seize and take possession of the abovementioned personal property, and bring said property to the undersigned to be dealt with as the law directs.

Witness my hand this 1st day of March, 2012.

(signed)

Judge XYZ

d) Cite/enumerate the defects, if any, of the search warrant. (3%)

e) Suppose the search warrant was served on March 15, 2012, and the search yielded the described contraband and a case was filed against the accused in the RTC, Sta. Cruz, Laguna, and you are the lawyer of Sio Pao and Ho Pia, what will you do? (3%)

f) Suppose an unlicensed armalite was found in plain view by the searches and the warrant was ordered quashed, should the court order the return of the same to the Chinese nationals? Explain your answer. (3%)

VII

a) Counsel A objected to a question posed by opposing Counsel B on the grounds that it was hearsay and it assumed a fact not yet established. The judge banged his gavel and ruled by saying "Objection sustained". Can Counsel B ask for a reconsideration of the ruling? (5%)

b) Plaintiff files a request for admission and serves the same on Defendant who fails, within the time prescribed by the rules, to answer the request. Suppose the request for admission asked for the admission of the entire material allegations stated in the complaint, what should plaintiff do? (5%)

VIII

a) A sues B for collection of a sum of money. Alleging fraud in the contracting of the loan, A applies for preliminary attachment with the court. The Court issues the preliminary attachment after A files a bond. While summons on B was yet unserved, the sheriff attached B's properties. Afterwards, summons was duly served on B. B moves to lift the attachment. Rule on this. (5%)

b) Discuss the three (3) Stages of Court Diversion in connection with Alternative Dispute Resolution. (5%)

IX

a) X, an undersecretary of DENR, was charged before the Sandiganbayan for malversation of public funds allegedly committed when he was still the Mayor of a town in Rizal. After arraignment, the prosecution moved that X be preventively suspended. X opposed the motion arguing that he was now occupying a position different from that which the Information charged him and therefore, there is no more possibility that he can intimidate witnesses and hamper the prosecution. Decide. Suppose X files a Motion to Quash challenging the validity of the Information and the Sandiganbayan denies the same, will there will be a need to conduct a pre-suspension hearing? Explain. (5%)

b) Briefly discuss/differentiate the following kinds of Attachment: preliminary attachment, garnishment, levy on execution, warrant of seizure and warrant of distraint and levy. (5%)
a) Where and how will you appeal the following:

(1) An order of execution issued by the RTC. (1%)
(2) Judgment of RTC denying a petition for Writ of Amparo. (1%)
(3) Judgment of MTC on a land registration case based on its delegated jurisdiction. (1%)
(4) A decision of the Court of Tax Appeals’ Fifth Division. (1%)

b) A files a Complaint against B for recovery of title and possession of land situated in Makati with the RTC of Pasig. B files a Motion to Dismiss for improper venue. The RTC Pasig Judge denies B’s Motion to Dismiss, which obviously was incorrect. Alleging that the RTC Judge “unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office,” B files a Petition for Mandamus against the judge. Will Mandamus lie? Reasons. (3%)

c) What are the jurisdictional facts that must be alleged in a petition for probate of a will? How do you bring before the court these jurisdictional facts? (3%)

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2011 BAR EXAMS QUESTIONS AND MY ALTERNATIVE ANSWERS

Set A

1. Anna filed a petition for appointment as regular administratrix of her fathers’ estate. Her sister Sophia moved to dismiss the petition on the ground that the parties, as members of the same family, have not exerted earnest effort toward a compromise prior to the filing of the petition. Should the petition be dismissed?
   A. Yes, since such earnest effort is jurisdictional in all estate cases.
   B. No, since such earnest effort is not required in special proceedings.
   C. Yes, since such earnest effort is required prior to the filing of the case.
   D. No, since such earnest effort toward a compromise is not required in summary proceedings.

2. A pending criminal case, dismissed provisionally, shall be deemed permanently dismissed if not revived after 2 years with respect to offenses punishable by imprisonment
   A. of more than 12 years.
   B. not exceeding 6 years or a fine not exceeding P1,000.00.
   C. of more than 6 years or a fine in excess of P1,000.00.
   D. of more than 6 years.

3. Angie was convicted of false testimony and served sentence. Five years later, she was convicted of homicide. On appeal, she applied for bail. May the Court of Appeals deny her application for bail on ground of habitual delinquency?
   A. Yes, the felonies are both punishable under the Revised Penal Code.
   B. Yes, her twin convictions indicated her criminal inclinations.
   C. No, the felonies fall under different titles in the Revised Penal Code.
D. No, the charges are both bailable.

4. Which of the following is NOT CONSISTENT with the rules governing expropriation proceedings?
   A. The court shall declare the defendant who fails to answer the complaint in default and render judgment against him.
   B. The court shall refer the case to the Board of Commissioners to determine the amount of just compensation.
   C. The plaintiff shall make the required deposit and forthwith take immediate possession of the property sought to be expropriated.
   D. The plaintiff may appropriate the property for public use after judgment and payment of the compensation fixed in it, despite defendant’s appeal.

5. Which of the following is a correct statement of the rule on amendment of the information in a criminal proceeding?
   A. An amendment that downgrades the offense requires leave of court even before the accused pleads.
   B. Substantial amendments are allowed with leave of court before the accused pleads.
   C. Only formal amendments are permissible before the accused pleads.
   D. After the plea, a formal amendment may be made without leave of court.

6. Gary who lived in Taguig borrowed P1 million from Rey who lived in Makati under a contract of loan that fixed Makati as the venue of any action arising from the contract. Gary had already paid the loan but Rey kept on sending him letters of demand for some balance. Where is the venue of the action for harassment that Gary wants to file against Rey?
   A. In Makati since the intent of the party is to make it the venue of any action between them whether based on the contract or not.
   B. In Taguig or Makati at the option of Gary since it is a personal injury action.
   C. In Taguig since Rey received the letters of demand there.
   D. In Makati since it is the venue fixed in their contract.

7. Which of the following is NOT within the power of a judicial receiver to perform?
   A. Bring an action in his name.
   B. Compromise a claim.
   C. Divide the residual money in his hands among the persons legally entitled to the same.
   D. Invest the funds in his hands without court approval.

8. Which of the following precepts forms part of the rules governing small claims?
   A. Permissive counterclaim is not allowed.
   B. The court shall render its decision within 3 days after hearing.
   C. Joinder of separate claims is not allowed.
   D. Motion to declare defendant in default is allowed.

9. The Metropolitan Trial Court convicted Virgilio and Dina of concubinage. Pending appeal, they applied for bail, claiming they are entitled to it as a matter of right. Is their claim correct?
   A. No, bail is not a matter of right after conviction.
   B. Yes, bail is a matter of right in all cases not involving moral turpitude.
   C. No, bail is dependent on the risk of flight.
   D. Yes, bail is a matter of right in the Metropolitan Trial Court before and after conviction.

10. As a rule, the judge shall receive the evidence personally. In which of the following circumstances may the court delegate the reception of evidence to the clerk of court?
A. When a question of fact arises upon a motion.
B. When the trial of an issue of fact requires the examination of a long account.
C. In default or ex-parte hearings.
D. Upon motion of a party on reasonable grounds.

11. Which of the following is in accord with the applicable rules on receivership?
   A. The court may appoint the plaintiff as receiver of the property in litigation over the defendant’s objection.
   B. A receiver may be appointed after judgment if the judgment obligor refuses to apply his property to satisfy the judgment.
   C. The trial court cannot appoint a receiver when the case is on appeal.
   D. The filing of bond on appointment of a receiver is mainly optional.

12. Bearing in mind the distinction between private and public document, which of the following is admissible in evidence without further proof of due execution or genuineness?
   A. Baptismal certificates.
   B. Official record of the Philippine Embassy in Singapore certified by the Vice-Consul with official seal.
   C. Documents acknowledged before a Notary Public in Hong Kong.
   D. Unblemished receipt dated December 20, 1985 signed by the promisee, showing payment of a loan, found among the well-kept file of the promissor.

13. Ramon witnessed the commission of a crime but he refuses to testify for fear of his life despite a subpoena being served on him. Can the court punish him for contempt?
   A. No, since no person can be compelled to be a witness against another.
   B. Yes, since public interest in justice requires his testimony.
   C. No, since Ramon has a valid reason for not testifying.
   D. Yes, since litigants need help in presenting their cases.

14. The right to intervene is not absolute. In general, it CANNOT be allowed where
   A. the intervenor has a common interest with any of the parties.
   B. it would enlarge the issues and expand the scope of the remedies.
   C. the intervenor fails to put up a bond for the protection of the other parties.
   D. the intervenor has a stake in the property subject of the suit.

15. Which of the following grounds for dismissal invoked by the court will NOT PRECLUDE the plaintiff from refiling his action?
   A. Res judicata.
   B. Lack of jurisdiction over the subject matter.
   C. Unenforceability under the Statutes of Fraud.
   D. Prescription.

16. When may a co-owner NOT demand the partition of the thing owned in common?
   A. When the creditor of one of the co-owners has attached the property.
   B. When the property is essentially indivisible.
   C. When related co-owners agreed to keep the property within the family.
   D. When a co-owner uses the property as his residence.

17. The city prosecutor of Manila filed, upon Soledad’s complaint, a criminal action for estafa against her sister, Wella, before the RTC of Manila for selling to Victor a land that she previously sold to Soledad. At the same time Soledad filed a civil action to annul the second sale before the RTC of Quezon City. May the Manila RTC motu proprio suspend the criminal action on ground of prejudicial question?
A. Yes, if it may be clearly inferred that complainant will not object to the suspension of the criminal case.
B. No, the accused must file a motion to suspend the action based on prejudicial question.
C. Yes, if it finds from the record that such prejudicial question exists.
D. Yes, if it is convinced that due process and fair trial will be better served if the criminal case is suspended.

18. Which of the following conforms to the applicable rule on replevin?
   A. The applicant must file a bond executed to the adverse party in an amount equal to the value of the property as determined by the court.
   B. The property has been wrongfully detained by the adverse party.
   C. The applicant has a contingent claim over the property object of the writ.
   D. The plaintiff may apply for the writ at any time before judgment.

19. Gerry sued XYZ Bus Co. and Rico, its bus driver, for injuries Gerry suffered when their bus ran off the road and hit him. Of the two defendants, only XYZ Bus Co. filed an answer, alleging that its bus ran off the road because one of its wheels got caught in an open manhole, causing the bus to swerve without the driver’s fault. Someone had stolen the manhole cover and the road gave no warning of the danger it posed. On Gerry’s motion and over the objection of XYZ Bus Co., the court declared Rico, the bus driver, in default and rendered judgment ordering him to pay P50,000 in damages to Gerry. Did the court act correctly?
   A. No, since the court should have tried the case against both defendants upon the bus company’s answer.
   B. No, the court should have dropped Rico as defendant since the moneyed defendant is the bus company.
   C. Yes, the court can, under the rules, render judgment against the defendant declared in default.
   D. Yes, since, in failing to answer, Rico may be deemed to have admitted the allegations in the complaint.

20. Which of the following has NO PLACE in an application for a replevin order? A statement
   A. that the property is wrongfully detained by the adverse party.
   B. that the property has not been distrained for a tax assessment or placed under custodia legis.
   C. of the assessed value of the property.
   D. that the applicant owns or has a right to the possession of the property.

21. 008-997-0001 In which of the following instances is the quantum of evidence ERRONEOUSLY applied?
   A. in Writ of Amparo cases, substantial evidence.
   B. to satisfy the burden of proof in civil cases, preponderance of evidence.
   C. to overcome a disputable presumption, clear and convincing evidence.
   D. to rebut the presumptive validity of a notarial document, substantial evidence.

22. The accused jumps bail and fails to appear on promulgation of judgment where he is found guilty. What is the consequence of his absence?
   A. Counsel may appeal the judgment in the absence of the accused.
   B. The judgment shall be promulgated in his absence and he loses his right of appeal.
   C. The promulgation of the judgment shall be suspended until he is brought to the jurisdiction of the court.
   D. The judgment shall be void.
23. What should the court sheriff do if a third party serves on him an affidavit of claim covering the property he had levied?
   A. Ask the judgment obligee to file a court-approved indemnity bond in favor of the third-party claimant or the sheriff will release the levied property.
   B. Ask the judgment obligee to file a court-approved bond for the sheriff's protection in case he proceeds with the execution.
   C. Immediately lift the levy and release the levied property.
   D. Ask the third-party claimant to support his claim with an indemnity bond in favor of the judgment obligee and release the levied property if such bond is filed.

24. Which of the following is NOT REGARDED as a sufficient proof of personal service of pleadings?
   A. Official return of the server.
   B. Registered mail receipt.
   C. Written admission of the party served.
   D. Affidavit of the server with a statement of the date, place and manner of service.

25. A sued B for ejectment. Pending trial, B died, survived by his son, C. No substitution of party defendant was made. Upon finality of the judgment against B, may the same be enforced against C?
   A. Yes, because the case survived B's death and the effect of final judgment in an ejectment case binds his successors in-interest.
   B. No, because C was denied due process.
   C. Yes, because the negligence of B's counsel in failing to ask for substitution, should not prejudice A.
   D. No, because the action did not survive B's death.

26. What is the proper remedy to secure relief from the final resolutions of the Commission On Audit?
   A. Petition for review on certiorari with the Supreme Court.
   B. Special civil action of certiorari with the Court of Appeals.
   C. Special civil action of certiorari with the Supreme Court.
   D. Appeal to the Court of Appeals.

27. Which of the following is a duty enjoined on the guardian and covered by his bond?
   A. Provide for the proper care, custody, and education of the ward.
   B. Ensure the wise and profitable investment of the ward's financial resources.
   C. Collect compensation for his services to the ward.
   D. Raise the ward to become a responsible member of society.

28. Berto was charged with and convicted of violating a city ordinance against littering in public places punishable by imprisonment of one month or a fine of P1,000.00. But the city mayor pardoned him. A year later, he was charged with violating a city ordinance against jaywalking which carried the same penalty. Need Berto post bail for such offense?
   A. Yes, his previous conviction requires posting of bail for the present charge.
   B. Yes, since he may be deemed to have violated the terms of his pardon.
   C. No, because he is presumed innocent until proven otherwise.
   D. No, one charged with the violation of a city ordinance is not required to post bail, notwithstanding a previous pardon.

29. Which of the following claims survive the death of the defendant and need not be presented as a claim against the estate?
   A. Contingent money claims arising from contract.
B. Unenforced money judgment against the decedent, with death occurring before levy on execution of the property.
C. Claims for damages arising from quasi-delict.
D. Claims for funeral expenses.

30. In a case, the prosecutor asked the medical expert the question, “Assuming that the assailant was behind the deceased before he attacked him, would you say that treachery attended the killing?” Is this hypothetical question permissible?
   A. No, since it asks for his legal opinion.
   B. Yes, but conditionally, subject to subsequent proof that the assailant was indeed behind the deceased at that time.
   C. Yes, since hypothetical questions may be asked of an expert witness.
   D. No, since the medical expert has no personal knowledge of the fact.

31. The city prosecutor charged Ben with serious physical injuries for stabbing Terence. He was tried and convicted as charged. A few days later, Terence died due to severe infection of his stab wounds. Can the prosecution file another information against Ben for homicide?
   A. Yes, since Terence’s death shows irregularity in the filing of the earlier charge against him.
   B. No, double jeopardy is present since Ben had already been convicted of the first offense.
   C. No, there is double jeopardy since serious physical injuries is necessarily included in the charge of homicide.
   D. Yes, since supervening event altered the kind of crime the accused committed.

32. Arvin was caught in flagrante delicto selling drugs for P200,000.00. The police officers confiscated the drugs and the money and brought them to the police station where they prepared the inventory duly signed by police officer Oscar Moreno. They were, however, unable to take pictures of the items. Will this deficiency destroy the chain of custody rule in the drug case?
   A. No, a breach of the chain of custody rule in drug cases, if satisfactorily explained, will not negate conviction.
   B. No, a breach of the chain of custody rule may be offset by presentation in court of the drugs.
   C. Yes, chain of custody in drug cases must be strictly observed at all times to preserve the integrity of the confiscated items.
   D. Yes, compliance with the chain of custody rule in drug cases is the only way to prove the accused’s guilt beyond reasonable doubt.

33. A sued B in the RTC of Quezon City, joining two causes of action: for partition of real property and breach of contract with damages. Both parties reside in Quezon City but the real property is in Manila. May the case be dismissed for improper venue?
   A. Yes, since causes of action pertaining to different venues may not be joined in one action.
   B. No, since causes of action pertaining to different venues may be joined in the RTC if one of the causes of action falls within its jurisdiction.
   C. Yes, because special civil action may not be joined with an ordinary civil action.
   D. No, since plaintiff may unqualifiedly join in one complaint as many causes of action as he has against opposing party.

34. What is the doctrine of judicial stability or non interference?
   A. Once jurisdiction has attached to a court, it can not be deprived of it by subsequent happenings or events.
B. Courts will not hear and decide cases involving issues that come within the jurisdiction of administrative tribunals.
C. No court has the authority to interfere by injunction with the judgment of another court of coordinate jurisdiction.
D. A higher court will not entertain direct resort to it unless the redress sought cannot be obtained from the appropriate court.

35. Which of the following admissions made by a party in the course of judicial proceedings is a judicial admission?
A. Admissions made in a pleading signed by the party and his counsel intended to be filed.
B. An admission made in a pleading in another case between the same parties.
C. Admission made by counsel in open court.
D. Admissions made in a complaint superseded by an amended complaint.

36. What defenses may be raised in a suit to enforce a foreign judgment?
A. That the judgment is contrary to Philippine procedural rules.
B. None, the judgment being entitled to full faith and credit as a matter of general comity among nations.
C. That the foreign court erred in the appreciation of the evidence.
D. That extrinsic fraud afflicted the judgment.

37. Cindy charged her husband, George, with bigamy for a prior subsisting marriage with Teresa. Cindy presented Ric and Pat, neighbors of George and Teresa in Cebu City, to prove, first, that George and Teresa cohabited there and, second, that they established a reputation as husband and wife. Can Cindy prove the bigamy by such evidence?
A. Yes, the circumstantial evidence is enough to support a conviction for bigamy.
B. No, at least one direct evidence and two circumstantial evidence are required to support a conviction for bigamy.
C. No, the circumstantial evidence is not enough to support a conviction for bigamy.
D. No, the circumstantial evidence cannot overcome the lack of direct evidence in any criminal case.

38. To prove payment of a debt, Bong testified that he heard Ambo say, as the latter was handing over money to Tessie, that it was in payment of debt. Is Bong's testimony admissible in evidence?
A. Yes, since what Ambo said and did is an independently relevant statement.
B. No, since what Ambo said and did was not in response to a startling occurrence.
C. No, since Bong's testimony of what Ambo said and did is hearsay.
D. Yes, since Ambo's statement and action, subject of Bong's testimony, constitutes a verbal act.

39. Considering the qualifications required of a would-be witness, who among the following is INCOMPETENT to testify?
A. A person under the influence of drugs when the event he is asked to testify on took place.
B. A person convicted of perjury who will testify as an attesting witness to a will.
C. A deaf and dumb.
D. A mental retardate.

40. Arthur, a resident foreigner sold his car to Bren. After being paid but before delivering the car, Arthur replaced its original sound system with an inferior one. Bren discovered the change, rejected the car, and demanded the return of his money. Arthur did not comply. Meantime, his company reassigned Arthur to Singapore. Bren filed a civil action against Arthur for contractual fraud and damages. Upon his application, the court issued a writ of
preliminary attachment on the grounds that (a) Arthur is a foreigner; (b) he departed from the Philippines; and (c) he was guilty of fraud in contracting with Bren. Is the writ of preliminary attachment proper?
A. No, Arthur is a foreigner living abroad; he is outside the court’s jurisdiction.
B. Yes, Arthur committed fraud in changing the sound system and its components before delivering the car bought from him.
C. Yes the timing of his departure is presumptive evidence of intent to defraud.
D. No, since it was not shown that Arthur left the country with intent to defraud Bren.

41. What is the movant’s remedy if the trial court incorrectly denies his motion to dismiss and related motion for reconsideration?
A. Answer the complaint.
B. File an administrative action for gross ignorance of the law against the trial judge.
C. File a special civil action of certiorari on ground of grave abuse of discretion.
D. Appeal the orders of denial.

42. During trial, plaintiff offered evidence that appeared irrelevant at that time but he said he was eventually going to relate to the issue in the case by some future evidence. The defendant objected. Should the trial court reject the evidence in question on ground of irrelevance?
A. No, it should reserve its ruling until the relevance is shown.
B. Yes, since the plaintiff could anyway subsequently present the evidence anew.
C. Yes, since irrelevant evidence is not admissible.
D. No, it should admit it conditionally until its relevance is shown.

43. Ben testified that Jaime, charged with robbery, has committed bag-snatching three times on the same street in the last six months. Can the court admit this testimony as evidence against Jaime?
A. No, since there is no showing that Ben witnessed the past three robberies.
B. Yes, as evidence of his past propensity for committing robbery.
C. Yes, as evidence of a pattern of criminal behavior proving his guilt of the present offense.
D. No, since evidence of guilt of a past crime is not evidence of guilt of a present crime.

44. What is the right correlation between a criminal action and a petition for Writ of Amparo both arising from the same set of facts?
A. When the criminal action is filed after the Amparo petition, the latter shall be dismissed.
B. The proceeding in an Amparo petition is criminal in nature.
C. No separate criminal action may be instituted after an Amparo petition is filed.
D. When the criminal action is filed after the Amparo petition, the latter shall be consolidated with the first.

45. Alex filed a petition for writ of amparo against Melba relative to his daughter Toni’s involuntary disappearance. Alex said that Melba was Toni’s employer, who, days before Toni disappeared, threatened to get rid of her at all costs. On the other hand, Melba countered that she had nothing to do with Toni’s disappearance and that she took steps to ascertain Toni’s whereabouts. What is the quantum of evidence required to establish the parties’ respective claims?
A. For Alex, probable cause; for Melba, substantial evidence.
B. For Alex, preponderance of evidence; for Melba, substantial evidence.
C. For Alex, proof beyond reasonable doubt; for Melba, ordinary diligence.
D. For both, substantial evidence.

46. In which of the following situations is the declaration of a deceased person against his interest NOT ADMISSIBLE against him or his successors and against third persons?
A. Declaration of a joint debtor while the debt subsisted.
B. Declaration of a joint owner in the course of ownership.
C. Declaration of a former co-partner after the partnership has been dissolved.
D. Declaration of an agent within the scope of his authority.

47. Defendant Dante said in his answer: “1. Plaintiff Perla claims that defendant Dante owes her P4,000 on the mobile phone that she sold him; 2. But Perla owes Dante P6,000 for the dent on his car that she borrowed.” How should the court treat the second statement?
A. A cross claim
B. A compulsory counterclaim
C. A third party complaint
D. A permissive counterclaim

48. How will the court sheriff enforce the demolition of improvements?
A. He will give a 5-day notice to the judgment obligor and, if the latter does not comply, the sheriff will have the improvements forcibly demolished.
B. He will report to the court the judgment obligor’s refusal to comply and have the latter cited in contempt of court.
C. He will demolish the improvements on special order of the court, obtained at the judgment obligee’s motion.
D. He will inform the court of the judgment obligor’s noncompliance and proceed to demolish the improvements.

49. When may the bail of the accused be cancelled at the instance of the bondsman?
A. When the accused jumps bail.
B. When the bondsman surrenders the accused to the court.
C. When the accused fails to pay his annual premium on the bail bond.
D. When the accused changes his address without notice to the bondsman.

50. Which of the following MISSTATES a requisite for the issuance of a search warrant?
A. The warrant specifically describes the place to be searched and the things to be seized.
B. Presence of probable cause.
C. The warrant issues in connection with one specific offense.
D. Judge determines probable cause upon the affidavits of the complainant and his witnesses.

51. Ranger Motors filed a replevin suit against Bart to recover possession of a car that he mortgaged to it. Bart disputed the claim. Meantime, the court allowed, with no opposition from the parties, Midway Repair Shop to intervene with its claim against Bart for unpaid repair bills. On subsequent motion of Ranger Motors and Bart, the court dismissed the complaint as well as Midway Repair Shop’s intervention. Did the court act correctly?
A. No, since the dismissal of the intervention bars the right of Bart to file a separate action.
B. Yes, intervention is merely collateral to the principal action and not an independent proceeding.
C. Yes, the right of the intervenor is merely in aid of the right of the original party, which in this case had ceased to exist.
D. No, since having been allowed to intervene, the intervenor became a party to the action, entitled to have the issue it raised tried and decided.

52. The accused was convicted for estafa thru falsification of public document filed by one of two offended parties. Can the other offended party charge him again with the same crime?
A. Yes, since the wrong done the second offended party is a separate crime.
B. No, since the offense refers to the same series of act, prompted by one criminal intent.
C. Yes, since the second offended party is entitled to the vindication of the wrong done him as well.
D. No, since the second offended party is in estoppel, not having joined the first criminal action.

53. Henry testified that a month after the robbery Asiong, one of the accused, told him that Carlos was one of those who committed the crime with him. Is Henry’s testimony regarding what Asiong told him admissible in evidence against Carlos?
A. No, since it is hearsay.
B. No, since Asiong did not make the statement during the conspiracy.
C. Yes, since it constitutes admission against a co-conspirator.
D. Yes, since it part of the res gestae.

54. Dorothy filed a petition for writ of habeas corpus against her husband, Roy, to get from him custody of their 5 year old son, Jeff. The court granted the petition and required Roy to turn over Jeff to his mother. Roy sought reconsideration but the court denied it. He filed a notice of appeal five days from receipt of the order denying his motion for reconsideration. Did he file a timely notice of appeal?
A. No, since he filed it more than 2 days after receipt of the decision granting the petition.
B. No, since he filed it more than 2 days after receipt of the order denying his motion for reconsideration.
C. Yes, since he filed it within 15 days from receipt of the denial of his motion for reconsideration.
D. Yes, since he filed it within 7 days from receipt of the denial of his motion for reconsideration.

55. Angel Kubeta filed a petition to change his first name “Angel.” After the required publication but before any opposition could be received, he filed a notice of dismissal. The court confirmed the dismissal without prejudice. Five days later, he filed another petition, this time to change his surname “Kubeta.” Again, Angel filed a notice of dismissal after the publication. This time, however, the court issued an order, confirming the dismissal of the case with prejudice. Is the dismissal with prejudice correct?
A. Yes, since such dismissal with prejudice is mandatory.
B. No, since the rule on dismissal of action upon the plaintiff's notice does not apply to special proceedings.
C. No, since change of name does not involve public interest and the rules should be liberally construed.
D. Yes, since the rule on dismissal of action upon the plaintiff's notice applies and the two cases involve a change in name.

56. A complaint without the required “verification"
A. shall be treated as unsigned.
B. lacks a jurisdictional requirement.
C. is a sham pleading.
D. is considered not filed and should be expunged.

57. The decisions of the Commission on Elections or the Commission on Audit may be challenged by
A. petition for review on certiorari filed with the Supreme Court under Rule 45.
B. petition for review on certiorari filed with the Court of Appeals under Rule 42.
C. appeal to the Supreme Court under Rule 54.
D. special civil action of certiorari under Rule 65 filed with the Supreme Court.
58. Which of the following states a correct guideline in hearing applications for bail in capital offenses?
A. The hearing for bail in capital offenses is summary; the court does not sit to try the merits of the case.
B. The prosecution’s conformity to the accused’s motion for bail is proof that its evidence of his guilt is not strong.
C. The accused, as applicant for bail, carries the burden of showing that the prosecution’s evidence of his guilt is not strong.
D. The prosecution must have full opportunity to prove the guilt of the accused.

59. Apart from the case for the settlement of her parents’ estate, Betty filed an action against her sister, Sigma, for reconveyance of title to a piece of land. Betty claimed that Sigma forged the signatures of their late parents to make it appear that they sold the land to her when they did not, thus prejudicing Betty's legitime. Sigma moved to dismiss the action on the ground that the dispute should be resolved in the estate proceedings. Is Sigma correct?
A. Yes, questions of collation should be resolved in the estate proceedings, not in a separate civil case.
B. No, since questions of ownership of property cannot be resolved in the estate proceedings.
C. Yes, in the sense that Betty needs to wait until the estate case has been terminated.
D. No, the filing of the separate action is proper; but the estate proceeding must be suspended meantime.

60. What is the consequence of the unjustified absence of the defendant at the pre-trial?
A. The trial court shall declare him as in default.
B. The trial court shall immediately render judgment against him.
C. The trial court shall allow the plaintiff to present evidence ex-parte.
D. The trial court shall expunge his answer from the record.

61. What is the remedy of the accused if the trial court erroneously denies his motion for preliminary investigation of the charge against him?
A. Wait for judgment and, on appeal from it, assign such denial as error.
B. None since such order is final and executory.
C. Ask for reconsideration; if denied, file petition for certiorari and prohibition.
D. Appeal the order denying the motion for preliminary investigation.

62. Which of the following renders a complaint for unlawful detainer deficient?
A. The defendant claims that he owns the subject property.
B. The plaintiff has tolerated defendant’s possession for 2 years before demanding that he vacate it.
C. The plaintiff's demand is for the lessee to pay back rentals or vacate.
D. The lessor institutes the action against a lessee who has not paid the stipulated rents.

63. In a judicial foreclosure proceeding, under which of the following instances is the court NOT ALLOWED to render deficiency judgment for the plaintiff?
A. If the mortgagee is a banking institution.
B. If upon the mortgagor's death during the proceeding, the mortgagee submits his claim in the estate proceeding.
C. If the mortgagor is a third party who is not solidarily liable with the debtor.
D. If the mortgagor is a non-resident person and cannot be found in the Philippines.

64. In which of the following cases is the plaintiff the real party in interest?
A. A creditor of one of the co-owners of a parcel of land, suing for partition
B. An agent acting in his own name suing for the benefit of a disclosed principal
C. Assignee of the lessor in an action for unlawful detainer
D. An administrator suing for damages arising from the death of the decedent

65. The defendant in an action for sum of money filed a motion to dismiss the complaint on the ground of improper venue. After hearing, the court denied the motion. In his answer, the defendant claimed prescription of action as affirmative defense, citing the date alleged in the complaint when the cause of action accrued. May the court, after hearing, dismiss the action on ground of prescription?
A. Yes, because prescription is an exception to the rule on Omnibus Motion.
B. No, because affirmative defenses are barred by the earlier motion to dismiss.
C. Yes, because the defense of prescription of action can be raised at anytime before the finality of judgment.
D. No, because of the rule on Omnibus Motion.

66. What is the effect of the failure of the accused to file a motion to quash an information that charges two offenses?
A. He may be convicted only of the more serious offense.
B. He may in general be convicted of both offenses.
C. The trial shall be void.
D. He may be convicted only of the lesser offense.

67. Which of the following is a correct application of the rules involved in consolidation of cases?
A. Consolidation of cases pending in different divisions of an appellate court is not allowed.
B. The court in which several cases are pending involving common questions of law and facts may hear initially the principal case and suspend the hearing in the other cases.
C. Consolidation of cases pending in different branches or different courts is not permissible.
D. The consolidation of cases is done only for trial purposes and not for appeal.

68. Summons was served on “MCM Theater,” a business entity with no juridical personality, through its office manager at its place of business. Did the court acquire jurisdiction over MCM Theater’s owners?
A. Yes, an unregistered entity like MCM Theater may be served with summons through its office manager.
B. No, because MCM has no juridical personality and cannot be sued.
C. No, since the real parties in interest, the owners of MCM Theater, have not been served with summons.
D. Yes since MCM, as business entity, is a de facto partnership with juridical personality.

69. Fraud as a ground for new trial must be extrinsic as distinguished from intrinsic. Which of the following constitutes extrinsic fraud?
A. Collusive suppression by plaintiff’s counsel of a material evidence vital to his cause of action.
B. Use of perjured testimony at the trial.
C. The defendant’s fraudulent representation that caused damage to the plaintiff.
D. Use of falsified documents during the trial.

70. Upon review, the Secretary of Justice ordered the public prosecutor to file a motion to withdraw the information for estafa against Sagun for lack of probable cause. The public prosecutor complied. Is the trial court bound to grant the withdrawal?
A. Yes, since the prosecution of an action is a prerogative of the public prosecutor.
B. No, since the complainant has already acquired a vested right in the information.
C. No, since the court has the power after the case is filed to itself determine probable cause.
D. Yes, since the decision of the Secretary of Justice in criminal matters is binding on courts.

71. Unexplained or unjustified non-joinder in the Complaint of a necessary party despite court order results in
A. the dismissal of the Complaint.
B. suspension of proceedings.
C. contempt of court.
D. waiver of plaintiff's right against the unpleaded necessary party.

72. Which of the following CANNOT be disputably presumed under the rules of evidence?
A. That the thing once proved to exist continues as long as is usual with things of that nature.
B. That the law has been obeyed.
C. That a writing is truly dated.
D. That a young person, absent for 5 years, it being unknown whether he still lives, is considered dead for purposes of succession.

73. Which of the following is NOT REQUIRED in a petition for mandamus?
A. The act to be performed is not discretionary.
B. There is no other adequate remedy in the ordinary course of law.
C. RIGHT ANSWER The respondent neglects to perform a clear duty under a contract.
D. The petitioner has a clear legal right to the act demanded.

74. When is the defendant entitled to the return of the property taken under a writ of replevin?
A. When the plaintiff's bond is found insufficient or defective and is not replaced.
B. When the defendant posts a redelivery bond equal to the value of the property seized.
C. When the plaintiff takes the property and disposes of it without the sheriff's approval.
D. When a third party claims the property taken yet the applicant does not file a bond in favor of the sheriff.

75. Character evidence is admissible
A. in criminal cases, the accused may prove his good moral character if pertinent to the moral trait involved in the offense charged.
B. in criminal cases, the prosecution may prove the bad moral character of the accused to prove his criminal predisposition.
C. in criminal cases, the bad moral character of the offended party may not be proved.
D. when it is evidence of the good character of a witness even prior to impeachment.

76. X's action for sum of money against Y amounting to P80,000.00 accrued before the effectivity of the rule providing for shortened procedure in adjudicating claims that do not exceed P100,000.00. X filed his action after the rule took effect. Will the new rule apply to his case?
A. No since what applies is the rule in force at the time the cause of action accrued.
B. No, since new procedural rules cover only cases where the issues have already been joined.
C. Yes, since procedural rules have retroactive effect.
D. Yes, since procedural rules generally apply prospectively to pending cases.

77. A motion for reconsideration of a decision is pro forma when
A. it does not specify the defects in the judgment.
B. it is a second motion for reconsideration with an alternative prayer for new trial.
C. it reiterates the issues already passed upon but invites a second look at the evidence and the arguments.
D. its arguments in support of the alleged errors are grossly erroneous.

78. Which of the following correctly states the rule on foreclosure of mortgages?
A. The rule on foreclosure of real estate mortgage is suppletorily applicable to extrajudicial foreclosures.
B. In judicial foreclosure, an order of confirmation is necessary to vest all rights in the purchaser.
C. There is equity of redemption in extra-judicial foreclosure.
D. A right of redemption by the judgment obligor exists in judicial foreclosure.

79. The information charges PNP Chief Luis Santos, (Salary Grade 28), with "taking advantage of his public position as PNP Head by feloniously shooting JOSE ONA, inflicting on the latter mortal wounds which caused his death." Based solely on this allegation, which court has jurisdiction over the case?
A. Sandiganbayan only
B. Sandiganbayan or Regional Trial Court
C. Sandiganbayan or Court Martial
D. Regional Trial Court only

80. Distinguish between conclusiveness of judgment and bar by prior judgment.
A. Conclusiveness of judgment bars another action based on the same cause; bar by prior judgment precludes another action based on the same issue.
B. Conclusiveness of judgment bars only the defendant from questioning it; bar by prior judgment bars both plaintiff and defendant.
C. Conclusiveness of judgment bars all matters directly adjudged; bar by prior judgment precludes all matters that might have been adjudged.
D. Conclusiveness of judgment precludes the filing of an action to annul such judgment; bar by prior judgment allows the filing of such an action.

81. Which of the following matters is NOT A PROPER SUBJECT of judicial notice?
A. Persons have killed even without motive.
B. Municipal ordinances in the municipalities where the MCTC sits.
C. Teleconferencing is now a way of conducting business transactions.
D. British law on succession personally known to the presiding judge.

82. The RTC of Malolos, Branch 1, issued a writ of execution against Rene for P20 million. The sheriff levied on a school building that appeared to be owned by Rene. Marie, however, filed a third party claim with the sheriff, despite which, the latter scheduled the execution sale. Marie then filed a separate action before the RTC of Malolos, Branch 2, which issued a writ of preliminary injunction enjoining the sheriff from taking possession and proceeding with the sale of the levied property. Did Branch 2 correctly act in issuing the injunction?
A. Yes, since the rules allow the filing of the independent suit to check the sheriff's wrongful act in levying on a third party's property.
B. Yes, since Branch 2, like Branch 1, is part of the RTC of Malolos.
C. No, because the proper remedy is to seek relief from the same court which rendered the judgment.
D. No, since it constitutes interference with the judgment of a co-equal court with concurrent jurisdiction.
83. What is the effect and ramification of an order allowing new trial?
   A. The court's decision shall be held in suspension until the defendant could show at the
      reopening of trial that it has to be abandoned.
   B. The court shall maintain the part of its judgment that is unaffected and void the rest.
   C. The evidence taken upon the former trial, if material and competent, shall remain in use.
   D. The court shall vacate the judgment as well as the entire proceedings had in the case.

84. Which of the following is sufficient to disallow a will on the ground of mistake?
   A. An error in the description of the land devised in the will.
   B. The inclusion for distribution among the heirs of properties not belonging to
      the testator.
   C. The testator intended a donation intervivos but unwittingly executed a will.
   D. An error in the name of the person nominated as executor.

85. As a rule, the estate shall not be distributed prior to the payment of all
charges to the estate. What will justify advance distribution as an exception?
   A. The estate has sufficient residual assets and the distributees file sufficient bond.
   B. The specific property sought to be distributed might suffer in value.
   C. An agreement among the heirs regarding such distribution.
   D. The conformity of the majority of the creditors to such distribution.

86. A party aggrieved by an interlocutory order of the Civil Service Commission (CSC) filed a
petition for certiorari and prohibition with the Court of Appeals. May the Court of Appeals
take cognizance of the petition?
   A. Yes, provided it raises both questions of facts and law.
   B. No, since the CSC Chairman and Commissioners have the rank of Justices of the Court
      of Appeals.
   C. No, since the CSC is a Constitutional Commission.
   D. Yes, since the Court of Appeals has jurisdiction over the petition concurrent with the
      Supreme Court.

87. Which of the following is appealable?
   A. An order of default against the defendant.
   B. The denial of a motion to dismiss based on improper venue.
   C. The dismissal of an action with prejudice.
   D. The disallowance of an appeal.

88. Which of the following is NOT REQUIRED of a declaration against interest as an exception
to the hearsay rule?
   A. The declarant had no motive to falsify and believed such declaration to be true.
   B. The declarant is dead or unable to testify.
   C. The declaration relates to a fact against the interest of the declarant.
   D. At the time he made said declaration he was unaware that the same was contrary to his
      aforesaid interest.

89. To prove the identity of the assailant in a crime of homicide, a police officer testified that,
Andy, who did not testify in court, pointed a finger at the accused in a police lineup. Is the
police officer’s testimony regarding Andy's identification of the accused admissible
evidence?
   A. Yes, since it is based on his personal knowledge of Andy's identification of the accused.
   B. Yes, since it constitutes an independently relevant statement.
   C. No, since the police had the accused identified without warning him of his rights.
D. No, since the testimony is hearsay.

90. In which of the following cases is the testimony in a case involving a deceased barred by the Survivorship Disqualification Rule or Dead Man Statute?
   A. Testimony against the heirs of the deceased defendant who are substituted for the latter.
   B. The testimony of a mere witness who is neither a party to the case nor is in privity with the latter.
   C. The testimony of an oppositor in a land registration case filed by the decedent’s heirs.
   D. The testimony is offered to prove a claim less than what is established under a written document signed by the decedent.

91. The prosecution moved for the discharge of Romy as state witness in a robbery case it filed against Zoilo, Amado, and him. Romy testified, consistent with the sworn statement that he gave the prosecution. After hearing Romy, the court denied the motion for his discharge. How will denial affect Romy?
   A. His testimony shall remain on record.
   B. Romy will be prosecuted along with Zoilo and Amado.
   C. His liability, if any, will be mitigated.
   D. The court can convict him based on his testimony.

92. In proceedings for the settlement of the estate of deceased persons, the court in which the action is pending may properly
   A. pass upon question of ownership of a real property in the name of the deceased but claimed by a stranger.
   B. pass upon with the consent of all the heirs the issue of ownership of estate asset, contested by an heir if no third person is affected.
   C. rule on a claim by one of the heirs that an estate asset was held in trust for him by the deceased.
   D. rescind a contract of lease entered into by the deceased before death on the ground of contractual breach by the lessee.

93. Which of the following stipulations in a contract will supersede the venue for actions that the rules of civil procedure fix?
   A. In case of litigation arising from this contract of sale, the preferred venue shall be in the proper courts of Makati.
   B. Should the real owner succeed in recovering his stolen car from buyer X, the latter shall have recourse under this contract to seller Y exclusively before the proper Cebu City court.
   C. Venue in case of dispute between the parties to this contract shall solely be in the proper courts of Quezon City.
   D. Any dispute arising from this contract of sale may be filed in Makati or Quezon City.

94. Allan was riding a passenger jeepney driven by Ben that collided with a car driven by Cesar, causing Allan injury. Not knowing who was at fault, what is the best that Allan can do?
   A. File a tort action against Cesar.
   B. Await a judicial finding regarding who was at fault.
   C. Sue Ben for breach of contract of carriage.
   D. Sue both Ben and Cesar as alternative defendants.

95. A surety company, which provided the bail bond for the release of the accused, filed a motion to withdraw as surety on the ground of the accused’s non-payment of the renewal premium. Can the trial court grant the withdrawal?
   A. No, since the surety’s undertaking is not annual but lasts up to judgment.
B. Yes, since surety companies would fold up otherwise.
C. No, since the surety company technically takes the place of the accused with respect to court attendance.
D. Yes, since the accused has breached its agreement with the surety company.

96. To prove that Susan stabbed her husband Elmer, Rico testified that he heard Leon running down the street, shouting excitedly, “Sinasaksak daw ni Susan ang asawa niya! (I heard that Susan is stabbing her husband)‖ Is Leon’s statement as narrated by Rico admissible?
A. No, since the startling event had passed.
B. Yes, as part of the res gestae.
C. No, since the excited statement is itself hearsay.
D. Yes, as an independently relevant statement.

97. Which of the following NOT TRUE regarding the doctrine of judicial hierarchy?
A. It derives from a specific and mandatory provision of substantive law.
B. The Supreme Court may disregard the doctrine in cases of national interest and matters of serious implications.
C. A higher court will not entertain direct recourse to it if redress can be obtained in the appropriate courts.
D. The reason for it is the need for higher courts to devote more time to matters within their exclusive jurisdiction.

98. Plaintiff Manny said in his complaint: “3. On March 1, 2001 defendant Letty borrowed P1 million from plaintiff Manny and made a promise to pay the loan within six months.” In her answer, Letty alleged: “Defendant Letty specifically denies the allegations in paragraph 3 of the complaint that she borrowed P1 million from plaintiff Manny on March 1, 2001 and made a promise to pay the loan within six months.” Is Letty’s denial sufficient?
A. Yes, since it constitutes specific denial of the loan.
B. Yes, since it constitutes positive denial of the existence of the loan.
C. No, since it fails to set forth the matters defendant relied upon in support of her denial.
D. No, since she fails to set out in par. 2 of her answer her special and affirmative defenses.

99. When may an information be filed in court without the preliminary investigation required in the particular case being first conducted?
A. Following an inquest, in cases of those lawfully arrested without a warrant.
B. When the accused, while under custodial investigation, informs the arresting officers that he is waiving his right to preliminary investigation.
C. When the accused fails to challenge the validity of the warrantless arrest at his arraignment.
D. When the arresting officers take the suspect before the judge who issues a detention order against him.

100. In a civil action involving three separate causes of action, the court rendered summary judgment on the first two causes of action and tried the third. After the period to appeal from the summary judgment expired, the court issued a writ of execution to enforce the same. Is the writ of execution proper?
A. No, being partial, the summary judgment is interlocutory and any appeal from it still has to reckon with the final judgment.
B. Yes, since, assuming the judgment was not appealable, the defendant should have questioned it by special civil action of certiorari.
C. No, since the rules do not allow a partial summary judgment.
D. No, since special reason is required for execut
I

On March 12, 2008, Mabini was charged with Murder for fatally stabbing Emilio. To prove the qualifying circumstance of evident premeditation, the prosecution introduced on December 11, 2009 a text message, which Mabini’s estranged wife Gregoria had sent to Emilio on the eve of his death, reading: “Honey, pa2tayin u ni Mabini. Mtgal n nyang plano i2. Mg ingat u bka ma tsugi k.”

A. A subpoena ad testificandum was served on Gregoria for her to be presented for the purpose of identifying her cellphone and the text message. Mabini objected to her presentation on the ground of marital privilege. Resolve. (3%)

B. Suppose Mabini’s objection in question A was sustained. The prosecution thereupon announced that it would be presenting Emilio’s wife Graciana to identify Emilio’s cellphone bearing Gregoria’s text message. Mabini objected again. Rule on the objection. (2%)

C. If Mabini’s objection in question B was overruled, can he object to the presentation of the text message on the ground that it is hearsay? (2%)

D. Suppose that shortly before he expired, Emilio was able to send a text message to his wife Graciana reading “Nagsaksak ako. D na me makahinga. Si Mabini ang may gawa ni2.” Is this text message admissible as a dying declaration? Explain. (3%)

II

On August 13, 2008, A, as shipper and consignee, loaded on the M/V Atlantis in Legazpi City 100,000 pieces of century eggs. The shipment arrived in Manila totally damaged on August 14, 2008. A filed before the Metropolitan Trial Court (MeTC) of Manila a complaint against B Super Lines, Inc. (B Lines), owner of the M/V Atlantis, for recovery of damages amounting to P167,899. He attached to the complaint the Bill of Lading.

A. B Lines filed a Motion to Dismiss upon the ground that the Regional Trial Court has exclusive original jurisdiction over “all actions in admiralty and maritime” claims. In his Reply, A contended that while the action is indeed “admiralty and maritime” in nature, it is the amount of the claim, not the nature of the action, that governs jurisdiction. Pass on the Motion to Dismiss. (3%)

B. The MeTC denied the Motion in question A. B Lines thus filed an Answer raising the defense that under the Bill of Lading it issued to A, its liability was limited to P10,000. At the pre-trial conference, B Lines defined as one of the issues whether the stipulation limiting its liability to P10,000 binds A. A countered that this was no longer in issue as B Lines had failed to deny under oath the Bill of Lading. Which of the parties is correct? Explain. (3%)

C. On July 21, 2009, B Lines served on A a “Notice to Take Deposition,” setting the deposition on July 29, 2009 at 8:30 a.m. at the office of its counsel in Makati. A failed to appear at the deposition-taking, despite notice. As counsel for B Lines, how would you proceed? (3%)
III

Anabel filed a complaint against B for unlawful detainer before the Municipal Trial Court (MTC) of Candaba, Pampanga. After the issues had been joined, the MTC dismissed the complaint for lack of jurisdiction after noting that the action was one for *accion publiciana*.

Anabel appealed the dismissal to the RTC which affirmed it and accordingly dismissed her appeal. She elevates the case to the Court of Appeals, which remands the case to the RTC. Is the appellate court correct? Explain. (3%)

IV

X was driving the dump truck of Y along Cattleya Street in Sta. Maria, Bulacan. Due to his negligence, X hit and injured V who was crossing the street. Lawyer L, who witnessed the incident, offered his legal services to V.

V, who suffered physical injuries including a fractured wrist bone, underwent surgery to screw a metal plate to his wrist bone.

On complaint of V, a criminal case for Reckless Imprudence Resulting in Serious Physical Injuries was filed against X before the Municipal Trial Court (MTC) of Sta. Maria. Atty. L, the private prosecutor, did not reserve the filing of a separate civil action.

V subsequently filed a complaint for Damages against X and Y before the Regional Trial Court of Pangasinan in Urdaneta where he resides. In his “Certification Against Forum Shopping,” V made no mention of the pendency of the criminal case in Sta. Maria.

A. Is A guilty of forum shopping? (2%)

B. Instead of filing an Answer, X and Y moved to dismiss the complaint for damages on the ground of *litis pendentia.* Is the motion meritorious? Explain. (2%)

C. Suppose only X was named as defendant in the complaint for damages, may he move for the dismissal of the complaint for failure of V to implead Y as an indispensable party? (2%)

D. X moved for the suspension of the proceedings in the criminal case to await the decision in the civil case. For his part, Y moved for the suspension of the civil case to await the decision in the criminal case. Which of them is correct? Explain. (2%)

E. Atty. L offered in the criminal case his affidavit respecting what he witnessed during the incident. X’s lawyer wanted to cross examine Atty. L who, however, objected on the ground of lawyer privilege. Rule on the objection. (2%)

V

Charisse, alleging that she was a resident of Lapu-Lapu City, filed a complaint for damages against Atlanta Bank before the RTC of Lapu-Lapu City, following the dishonor of a check she drew in favor of Shirley against her current account which she maintained in the bank’s local branch.

The bank filed a Motion to Dismiss the complaint on the ground that it failed to state a cause of action, but it was denied. It thus filed an Answer.

A. In the course of the trial, Charisse admitted that she was a US citizen residing in Los Angeles, California and that she was temporarily billeted at the Pescado Hotel in Lapu-Lapu City, drawing the bank to file another motion to dismiss, this time on the ground of improper venue, nce Charisse is not a resident of Lapu-Lapu City.
Charisse opposed the motion citing the “omnibus motion rule.” Rule on the motion. (3%)

B. Suppose Charisse did not raise the “omnibus motion rule,” can the judge proceed to resolve the motion to dismiss? Explain. (3%)

C. Suppose the judge correctly denied the second motion to dismiss and rendered judgment in favor of Charisse, ordering the bank to pay her P100,000 in damages plus legal interest. The judgment became final and executor in 2008. To date, Charisse has not moved to execute the judgment. The bank is concerned that its liability will increase with the delay because of the interest on the judgment award.

As counsel of the bank, what move should you take?

VI

Antique dealer Mercedes borrowed P1,000,000 from antique collector Benjamin. Mercedes issued a postdated check in the same amount to Benjamin to cover the debt.

On the due date of the check, Benjamin deposited it but it was dishonored. As despite demands, Mercedes failed to make good the check, Benjamin filed in January 2009 a complaint for collection of sum of money before the RTC of Davao.

Mercedes filed in February 2009 her answer with Counterclaim, alleging that before the filing of the case, she and Benjamin had entered into a dacion en pago agreement in which her vintage P1,000,000 Rolex watch which was taken by Benjamin for sale on commission was applied to settle her indebtedness; and that she incurred expenses in defending what she termed a “frivolous lawsuit.” She accordingly prayed for P50,000 damages.

A. Benjamin soon after moved for the dismissal of the case. The trial court accordingly dismissed the complaint. And it also dismissed the Counterclaim.

Mercedes mover for reconsideration of the dismissal of the Counterclaim. Pass upon Mercedes’ motion. (3%)

B. Suppose there was no Counterclaim and Benjamin’s complaint was not dismissed, and judgment was rendered against Mercedes for P1,000,000. The judgment became final and executor and a writ of execution was correspondingly issued.

Since Mercedes did not have cash to settle the judgment debt, she offered her Toyota Camry model 2008 valued at P1.2 million. The Sheriff, however, on request of Benjamin, seized Mercedes’ 17th century ivory image of the La Sagada Familia estimated to be worth over P1,000,000.

Was the Sheriff’s action in order? (3%)

VII

As Cicero was walking down a dark alley one midnight, he saw an “owner-type jeepney” approaching him. Sensing that the occupants of the vehicle were up to no good, he darted into a corner and ran. The occupants of the vehicle - elements from the Western Police District - gave chase and apprehended him.

The police apprehended Cicero, frisked him and found a sachet of 0.09 gram of shabu tucked in his waist and a Swiss knife in his secret pocket, and detained him thereafter. Is the arrest and body search legal? (3%)
PART II

VIII

Dominique was accused of committing a violation of the Human security Act. He was detained *incommunicado*, deprived of sleep, and subjected to water torture. He later allegedly confessed his guilt via an affidavit.

After trial, he was acquitted on the ground that his confession was obtained through torture, hence inadmissible as evidence.

In a subsequent criminal case for torture against those who deprived him of sleep and subjected him to water torture, Dominique was asked to testify and to, among other things, identify his above-said affidavit of confession. As he was about to identify the affidavit, the defense counsel objected on the ground that the affidavit is a fruit of a poisonous tree. Can the objection be sustained? Explain. (3%)

IX

In a prosecution for rape, the defense relied on Deoxyribonucleic Acid (DNA) evidence showing that the semen found in the private part of the victim was not identical with that of the accused’s. As private prosecutor, how will you dispute the veracity and accuracy of the results of the DNA evidence? (3%)

X

Marinella is a junior officer of the Armed Forces of the Philippines who claims to have personally witnessed the malversation of funds given by US authorities in connection with the *Balikatan* exercises.

Marinella alleges that as a result of her exposé, there are operatives within the military who are out to kill her. She files a petition for the issuance of a writ of amparo against, among others, the Chief of Staff but without alleging that the latter ordered that she be killed.

Atty. Daro, counsel for the Chief of staff, moves for the dismissal of the Petition for failure to allege that his client issued any order to kill or harm Marinella. Rule on Atty. Daro’s motion. Explain. (3%)

XI

X was arrested for the alleged murder of a 6-year old lad. He was read his *Miranda* rights immediately upon being apprehended.

In the course of his detention, X was subjected to three hours of non-stop interrogation. He remained quiet until, on the 3rd hour, he answered "yes" to the question of whether "he prayed for forgiveness for shooting down the boy." The trial court, interpreting X’s answer as an admission of guilt, convicted him.

On appeal, X’s counsel faulted the trial court in its interpretation of his client’s answer, arguing that X invoked his *Miranda* rights when he remained quiet for the first two hours of questioning. Rule on the assignment of error. (3%)
In a prosecution for murder, the prosecutor asks accused Darwin if he had been previously arrested for violation of the antiGraft and corrupt Practices Act. As defense counsel, you object. The trial court asks you on what ground/s. Respond. (3%)

Policemen brought Lorenzo to the Philippine General Hospital (PGH) and requested one of its surgeons to immediately perform surgery on him to retrieve a packet of 10 grams of shabu which they alleged was swallowed by Lorenzo.

Suppose the PGH agreed to, and did perform the surgery, is the package of shabu admissible in evidence? Explain. (3%)

Czarina died single. She left all her properties by will to her friend Duqueza. In the will, Czarina stated that she did not recognize Marco as an adopted son because of his disrespectful conduct towards her.

Duqueza soon instituted an action for probate of Czarina’s will. Marco, on the other hand, instituted intestate proceedings. Both actions were consolidated before the RTC of Pasig. On motion of Marco, Duqueza’s petition was ordered dismissed on the ground that the will is void for depriving him of his legitime. Argue for Duqueza. (5%)

Pedrillo, a Fil-Am permanent resident of Los Angeles, California at the time of his death, bequeathed to Winston a sum of money to purchase an annuity.

Upon Pedrillo’s demise, his will was duly probated in Los Angeles and the specified sum in the will was in fact used to purchase an annuity with XYZ of Hong Kong so that Winston would receive the equivalent of US$1,000 per month for the next 15 years.

Wanting to receive the principal amount of the annuity, Winston files for the probate of Pedrillo’s will in the Makati RTC. As prayed for, the court names Winston as administrator of the estate.

Winston now files in the Makati RTC a motion to compel XYZ to account for all sums in its possession forming part of Pedrillo’s estate. Rule on the motion. (5%)

Sal Mineo died intestate, leaving a P1 billion estate. He was survived by his wife Dayanara and their five children. Dayanara filed a petition for the issuance of letters of administration. Charlene, one of the children, filed an opposition to the petition, alleging that there was neither an allegation nor genuine effort to settle the estate amicably before the filing of the petition. Rule on the opposition. (5%)
XVII

What is “res judicata in prison grey”? (2%) 

XVIII

While window-shopping at the mall on August 4, 2008, Dante lost his organizer including his credit card and billing statement. Two days later, upon reporting the matter to the credit card company, he learned that a one-was airplane ticket was purchased online using his credit card for a fight to Milan in mid-August 2008. Upon extensive inquiry with the airline company, Dante discovered that the plane ticket was under the name of one Dina Meril. Dante approaches you for legal advice.

A. What is the proper procedure to prevent Dina from leaving the Philippines? (2%) 

B. Suppose an Information is filed against Dina on August 12, 2008 and she is immediately arrested. What pieces of evidence will Dante have to secure in order to prove the fraudulent online transaction? (2%) 

XIX

1. Enumerate the requisites of a “trial in absentia” (2%) and a “promulgation of judgment in absentia” (2%).

2. Name two instances where the trial court can hold the accused civilly liable even if he is acquitted. (2%) 

XX

Azenith, the cashier of Temptation Investments, Inc. (Temptation, Inc.) with principal offices in Cebu City, is equally hated and loved by her co-employees because she extends cash advances or “vales” to her colleagues whom she likes. One morning, Azenith discovers an anonymous letter inserted under the door of her office threatening to kill her. Azenith promptly reports the matter to her superior Joshua, who thereupon conducts an internal investigation to verify the said threat.

Claiming that the threat is real, Temptation, Inc. opts to transfer Azenith to its Palawan Office, a move she resists in view of the company’s refusal to disclose the results of its investigation.

Decrying the move as a virtual deprivation of her employment, Azenith files a petition for the issuance of a writ of habeas corpus before the Regional Trial Court (RTC) to enjoin Temptation, Inc. from transferring her on the ground that the company’s refusal to provide her with a copy of the investigation results compromises her rights to life, liberty, and privacy.

Resolve the petition. Explain. (5%) 

--- o o O o o ---
PART I

I

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

a. The Vallejo standard refers to jurisprudential norms considered by the court in assessing the probative value of DNA evidence.
b. The One-Day Examination of Witness Rule abbreviates court proceedings by having a witness fully examined in only one day during trial.
c. A suit for injunction is an action in rem.
d. Under the doctrine of adoptive admission, a third party's statement becomes the admission of the party embracing or espousing it.
e. Summons may be served by mail.

II

Angelina sued Armando before the Regional Trial Court (RTC) of Manila to recover the ownership and possession of two parcels of land; one situated in Pampanga, and the other in Bulacan.

a. May the action prosper? Explain. (2%)
b. Will your answer be the same if the action was for foreclosure of the mortgage over the two parcels of land? Why or why not? (2%)

III

Amorsolo, a Filipino citizen permanently residing in New York City, filed with the RTC of Lipa City a Complaint for Rescission of Contract of Sale of Land against Brigido, a resident of Barangay San Miguel, Sto. Tomas, Batangas. The subject property, located in Barangay Talisay, Lipa City, has an assessed value of P19,700.00. Appended to the complaint is Amorsolo's verification and certification of non-forum shopping executed in New York City, duly notarized by Mr. Joseph Brown, Esq., a notary public in the State of New York.

Brigido filed a motion to dismiss the complaint on the following grounds:

a. The court cannot acquire jurisdiction over the person of Amorsolo because he is not a resident of the Philippines; (2%)b. The RTC does not have jurisdiction over the subject matter of the action involving real property with an assessed value of P19,700.00; exclusive and original jurisdiction is with the Municipal Trial Court where the defendant resides; (3%) and
c. The verification and certification of non-forum shopping are fatally defective because there is no accompanying certification issued by the Philippine Consulate in New York, authenticating that Mr. Brown is duly authorized to notarize the document. (3%)
Rule on the foregoing grounds with reasons.

IV

Pedrito and Tomas, Mayor and Treasurer, respectively, of the Municipality of San Miguel, Leyte, are charged before the Sandiganbayan for violation of Section 3 (e), Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). The information alleges, among others, that the two conspired in the purchase of several units of computer through personal canvass instead of a public bidding, causing undue injury to the municipality.

Before arraignment, the accused moved for reinvestigation of the charge, which the court granted. After reinvestigation, the Office of the Special Prosecutor filed an amended information duly signed and approved by the Special Prosecutor, alleging the same delictual facts, but with an additional allegation that the accused gave unwarranted benefits to SB Enterprises owned by Samuel. Samuel was also indicted under the amended information.

Before Samuel was arraigned, he moved to quash the amended information on the ground that the officer who filed the same had no authority to do so. Resolve the motion to quash with reasons. (3%)

V

Frank and Gina were married on June 12, 1987 in Manila. Barely a year after the wedding, Frank exhibited a violent temperament, forcing Gina, for reasons of personal safety, to live with her parents. A year thereafter, Gina found employment as a domestic helper in Singapore, where she worked for ten consecutive years. All the time she was abroad, Gina had absolutely no communications with Frank, nor did she hear any news about him. While in Singapore, Gina met and fell in love with Willie.

On July 4, 2007, Gina filed a petition with the RTC of Manila to declare Frank presumptively dead, so that she could marry Willie. The RTC granted Gina's petition. The Office of the Solicitor General (OSG) filed a Notice of Appeal with the RTC, stating that it was appealing the decision to the Court of Appeals on questions of fact and law.

a. Is a petition for Declaration of Presumptive Death a special proceeding? Why or why not? (2%)

b. As the RTC judge who granted Gina's petition, will you give due course to the OSG's Notice of Appeal? Explain. (3%) 

VI

Arrested in a buy-bust operation, Edmond was brought to the police station where he was informed of his constitutional rights. During the investigation, Edmond refused to give any statement. However, the arresting officer asked Edmond to acknowledge in writing that six (6) sachets of "shabu" were confiscated from him. Edmond consented and also signed a receipt for the amount of P3,000.00, allegedly representing the "purchase price of the shabu." At the trial, the arresting officer testified and identified the documents executed and signed by Edmond.
Edmond's lawyer did not object to the testimony. After the presentation of the testimonial evidence, the prosecutor made a formal offer of evidence which included the documents signed by Edmond.

Edmond's lawyer objected to the admissibility of the documents for being the "fruit of the poisoned tree." Resolve the objection with reasons. (3%)

VII

Cresencio sued Dioscoro for collection of a sum of money. During the trial, but after the presentation of plaintiff's evidence, Dioscoro died. Atty. Cruz, Dioscoro's counsel, then filed a motion to dismiss the action on the ground of his client's death. The court denied the motion to dismiss and, instead, directed counsel to furnish the court with the names and addresses of Dioscoro's heirs and ordered that the designated administrator of Dioscoro's estate be substituted as representative party.

After trial, the court rendered judgment in favor of Cresencio. When the decision had become final and executory, Cresencio moved for the issuance of a writ of execution against Dioscoro's estate to enforce his judgment claim. The court issued the writ of execution. Was the court's issuance of the writ of execution proper? Explain. (2%)

VIII

On July 15, 2009, Atty. Manananggol was served copies of numerous unfavorable judgments and orders. On July 29, 2009, he filed motions for reconsideration which were denied. He received the notices of denial of the motions for reconsideration on October 2, 2009, a Friday. He immediately informed his clients who, in turn, uniformly instructed him to appeal. How, when and where should he pursue the appropriate remedy for each of the following: (10%)

a. Judgment of a Municipal Trial Court (MTC) pursuant to its delegated jurisdiction dismissing his client's application for land registration?
b. Judgment of the Regional Trial Court (RTC) denying his client's petition for a Writ of Habeas Data?
c. Order of a Family Court denying his client's petition for Habeas Corpus in relation to custody of a minor child?
d. Order of the RTC denying his client's Petition for Certiorari questioning the Metropolitan Trial Court's (MeTC's) denial of a motion to suspend criminal proceedings?
e. Judgment of the First Division of the Court of Tax Appeals (CTA) affirming the RTC decision convicting his client for violation of the National Internal Revenue Code?

IX

Modesto sued Ernesto for a sum of money, claiming that the latter owed him P1-million, evidenced by a promissory note, quoted and attached to the complaint. In his answer with counterclaim, Ernesto alleged that Modesto coerced him into signing the promissory note, but that it is Modesto who really owes him P1.5-million. Modesto filed an answer to Ernesto's counterclaim admitting that he owed Ernesto, but only in the amount of P0.5-million. At the pre-trial, Modesto marked and identified Ernesto's promissory note. He also marked and identified
receipts covering payments he made to Ernesto, to the extent of P0.5-million, which Ernesto did not dispute.

After pre-trial, Modesto filed a motion for judgment on the pleadings, while Ernesto filed a motion for summary judgment on his counterclaim. Resolve the two motions with reasons. (5%)

X

Upon termination of the pre-trial, the judge dictated the pre-trial order in the presence of the parties and their counsel, reciting what had transpired and defining three (3) issues to be tried.

a. If, immediately upon receipt of his copy of the pre-trial order, plaintiff's counsel should move for its amendment to include a fourth (4th) triable issue which he allegedly inadvertently failed to mention when the judge dictated the order. Should the motion to amend be granted? Reasons. (2%)

b. Suppose trial had already commenced and after the plaintiff's second witness had testified, the defendant's counsel moves for the amendment of the pre-trial order to include a fifth (5th) triable issue vital to his client's defense. Should the motion be granted over the objection of plaintiff's counsel? Reasons. (3%)

PART II

XI

TRUE or FALSE. Answer TRUE if the statement is true, or FALSE if the statement is false. Explain your answer in not more than two (2) sentences. (5%)

a. The accused in a criminal case has the right to avail of the various modes of discovery.

b. The viatory right of a witness served with a subpoena ad testificandum refers to his right not to comply with the subpoena.

c. In the exercise of its original jurisdiction, the Sandiganbayan may grant petitions for the issuance of a writ of habeas corpus.

d. An electronic document is the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately.

e. The filing of a motion for the reconsideration of the trial court's decision results in the abandonment of a perfected appeal.

XII

Mike was renting an apartment unit in the building owned by Jonathan. When Mike failed to pay six months' rent, Jonathan filed an ejectment suit. The Municipal Trial Court (MTC) rendered judgment in favor of Jonathan, who then filed a motion for the issuance of a writ of execution. The MTC issued the writ.

a. How can Mike stay the execution of the MTC judgment? Explain. (2%)

b. Mike appealed to the Regional Trial Court (RTC), which affirmed the MTC decision. Mike then filed a petition for review with the Court of Appeals (CA). The CA dismissed the petition on the ground that the sheriff had already executed the MTC decision and
had ejected Mike from the premises, thus rendering the appeal moot and academic. Is the CA correct? Reasons. (3%)  

XIII  

a. Continental Chemical Corporation (CCC) filed a complaint for a sum of money against Barstow Trading Corporation (BTC) for the latter's failure to pay for its purchases of industrial chemicals. In its answer, BTC contended that it refused to pay because CCC misrepresented that the products it sold belonged to a new line, when in fact they were identical with CCC's existing products. To substantiate its defense, BTC filed a motion to compel CCC to give a detailed list of the products' ingredients and chemical components, relying on the right to avail of the modes of discovery allowed under Rule 27. CCC objected, invoking confidentiality of the information sought by BTC. Resolve BTC's motion with reasons. (3%)  

b. Blinded by extreme jealousy, Alberto shot his wife, Betty, in the presence of his sister, Carla. Carla brought Betty to the hospital. Outside the operating room, Carla told Domingo, a male nurse, that it was Alberto who shot Betty. Betty died while undergoing emergency surgery. At the trial of the parricide charges filed against Alberto, the prosecutor sought to present Domingo as witness, to testify on what Carla told him. The defense counsel objected on the ground that Domingo's testimony is inadmissible for being hearsay. Rule on the objection with reasons. (3%)  

XIV  

The Republic of the Philippines, through the Department of Public Works and Highways (DPWH) filed with the RTC a complaint for the expropriation of the parcel of land owned by Jovito. The land is to be used as an extension of the national highway. Attached to the complaint is a bank certificate showing that there is, on deposit with the Land Bank of the Philippines, an amount equivalent to the assessed value of the property. Then DPWH filed a motion for the issuance of a writ of possession. Jovito filed a motion to dismiss the complaint on the ground that there are other properties which would better serve the purpose.  

a. Will Jovito's motion to dismiss prosper? Explain. (3%)  

b. As judge, will you grant the writ of possession prayed for by DPWH? Explain. (3%)  

XV  

a. Florencio sued Guillermo for partition of a property they owned in common. Guillermo filed a motion to dismiss the complaint because Florencio failed to implead Hernando and Inocencio, the other co-owners of the property. As judge, will you grant the motion to dismiss? Explain. (3%)  

b. Mariano, through his attorney-in-fact, Marcos, filed with the RTC of Baguio City a complaint for annulment of sale against Henry. Marcos and Henry both reside in Asin Road, Baguio City, while Mariano resides in Davao City. Henry filed a motion to dismiss the complaint on the ground of prematurity for failure to comply with the mandatory barangay conciliation. Resolve the motion with reasons. (3%)
XVI

a. After the prosecution had rested and made its formal offer of evidence, with the court admitting all of the prosecution evidence, the accused filed a demurrer to evidence with leave of court. The prosecution was allowed to comment thereon. Thereafter, the court granted the demurrer, finding that the accused could not have committed the offense charged. If the prosecution files a motion for reconsideration on the ground that the court order granting the demurrer was not in accord with the law and jurisprudence, will the motion prosper? Explain your answer. (3%)

b. A criminal information is filed in court charging Anselmo with homicide. Anselmo files a motion to quash the information on the ground that no preliminary investigation was conducted. Will the motion be granted? Why or why not? (3%)

XVII

Having obtained favorable judgment in his suit for a sum of money against Patricio, Orencio sought the issuance of a writ of execution. When the writ was issued, the sheriff levied upon a parcel of land that Patricio owns, and a date was set for the execution sale.

a. How may Patricio prevent the sale of the property on execution? (2%)

b. If Orencio is the purchaser of the property at the execution sale, how much does he have to pay? Explain. (2%)

c. If the property is sold to a third party at the execution sale, what can Patricio do to recover the property? Explain. (2%)

XVIII

Pinoy died without a will. His wife, Rosie, and three children executed a deed of extrajudicial settlement of his estate. The deed was properly published and registered with the Office of the Register of Deeds. Three years thereafter, Suzy appeared, claiming to be the illegitimate child of Pinoy. She sought to annul the settlement alleging that she was deprived of her rightful share in the estate.

Rosie and the three children contended that (1) the publication of the deed constituted constructive notice to the whole world, and should therefore bind Suzy; and (2) Suzy's action had already prescribed.

Are Rosie and the three children correct? Explain. (4%)

XIX

a. Distinguish the two (2) modes of appeal from the judgment of the Regional Trial Court to the Court of Appeals. (3%)

b. What is the writ of amparo? How is it distinguished from the writ of habeas corpus? (2%)

c. What is the writ of habeas data? (1%)

-NOTHING Follows-
I

Lanie filed an action for partition and accounting in the Regional Trial Court (RTC) of Manila against her sister Mary Rose, who is a resident of Singapore and is not found in the Philippines. Upon motion, the court ordered the publication of the summons for three weeks in a local tabloid, *Bulgar*. Linda, an OFW vacationing in the Philippines, saw the summons in *Bulgar* and brought a copy of the tabloid when she returned to Singapore, Linda showed the tabloid and the page containing the summons to Mary Rose, who said, “Yes I know, my kumara Anita scanned and e-mailed that page of *Bulgar* to me!”

Did the court acquire jurisdiction over Mary Rose?

II

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

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

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

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

III

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

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

IV

Filomeno brought an action in the Metropolitan Trial Court (MeTC) of Pasay City against Marcelino pleading two causes of action. The first was a demand for the recovy of physical possession of a parcel of land situated in Pasay City with an assessed value of P40,000; the second was a claim for damages of P500,000 for Marcelino’s unlawful retention of the property. Marcelino filed a motion to dismiss on the ground that the total amount involved, which is P540,000, is beyond the jurisdiction of the MeTC. Is Marcelino correct? (4%)
Within the period for filing a respective pleading, the defendant filed a motion for bill of particulars that he set for hearing on a certain date. However, the defendant was surprised to find on the date set for hearing that the trial court had already denied the motion on the day of its filing, stating that the allegations of the complaint were sufficiently made.

a) Did the judge gravely abuse his discretion in acting on the motion without waiting for the hearing set for the motion?

b) If the judge grants the motion and orders the plaintiff to file and serve the bill of particulars, can the trial judge dismiss the case if the plaintiff does not comply with the order? (3%)

After his properties were attached, defendant Porfirio filed a sufficient counterbond. The trial court discharged the attachment. Nonetheless, Porfirio suffered substantial prejudice due to the unwarranted attachment. In the end, the trial court rendered a judgment in Porfirio’s favor by ordering the plaintiff to pay damages because the plaintiff was not entitled to the attachment. Porfirio moved to charge the plaintiff’s attachment bond. The plaintiff and his sureties opposed the motion, claiming that the filing of the counterbond had relieved the plaintiff’s attachment bond from all liability for the damages. Rule on Porfirio’s motion. (4%)

The writ of execution was returned unsatisfied. The judgment obligee subsequently received information that a bank holds a substantial deposit belonging to the judgment obligor. If you were the counsel of the judgment obligee, what steps would you take to reach the deposit to satisfy the judgment? (3%)

b) If the bank denies holding the deposit in the name of the judgment obligor but you client's informant is certain that the deposit belongs to the judgment obligor under an assumed name, what is your remedy to reach the deposit? (3%)

Bembol was charged with rape. Bembol’s father, Ramil, approached Artemon, the victim’s father, during the preliminary investigation and offered P1 Million to Artemon to settle the case. Artemon refused the offer.

a) During trial, the prosecution presented Artemon to testify on Ramil’s offer and thereby establish an implied admission of guilt. Is Ramil’s offer to settle admissible in evidence? (3%)

b) During the pre-trial, Bembol personally offered to settle the case for P1 Million to the private prosecutor, who immediately put the offer on record in the presence of the trial judge. Is Bembol's offer a judicial admission of his guilt?
IX

The search warrant authorized the seizure of “undetermined quantity of shabu.” During the service of the search warrant, the raiding team also recovered a kilo of dried marijuana leaves wrapped in newsprint. The accused moved to suppress the marijuana leaves as evidence for the violation of Section 11 of the Comprehensive Dangerous Drugs Act of 2002 since they were not covered by the search warrant. The State justified the seizure of the marijuana leaves under the “plain view” doctrine. There was no indication of whether the marijuana leaves were discovered and seized before or after the seizure of the shabu. If you are the judge, how would you rule on the motion to suppress? (4%)

X

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

XI

a) On October 1, 2007, pending resolution of the motion to dismiss, Arturo filed an amended complaint alleging that Robert’s debt still refused to pay. Should the amended complaint be allowed considering that no answer has been filed? (3%)

b) Would your answer be different had Arturo filed instead a supplemental complaint stating that the debt became due after the filing of the original complaint? (2%)

XII

After receiving the adverse decision rendered against his client, the defendant, Atty. Sikat duly filed a notice of appeal. For his part, the plaintiff timely filed a motion for partial new trial to seek an increase in the monetary damages awarded. The RTC instead rendered an amended decision further reducing the monetary awards. Is it necessary for Atty. Sikat to file a second notice of appeal after receiving the amended decision? (3%)

XIII

An heir/oppositor in a probate proceeding filed a motion to remove the administrator on the grounds of neglect of duties as administrator and absence from the country. On his part the heir/oppositor served written interrogatories to administrator preparatory to presenting the latter as a witness. The administrator objected, insisting that the modes of discovery apply only to ordinary civil actions, not special proceedings. Rule on the matter. (4%)
XIV

On August 15, 2008, Edgardo committed estafa against Petronilo in the amount of P3 Million. Petronilo brought his complaint to the National Bureau of Investigation, which found that Edgardo had visited his lawyer twice, the first time on August 14, 2008, and the second on August 16, 2008; and that both visits concerned the swindling of Petronilo. During trial of Edgardo, the RTC issued a subpoena ad testificandum to Edgardo’s lawyer for him to testify on the conversations during their first and second meetings. May the subpoena be quashed on the ground of privileged communication? Explain fully. (4%)

XV

Half-brothers Roscoe and Salvio inherited from their father a vast tract of unregistered land. Roscoe succeeded in gaining possession of the parcel of land in its entirety and transferring the tax declaration thereon in his name. Roscoe sold the northern half to Bono, Salvio’s cousin. Upon learning of the sale, Salvio asked Roscoe to convey the southern half to him. Roscoe refused as he even sold one-third of the southern half along the West to Carlo. Thereupon, Salvio filed an action for the reconveyance of the southern half against Roscoe only. Carlo was not impleaded. After filing his answer, Roscoe sold the middle third of the southern half to Nina. Salvio did not amend the complaint to implead Nina.

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

XVI

The mutilated cadaver of a woman was discovered near a creek. Due to witnesses attesting that he was the last person seen with the woman when she was still alive, Carlito was arrested within five hours after the discovery of the cadaver and brought to the police station. The crime laboratory determined that the woman had been raped. While in police custody, Carlo broke down in the presence of an assisting counsel and orally confessed to the investigator that he had raped and killed the woman, detailing the acts he had performed up to his dumping of the body near the creek. He was genuinely remorseful. During the trial, the State presented the investigator to testify on the oral confession of Carlito. Is the oral confession admissible as evidence of guilt? (4%)

XVII

Ben sold a parcel of land to Del with right to repurchase within one (1) year. Ben remained in possession of the property. When Ben failed to repurchase the same, title was consolidated in favor of Del. Despite demand, Ben refused to vacate the land, constraining Del to file a complaint for unlawful detainer. In his defense, Ben averred that the case should be dismissed because Del had never been in possession of the property. Is Ben correct? (4%)
XVIII

Domenico and Gen lived without benefit of marriage for twenty yrs, during which time they purchased properties together. After Domenico died without a will, Gen filed a petition for letters of administration. Domenico’s siblings opposed the same on the ground that Gen has no legal personality. Decide. (4%)

XIX

After Alma had started serving her sentence for violation of Batas Pambansa Blg. 22 (BP 22), she filed a petition of writ of habeas corpus, citing Vaca vs. CA where the sentence of imprisonment of a party found guilty of violation of BP 22 was reduced to a fine equal to double the amount of the check involved. She prayed that her sentence be similarly modified and that she be immediately released form detention. In the alternative, she prayed that pending determination on whether the Vaca ruling applies to her, she be allowed to post bail pursuant to Rule 102, Sec. 14, which provides that if a person is lawfully imprisoned or restrained on a charge of having committed an offense not punishable by death, he may be admitted to bail in the discretion of the court. Accordingly, the trial court allowed Alma to post bail and then ordered her release. In your opinion, is the order of the trial court correct?

a) Under Rule 102? (2%)
b) Under the Rules of Criminal Procedure? (2%)

XX

A tugboat owned by Speedy Port Service, Inc. (SPS) sank in Manila Bay while helping tow another vessel, drowning five (5) of the crew in the resulting shipwreck. At the maritime board inquiry the four (4) survivors testified. SPS engaged Atty. Ely to defend it against potential claims ad to sue the company owning the other vessel for damages to the tug. Ely obtained signed statements from the survivors. He also interviewed other persons, in some instance making memoranda. The heirs of the five (5) victims filed an action for damages against SPS.

Plaintiff’s counsel sent written interrogatories to Ely, asking whether statements of witnesses were obtained; if written, copies were to be furnished; if oral, the exact provisions were to be set forth in detail. Ely refused to comply, arguing that the documents and information asked are privileged communication. Is the contention tenable? Explain. (4%)

XXI

a) Compare the certiorari jurisdiction of the Supreme Court under the Constitution with that under Rule 65 of Civil Procedure. (4%)

b) Give at least three instances where the Court of Appeals may act as a trial court. (3%)
I

a) What are the rules on the recognition and enforcement of foreign judgments in our courts? (6%)  
b) Can a foreign arbitral award be enforced in the Philippines under those rules? Explain briefly. (2%)  
c) How about a global injunction issued by a foreign court to prevent dissipation of funds against a defendant therein whose assets in the Philippines? Explain briefly. (2%)  

II

True or False. If the answer is false, explain your answer briefly.

a) The surviving parties rule bars Maria from testifying for the claimant as to what the deceased Jose had said to her, in a claim filed by Pedro against the estate of Jose. (3%)  
b) A defendant who has been declared in default can avail of a petition for relief from the judgment subsequently rendered in the case. (3%)  
c) A motion is a pleading. (2%)  
d) A counterclaim is a pleading. (2%)  

III

a) What is the hearsay rule? (5%)  
b) In relation to the hearsay rule, what do the following rules of evidence have in common? (5%)  

IV

Husband H files a petition for declaration of nullity of marriage before the RTC of Pasig City. Wife W files a petition for habeas corpus before the RTC of Pasay City, praying for custody over their minor child. H files a motion to dismiss the wife's petition on the ground of the pendency of the other case. Rule. (10%)  

V

a) Distinguish the effects of the filing of a demurrer to the evidence in a criminal case and its filing in a civil case. (5%)  
b) What is reverse trial and when may it be resorted to? Explain briefly. (5%)  

VI
a) On his way home, a member of the Caloocan City police force witnesses a bus robbery in Pasay City and effects the arrest of the suspect. Can he bring the suspect to Caloocan City for booking since that is where his station is? Explain briefly. (5%)

b) In the course of serving a search warrant, the police finds an unlicensed firearm. Can the police take the firearm even if it is not covered by the search warrant? If the warrant is subsequently quashed, is the police required to return the firearm? Explain briefly. (5%)

VII

a) B files a petition for cancellation of the birth certificate of her daughter R on the ground of falsified material entries therein made by B’s husband as the informant. The RTC sets the case for hearing and directs the publication of the order once a week for three consecutive weeks in a newspaper of general circulation. Summons was served on the Civil Registrar but there was no appearance during the hearing. The RTC granted the petition. R filed a petition for annulment of judgment before the Court of Appeals saying that she was not notified of the petition and hence, the decision was issued in violation of due process. B opposed saying that the publication of the court order was sufficient compliance with due process. Rule. (5%)

b) G files a complaint for recovery of possession and damages against F. In the course of the trial, G marked his evidence but his counsel failed to file a formal offer of evidence. F then presented in evidence tax declarations in the name of his father to establish that his father is a co-owner of the property. The court ruled in favor of F, saying that G failed to prove sole ownership of the property in the face of F’s evidence. Was the court correct? Explain briefly. (5%)

VIII

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

b) The heirs of H agree among themselves that they will honor the division of H’s estate as indicated in her Last Will and Testament. To avoid the expense of going to court in a Petition for Probate of the Will, can they instead execute an Extrajudicial Settlement Agreement among themselves? Explain briefly. (5%)

IX

L was charged with illegal possession of shabu before the RTC. Although bail was allowable under his indictment, he could not afford to post bail, and so he remained in detention at the City Jail. For various reasons ranging from the promotion of the Presiding Judge, to the absence of the trial prosecutor, and to the lack of notice to the City Jail Warden, the arraignment of L was postponed nineteen times over a period of two years. Twice during that period, L’s counsel filed motions to dismiss, invoking the right of the accused to a speedy trial. Both motions were denied by the RTC. Can L file a petition for mandamus? Reason briefly. (10%)
a) RC filed a complaint for annulment of the foreclosure sale against Bank V. In its answer, Bank V set up a counterclaim for actual damages and litigation expenses. RC filed a motion to dismiss the counterclaim on the ground that Bank V's Answer with Counterclaim was not accompanied by a certification against forum shopping. Rule. (5%)

b) A files a case against B. While awaiting decision on the case, A goes to the United States to work. Upon her return to the Philippines, seven years later, A discovers that a decision was rendered by the court in her favor a few months after she had left. Can A file a motion for execution of the judgment? Reason briefly. (5%)

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2006 BAR EXAMS QUESTIONS

I
1. What is the concept of remedial law? (2%)
2. Distinguish between substantive law and remedial law. (2%)
3. How are remedial laws implemented in our system of government? (2%)
4. Distinguish jurisdiction from venue. (2%)
5. What do you mean by a) real actions; and b) personal action? (2%)

II

What court has jurisdiction over an action for specific performance filed by a subdivision homeowner against a subdivision developer? Choose the correct answer. Explain. (2.5%)
1. The Housing and Land Use Regulatory Board
2. The Securities and Exchange Commission
3. The Regional Trial Court
4. The Commercial Court or the Regional Trial Court designated by the Supreme Court to hear and decide "commercial cases"

III
1. What is forum shopping? (2.5%)
2. Honey filed with the Regional Trial Court, Taal, Batangas a complaint for specific performance against Bernie. For lack of certification against forum shopping, the judge dismissed the complaint. Honey's lawyer filed a motion for reconsideration, attaching thereto an amended complaint with the certification against forum shopping. If you were the judge, how would you resolve the motion? (5%)
IV

Jojie filed with the Regional Trial Court of Laguna a complaint for damages against Joe. During the pre-trial, Jojie (sic) and her (sic) counsel failed to appear despite notice to both of them. Upon oral motion of Jojie, Joe was declared as in default and Jojie was allowed to present her evidence *ex parte*. Thereafter, the court rendered its Decision in favor of Jojie.

Joe hired Jose as his counsel. What are the remedies available to him? (5%)
X

1. Define a temporary restraining order (TRO). (2%)
2. May a Regional Trial Court issue injunction without bond? (2%)
3. What is the duration of a TRO issued by the Executive Judge of a Regional Trial Court? (2%)
4. Differentiate a TRO from a status quo order. (2%)
5. May a justice of a Division of the Court of Appeals issue a TRO? (2%)

XI

1. What is an interlocutory order? (2%)
2. What is the difference between a judgment and an opinion of the court? (2.5%)

XII

Tina Guerrero filed with the Regional Trial Court of Biñan, Laguna, a complaint for sum of money amounting to P1 Million against Carlos Corro. The complaint alleges, among others, that Carlos borrowed from Tina the said amount as evidenced by a promissory note signed by Carlos and his wife, jointly and severally. Carlos was served with summons which was received by Linda, his secretary. However, Carlos failed to file an answer to the complaint within the 15-day reglementary period. Hence, Tina filed with the court a motion to declare Carlos in default and to allow her to present evidence ex parte. Five days thereafter, Carlos filed his verified answer to the complaint, denying under oath the genuineness and due execution that he has fully paid his loan with interest at 12% per annum.

1. Was he summons validly served on Carlos? (2.5%)
2. If you were the judge, will you grant Tina’s motion to declare Carlos in default? (2.5%)

XIII

Sergio Punzalan, Filipino, 50 years old, married, and residing at Ayala Alabang Village, Muntinlupa City, of sound and disposing mind, executed a last will and testament in English, a language spoken and written by him proficiently. He disposed of his estate consisting of a parcel of land in Makati City and cash deposit at the City Bank in the sum of P300 Million. He bequeathed P50 Million each to his 3 sons and P150 Million to his wife. He devised a piece of land worth P100 Million to Susan, his favorite daughter-in-law. He named his best friend, Cancio Vidal, as executor of the will without bond.

1. Is Cancio Vidal, after learning of Sergio’s death, obliged to file with the proper court a petition of probate of the latter’s last will and testament? (2%)
2. Supposing the original copy of the last will and testament was lost, can Cancio compel Susan to produce a copy in her possession to be submitted to the probate court? (2%)
3. Can the probate court appoint the widow as executor of the will? (2%)
4. Can the widow and her children settle extrajudicially among themselves the estate of the deceased? (2%)
5. Can the widow and her children initiate a separate petition for partition of the estate pending the probate of the last will and testament by the court? (2%)

XIV

When is bail a matter of right and when is it a matter of discretion? (5%)

XV

Leticia was estranged from her husband Paul for more than a year due to his suspicion that she was having an affair with Manuel their neighbor. She was temporarily living with her sister in Pasig City.

For unknown reasons, the house of Leticia’s sister burned, killing the latter. Leticia survived. She saw her husband in the vicinity during the incident. Later he was charged with arson in an Information filed with the Regional Trial Court, Pasig City.

During the trial, the prosecutor called Leticia to the witness stand and offered her testimony to prove that her husband committed arson.

Can Leticia testify over the objection of her husband on the ground of marital privilege? (5%)

XVI

1. What are the requirements in order that an admission of guilt of an accused during a custodial investigation be admitted in evidence? (2.5%)

2. As counsel of an accused charged with homicide, you are convinced that he can be utilized as a state witness. What procedure will you take? (2.5%)

XVII

In 1996, congress passed Republic Act No. 8189, otherwise known as the Voter’s Registration Act of 1996, providing for computerization of elections. Pursuant thereto, the COMELEC approved the Voter’s Registration and Identification system (VRIS) Project. It issued invitations to pre-qualify and bid for the project. After the public bidding, Fotokina was declared the winning bidder with a bid of P6 billion and was issued a Notice of Awards. But COMELEC Chairman Gener Go objected to the award on the ground that under the Appropriations Act, the budget for the COMELEC’s modernization is only P1 billion. He announced to the public that the VRIS project has been set aside. Two Commissioners sided with Chairman Go, but the majority voted to uphold the contract.

Meanwhile, Fotokina filed with the RTC a petition for mandamus to compel COMELEC to implement the contract. The Office of the Solicitor General (OSG), representing Chairman Go, opposed the petition on the ground that mandamus does not lie to enforce contractual obligations. During the proceedings, the majority Commissioners filed a manifestation that Chairman Go was not authorized by the COMELEC En Banc to oppose the petition.

1. May the OSG represent Chairman Go before the RTC notwithstanding that his position is contrary to that of the majority? (5%)
2. Is a petition for *mandamus* an appropriate remedy to enforce contractual obligations? (5%)
b) If the result of such test shows that he is HIV positive, and the prosecution offers such result in evidence to prove the qualifying circumstance under the Information for qualified rape, should the court reject such result on the ground that it is the fruit of a poisonous tree? Explain.

III

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

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

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

IV

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

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

Resolve the motion with reasons. (4%)

V

(1) After Lulu’s death, her heirs brought her last will to a lawyer to obtain their respective shares in the estate. The lawyer prepared a deed of partition distributing Lulu’s estate in accordance with the terms of her will.

Is the act of the lawyer correct? Why? (2%)

(2) Nestor died intestate in 2003, leaving no debts. How may his estate be settled by his heirs who are of legal age and have legal capacity? Explain. (2%)

(3) State the rule on venue in judicial settlement of estate of deceased persons. (2%)
VI

While cruising on a highway, a taxicab driven by Mans hit an electric post. As a result thereof, its passenger, Jovy, suffered serious injuries. Mans was subsequently charged before the Municipal Trial Court with reckless imprudence resulting in serious physical injuries.

Thereafter, Jovy filed a civil action against Lourdes, the owner of the taxicab, for breach of contract, and Mans for quasi-delict. Lourdes and Mans filed a motion to dismiss the civil action on the ground of litis pendentia, that is, the pendency of the civil action impliedly instituted in the criminal action for reckless imprudence resulting in serious physical injuries.

Resolve the motion with reasons. (4%)

VII

Katy filed an action against Tyrone for collection of the sum of P1 Million in the Regional Trial Court, with an ex parte application for a writ of preliminary attachment. Upon posting of an attachment bond, the court granted the application and issued a writ of preliminary attachment.

Apprehensive that Tyrone might withdraw his savings deposit with the bank, sheriff immediately served a notice of garnishment on the bank to implement the writ of preliminary attachment. The following day, the sheriff proceeded to Tyrone’s house and served him the summons, with copies of the complaint containing the application for writ of preliminary attachment, Katy’s affidavit, order of attachment, writ of preliminary attachment and attachment bond.

Within fifteen (15) days from service of summons, Tyrone filed a motion to dismiss and to dissolve the writ of preliminary attachment on the following grounds: (i) the court did not acquire jurisdiction over his person because the writ was served ahead of the summons; (ii) said writ was improvidently issued because the obligation in question was already fully paid.

Resolve the motion with reasons. (4%)

VIII

In a complaint for recovery of real property, the plaintiff averred, among others, that he is the owner of the said property by virtue of a deed of sale executed by the defendant in his favor. Copy of the deed of sale was appended to the complaint as Annex “A” thereof.

In his unverified answer, the defendant denied the allegation concerning the sale of the property in question, as well as the appended deed of sale, for lack of knowledge or information sufficient to form a belief as to the truth thereof.

Is it proper for the court to render judgment without trial? Explain. (4%)

IX

On May 12, 2005, the plaintiff filed a complaint in the Regional Trial Court of Quezon City for the collection of P250,000.00. The defendant filed a motion to dismiss the complaint on the ground that the court had no jurisdiction over the action since the claimed amount of P250,000.00 is within the exclusive jurisdiction of the Metropolitan Trial Court of Quezon City.

Before the court could resolve the motion, the plaintiff, without leave of court, amended his complaint to allege a new cause of action consisting in his inclusion of an additional amount
of P200,000.00, thereby increasing his total claim to P450,000.00. the plaintiff thereafter filed his opposition to the motion to dismiss, claiming that the Regional Trial Court had jurisdiction over his action.

Rule on the motion of the defendant with reasons. (4%)

X

A obtained a money judgment against B. After the finality of the decision, the court issued a writ of execution for the enforcement thereof. Conformably with the said writ, the sheriff levied upon certain properties under B's name. C filed a third-party claim over said properties that B had already transferred the same to him.

A moved to deny the third-party claim and to hold B and C jointly and severally liable to him for the money judgment alleging that B had transferred said properties to C to defraud him (A).

After due hearing, the court denied the third-party claim and rendered an amended decision declaring B and C jointly and severally liable to A for the money judgment. Is the ruling of the court correct? Explain. (4%)

XI

Helen is the daughter of Eliza, a Filipina, and Tony, a Chinese, who is married to another woman living in China. Her birth certificate indicates that Helen is the legitimate child of Tony and Eliza and that she is a Chinese citizen.

Helen wants her birth certificate corrected by changing her filiation from “legitimate” to “illegitimate” and her citizenship from “Chinese” to “Filipino” because her parents were not married.

What petition should Helen file and what procedural requirements must be observed? Explain. (5%)

XII

Mariano was convicted by the Regional Trial Court for raping Victoria and meted the penalty or reclusion perpetua. While serving sentence at the National Penitentiary, Mariano and Victoria were married. Mariano filed a motion in said court for his release from the penitentiary on his claim that under Republic Act No. 8353, his marriage to Victoria extinguished the criminal action against him for rape, as well as the penalty imposed on him. However, the court denied the motion on the ground that it had lost jurisdiction over the case after its decision had become final and executory. (7%)

a) Is the ruling of the court correct? Explain.

b) What remedy/remedies should the counsel of Mariano take to secure his proper and most expeditious release from the National Penitentiary? Explain.
XIII

Rodolfo is charged with possession of unlicensed firearms in an Information filed in the Regional Trial Court. It was alleged therein that Rodolfo was in possession of two unlicensed firearms: a .45 caliber and a .32 caliber.

Under Republic Act No. 8294, possession of an unlicensed .45 caliber gun is punishable by prison mayor in its minimum period and a fine of P30,000.00, while possession of unlicensed .32 caliber gun is punishable by prison correccional in its maximum period and a fine of not less than P15,000.00.

As counsel of the accused, you intend to file a motion to quash the Information. What ground or grounds should you invoke? Explain. (4%)
Dancio had raped her. The policeman noticed that Candida was hysterical and on the verge of collapse. Dencio was charged with robbery with rape. During the trial, Candida can no longer be located. (8%)

a) If the prosecution presents Police Officer Roberto Maawa to testify on what Candida had told him, would such testimony of the policeman be hearsay? Explain.

b) If the police officer will testify that he noticed Candida to be hysterical and on the verge of collapse, would such testimony be considered as opinion, hence, inadmissible? Explain.

XVII

Explain briefly whether the regional Trial Court may, *motu proprio*, take judicial notice of the following: (5%)

a) The street name of metamphetamine hydrochloride is *shabu*;

b) Ordinances approved by municipalities under its territorial jurisdiction;

c) Foreign laws;

d) Rules and Regulations issued by quasi-judicial bodies implementing statutes;

e) Rape may be committed even in public places.

XVII

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

AG moved to reconsider the order on the following grounds: (a) the Office of the Special Prosecutor had exclusive authority to conduct a preliminary investigation of the criminal case; (b) the order for his preventive suspension was premature because he had yet to file his answer to the administrative complaint and submit countervailing evidence; and (c) he was a career executive service officer and under Presidential Decree No. 807 (Civil Service Law), his preventive suspension shall be for a maximum period of three months.

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

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