JOURNAL

OF THE INTEGRATED BAR OF THE PHILIPPINES

ARTICLES

Vol. XXVII **1st & 2nd Quarters 2001** **No. 1**

JOURNAL
OF THE INTEGRATED BAR OF THE PHILIPPINES

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Journal of the Integrated Bar of the Philippines

Printed in the Philippines
Vol. XXVII, No. 1

ARTICLES IN THIS ISSUE

Volume XXVII of the **Journal of the Integrated Bar of the Philippines** contains four (4) articles and a digest of selected Supreme Court decisions in the different fields of law.

In the lead article, *The Judiciary at the Threshold of the New Millennium,* **HILARIO G. DAVIDE, JR.,** Chief Justice of the Supreme Court of the Philippines, writes about the colorful history of the High Tribunal on the occasion of its centennial anniversary and the various celebrations held to commemorate the judiciary's contributions to society and recognize the efforts by members of the general public in assisting with the fulfilment of the judiciary's goals. The Chief Magistrate likewise discusses preparations for the Third Millennium so that the justice system can achieve the goal of delivering fair, impartial and sufficient justice. Finally, he pledges the Court's commitment "to be the people's bulwark of justice for the years to come."

In the second article, *Family Courts and Significant Jurisprudence in Family Law,* **RUBÉN F. BALANE,** Professor of Law at the University of the Philippines College of Law and Ateneo de Manila University Law School and JBL Reyes Professor of Civil Law, evaluates leading Supreme Court decisions relating to, among others, the following issues: (i) status of foreign divorces; (ii) psychological incapacity; (iii) marriage; (iv) charges upon and obligations of the absolute community of property; (v) non-marital union and regime of separation of property; (vi) illegitimate children; and (vii) parental authority and custody of children and minors.

Next, **FRANCIS V. SOBREVIÑAS,** a private practitioner, undertakes in *Questioning the Secretary's Order in National Interest Disputes: In Melius Mutari?* an examination of the power of the Secretary of Labor and Employment to initiate a national interest case in labor disputes. The difficult and debatable legal question concerning the right of the Secretary to assume jurisdiction over a dispute or certify it to compulsory arbitration — made even more controversial by the recent ruling in the **Phimco** case, which reversed and nullified the Secretary's assumption order — is discussed in relation to the rule regarding political acts by the executive and the legislative branches of the government. The writer suggests that adopting the recommendation of the Congressional Commission on Labor limiting the jurisdiction of the Secretary on disputes involving the national interest to disputes involving essential services only, as defined by the International Labor Organization, may be a step in the right direction.

The fourth article, *The Identity of a Client as Privileged Attorney-Client Information: Regala v. Sandiganbayan*, by **DIVINAGRACIA S. SAN JUAN**, a law practitioner and partner of Sobreviñas Diaz Hayudini & Bodegon, tackles a 1996 Supreme Court decision on an issue of first impression: the attorney-client privilege as extending to the identity of a client, justifying a lawyer's refusal to name and identify his principal in questioned transactions as an exception to the general rule that client identity is unprotected. The author analyzes the majority opinion as well as the strong dissents in the case, concluding with the view that, with the stress laid by the Supreme Court on the peculiar considerations impelling its ruling on the privilege as applying to the situation of the lawyers concerned, the success of future invocations of the privilege by lawyers in similar circumstances still remains to be seen.

The final item is a digest or summary of selected Supreme Court decisions covering the period October through December 2000, prepared by **TARCISIO A. DIÑO,** partner of Villareal Rosacia Diño and Patag. The digest is grouped under the following headings: (a) Agrarian Reform; (b) Civil Law; (c) Commercial Law; (d) Labor Law; (e) Land Law; (f) Legal Ethics; (g) Political Law; (h) Remedial Law; and (i) Taxation.

THE JUDICIARY AT THE THRESHOLD OF THE NEW MILLENNIUM

By Hilario G. Davide, Jr.*

We Filipinos have a saying, *"Ang hindi marunong lumingon sa pinanggalingan ay hindi makararating sa paroroonan."* He who does not look back to his beginnings will not reach his objective.

Justice Oliver Wendell Holmes, Jr. of the United States Supreme Court stated: "When I want to understand what is happening today or try to decide what will happen tomorrow, I look back."

George Santayana in *The Life of Reason* said: "Those who cannot remember the past are condemned to repeat it."

The importance of knowing one's history is thus universally established. We in the Supreme Court recognize this. That is why we celebrate a hundred years of achievement, and we lay claim to the eleventh of June in the year 2001, as OUR day, for on that day, we rejoice in celebrating the centennial of the Supreme Court of the Philippines.

A BRIEF HISTORY OF THE SUPREME COURT

On this same day in 1901, the Second Philippine Commission enacted Act No. 136 or the Judiciary Law of 1901, which vested judicial power in the Supreme Court, Courts of First Instance and

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* Chief Justice, Supreme Court of the Philippines. This article is an adaptation of a lecture delivered at a special *en banc* session of the Court for the Eleventh Centenary Lecture, held at the Supreme Court Session Hall, 11 June 2001.

Justice of the Peace Courts. Even centuries before that date, however, the Philippines already had an indigenous system of justice. When the Spaniards colonized the islands starting in the 16th century, they introduced an Occidental system of justice.

The present Supreme Court traces its roots from the Judiciary Law of 1901, which institutionalized a hybrid justice system patterned after American common law and Spanish civil law. The first Chief Justice was Cayetano S. Arellano. The Court then sat at the Spanish-style, red-roofed *Audiencia*, bounded by *Calle Arzobispo* and *Calle Palacio* in historic Intramuros, Manila.

After the old *Audiencia* building was destroyed along with most of the city in the Battle of Manila in 1944, the Supreme Court was forced to hold temporary office at the Annex Building of Malacañang. The proximity of the Court to the President, however, did not sit well with the Chief Justice at the time, Manuel V. Moran – the seventh Chief Justice of the Philippines – so he made sure the Court would find a more suitable site. In 1948, the Court acquired the rights to the former Villamor Hall or College of Fine Arts and Conservatory of the University of the Philippines at the corner of Padre Faura Street and Taft Avenue. The existing structure had to undergo massive renovation, and the Court was able to occupy it only in 1951.

Until 1991, that corner building was the venue for all cases elevated to the High Court. In 1991, the transfer of the Session Hall and the offices of the Justices to the building formerly occupied by the Department of Foreign Affairs along Padre Faura Street was completed.

THE SUPREME COURT CENTENARY CELEBRATIONS

The period 11 June 2000 to 11 June 2001 has been declared by then-President Estrada in his Proclamation No. 322 issued on

6 June 2000 as the *Centenary of the Supreme Court*. And by Proclamation No. 47 of President Gloria Macapagal-Arroyo, issued on 18 May 2001, the period from 4 June to 11 June of this year and every year thereafter has been declared as the *Judiciary Week*.

Since last year, the Court has been celebrating its centenary year with the theme, *"Katarungan at Bayan Magpakailanman."* Justice and Nation Forevermore. Several activities were lined up to make the event historic and memorable. The Centenary Lecture Series is one of those activities.

The lecture series covered the following topics: (1) "The Chief Justices in Philippine History" delivered by retired Chief Justice Andres R. Narvasa; (2) "Shari'a Law and the Philippine Legal System" by Professor Michael Mastura; (3) "Contracts and Transactions by E-Commerce: Legal and Evidentiary Considerations" by Representative Leandro Verceles; (4) "Life Technologies and the Rule of Law" by Dr. Franklin Zweig of the Einstein Institute for Science, Health and the Courts; (5) "Protecting Civil Liberties in a State of Continuing Emergency" by Mme. Justice Dorit Beinisch of the Supreme Court of Israel; (6) "The Functions of the Supreme Court of Justice of Hungary" by President Pal Solt of the Supreme Court of Hungary; (7) "Old Doctrines and New Paradigms" by Justice Artemio Panganiban; (8) "A Century of Constitutionalism: The Mission (as per Malcolm, *J.*) and its Fulfillment (as per Laurel, *J.*)" by retired Chief Justice Enrique Fernando; (9) "Feminine Grace, The High Court, and Jurisprudence" by Mme. Justice Ameurfina A. Melencio-Herrera; and (10) "The Impact of People Power on Our Legal System" by Dean Raul Pangalangan, Attorney Katrina Legarda, and Professor Randy David. The lecture delivered by the Chief Justice in a special *En Banc* session on 11 June wrapped up the series.

Also in line with the Court's centenary, separate celebrations were conducted in the different judicial regions of the coun-

try so it can be truly said that the *entire* Judiciary was one in this momentous event. Judges and court personnel devoted their time, energy and even personal funds to ensure the success of the festivities.

Another centennial project was the *Benchbook for Trial Court Judges*, published with assistance from the Australian government through the Australian Agency for International Development (AusAID) and its Philippines-Australia Governance Facility, and the consultancy services of the International Development Law Institute (IDLI).

During the centenary year, the Court promulgated the Revised Rules of Criminal Procedure, the Rule on Examination of Child Witnesses, the Interim Rules of Procedure on Corporate Rehabilitation, and the Interim Rules of Procedure for Intra-corporate Controversies. These rules were drafted by the Committee on the Revision of the Rules of Court headed by Justice Reynato S. Puno. The Court also approved the Rules on Mandatory Continuing Legal Education which was drafted by the Committee on Legal Education and Bar Matters headed by Justice Jose C. Vitug.

The Philippine Judicial Academy (PHILJA) figures prominently in many centenary activities, one of which is the Settlement Weeks, consisting of two weeks of intensive testing of court-annexed mediation. In that period, about 800 out of 1,000 cases selected for mediation from trial courts in Manila, Davao and Cebu were successfully settled. The activity culminated with the launching of the Philippine Mediation Center on 6 April 2001. The Center will be the nexus for all mediation-related activities.

Pursuant to the centennial computerization program, 1,500 computers will soon be distributed to trial courts across the country. These will come with legal research software donated last April by CD Technologies Asia. Just as computers were instru-

mental in the Supreme Court's attainment of a near-zero backlog of cases, so these computers for the trial courts are seen to duplicate the feat at the trial court level.

Since the centenary is fundamentally an edification in history, the Supreme Court reserved a site for the statue of the first Chief Justice, Chief Justice Cayetano Arellano. We likewise unveiled the Supreme Court Commemorative Stamps, and, through the initiative and dedicated labor of the Association of Retired Justices of the Supreme Court headed by retired Justice Abraham Sarmiento, we held a book and photo exhibit at the Centennial Building, which featured, among other things, priceless books written by Members of the Court, past or incumbent. In recognition of the role of the youth not only in nation building but also in improving the justice system, we held oratorical contests and debates through the able support of the Philippine Association of Law Schools. The grand finals of that event was held in the Supreme Court Session Hall on 7 June 2001.

On the morning of 11 June, Supreme Court employees held a thanksgiving mass, a fitting reminder of the inspiration that permeates this entire affair and of the providence of the Almighty and ever-loving God who illuminated the path of this Court and guided it in its course during its first one hundred years.

As God's words motivate the Members and personnel of the Court to serve the public with greater zeal and dedication, there are also persons, natural and juridical, whose indomitable spirit inspires everyone in the Judiciary. In recognition of their priceless contributions to the effective and efficient administration of justice and to society, we handed out Peacemakers Circle Awards to outstanding mediators, Centennial Awards for Judicial Excellence to Judges and Court Personnel, Supreme Court Centennial Awards to Retired Justices, and Awards for Centenary Legal Publications and Model Centennial Law Libraries.

There were also activities intended to invigorate the body. Golfers participated in the Judiciary Golf Fellowship Tournament. Supreme Court officials and employees were able to condition their bodies by joining either the Centennial Walk with Aerobics or, for the more athletic types, the Fun Run. Basketball and volleyball tournaments were held. There were games as well as song and dance contests. On Independence Day, 12 June, the Court hosted a Centennial Concert at the Cultural Center of the Philippines. If music is a universal language, justice is a universal virtue which must be passionately served.

On the night of 11 June, the night of the Court's Centennial, the Court hosted the Grand Centennial Dinner at the Manila Hotel with the President, Her Excellency Gloria Macapagal-Arroyo, as guest of honor and speaker, and with visiting Chief Justices, Justices and other judiciary officers from abroad, the members of the diplomatic corps, the officials of the Executive and the Legislative branches of government, among other guests. The affair capped the year-long celebration of the Supreme Court's centenary.

THE DAVIDE WATCH

A detailed reading of the history the Supreme Court will lead one to conclude it had its highs and lows, its ups and downs. But we are now prepared to look to the future. Let me place the discussion in context.

When I assumed the position of Chief Justice on 30 November 1998, I immediately set forth my plans as head of the Supreme Court and the Philippine Judiciary. I outlined the goals and objectives that would be pursued during my incumbency in a document I called **THE DAVIDE WATCH: LEADING THE PHILIPPINE JUDICIARY AND THE LEGAL PROFESSION TOWARDS THE THIRD MILLENNIUM.** And a *watch* it was purposely made because I intended to employ a hands-on policy in all aspects of court and case management, including a

constant exchange of ideas, not only with the members of the Judiciary but with all who hold a stake in justice and good government. This is exactly what I did, what I have been doing, and what I commit to do until my retirement.

Note that the *Davide Watch* says: "Towards the Third Millennium." Verily, it contemplates preparations for the coming new millennium, meaning the Third Millennium. At the heart of the *Davide Watch* are internal and external reforms. The *Davide Watch* recognizes the reality that the Judiciary must always maintain its independence and remain immune from undue influence, without, however, sacrificing friendly relations with the other branches of government. At the same time, it is essential that all members of the Bench and Bar be of utmost competence and unassailable integrity. This standard must be preserved, not for the benefit of individuals but of the general public. And since the Judiciary is meant to serve the people through the dispensation of justice, the Bench must be fully accountable by remaining transparent, in spite of the confidentiality of some aspects of the judicial process. Keeping in mind that public office is a public trust, dishonesty, immorality, incompetence, inefficiency, and any form of unbecoming conduct are impermissible and will not be tolerated in the Judiciary and the legal profession. Many of those who failed to stand by these principles have already been purged from our ranks; the remaining few – and I am sure there are not many of them for the others have gone under massive transformation – will be relentlessly weeded out.

The *Davide Watch* underscores that the justice system must strive to achieve the goal of delivering fair, impartial, and swift justice. To this end, I have endeavored to get the support of the Bench and Bar in preserving and maintaining the rule of law, equal justice, judicial independence, and the pursuit of excellence. This is consistent with my vision of a Judiciary that is independent, effective and efficient, and worthy of public trust and confidence;

and a legal profession that provides quality, ethical, accessible, and cost-effective legal service to our people, and is willing and able to answer the call to public service.

With these ends laid out, the Supreme Court is very much on track in its determined and unceasing pursuit of excellence and the promotion of integrity and efficiency in the justice system.

On my first year as Chief Justice, I visited the judges and personnel of the trial courts spread out across the nation. In sincere and determined dialogues, I had a first-hand account of the problems and innovations encountered and devised by our people in the trial courts. At the same time, the dialogues gave me the opportunity to personally assure the judges and personnel of the full support and listening ear of the Supreme Court.

The Supreme Court has, from 1999 to June 2001, issued 435 circulars and orders to implement the policy statements of the *Davide Watch*. These directives, among other things, enjoin or provide, the strict observance of working hours and session hours of trial courts; grant incentives to judges who are given the additional duty of hearing and deciding cases of *other branches* of their courts or of *other courts* of the same level; limit the period of extensions of time on the part of the Office of the Solicitor General to file comments or appellee's briefs; mandate the exercise of utmost caution in the issuance of temporary restraining orders and writs of preliminary injunction; and prescribe guidelines for qualification for judicial office.

These orders, of course, do not necessarily indicate performance. They do, however, show that this Court has been faithfully pursuing the vision of the Judiciary. A more concrete picture of the Judiciary may be developed from a description of its workload. As of the end of 1999, the total caseload of all courts other than the

Supreme Court was 825,706. This was brought down slightly at the end of year 2000 to 824,821 cases.

It is worth noting that these cases are divided among some 2,200 magistrate positions, for an average of 375 cases per judge or Justice per year. However, we must also note that there is a thirty percent (30%) vacancy in judicial positions, so the average caseload can reach about 500 cases per judge each year. With that number, judges should dispose of at least one and a half cases each day everyday, including Sundays and holidays. That, of course, would be suicide. And we cannot afford to lose more judges.

Thus, the Judicial and Bar Council (JBC) has been actively performing its constitutional function. The JBC is mandated by the Constitution to screen and recommend nominees for judicial posts to the President, who would then appoint a judge or Justice based on the JBC's list. Through the initiative of the ex-officio Chairman (the Chief Justice), and the support of its Members, the JBC, for the first time, promulgated a few months ago its Rules which embody its previous guidelines and incorporate new rules and policies to ensure wider public scrutiny of the applicants' merit and qualifications and guarantee that only the most competent are nominated. Between January 2000 and May 2001, the President appointed 200 magistrates from the JBC's nominees; 281 nominees are yet to be acted upon as of 7 June.

While filling up the vacancies is important, we are also concerned that only those who maintain the stringent standards of judgeship stay on the Bench. Thus, from 1999 to 30 April 2001, a total of 252 judges were disciplined in varying degrees for various offenses. The penalties ranged from reprimands to dismissal from service with forfeiture of benefits and disqualification to hold any office in any government agency or instrumentality including government-owned or controlled corporations.

We have also been keeping our judges and Justices up to speed on the latest legal and jurisprudential trends. From 1996 to 1999, the PHILJA conducted 117 training workshops on various judicial concerns with a total of 17,376 overlapping participants. The Academy conducts orientation seminars for newly appointed judges, and judicial career enhancement programs for judges and court officials. These are now done on a regional basis. The Academy also conducts special workshops on, among other topics, gender sensitivity, juvenile and domestic relations justice, family courts and court social workers, election laws, corporate law and insolvency and rehabilitation, law and economics, E-commerce, intellectual property rights, environmental law, and transnational issues.

At the Supreme Court, we have kept a close eye on our caseload. At the end of 1999, there were 5,380 cases pending at the High Court. A total of 4,010 cases were filed in 2000, but by the end of that year there were only 5,536 cases pending in our dockets, meaning that in that year, the fifteen (15) Members of the Supreme Court decided 3,854 cases. That translates to an average disposition of 257 cases per year for each Member of the Supreme Court for the year 2000. On top of this disposition rate, the Members of the High Court endeavored to achieve zero backlog by the Court's centennial. While we did not achieve an absolute zero, we did attain a substantially significant near-zero backlog. The remaining cases will be easier to dispose of at this stage.

To complete the present picture of the Judiciary, I must emphasize that the Judiciary has experienced a diminishing share in the national budget equivalent to an annual average of a little over one percent thereof. That is roughly six billion pesos (P6,000,000,000) or one hundred twenty million US dollars (US$120,000,000) to run the entire judicial machinery annually.

THE SUPREME COURT OF THE FUTURE

The foregoing figures give an idea of the Judiciary's situation. But the courts will always be best known and most remembered for the cases they decide. Focusing on the Supreme Court's pronouncements will help us realize its true role and value in society. The High Tribunal has been a silent element in Philippine history, influencing the course of events with the exercise of its constitutional powers.

For instance, in the case of *Javellana v. Executive Secretary (G.R. No. L-36142, 31 March 1973; 50 SCRA 30)*, decided in 1973, the Court paved the way for the operation of the 1973 Constitution, which, in turn, legitimized the martial law rule of then-President Marcos. In the 1986 decision in *Lawyer's League for Better Philippines v. Aquino (G.R. No. 73748, 22 May 1986 [Resolution])*, the Court declared that the Aquino administration was a *de jure* government. Some fifteen (15) years later, in its joint decisions in *Joseph Estrada v. Desierto (G.R. No. 146710-15)* and *Estrada v. Macapagal-Arroyo (G.R. No. 146737)*, decided just last 2 March, the Court declared that Gloria Macapagal-Arroyo constitutionally succeeded to the Presidency and affirmed the legitimacy of her government.

In the last decade alone, the decisions of the Supreme Court have directly or indirectly fashioned the fabric of Philippine society. In *Garcia v. COMELEC (G.R. No. 11151, 5 October 1994; 227 SCRA 100)*, the Court upheld the power of the people to remove their local elected officials through recall. In the 1997 case *Manila Prince Hotel v. GSIS (G.R. No. 122156, 3 February 1997; 252 SCRA 412)*, historic Manila Hotel was declared part of the national patrimony, a pronouncement which many believed encroached on the power of the Executive to determine economic policies. To be sure, the Court did not; it only exercised a constitutional duty. Also in 1997, the Supreme Court, through the case *Tañada v. Angara (G.R. No. 118295, 2 May 1997; 272 SCRA 18)*, paved the way for the

operation of the World Trade Organization Agreement in the Philippines. In *Echegaray v. Secretary of Justice (G.R. No. 132601, 19 January 1999; 301 SCRA 96)*, the Court ruled that the law providing for the death penalty was constitutional.

Such has been the role played by the Court. At least for the immediate future, this critical responsibility shall be wielded by the present Members of the Court, the "Centennial Justices of the Supreme Court." These are the men and women who have served the Court during the last years of the Second Millennium, and are now at the threshold of the Third Millennium, and who will assist the Judiciary as it breaches the Third Millennium.

The Court is still dominated by men, but the three lady Justices definitely add a touch of feminine grace, not to say feminine wisdom, to its masculine image. Among the Justices appointed by President Aquino, only Justice Josue N. Bellosillo and I remain. Six were appointed by former President Ramos and the rest by former President Estrada. By the time I retire in December 2005, nine of these seats may possibly be occupied by appointees of President Gloria Macapagal-Arroyo.

By order of seniority, the Members of the Supreme Court are Senior Associate Justice Josue N. Bellosillo, Associate Justices Jose A.R. Melo, Reynato S. Puno, Jose C. Vitug, Santiago M. Kapunan, Vicente V. Mendoza, Artemio V. Panganiban, Leonardo A. Quisumbing, Bernardo P. Pardo, Arturo B. Buena, Minerva Gonzaga Reyes, Consuelo Ynares Santiago, Sabino R. de Leon, Jr., and Angelina S. Gutierrez.

Intellectual heavyweights in their respective fields of expertise, they bring to the Supreme Court a wealth of experience individually gathered from years and decades spent mastering the law. Collectively they are a national treasure and a treasure house of legal knowledge. I am honored to have served our country and

our people in the last years of the Twentieth Century with these exceptional men and women of outstanding competence and unparalleled probity and integrity. Mine is the distinct privilege to be with them at the threshold of the Third Millennium, the threshold of new challenges for the Supreme Court. Together we shall plan and build the future of the Supreme Court and the Judiciary.

With the predicate thus laid, I can now discuss THE JUDICIARY AT THE THRESHOLD OF THE NEW MILLENNIUM. The new millennium refers to the Third Millennium. Connect this to the *Davide Watch*, which is, *"Leading the Philippine Judiciary and the Legal Profession Towards the Third Millennium."* Inevitably then, we have moved forward and are now about to reach the threshold of the Third Millennium.

The threshold would cover the next one hundred years of the Supreme Court and the Judiciary. This next centenary is our immediate concern. Let me now take you on a journey through the next one hundred years. Within those years, the Supreme Court would be housed in a bigger structure, not to accommodate more personnel, but to allow for more equipment and facilities. Our courts will be housed in decent if not impressive structures which would exclusively belong to the Judiciary, complete with the latest tools of technology that afford efficiency in court and case management, financial monitoring, smoother and faster communication between the central office and its adjuncts, and people-friendly mechanisms for feedback and performance monitoring. It is precisely this technology which will unburden the Judiciary of a bloated bureaucracy as antiquated systems are replaced with cost-efficient tools, thus stretching even more the wisely allocated resources of the courts. Despite the streamlined staffing structure, the Judiciary will be driven by people, not by man-made structures. Every judge and all court personnel will be equipped with the skills, determination, attitude and habit to ceaselessly, untiringly, efficiently, effectively, and with utmost honesty and integrity, deliver swift, impartial and equal justice to the people.

Fewer cases will reach the courts as – thanks to the joint efforts of the Judiciary, the Bar, civil society, and relevant government agencies – people will resort more to alternative modes of dispute resolution or ADR. The Judiciary will continue to support ADR, not to relieve itself of its duty to adjudicate cases, but more to promote peace and harmony among litigants and the community. Judges, like mediators, will be peacemakers as well, as they explore all possibilities of a peaceful settlement of a case at the pre-trial stage. Exceptionally stringent requirements, effectively monitored and implemented, will allow only the fittest of the fit to serve in the Judiciary, either as a judge or as personnel. A reasonable compensation package will attract even the most discerning of qualified applicants to the service. A program of continuing judicial education will keep the Members and personnel of the Judiciary up to date on everything they need to know in order to dispense justice. The Philippine Judicial Academy, with state-of-the-art judicial training facilities, will be the center for judicial education in the Asia-Pacific, and shall be the pride of the region, serving as the venue for the transnational exchange of ideas and mutual development of judiciaries across the globe.

All these activities will be overseen by a Supreme Court which actively participates in global efforts to promote international justice across borders and across cultures, across faiths and beliefs. The Judiciary will enjoy the trust and confidence of the people, thus, giving binding force to all the decisions made by the courts. With the Judiciary so situated, Philippine society will be subject to the rule of law and not of men, where every person's rights are protected and redress is immediately and equitably obtained for any breach thereof.

Is this a work of science fiction? A flight of pure fantasy? No, it is not. Even now, forces are at work that will make sure this vision of the Judiciary will soon become a reality. Change is happening right now.

The Supreme Court is actively pursuing a program of reform. For years, the word "reform" has been avoided by the Judiciary. It has been mentioned only in muted or hushed whispers, and even then, reprisals from offended judges or personnel would surely follow. But the Judiciary is, after all, a man-made institution; flaws are certain to occur.

Initiatives to enhance judicial performance have been sporadic across the Judiciary's one hundred years. Little or no effort, however, was ever made to consolidate and strengthen these activities. But starting in the late 1990s, an unstoppable momentum for comprehensive reform slowly gained ground.

In 1998, the United Nations Development Programme assisted the Supreme Court with the conduct of consultations with the Judiciary's stakeholders nationwide. This project resulted in the creation of the BLUEPRINT OF ACTION FOR THE JUDICIARY, which identifies recommended priorities for reform and suggests strategies for change.

This activity was followed by a Policy and Human Resource Development Grant from the World Bank in 1999. Building on the firm foundation of the Blueprint of Action, the grant allowed the Supreme Court to establish basic data which would then be the basis for concrete projects and activities to realize the Judiciary's vision. The varied aspects of the Judiciary, from its administrative structure to its information technology capability and its relationship with the public, were thoroughly investigated under the World Bank grant.

At around this time, the Court had been initiating the Benchbook Project I mentioned earlier, with assistance from the Australian Agency for International Development through its Philippines-Australia Governance Facility or PAGF.

Simultaneously, the United States Agency for International Development, or USAID, and the Asia Foundation supported a study on the *barangay* justice system and pilot-tests of alternative modes of dispute resolution. USAID has also constantly assisted the Supreme Court with its judicial training activities.

Judicial education has attracted strong support from various sectors. The training agenda of the Philippine Judicial Academy has been formidable, to say the least.

The Canadian International Development Agency or CIDA has been especially supportive of the Court's continuing education program for its Members. With CIDA assistance, six Court officers and faculty members of the Judicial Academy were trained at the Commonwealth Judicial Education Institute in Canada.

All the while, the Supreme Court sustained dialogues with the media, the business sector, and civil society to determine ways to improve the Judiciary.

Realizing that other agencies involved in the justice system must also be involved in judicial reform efforts, the Supreme Court has worked closely with the Department of Justice and the Integrated Bar in outlining judicial reform. In fact, they are represented, in the Executive Committee for the Judicial Reform Project, which was formed precisely to coordinate the various, multi-faceted reform activities.

Clearly, the Judiciary's reform initiatives were gaining wide international and local support. For the first time, the Judiciary was actively participating in development exercises conducted by the Executive branch. For instance, on 1 February 2000, the Court, represented by Justice Artemio Panganiban, took part in the Sectoral Consultations for the Philippines-ADB/WB Programming Exercises.

The diverse support attracted by judicial reform initiatives required thorough coordination. To guide the implementation of these efforts, the Supreme Court formulated the Action Program for Judicial Reform, or APJR. The APJR, which was approved by the Supreme Court *En Banc* last 5 December 2000, is a comprehensive judicial development plan which consolidates the outputs of the studies and the workshops and provides the framework for all judicial reform projects and activities.

The APJR was presented to the diplomatic and the donor communities on 8 December 2000. The event marked the first formal meeting between the Court and these groups to discuss possible areas for partnership and cooperation.

The broad sweep of the APJR necessitates the consensus and support of the many stakeholders of the Judiciary. To generate awareness on the reform program, multi-sectoral workshops on the APJR are currently being conducted. A higher goal is for the stakeholders to claim ownership of the program in order to ensure full support. To date, six (6) consultation workshops have been conducted in Luzon, Visayas and Mindanao involving Court officials and personnel, Justices and staff of the Court of Appeals, Sandiganbayan and Court of Tax Appeals, Judges and clerks of court, and civil society organizations. One workshop remains for members of the civil society.

The APJR was formally presented to the Investment Coordination Committee Technical Board (ICC-TB) last 3 May 2001 to facilitate the approval of specific projects identified therein, which, in turn, will be presented individually to the ICC as they are developed. Indeed, a proposal for a grant from the Japan International Cooperation Agency for the construction of the PHILJA Development Center in Tagaytay City has been favorably endorsed by the ICC - Cabinet Committee.

With the framework offered by the APJR, the coordination of reform implementation and assistance has been facilitated. Based on the APJR, the Asian Development Bank is already preparing a US $1.8 million grant to strengthen judicial independence. This generous assistance from the ADB will jumpstart reforms in the areas of fiscal and administrative autonomy, formulation of performance indicators in the selection and appointment to the Bench, and judicial training. We expect to sign the agreement on the grant in July. Simultaneously, the ADB is preparing a regional technical assistance also on judicial independence.

Australia's PAGF has committed to continue supporting judicial reform through its system of progressive engagement. Its assistance has already caused the production of the Benchbook for Trial Court Judges, including CD-ROM and web-based versions. The PAGF's continuing support will make possible the strengthening of the capacity of PHILJA to train Judges in the other judicial regions on the use of the Benchbook. This will be complemented by an enhancement of the Court's ability to maintain the website of the Benchbook.

Canada has likewise exhibited admirable support for judicial reform. Early this year, Canadian Ambassador Robert Collette, through the Department of Foreign Affairs and International Trade (DFAIT), donated 16 units of computers to PHILJA. These computers will assist the hands-on computer training programs of the Academy.

CIDA has likewise intimated that it is considering a grant to support the judicial reform program. A scoping mission is being conducted by the Policy Training and Technical Assistance Facility toward this end.

There are also ongoing discussions with the Association of Universities and Colleges in Canada (AUCC) and the University of

Saskatchewan for possible cooperation in the areas of mediation, family courts, and judicial education.

USAID is also providing additional assistance for activities on commercial law/insolvency, in coordination with the ADB and the World Bank.

THE NEXT 100 YEARS

What lies beyond today? I see the Court continuing to do what it has been doing, only with more dedication and focus. The APJR will provide the direction for efforts to realize the goals of the *Davide Watch*. The APJR is not merely a document for the benefit of the government's economic development agencies, the donors, and interested stakeholders. It is a source of inspiration for us in the Judiciary because we all participated in its production. The beauty of it is that once the projects identified in the APJR start rolling, they will receive the full support and cooperation of all those involved. At the same time, because it is a plan, the APJR will serve as a map for all future actions while evolving in order to efficiently address changes both predicted and unforeseen. Duplication of activities will be avoided and each project can be executed and precisely monitored within the larger framework of judicial reform.

Above all, with the implementation of reforms, the Judiciary will be sending a clear and strong message to the people, that is, that justice works in the court as well as beyond the court. This would, of course, entail continuing our relentless quest of ridding our ranks of scalawags and incompetents, while rewarding those who perform efficient and honest work. It will be a Judiciary with a human face, not distant from the people, but cognizant of their longing for justice. This Judiciary will have all the tools necessary to realize this objective.

The task may seem overwhelming, but find comfort in the thought that our triumph in this regard would be the triumph of justice and of peace. Verily, there can be no peace without justice.

Let me emphasize that the Supreme Court Centennial theme is *Katarungan at Bayan Magpakailanman*. Justice and Nation Forevermore. The Supreme Court's commitment to justice has been firm through the years. It promises to be the people's bulwark of justice for the years to come. The present Supreme Court – your Supreme Court – is leaving nothing to chance, and is performing everything necessary to fulfill this pledge. With God's unfailing help and the firm guiding hand and the constancy of the Holy Spirit's gift of wisdom, knowledge and understanding, we in the Court will neither weaken nor fail in the quest and pursuit of this pledge.

FAMILY COURTS AND SIGNIFICANT JURISPRUDENCE IN FAMILY LAW

*By Rubén F. Balane**

UNDERPINNINGS AND BASES

The most basic source from which the family derives its recognition and protection is of course the Constitution. Article XV of the 1987 Constitution, entitled "The Family" contains the following sections:

> SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.
>
> SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.
>
> SECTION 3. The State shall defend:
>
> (1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;
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> (2) The right of children to assistance, including proper care and nutrition, and special

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protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;

(3) The right of the family to a family living wage and income; and

(4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

The Constitutional provisions, however, nowhere define the family as a concept nor do they tell us who are included within the family unit.

The Family Code (**EO 209**) contains more detailed provisions on the family. In Article 149, it paraphrases and, to some extent, expands the Constitutional declaration and enumerates the persons considered members of the family and therefore mutually bound by family relations. Article 149 states:

ART. 149. The family, being the foundation of the nation, is a basic social institution which public policy cherishes and protects. Consequently, family relations are governed by law and no custom, practice or agreement destructive of the family shall be recognized or given effect.

And Article 150 provides:

> ART. 150. Family relations include those:
>
> (1) Between husband and wife;
> (2) Between parents and children;
> (3) Among other ascendants and descendants; and
> (4) Among brothers and sisters, whether of the full or half-blood.

The Family Courts:

The State policy on family courts is contained in Section 2 of R.A. 8369:

> SEC. 2. **State and National Policies** – The State shall protect the rights and promote the welfare of children in keeping with the mandate of the Constitution and the precepts of the United Nations Convention of the Rights of the Child. The State shall provide a system of adjudication for youthful offenders which takes into account their peculiar circumstances.
>
> The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. The courts shall preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy.

Section 5 of the law defines the jurisdiction of the family courts. Relevant to our topic are the following paragraphs of the provision:

SEC. 5 **Jurisdiction of Family Courts** – The Family Courts shall have exclusive original jurisdiction to hear and decide the following cases:

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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) Petitions for support and/or acknowledgment;

f) Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "Family Code of the Philippines";

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 President Decree No. 603, Executive

> Order No. 56, (Series of 1986), and other related laws;
>
> h) Petitions for the constitution of the family home;
>
> xxx xxx xxx

Arts. 15 (CC) & 26, 2 (FC)

Status of Foreign Divorces

We do not have a divorce law. Our courts cannot therefore grant a divorce. And since our law provides (Art. 15, Civil Code) that Filipino citizens are governed, with respect to their status and capacity, by Philippine law wherever they are, a foreign divorce obtained by or against them is, as a rule, not recognized by Philippine law. The case of *Tenchavez v. Escaño,*[1] penned by the revered J.B.L. Reyes, lays down the rule.

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>
> The Civil Code of the Philippines, now in force, does not admit absolute divorce, *quo advinculo matrimonii;* and in fact does not even use that term, to further emphasize its restrictive policy on the matter, in contrast to the preceding legislation that admitted absolute divorce on grounds of adultery of the wife or concubinage of the husband (Act. 2710). Instead of divorce, the present Civil Code only provides for *legal separation* (Title IV, Book I,

1 15 SCRA 355 (1965).

> Arts. 97 to 108), and, even in that case, it expressly prescribes that "the marriage bonds shall not be severed" (Art. 106, sub par. 1).
>
> For the Philippine courts to recognize and give recognition or effect to a foreign decree of absolute divorce between Filipino citizens would be a patent violation of the declared public policy of the state, specially in view of the third paragraph of Article 17 of the Civil Code that prescribes the following:
>
> "Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, policy and good customs, shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country."
>
> Even more, the grant of effectivity in this jurisdiction to such foreign divorce decrees would, in effect, give rise to an irritating and scandalous discrimination in favor of wealthy citizens, to the detriment of those members of our polity whose means do not permit them to sojourn abroad and obtain absolute divorces outside the Philippines.
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That is still the **general** rule at present, because the Family Code does not authorize divorces either. There has, however, been some mitigation of the consequences of this rule. In at least

two cases,[2] where one of the spouses was a foreigner, the foreign partner was not allowed to claim any rights as spouse, either in the sharing of the profits of the Filipino spouse's business or in being an heir of the Filipino partner. In *Llorente v. CA,*[3] the spouses were married in 1937, when both of them were Filipino citizens. In 1943, the husband was naturalized as a US citizen and in 1951 he obtained a California divorce. In 1958, he remarried in the Philippines; his second wife was, like his first, a Filipina. He died in 1985. His first wife then went to court, claiming rights to the conjugal estate and to the husband's estate as his legal wife. The Supreme Court, through Mr. Justice Pardo, held that the divorce obtained by the husband from his first wife was valid and is recognized in this jurisdiction (citing *Pilapil v. Ibay-Somera [174 SCRA 653] [1989]*, where the Court held that a divorce obtained by a foreigner against his Filipino spouse in his own country [Germany] is recognized in the Philippines as far as the foreigner is concerned).[4] However, it stopped short of determining the issues of the successional claims of the first wife, her claimed share in the conjugal estate, the status of the children by the second marriage and the intrinsic validity of the husband's will, leaving the determination of these matters to the court of origin, to which the Supreme Court remanded the case.

One important innovation introduced by the Family Code is Article 26, par. 2, a belated addition incorporated by Malacañang after the draft had been submitted to it by the Code Committee:

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2 *Van Dorn v. Romillo,* 139 SCRA 139 (1985), and *Quita v. CA,* 300 SCRA 406 (1998).

3 G.R. 124371, 23 November 2000.

4 The statement of the Court is ambiguous: "We hold that the divorce obtained by Lorenzo H. Llorente from his first wife Paula was valid and recognized in this jurisdiction as a matter of comity." Did that mean "valid as to the foreigner spouse," as was held in Pilapil? Or was the divorce valid as to both spouses? If so, that would give Article 26, par. 2 retroactive application.

> Art. 26. xxx xxx xxx
>
> Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law (as amended by Sec. 1, Exec. Order No. 227, dated 17 July, 1987).

The requisites of this provision are four:

1) a marriage between a Filipino and a foreigner;
2) a valid foreign divorce decree;
3) the decree is obtained at the instance of the foreign spouse;
4) the foreign spouse acquires capacity to remarry by virtue of the divorce decree.

Obviously, this new provision is aimed at extricating the Filipino spouse from an absurd situation in which he or she is married to someone who is not married to him or her. This provision in effect introduces divorce in the Philippines, or at least extends some degree of recognition to foreign divorces, albeit in very exceptional circumstances.

Alas, the article may have raised more problems than it solves. Some questions can be raised about the operation of this provision. First, is there any need for a court proceeding in Philippine courts to declare the Filipino spouse qualified to remarry? Second, does the benefit of this provision apply in cases where the foreigner spouse who obtained the divorce was originally a Filipino citizen?

As to the first question, there is no explicit provision in the Family Code. This is explained by the fact that Article 26, par. 2 was, as already pointed out, a last-minute addition. There is good argument to support the view that a court proceeding, even if only a summary one, is required, because the policy of the Family Code is not to leave the determination of the issue of capacity to remarry in the hands of the parties themselves. This is seen in the requirement of a court decree in case of void previous marriages and of a remarriage in case of absence of one of the spouses amounting to presumptive death *(Articles 40 & 41, Family Code).*

As to the second, we have at present no Supreme Court ruling, but may be helped by an Opinion of the Department of Justice dated 23 September 1993 that the benefit of Article 26, par. 2 applies to such cases.

Other questions may be raised.

1. Should the Filipino spouse not remarry,

    a) what is his/her status in relation to his/her foreign consort?
    b) can he/she claim any share of property or income acquired by the foreign consort?
    c) does he/she have a right to demand support from the foreign consort?
    d) and what is the status of any children they may have after the divorce decree?

2. And what of the possibility of giving retroactive effect to this provision – will the rule of Art. 26, par. 2 apply to foreign divorces obtained before the effectivity date of the Family Code? (Art. 256).

ART. 36

Article 36 of the Family Code introduces psychological incapacity as an impediment to a valid marriage. As we all know, this ground of nullity is derived from Canon law and is found in Can. 1095 of the Code of Canon Law of 1983.

Time constraints will not allow a more detailed discussion of this interesting ground. Allow me to invite to your attention the leading decisions on psychological incapacity: *Santos v. CA*[5] holds that psychological incapacity should refer to no less than a mental, not physical, incapacity that causes a party to be truly incognitive of the basic marital covenants as expressed in Article 68 (of the Family Code). Psychological incapacity, according to **Santos**, must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. *Republic v. CA and Molina*[6] is important for the guidelines it lays down for the interpretation and application of Article 36:

> 1. The burden of proof is on the plaintiff. Doubts should be resolved in favor of validity;
>
> 2. The root cause of the psychological incapacity must be:
>
> a) medically or clinically identified (*i.e.* it must be psychological, not physical, although the manifestations may be physical);
>
> b) alleged in the complaint;

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5 240 SCRA 20 (1995).

6 268 SCRA 198 (1997).

c) sufficiently proven by experts (*i.e.* qualified psychiatrists or clinical psychologists);

d) clearly explained in the decision.

3. The incapacity must be proven to be existing at the time of the celebration of the marriage, although its manifestation need not be perceivable at such time.

4. The incapacity must be shown to be medically or clinically permanent or incurable. Incurability may be absolute or relative only to the other spouse.

The incapacity must be relevant to the assumption of the marriage obligations.

5. Such illness must be grave enough to bring about the disability of the party to assume the essential marital obligations.

6. The essential marital obligations are those embraced by Arts. 68-71 and Arts. 220, 221, and 225 of the Family Code.

The non-performed obligation must be stated in the petition, proven by evidence, and included in the text of the decision.

7. Interpretations given by Catholic matrimonial courts (National Appellate Matrimonial Tribunal), while not controlling or decisive, should be given great respect by our courts.

Ideally, what is decreed canonically void should also be declared civilly void.

8. The trial court must order the prosecuting attorney or fiscal **and** the Solicitor General to appear as counsel for the State. No decision should be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating the reasons for his agreement or opposition. The Solicitor General, along with the prosecuting attorney, shall submit to the court such certification within fifteen (15) days from the date the case is deemed submitted for resolution.

Chi Ming Tsoi v. CA (266 SCRA 324 [1997]) observes, albeit in an **obiter**, that a petition under Article 36 may be filed even by the incapacitated party.

Hernandez v. CA (320 SCRA 76) [1999] should give us an idea of how strictly the Supreme Court interprets Article 36:

xxx xxx xxx

> In the instant case, other than her self-serving declarations, petitioner failed to establish the fact that at the time they were married, private respondent was suffering from a psychological defect which in fact deprived him of the ability to assume the essential duties of marriage and its concomitant responsibilities. As the Court of Appeals pointed out, no evidence was presented to show that private respondent was not cognizant of the basic marital obligations. It was not sufficiently proved that private respondent was really incapable of fulfilling his duties due to some incapacity of a psychological nature, and not merely physical.

> Petitioner says that at the outset of their marriage, private respondent showed lack of drive to work for his family. Private respondent's parents and petitioner supported him through college. After his schooling, although he eventually found a job, he availed himself of the early retirement plan offered by his employer and spent the entire amount he received on himself. For a greater part of their marital life, private respondent was out of job and did not have the initiative to look for another. He indulged in vices and engaged in philandering, and later abandoned his family. Petitioner concludes that private respondent's condition is incurable, causing the disintegration of their union and defeating the very objectives of marriage.
>
> However, private respondent's alleged habitual alcoholism, sexual infidelity or perversion, and abandonment do not by themselves constitute grounds for finding that he is suffering from a psychological incapacity within the contemplation of the Family Code. It must be shown that these acts are manifestations of a disordered personality which make private respondent completely unable to discharge the essential obligations of the marital state, and not merely due to private respondent's youth and self-conscious feeling of being handsome.
> x x x x

xxx xxx xxx

> x x x The burden of proof to show the nullity of the marriage rests upon petitioner. The Court is mindful of the policy of the 1987 Constitution to protect and strengthen the family as the basic autonomous social institution and marriage as the foundation of the family. Thus, any doubt should be resolved in favor of the validity of the marriage. x x x

Marcos v. Marcos[7] reiterates the guidelines laid down in **Molina** and explains the reason why the guidelines are as strict as they are: the tendency to use or more precisely, **abuse** Article 36 as "a convenient divorce law."

Marcos, however, somewhat liberally construing the requirement of psychiatric or psychological examination in **Molina**, holds that the personal medical or psychological examination of the respondent (*i.e.* the spouse alleged to be psychologically incapacitated) is not a requirement, the psychologist's examination of the petitioner being held to be sufficient in this case.

Marcos emphasizes that the evidence presented must adequately establish psychological incapacity as having been present at the time the marriage was contracted and as being incurable.

Pesca v. Pesca[8] ruled that the explanation and interpretation of the term "psychological incapacity" in the **Santos** and **Molina** cases establish the contemporaneous legislative intent (citing Art. 8 of the Civil Code) and constitute a part of the law **as of the date the statute was enacted**. Further, **Pesca** held that the evidence

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7 G.R. 136490, 19 October 2000.

8 G.R. 136921, 17 April 2001.

adduced by the complaining wife (of her husband's violent acts and outbursts (which started about 13 years after the marriage) did not make out a case of psychological incapacity, let alone one existing at the time of the solemnization of the marriage. Thus, we see in **Pesca** a continuing court philosophy of strict interpretation of Article 36.

Requisites of Marriage:

In a nutshell the requisites for a valid marriage are six:

1. difference in sex
2. some form of ceremony
3. legal capacity
4. consent
5. authority of solemnizing officer
6. marriage license

Legal capacity is affected by such impediments as:

1. age, or more precisely, under-age
2. relationship
3. prior marriage
4. crime
5. physical incapacity
6. psychological incapacity
7. disease (meaning serious incurable sexually-transmitted disease)

Consent is vitiated by:

1. insanity
2. fraud
3. duress

There are three essential (#'s 1, 3 and 4) and three formal (#s 2, 5 and 6) requisites.

The absence of any of the six requisites above discussed results in a void marriage *(Art. 3, Family Code).* With respect, however, to the third and the fourth requisites (legal capacity and consent), it is possible to have an irregularity falling short of absence, but constituting what the Family Code terms a **defect** *(Art. 4, par. 2).* Such irregularities are:

1. with respect to legal capacity –

    a) where at least one of the parties is between 18 and 21 and no parental consent is obtained (Art. 45 [1]);

    b) physical incapacity (impotence) (Art. 45 [5]);

    c) disease (Art. 45 [6]).

2. with respect to consent –

    a) insanity (Art. 45 [2]);

    b) fraud (Art. 45 [3]);

    c) duress (Art. 45 [4]).

These irregular marriages are merely voidable and can be annulled only within specific but varying prescriptive periods, depending on the cause. In addition, in at least four of them (*i.e.* in cases of under-age, insanity, fraud and duress), the irregularity can be cured by ratification, which consists in voluntary cohabitation after knowledge or cessation of the cause of the irregularity.

ART. 39

Ninal v. Badayog[9] [Mme. Justice Ynares-Santiago] outlines the distinctions between void and voidable marriages.

1. **As to nature** - A marriage that is annulable is valid until otherwise declared by the court; whereas a marriage that is void *ab initio* is considered as having never to have taken place and cannot be the source of rights.

2. **As to ratification** - The first can be generally ratified or confirmed by free cohabitation or prescription while the other can never be ratified.

3. **As to manner of challenge or attack and prescriptibility** - A voidable marriage cannot be assailed collaterally but only in a direct proceeding while a void marriage can be attacked collaterally. Consequently, void marriages can be questioned even after the death of either party but voidable marriages can be assailed only during the lifetime of the parties and not after the death of either, in which case the parties and their offspring will be left as if the marriage had been perfectly valid. That is why the action or defense for nullity is imprescriptible, unlike voidable marriages where the action prescribes.

4. **As to parties who can assail the marriage** - Only the parties to a voidable marriage can assail it but any proper interested party may attack a void marriage.

5. **As to effects** - Void marriages have no legal effect except those declared by law concerning the properties of the alleged spouses, regarding co-ownership or ownership through actual joint

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9 G.R. 133778, 14 March 2000.

contribution, and its effect on the children born to such void marriages as provided in Article 50 in relation to Articles 43 and 44 as well as Articles 51, 53 and 54 of the Family Code. On the contrary, the property regime governing voidable marriages is generally conjugal partnership *(Note: Under the Family Code, absolute community)* and the children conceived before its annulment are legitimate.

It may be pointed out that children conceived and born of a voidable marriage before the final judgment of annulment are legitimate (Art. 54), while those conceived and born of a void marriage are illegitimate, except where the marriage is void under Art. 36 or 53 (those marriages void for having been contracted without or before the recording of the judgment of annulment or nullity, of the partition and distribution of property, and of the delivery of the children's presumptive legitimes), in which cases the children are legitimate.

ART. 40

In *Domingo v. CA,*[10] the issue was: may an action for declaration of nullity of a marriage be filed for purposes other than contracting a subsequent marriage? In this case, the wife had discovered that her husband had contracted a prior marriage which was still valid and subsisting. She filed a petition for declaration of nullity for the purpose of separation and distribution of properties acquired during their supposed marriage. The Supreme Court, through Mme. Justice Romero, ruled that such a petition is proper even if it is filed for purposes other than remarriage:

> Crucial to the proper interpretation of Article 40 is the position in the provision of the word "solely." As it is placed, the same shows that it is meant to

10 226 SCRA 572 (1993).

> qualify "final judgment declaring such previous marriage void." Realizing the need for careful craftsmanship in conveying the precise intent of the Committee members, the provision in question, as it finally emerged, did not state "The absolute nullity of a previous marriage may be invoked *solely* for purposes of remarriage . . .," in which case "solely" would clearly qualify the phrase "for purposes of remarriage." Had the phraseology been such, the interpretation of petitioner would have been correct and, that is, that the absolute nullity of a previous marriage may be invoked *solely* for purposes of remarriage, thus rendering irrelevant the clause "on the basis solely of a final judgment declaring such previous marriage void."
>
> That Article 40 as finally formulated included the significant clause denotes that such final judgment declaring the previous marriage void need not be obtained only for purposes of remarriage. Undoubtedly, one can conceive of other instances where a party might well invoke the absolute nullity of a previous marriage for purposes other than remarriage, such as in case of an action for liquidation, partition, distribution and separation of property between the erstwhile spouses, as well as an action for the custody and support of their common children and the delivery of the latters' presumptive legitimes.

The impact of Art. 40 is seen in the case of *Mercado v. Tan,*[11] where a man contracted two marriages, the second during the first wife's lifetime. After a complaint for bigamy was filed by the second wife with the Prosecutor, the husband instituted a Petition

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11 G.R. 137110, 1 August 2000.

for Declaration of Nullity of the first marriage based on Art. 36, as a consequence of which the first marriage was declared void. The husband nonetheless was convicted for bigamy by the lower court. Affirming the conviction, the Supreme Court, through Mr. Justice Panganiban, noted the conflicting jurisprudence on the matter but observed that Art. 40 of the Family Code is now the applicable provision:

> x x x Article 40 of the Family Code, a new provision, expressly requires a judicial declaration of nullity of the previous marriage, as follows:
>
> "Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such marriage void."
>
> In view of this provision, **Domingo** stressed that a final judgment declaring such marriage void was necessary. Verily, the Family Code and **Domingo** affirm the earlier ruling in *Wiegel*. Thus, a Civil Law authority and member of the Civil Code Revision Committee has observed:
>
> "[ARTICLE 40] is also in line with the recent decisions of the Supreme court that the marriage of a person may be null and void but there is need of a judicial declaration of such fact before that person can marry again; otherwise, the second marriage will also be void *(Wiegel v. Sempio-Diy, Aug. 19/86, 143 SCRA 499, Vda. De Consuegra v. GSIS, 37 SCRA 315)*. This provision changes the old rule that where a marriage is illegal and void from its performance, no judicial decree is necessary to estab-

lish its validity *(People v. Mendoza, 95 Phil. 843; People v. Aragon, 100 Phil. 1033).*"

In this light, the statutory mooring of the ruling in **Mendoza** and **Aragon** – that there is no need for a judicial declaration of nullity of a void marriage – has been cast aside by Article 40 of the Family Code. Such declaration is now necessary before one can contract a second marriage. Absent that declaration, we hold that one may be charged with and convicted of bigamy.

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In the instant case, petitioner contracted a second marriage although there was yet no judicial declaration of nullity of his first marriage. In fact, he instituted the Petition to have the first marriage declared void only after complainant had filed a letter-complaint charging him with bigamy. By contracting a second marriage while the first was still subsisting, he committed the acts punishable under Article 349 of the Revised Penal Code.

That he subsequently obtained a judicial declaration of the nullity of the first marriage was immaterial. To repeat, the crime had already been consummated by then. Moreover, his view effectively encourages delay in the prosecution of bigamy cases; an accused could simply file a petition to declare his previous marriage void and invoke the pendency of that action as a prejudicial question in the criminal case. We cannot allow that.

Te v. CA[12] [Mr. Justice Kapunan] is a reiteration of the **Mercado** ruling.

ART. 94

Article 94 enumerates the obligations for which the community property is liable. The common element or basis of the enumerated obligations is benefit to the family (either presumed or established). The only exception to this seems to be paragraph 9 –

> (9) Antenuptial debts of either spouse other than those falling under paragraph (7) of this Article, the support of illegitimate children of either spouse, and liabilities incurred by either spouse by reason of a crime or a quasi-delict, in case of absence or insufficiency of the exclusive property of the debtor-spouse, the payment of which shall be considered as advances to be deducted from the share of the debtor-spouse upon liquidation of the community. *(Art. 94, Family Code)*

but then these obligations are not ultimately community liabilities, rather they are debts, personal to either spouse, the payment of which the community advances but with right of reimbursement at liquidation time.

Paragraph 3 of the article, referring to "debts and obligations contracted by either spouse without the consent of the other to the extent that the family may have been benefited," can present difficult problems. As we all know, the dominant property regime under the Civil Code of 1950 was the conjugal partnership of gains, in which regime the husband was the administrator. Conse-

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12 G.R. 126746, 29 November 2000.

quently, the husband alone, without the wife's intervention, was empowered to contract obligations binding on the conjugal partnership and chargeable against partnership assets, provided (and this was the only requirement) that it was **for the benefit of the partnership.** Note that actual benefit was not required, but only a purpose or intention to benefit. Now, under the dominant regime of absolute community (as also in the present conjugal partnership regime), administration is vested jointly in the spouses *(Art. 96, Family Code)*. An obligation contracted by the husband (or the wife) alone, without the participation of the other, cannot *ipso facto* be imputed to the community, even if there was an intention to benefit the community. **Actual** benefit now seems to be required and the liability of the community is only up the extent of the benefit.

The recent case of *Ayala Investment & Development Corp. v. CA*[13] [Mr. Justice Martinez], attempting to correlate and summarize past rulings of the Supreme Court on the matter, laid down the following guidelines:

> (A) If the husband himself is the principal obligor in the contract, *i.e.*, he directly received the money and services to be used in or for his own business or his own profession, that contract falls within the term "xxx obligations for the benefit of the conjugal partnership." Here, no actual benefit may be proved. It is enough that the benefit to the family is apparent at the time of the signing of the contract. From the very nature of the contract of loan or services, the family stands to benefit from the loan facility or services to be rendered to the business or profession of the husband. It is immaterial, if in the end, his business or profession fails or does not succeed. Simply stated,

13 286 SCRA 273 (1998).

> where the husband contracts obligations on behalf of the family business, the law presumes, and rightly so, that such obligation will redound to the benefit of the conjugal partnership.
>
> (B) On the other hand, if the money or services are given to another person or entity, and the husband acted only as a surety or guarantor, that contract cannot, by itself alone be categorized as falling within the context of "obligations for the benefit of the conjugal partnership." The contract of loan or services is clearly for the benefit of the principal debtor and not for the surety or his family. No presumption can be inferred that, when a husband enters into a contract of surety or accommodation agreement, it is "for the benefit of the conjugal partnership." Proof must be presented to establish benefit redounding to the conjugal partnership." (pp. 281-282)

However, the applicability of these guidelines to the present absolute community and conjugal partnership regimes is questionable. The facts which gave rise to the suit in **Ayala** occurred before the effectivity of the Family Code, and therefore the backdrop of the guidelines is the husband as administrator of the partnership. But Justice Vitug, in a recent lecture, expresses an interesting opinion that under the Family Code, "an obligation contracted by a spouse in the course of business or profession may be deemed to be, implicitly, with the consent of the other" (***Justice Jose C. Vitug, Developments in Civil Law, 14 October 1999***). This opinion seems to me consistent with Article 73.

ARTS. 147-148

NON-MARITAL UNIONS

The increasing frequency of live-in arrangements underscores the importance of the rules on non-marital unions (sometimes inaccurately called common-law marriages). These rules are found in Articles 147 and 148.

1. The requisites for the application of Art. 147 are:
   1) – the man and the woman have capacity to marry each other;
   2) – they cohabit;
   3) – their cohabitation is exclusive;
   4) – there is no marriage or the marriage is void.

The partners are under a property relationship of co-ownership, covering:

1) – their wages and salaries;
2) – property acquired through the work or industry of both or either (if in the latter case the other shared in family care/maintenance)

On the other hand, there may be cases of cohabitation not covered by Article 147, either because the couple have no capacity to marry each other or cohabitation is not exclusive.[14]

In such cases, Article 148 establishes a co-ownership but a more limited one, covering only:

a) actual joint contributions of money, or
b) actual joint contributions of property, or
c) actual joint contributions of industry.

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14 *Valdes v. RTC*, 260 SCRA 221 (1996).

Excluded are wages/salaries, and also acquisitions where one of the parties only participated in care and maintenance.

Some recent rulings on these articles deserve mention.

In *Valdes v. RTC,*[15] the Court, through Mr. Justice Vitug, laid down the following rulings:

1. In a void marriage, regardless of the cause thereof [The marriage in **Valdes** had been declared void under Art. 36], the property relations of the parties during the period of cohabitation are governed by Arts. 147 or 148, as the case may be.

2. The liquidation and partition of the property owned in common by the partners are governed by the rules on co-ownership and thus the rules set up to govern the liquidation of property regimes recognized for valid or voidable marriages (Arts. 50, 51, and 52 in relation to Arts. 102 and 129) are irrelevant to the liquidation of the co-ownership between live-in partners.

In *Agapay v. Palang,*[16] the Supreme Court, through Mme. Justice Romero, stressed that " . . . actual contribution is required by this provision (*i.e.* Art. 148), in contrast to Article 147 which states that efforts in the care and maintenance of the family and household, are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. If the actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares." In that case, the Court found it improbable that the acquisition of the property was through joint contributions of money, consider-

15 260 SCRA 221 (1996).

16 276 SCRA 340 (1997).

ing that the man was a 64-year-old *pensionado* while the woman was a girl of 20.

ART. 150

Article 150 of the Family Code defines the scope and coverage of family relations. This enumeration, which is exclusive and is reiterated in Article 195, marks out the defining limits of support. Also, it defines the operation of Article 151, which provides:

> Art. 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.
>
> This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

A suit, then, between family members will not prosper unless the following requisites are present:

1) earnest efforts towards a compromise have been first exerted;

2) the efforts have failed;

3) the verified complaint must allege the exertion and failure of the efforts.

The recent case of *Hontiveros v. RTC,*[17] reiterating previous cases, held that this requirement in Art. 151 applies only if the suit is **exclusively** between or among family members. The presence

17 309 SCRA 340 (1999).

of a non-family member as a party litigant removes the case from the article's coverage. The reason for this, as explained in *Magbaleta v. Gonong*[18] is to prevent collusion or compromise among family members to the prejudice of the third person.

ART. 176

Article. 176 provides:

> Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child (287a)

Mossesgeld v. CA [19] was a suit filed by the father of an illegitimate child to compel the civil registrar to have the child registered with his surname. Accompanying the petition was an affidavit of recognition. Affirming the refusal of the civil registrar to effect the registration sought by the father, the Supreme Court, through Mr. Justice Pardo, cited Art. 176 and held that this article applies even if the father admits paternity.

> " xxx xxx xxx
>
> The Family Code has effectively repealed the provisions of Article 366 of the Civil Code of the Philippines giving a natural child acknowledged by both parents the right to use the surname of the father. The Family Code has limited the classification of children to legitimate and illegitimate, thereby eliminat-

18 76 SCRA 511 (1977).

19 300 SCRA 464 (1998).

> ing the category of acknowledged natural children and natural children by legal fiction."

Republic v. Abadilla[20] was a reiteration of this rule.

Establishment of Status of Illegitimate Children – The Family Code introduced an important change favorable to the illegitimate child: the liberalization of the rule regarding the establishment of their status. The pivotal provision is Article 175:

> Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.
>
> The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

Thus, as far as asserting their status is concerned, illegitimate children are placed on the same footing as legitimate children.

It will be remembered that, under the Civil Code of 1950, for one to have the status and rights of illegitimate filiation, recognition was required as the constitutive act conferring that status. Recognition was either voluntary (under Article 278, either by means of a record of birth, a will, a statement in a court of record, or an authentic writing) or compulsory [or judicial] (under Articles 283 and 284, consisting of a court judgment based on certain enumerated grounds). An illegitimate child who was not recognized

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20 302 SCRA 358 (1999).

in either manner did not have the status of illegitimate filiation and could claim no rights as such *(Art. 282, Civil Code).*

The sole difference now between the manner of establishing illegitimate and legitimate filiation is the prescriptive period should an action be brought to confirm the status of illegitimate filiation based on open and continuous possession of such status or on any other means allowed by the Rules of Court. The prescriptive period for an illegitimate child is the lifetime of the alleged parent, whereas for a legitimate child the corresponding prescriptive period is the child's lifetime. The reason for the difference, as reflected in the Minutes of the Family Code Committee's meetings, is explained by my distinguished colleague on the Committee, Justice Alicia Sempio-Diy; in words which are quoted in *Uyguangco v. CA*[21] (Mr. Justice Cruz):

> Why must the action be brought during the lifetime of the putative parent in the last two cases mentioned above? Since in these cases, there might still be a question as to whether the child is really the illegitimate child of the alleged parent or not, the latter must be given an opportunity to contest the action, and this he or she can do only if the action is filed during his or her lifetime. It is a truism that unlike legitimate children who are publicly recognized, illegitimate children are usually begotten and raised in secrecy and without the legitimate family being aware of their existence. Who, then, can be sure of their filiation but the parents themselves? But suppose the child claiming to be the illegitimate child of a certain person is not really the child of the latter? The putative parent should thus be given the opportunity to affirm or deny the child's filiation, and this,

21 178 SCRA 684 (1989)

> he or she cannot do if he or she is already dead *(citing Sempio-Diy, Handbook on the Family Code of the Philippines, p. 246).*

Because of this difference in the prescriptive period, it may be prudent for the illegitimate child, if the only proof of illegitimate filiation available is open and continuous possession of that status or other means than a birth record, final judgment, or written acknowledgment, to file an action to establish his filiation during the putative parent's lifetime. Else, he may find himself deprived of that status, should his progenitor's family deny his filiation. Some enlightenment in this area may be provided by **Uyguangco**, where the Supreme Court (though I think it mistakenly applied the Family Code since the putative father died in 1975, and therefore successional rights vested long before the Family Code took effect in 1988) ruled the illegitimate child's claim to a share in the decedent's estate to have been barred. After the illegitimate child's father died in 1975, the legitimate family divided the estate among themselves and the excluded illegitimate child brought an action for partition, claiming his share as his father's heir. Having no evidence of his filiation but continuous possession of that status, the Supreme Court upheld the legitimate family's contention that the complaint for partition was actually an action for recognition and was thus barred since the action could be brought only during the alleged parent's lifetime.

ARTS. 210/211/212/214

The case of *Santos v. CA*[22] presents an interesting situation involving custody. The child's parents (the husband was an army officer and the wife, a nurse) entrusted the infant to the custody of the wife's parents as soon as it was released from the hospital.

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22 242 SCRA 407 (1995).

The boy remained in the maternal grandparents' custody, who also took care of its support. A few months after the child's birth, the mother left for the United States. The father apparently was on assignment elsewhere. When the boy was three, the father took the boy from the maternal grandparents who then filed a petition for custody of the boy.

The pertinent portions of the decision,[23] awarding custody to the father, should be quoted at length:

xxx xxx xxx

> The right of custody accorded to parents springs from the exercise of parental authority. Parental authority or *patria potestas* in Roman Law is the juridical institution whereby parents rightfully assume control and protection of their unemancipated children to the extent required by the latter's needs. It is a mass of rights and obligations which the law grants to parents for the purpose of the children's physical preservation and development, as well as the cultivation of their intellect and the education of their heart and senses. As regards parental authority, "there is no power, but a task; no complex of rights, but a sum of duties; no sovereignty but a sacred trust for the welfare of the minor."
>
> Parental authority and responsibility are inalienable and may not be transferred or renounced except in cases authorized by law. The right attached to parental authority, being purely personal, the law allows a waiver of parental authority only in cases of

23 (Mme. Justice Romero).

adoption, guardianship and surrender to a children's home or an orphan institution. When a parent entrusts the custody of a minor to another, such as a friend or godfather, even in a document, what is given is merely temporary custody and it does not constitute a renunciation of parental authority. Even if a definite renunciation is manifest, the law still disallows the same.

The father and mother, being the natural guardians of unemancipated children, are duty-bound and entitled to keep them in their custody and company. The child's welfare is always the paramount consideration in all questions concerning his care and custody.

The law vests on the father and mother joint parental authority over the persons of their common children. *In case of absence* or death *of either parent, the parent present shall continue exercising parental authority.* Only in case of the parents' death, absence or unsuitability may substitute parental authority be exercised by the surviving grandparent. The situation obtaining in the case at bench is one where the mother of the minor Santos, Jr., is working in the United States while the father, petitioner Santos, Sr., is present. Not only are they physically apart but are also emotionally separated. There has been no decree of legal separation and petitioner's attempt to obtain an annulment of the marriage on the ground of psychological incapacity of his wife has failed.

Petitioner assails the decisions of both the trial court and the appellate court to award custody of his minor son to his parents-in-law, the Bedia spouses,

> on the ground that under Art. 214 of the Family Code, substitute parental authority of the grandparents is proper only when both parents are dead, absent or unsuitable. Petitioner's unfitness, according to him, has not been successfully shown by private respondents.

The Supreme Court sustained the father's contention that there was no sufficient showing that he was unfit or unsuitable to have his son in his custody.

In a subsequent case[24] involving the conflicting claims of the mother and the paternal grandmother (the child was 6), the Supreme Court (Mr. Justice Torres) had occasion to reiterate the doctrines laid down in **Santos**, with the further observation that "[O]f considerable importance is the rule long accepted by the courts that 'the right of parents to the custody of their minor children is one of the natural rights incident to parenthood,' a right supported by law and sound public policy. The right is an inherent one, which is not created by the state or decisions of the courts, but derives from the nature of the parental relationship."

In *David v. CA,*[25] at issue was the custody of an illegitimate child. The Supreme Court, through Mr. Justice Mendoza, after ruling that a petition for *habeas corpus* was a proper remedy for the mother to regain custody of the child, held:

xxx xxx xxx

> In the case at bar, Christopher J. is an illegitimate child since at the time of his conception, his father, private respondent Ramon R. Villar, was married to

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24 *Eslao v. CA*, 266 SCRA 317 (1997).

25 250 SCRA 82 (1995).

> another woman other than the child's mother. As such, pursuant to Art. 176 of the Family Code, Christopher J. is under the parental authority of his mother, the herein petitioner, who, as a consequence of such authority, is entitled to have custody of him. xxx (The Court cited *Art. 220 of the Family Code.*)

In *Silva v. CA,*[26] the father of two illegitimate children had filed a petition for custodial rights over them but the RTC granted only visitorial rights on weekends. The father was happy enough with the decision, but the mother was not; she went on appeal to the Court of Appeals, which denied the father even visitorial rights. The Supreme Court, through Mr. Justice Vitug, reinstated the lower court's decision, explaining:

xxx xxx xxx

> The issue before us is not really a question of child custody; instead, the case merely concerns the visitation right of a parent over his children which the trial court has adjudged in favor of petitioner by holding that he shall have "visitorial rights to his children during Saturdays and/or Sundays, but in no case (could) he take out the children without the written consent of the mother x x x." The visitation right referred to is the right of access of a noncustodial parent to his or her child or children.
>
> There is, despite a dearth of *specific* legal provisions, enough recognition on the *inherent* and *natural right* of parents over their children. Article 150 of the Family Code expresses that "(f)amily relations include

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26 275 SCRA 604 (1997).

> those x x x (2) (b)etween parents and children; x x x." Article 209, in relation to Article 220, of the Code states that it is the *natural right and duty of parents* and those exercising parental authority to, among other things, keep children in their company and to give them love and affection, advice and counsel, companionship and understanding. The Constitution itself speaks in terms of the *"natural and primary rights"* of parents in the rearing of the youth. There is nothing conclusive to indicate that these provisions are meant to solely address themselves to legitimate relationships. Indeed, although in varying degrees, the laws on support and successional rights, by way of examples, clearly go beyond the legitimate members of the family and so explicitly encompass illegitimate relationships as well. Then, too, and most importantly, in the declaration of *nullity* of marriages, a situation that presupposes a *void* or *inexistent* marriage, Article 49 of the Family Code provides for appropriate visitation rights to parents who are not given custody of their children.
>
> There is no doubt that in all cases involving a child, his interest and welfare is always the paramount consideration. The Court shares the view of the Solicitor General, who has recommended due course to the petition, that a few hours spent by petitioner with the children, however, could not all be that detrimental to the children. xxx xxx xxx

The father's victory, however, may have been an empty one – while the seven-year controversy was going through the judicial mill, the mother, having married a Dutchman, had emigrated to the Netherlands, taking the children with her.

It is interesting that this decision quotes with approval the trial court's reference to the "deep sorrows of a father who is deprived of his children of tender age."

This balances the Code Commission's statement on the "deep sorrows of a mother who is deprived of her child of tender age" (Code Commission Report, p. 12). Or Mme. Justice Romero's eloquent observation in *Perez v. CA*:[27]

> x x x In prose and poetry, the depth of a mother's love has been immortalized times without number, finding, as it does, its justification, not in fantasy but in reality.

In custody cases, the courts are frequently called upon to decide which parent has the better right. The Family Code retains the rule that the mother is presumed to have the better right if the child is below seven (Art. 213). Some trends in recent decisions have shown a more flexible attitude in the matter of awarding custody. *Espiritu v. CA*[28] (Mr. Justice Melo) warns against an "automatic and blind" application of the provisions of custody found in Art. 363 of the Civil Code and Art. 213 of the Family Code. [The Court was referring to the mother's preferential right of custody over children below 7], and went on to state:

> x x x Whether a child is under or over seven years of age, the paramount criterion must always be the child's interests. Discretion is given to the court to decide who can best assure the welfare of the child, and award the custody on the basis of that consideration. In *Unson III v. Navarro (101 SCRA 183 [1980])*, we laid down the rule that "in all controversies re-

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27 255 SCRA 661 (1996).

28 242 SCRA 362 (1995).

> garding the custody of minors, the sole and foremost consideration is the physical, education, social and moral welfare of the child concerned, taking into account the respective resources and social and moral situations of the contending parents," x x x
>
> xxx xxx xxx
>
> x x x In its discretion, the court may find the chosen parent unfit and award custody to the other parent, or even to a third party as it deems fit under the circumstances.

Again in *Sombong v. CA,*[29] the Court, through Mr. Justice Hermosisima, approvingly quoted the Court of Appeals:

> As to the issue of the welfare of the child, petitioner-appellee's capability to give her child the basic needs and guidance in life appear (sic) to be bleak. Before the lower court petitioner-appellee filed a motion to litigate as pauper as she had no fixed income. She also admitted that she had no stable job, and she had been separated from a man previously married to another woman. She also confessed that she planned to go abroad and leave her other child Johannes to the care of the nuns. The child Arabella Sombong wherever she is certainly does not face a bright prospect with petitioner-appellee.

In *Perez v. CA,*[30] Mme. Justice Romero mentions some circumstances which may be considered ample justification to de-

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29 252 SCRA 663 (1996).

30 255 SCRA 661 (1996).

prive a mother of custody: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment, insanity, communicable disease. But always the child's welfare is the paramount consideration.

In conclusion, the grounds for loss of *patria potestas* are:

Loss of parental authority
Arts. 228-232 (FC)
Deprivation of parental authority:

I. Irreversible termination –
   1. death of parents (228[1]);
   2. death of child (228[2]);
   3. emancipation (228[3]);
   4. court order under 232.

II. Reversible termination –
   1. adoption (229 [1])
   2. appointment of a general guardian (229 [2])
   3. judicial declaration of abandonment (229 [3])
   4. final judgment divesting the party concerned of parental authority (229 [4]) in rel. to 231
   5. judicial declaration of absence or incapacity (229 [5])

III. Suspension –
   1. conviction of crime with accessory penalty of civil interdiction (230).
   2. court order under 231.

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QUESTIONING THE SECRETARY'S ORDER IN NATIONAL INTEREST DISPUTES: *IN MELIUS MUTARI?*

By Francis V. Sobreviñas[*]

The Labor Code confers on the Secretary of Labor and Employment the power to initiate a national interest case.[1] He has the discretion to determine whether or not a given labor dispute exists in an industry indispensable to the national interest and assume jurisdiction over the labor dispute involved and decide it or certify the same to the National Labor Relations Commission (NLRC) for compulsory arbitration. Labor disputes in industries indispensable to the national interest are classified as national interest disputes. In the United States, they are called emergency disputes.[2] Even if the facts of a national interest are present, the

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1 Article 263 (g) of the Labor Code Provides: "When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in any industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same. x x x The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at anytime and assuming jurisdiction over any such labor dispute in order to settle or terminate the same."

2 1 Martin, Philippine Labor and Social Legislation 250 (4th Edition).

Secretary may decide not to assume jurisdiction over the labor dispute in which case it will not reach the NLRC for compulsory arbitration. It is also quite possible for the Secretary to assume jurisdiction even if the facts of a national interest case are not present. The action of the Secretary sets in motion the mechanism of compulsory arbitration of national interest cases. What his action does is to categorize the labor dispute between labor and management as having created an emergency situation which might cause detriment to the national interest requiring prompt and swift governmental attention.[3]

Before the Labor Code, there was R.A. 875,[4] otherwise known as the Industrial Peace Act (IPA), Section 10 of which treats of labor disputes in industries indispensable to the national interest, to wit:

> When in the opinion of the President of the Philippines there exists a labor dispute in an industry indispensable to the national interest and when such labor dispute is certified by the President to the Court of Industrial Relations, said Court may cause to be issued a restraining order forbidding the employees to strike or the employer to lockout the employees, pending an investigation by the Court, and if no other solution to the dispute is found, the Court may issue an order fixing the terms and conditions of employment.

As early as 1957, in *Bisaya Land Transportation Co., Inc. v. Court of Industrial Relations*,[5] it was held that "where the President believes that public interest demands arbitration and conciliation,

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3 Pascual, Labor Relations Law 366-367 (5th Edition).

4 R.A. 875 took effect on June 17, 1953; it was further amended by R.A. 1941 (approved on June 22, 1957) and R.A. 3353 (approved on June 17, 1961).

5 102 Phil. 438, 442 (1957).

the President may certify the case for that purpose." Later on, the Supreme Court had occasion to rule on the application of Section 10 of the IPA in *Pampanga Sugar Development Co. v. Court of Industrial Relations*,[6] involving the sugar industry, "which is important to our national economy." In that case, the Court recognized that the IPA grants to the President a power the exercise of which is "a matter that only devolves upon him" and that "(t)he same is not the concern of the industrial court." According to the Tribunal:

> It thus appears that when in the opinion of the President a labor dispute exists in an industry indispensable to national interest and he certifies it to the Court of Industrial Relations the latter acquires jurisdiction to act thereon in the manner provided for by law. Thus the court may take either of the following courses: it may issue an order forbidding the employees to strike or the employer to lockout its employees, or, failing in this, it may issue an order fixing the terms and conditions of employment. It has no other alternative. It cannot throw the case out on the assumption that the certification was erroneous. x x x The fact, however, is that because of the strike declared by the members of the minority union which threatens a major industry the President deemed it wise to certify the controversy to the Court of Industrial Relations for adjudication. *This is a power that the law gives to the President the propriety of its exercise being a matter that only devolves upon him. The same is not the concern of the industrial court.* What matters is that by virtue of the certification made by the President the case was placed under the jurisdiction of said court.[7]

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6 1 SCRA 770 (1961).

7 *Ibid.*, at 773-774, emphasis supplied.

The certification of a labor dispute to the CIR is a prerogative given by law to the President and the Supreme Court will not interfere in, much less curtail, the exercise of such prerogative. Thus, in *Feati University v. Bautista*,[8] where the President took into consideration the fact that a private university "has some 18,000 students and employs approximately 500 faculty members" and that "the continued disruption in the operations of the university will necessarily prejudice the thousands of students" and that "the dispute affects the national interest" and certified the dispute to the CIR, it was confirmed that "it is not for the CIR nor this Court to pass upon the correctness of the reasons of the President in certifying the labor dispute to the CIR."

In one case,[9] the Court stated that Section 10 of the IPA granted the CIR "great breadth of discretion in its quest for a solution to a labor problem so certified" and that under said statutory provision, injunction may be issued as an aid to the disposal of a certified labor dispute in industries indispensable to the national interest. And in *Manila Cordage Co. v. Court of Industrial Relations*,[10] presidential intervention was permitted in an emergency causing harm or damage to the national interest. Thus said the Court:

> The purpose of a presidential certification is nothing more than to bring about soonest, thru arbitration by the industrial court, a fair and just solution of the differences between an employer and his workers regarding the terms and conditions of work in the industry concerned which in the opinion of the President involves the national interest, so that the damage such employer-worker dispute might cause upon the national interest may be minimized as much as

8 18 SCRA 1191, 1221 (1966).

9 *Bachrach Transportation Co. v. Rural Transit Shop Employees Association*, 20 SCRA 779, 784 (1967).

10 37 SCRA 288, 300 (1971).

> possible, if not totally averted by avoiding the stoppage of work as a result of a strike or lock out or any lagging of the activities of the industry or the possibility of these contingencies which might cause detriment to such national interest. This is the foundation of that court's jurisdiction in what may be termed as a certification case.

Once more, in *Philippine American Management Co. v. Philippine American Management Employees Association,*[11] the Court referred to the "broad powers" of the President under Section 10 of the IPA authorizing him to certify to the CIR labor disputes in industries indispensable to the national interest. Consequently, the CIR enjoyed a "wide sweep of discretion" that must not be "confined within narrow bounds" when discharging its functions as an arbitrator in a certified case.

Under the Labor Code, which took effect on November 1, 1974, the Supreme Court has decided a number of cases in which it justified assumption of jurisdiction in labor disputes affecting the national interest. In *Saulog Transit v. Lazaro,*[12] the Court upheld the right of the then Minister of Labor and Employment to assume jurisdiction over a dispute in the transportation industry even if no notice of strike or a formal complaint was filed. An actual strike effectively paralyzing a vital industry, the Court emphasized, called for the Minister's immediate action.

The Court upheld in *Sarmiento v. Tiuco*[13] the certification of a labor dispute to the NLRC "given the predictable prejudice the strike might cause not only to the parties but more especially to the national interest," it appearing that the employer exports 90

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11 49 SCRA 194 (1973).
12 128 SCRA 591, 598 (1984).
13 162 SCRA 676, 684 (1988).

percent of its sales and generates more than $12 million dollars per year. In that case, the Court stated that there is need "to prevent impairment of the national interest in case the operations of the Company are disrupted by a refusal of the strikers to return to work as directed." In the words of the Tribunal:

> There can be no question that the MOLE acted correctly in certifying the labor dispute to the NLRC, given the predictable prejudice the strike might cause not only to the parties but more especially to the national interest. Affirming this fact, we conclude that the return-to-work order was equally valid as a statutory part and parcel of the certification order issued by the MOLE on November 24, 1986. x x x The challenged order of the NLRC was actually only an implementation of [Article 263 (g)] of the Labor Code and a reiteration of the directive earlier issued by the MOLE in its own assumption order of September 9, 1986.
>
> It must be stressed that while one purpose of the return-to work order is to protect the workers who might otherwise be locked out by the employer for threatening or waging the strike, the more important reason is to prevent impairment of the national interest in case the operations of the company are disrupted by a refusal of the strikers to return to work as directed. In the instant case, stoppage of work in the firm will be hurtful not only to both the employer and the employees. More particularly, it is the national economy that will suffer because of the resultant reduction in our export earnings and our dollar reserves, not to mention possible cancellation of the contracts of the company with foreign importers. It was particularly for the purpose of avoiding such a

development that the labor dispute was certified to the NLRC, with the return-to-work order following as a matter of course under the law.

In *Philippine School of Business Administration v. Noriel*,[14] the Court agreed with the Secretary of Labor and Employment that the administration of a school with some 9,000 students affects the national interest because the school is "engaged in the promotion of the physical, intellectual and emotional well-being of the country's youth." In another case,[15] the operations of an airline company solely servicing domestic routes was deemed to be imbued with national interest. A manufacturer of drugs and pharmaceuticals was classified as an industry indispensable to the national interest in *International Pharmaceuticals, Inc. v. Secretary of Labor and Employment.*[16] Likewise, an establishment was considered indispensable to the national interest upon a showing that it was responsible for 22 percent of the tire production in the country, and work disruption would have not only aggravated the already worsening unemployment situation but also discouraged foreign and domestic entrepreneurs from further investing in the country.[17]

Thus did the Court declare:

> We do not agree with the petitioners that the respondent company is not indispensable to national interest considering that the tire industry has already been liberalized. Philtread supplies 22% of the tire products in the country. Moreover, it employs about

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14 164 SCRA 402, 407 (1988).

15 *Philippine Airlines v. Secretary of Labor and Employment*, 193 SCRA 223, 226 (1991).

16 205 SCRA 59, 62 (1992).

17 *Philtread Workers Union v. Confesor*, 269 SCRA 393 (1997).

700 people. As observed by the Secretary of Labor, viz.:

> "The Company is one of the tire manufacturers in the country employing more or less 700 workers. Any work disruption thereat, as a result of a labor dispute will certainly prejudice the employment and livelihood of its workers and their dependents. Furthermore, the labor dispute may lead to the possible closure of the Company and loss of employment to hundreds of its workers. This will definitely aggravate the already worsening unemployment situation in the country and discourage foreign and domestic investors from further investing in the country. There is no doubt, therefore, that the labor dispute in the country is imbued with national interest.
>
> "At this point in time when all government efforts are geared towards economic recovery and development by encouraging both foreign and domestic investments to generate employment, we cannot afford to derail the same as a result of a labor dispute considering that there ware alternative dispute resolution machineries available to address labor problems of this nature."[18]

On March 17, 1999, the Supreme Court decided the case of *Phimco Industries, Inc. v. Brillantes*,[19] and therein set aside the assumption order of the Secretary for having been issued "in grave

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18 *Ibid.*, at 400-401.
19 304 SCRA 747 (1999).

abuse of discretion amounting to lack of or excess of jurisdiction." The facts in **Phimco** are as follows: On March 9, 1995, the union representing the daily paid workers of the employer filed a notice of strike with the National Conciliation & Mediation Board (NCMB) against the latter, a corporation engaged in the production of matches, after a deadlock in the collective bargaining negotiations. On April 21, 1995, the union staged a strike when the parties failed to resolve their differences after several conciliation conferences at the NCMB. On June 7, 1995, the union petitioned the Secretary to intervene in the labor dispute but the employer opposed it. On June 26, 1995, pending resolution of said petition, the employer terminated some workers including several union officers. On July 7, 1995, the Acting Secretary of Labor assumed jurisdiction over the labor dispute and directed the strikers to return to work within 24 hours. The employer assailed the assumption order claiming, among others, that the Acting Secretary acted with grave abuse of discretion "when he went beyond the basis for assumption of jurisdiction under Article 263 of the Labor Code."

Finding for the employer, the Tribunal tersely told off the Acting Secretary for the reason that he

> xxx did not even make any effort to touch on the indispensability of the match factory to the national interest. It must have been aware that a match factory, though of value, can scarcely be considered as an industry "indispensable to the national interest" as it cannot be in the same category as "generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries." Yet, the public respondent assumed jurisdiction thereover, ratiocinating as follows:

> "For one, the prolonged work disruption has adversely affected not only the protagonists, *i.e.*, the workers and the Company, but also those directly and indirectly dependent upon the unhampered and continued operations of the Company for their means of livelihood and existence. In addition, the entire community where the plant is situated has also been placed in jeopardy. If the dispute at the Company remains unabated, possible loss of employment, not to mention consequent social problems, might result thereby compounding the unemployment problem of the country.
>
> "Thus we cannot be unmindful of the possible dire consequences that might ensue if the present dispute is allowed to remain unresolved, particularly when an alternative dispute resolution mechanism obtains to dispose of the differences between the parties herein."[20]

Continued the Court:

> It is thus evident from the foregoing that the Secretary's assumption of jurisdiction grounded on the alleged *"obtaining circumstances"* and not on a determination that the industry involved in the labor dispute is one indispensable to the "national interest," the standard set by the legislature, constitutes grave abuse of discretion amounting to lack or excess of jurisdiction. *To uphold the action of the public*

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20 *Ibid.*, at 753-754.

> *respondent under the premises would be stretching too far the power of the Secretary of Labor as every case of a strike or lockout where there are inconveniences in the community, or work disruptions in an industry though not indispensable to the national interest, would then come within the Secretary's power. It would be practically allowing the Secretary of Labor to intervene in any labor dispute at his pleasure. This is precisely why the law sets and defines the standard: even in the exercise of his power of compulsory arbitration under Article 263(g) of the Labor Code, the Secretary must follow the law. For "when an overzealous official by-passes the law on the pretext of retaining a laudable objective, the intendment or purpose of the law will lose its meaning as the law itself is disregarded."*[21]

About eight years before the promulgation of **Phimco,** the Court had the opportunity to question the assumption order of the Secretary in a labor dispute involving a company that produced telephone directories. In *GTE Directories Corp. v. Sanchez*[22] the Court made the following remarks:

> Even that assumption of jurisdiction is open to question.
>
> The production and publication of telephone directories, which is the principal activity of GTE, can scarcely be described as an industry affecting the national interest. GTE is a publishing firm chiefly depending on the marketing and sale of advertising space for its not inconsiderable revenues. Its ser-

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21 *Ibid.*, at 754, emphasis supplied.

22 197 SCRA 452 (1991).

> vices, while of value, cannot be deemed to be in the same category of such essential activities as "the generation or distribution of energy" or those undertaken by "banks, hospitals, and export-oriented industries." It cannot be regarded as playing as vital a role in communication as other mass media. The small number of employees involved in the dispute, the employer's payment of "P10 million in income tax alone to the Philippine government," and the fact that the "top officers of the union were dismissed during the conciliation process," obviously do not suffice to make the dispute in the case at bar one "adversely affecting the national interest."[23]

To be sure, not a few practitioners have let out a chorus of protest against the ruling in **Phimco**, which they find disturbing. Already, there are those who maintain that in setting aside the Secretary's assumption order, the Court inquired into the motives of the legislature or the executive in performing any act, thereby transgressing the theory that the courts may not review questions of legislative or executive policy even as they have no power to pass judgment on the wisdom or desirability of an act by the other two branches of government. The view is further expressed that when the question involves the legality of a political act of government, the courts should decline to act on said "political questions." Those critical of this perceived encroachment on the power of the executive to determine economic policies point to *Tañada v. Cuenco*,[24] where the term "political question" was used to refer to "those questions which, under the Constitution, are to be decided by the people in their sovereign capacity, or in regard to which full discretionary authority has been delegated to the legislative or executive branch of the government."

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23 *Ibid*., at 470-471.

24 103 Phil. 1051, 1067 (1957).

On the other hand, there are those who contend that the courts are not powerless to deal with legislative and executive acts that are arbitrary or absolutely unreasonable. They also argue that the constitutional requirement of due process of law or of the equal protection of law would justify the intervention of the courts in questions of this nature. Hence, the admonition in *Colgate Palmolive Philippines v. Ople*[25] that "(w)hen an overzealous official by-passes the law on the pretext of retaining a laudable objective, the intendment or purpose of the law will lose its meaning as the law itself is disregarded."

Last June 26, 2001, the Congressional Commission on Labor (LABORCOM), which undertook a comprehensive review of the Labor Code and other labor and social legislation for the purpose of proposing amendments to these laws, presented to President Gloria Macapagal-Arroyo a report that would implement its policy prescriptions. In Chapter 5 of said Report, there is a proposal to limit the jurisdiction of the Secretary of Labor and Employment on disputes involving the national interest to disputes involving **essential services** only as defined by the International Labor Organization (ILO).[26]

In this connection, an ILO expert, commenting on the right to strike in the public sector, has proposed that strikes be restricted or prohibited in essential services described as "those services x x x the interruption of which would endanger the life, personal safety and health of the whole or part of the population."[27] At once, the following essential services come to mind: the hospital sector, electricity services, water supply services, telephone services, and air traffic control services. Although it is not practical to

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25 163 SCRA 323, 330 (1988).

26 Report and Recommendations of the Congressional Commission on Labor 76: Congress of the Philippines, February 2001.

27 Abhik Ghosh, Senior Specialist in Industrial Relations and Labor Administration, ILO/SEAPAT, Manila.

draw up any exhaustive list of non-essential services, the ILO Committee on Freedom of Association, based on the cases it has examined, has declared that the right to strike may not be prohibited in the following sectors which do not constitute essential services in the strict sense of the term:

"- radio and television;
- petroleum sector;
- ports (loading and unloading);
- banking;
- computer services for the collection of excise duties and taxes;
- department stores;
- pleasure parks;
- metal sector; mining sector; transport sector;
- refrigeration enterprises;
- hotel services;
- construction;
- automobile manufacture;
- aircraft repair;
- agricultural activities;
- supply and distribution of foodstuff;
- government Mint;
- government printing service;
- state alcohol and tobacco monopolies;
- education sector;
- metropolitan transport;
- postal services.

"The list of non-essential services cannot be fixed and much would depend on the specific context and the national circumstances. Where certain non-essential services are in the nature of public utilities – metropolitan transport or railway services, for example - in which prolonged strike may cause disproportionate and irreparable damage, the public authorities may establish a

system of minimum service and the outright ban on strike may be limited to essential services in the strict sense of the term.

"A negotiated minimum service, which is a possible alternative to total prohibition of the right to strike, must meet two basic requirements. It must genuinely and exclusively be a minimum service, one that is limited to the operations strictly necessary to meet the basic needs of the population or the minimum needs of the service for ensuring the safety of machinery and equipment and preventing accidents. Secondly, the organizations of workers, along with employers and public authorities, must be able to participate in objectively defining the minimum service that needs to be established. Moreover, a joint or independent body may be set up to examine the difficulties raised by the definition and application of such a minimum service and that body should be empowered to issue enforceable decisions. A negotiated minimum service may also be established in an essential service if the public authorities consider that such a solution is more appropriate to national conditions."[28]

This brief survey of jurisprudence on the right of the Secretary to assume jurisdiction over a labor dispute or certify it for compulsory arbitration upon the justification that it affects the national interest will doubtless demonstrate that the direction in deciding this difficult or debatable legal issue, like the pendulum, has swung from one end of the continuum to the other. Where before the Court acknowledged that the said officials have broad powers under the law and that it would not interfere in, much less curtail, the exercise of such prerogative, **Phimco** has now plainly and patently mandated the Secretary to comply with the "standard set by the legislature" even as it warned against "allowing the Secretary of Labor to intervene in any labor dispute at his pleasure."

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28 *Ibid.*

It is submitted that the action of the Secretary would be less controversial and he would have a less worrisome time obeying the Court's command to follow the standard of the law in a situation where remedial legislation is passed by Congress precisely describing and delineating the specific areas where the said official may intervene and enumerating the other areas exempt from intervention. And the LABORCOM recommendation, limiting the jurisdiction of the Secretary over disputes involving the national interest to disputes involving essential services only, could very well serve as a model.

THE IDENTITY OF A CLIENT AS PRIVILEGED ATTORNEY-CLIENT INFORMATION: *REGALA v. SANDIGANBAYAN*

*By Divinagracia S. San Juan**

May a lawyer refuse to disclose the identity of his client as a matter of attorney-client privilege?

A sharply divided Supreme Court resolved this question in the affirmative in the case of *Regala v. Sandiganbayan*[1] – for the High Court, an unavoidable foray, given the issue squarely raised before it, into a subject on which no Philippine case law then existed to provide guidance. The outcome: an 8-4 decision,[2] the weakness of the majority vote being in the three concurrences merely "in the result"[3] and thus not necessarily in the *ponencia*'s ratiocination of the coverage of the attorney-client privilege as extending to the client's identity. The majority opinion itself admitted that U.S. Supreme Court decisions on this point yield the general rule that "a lawyer may not invoke the privilege and refuse to divulge the name or identity of his client," it being "a matter of public policy"

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1 G.R. No. 105938, September 20, 1996, consolidated with G.R. No. 108113, entitled *Hayudini v. The Sandiganbayan*, G.R. No. 108113; 262 SCRA 122 (1996).

2 The eight constituting the majority are Associate Justices Santiago M. Kapunan (*ponente*), Josue N. Bellosillo, Jose A.R. Melo, Ricardo J. Francisco, Teodoro R. Padilla, Artemio V. Panganiban, Justo P. Torres, Jr., and Jose C. Vitug; the four dissenters are Chief Justice Andres R. Narvasa and Associate Justices Florenz D. Regalado, who joined in the separate dissent of Justice Hilario G. Davide, Jr., and Reynato S. Puno, who entered a separate dissent. Associate Justices Flerida Ruth P. Romero and Regino C. Hermosisima, Jr. took no part in the deliberations while Justice Vicente V. Mendoza was on leave.

3 this being the vote of Justices Padilla, Panganiban and Torres.

that a client's identity "should not be shrouded in mystery."[4] What then had been behind the Supreme Court's ruling otherwise in *Regala*?

We turn to the facts.

The case had its origins in the Complaint filed in the Sandiganbayan by the Republic of the Philippines, through the Presidential Commission on Good Government (PCGG) against Eduardo M. Cojuangco, Jr., as one of the principal defendants, for the recovery of alleged ill-gotten wealth consisting *inter alia* of shares of stocks in the so-called coconut-levy funds corporations (UCPB, UNICOM, COCOLIFE, COCOMARK, CIC, etc.) identified in PCGG Civil Case No. 33, entitled "Republic of the Philippines versus Eduardo Cojuangco, et al." Among Mr. Cojuangco's co-defendants in the case were lawyers of the Angara, Abello, Concepcion, Regala and Cruz Law Offices (ACCRA),[5] whose legal services to its clients admittedly included, among others, the organization and acquisition of business associations and/or organizations, with the correlative and incidental services where its members acted as nominee incorporators or stockholders. The prosecution theorized that the impleaded ACCRA lawyers conspired and confederated with Mr. Conjuangco and each other in unlawfully setting up the financial and corporate framework and structures that led to the establishment of the coconut-levy fund corporations.

In a Third Amended Complaint, the PCGG excluded erstwhile defendant and former ACCRA lawyer Raul S. Roco from the case based on his alleged undertaking that he will reveal the identity of the principal/s for whom he acted as nominee/stockholder in the companies involved in PCGG Case No. 33. The rest of the

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4 *supra*, note 1, at 141, citing 58 Am Jur 2d Witnesses, sec. 507, 285.

5 Teodoro Regala, Edgardo J. Angara, Avelino V. Cruz, Jose C. Concepcion, Rogelio A. Vinluan, Victor P. Lazatin, Eduardo U. Escueta, Paraja G. Hayudini and Raul S. Roco.

ACCRA lawyers were retained as defendants in the case; they filed their answers alleging that their participation in the acts subject of the charges was in furtherance of legitimate lawyering, and denying the accusations implicating them in the alleged ill-gotten wealth in the absence of any actual proprietary rights in the subject shareholdings, beneficially owned by their clients.

Taking their cue from the exclusion of fellow ACCRA lawyer Raul S. Roco, the rest of the ACCRA lawyers sought to be dropped from the case and thus, to receive the same treatment accorded to him. However, the PCGG set the following "conditions precedent" for such exclusion, *viz.*: (a) the ACCRA lawyers' disclosure of the identity of their client; (b) their submission of the documents substantiating the lawyer-client relationship; and (c) their submission of the deeds of assignments executed in favor of the client/s covering their respective shareholdings. The ACCRA lawyers then claimed attorney-client privilege respecting the information demanded.

For the ACCRA lawyers' refusal to comply with the PCGG requirements, the Sandiganbayan denied the exclusion prayed for. Said the Sandiganbayan:

> ACCRA lawyers may take the heroic stance of not revealing the identity of the client for whom they have acted, *i.e.,* their principal, and that will be their choice. But until they do identify their clients, considerations of whether or not the privilege claimed by the ACCRA lawyers exists cannot even begin to be debated. The ACCRA lawyers cannot excuse themselves from the consequences of their acts until they have begun to establish the basis for recognizing the privilege; the existence and identity of the client.

> This is what appears to be the cause for which they have been impleaded by the PCGG as defendants herein.
>
> 5. The PCGG is satisfied that defendant Roco has demonstrated his agency and that Roco has apparently identified his principal, which revelation could show the lack of cause against him. This in turn has allowed the PCGG to exercise its power both under the rules of Agency and under Section 5 of E.O. No. 14-A in relation to the Supreme Court's ruling in *Republic v. Sandiganbayan (173 SCRA 72)*.
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> The PCGG has apparently offered to the ACCRA lawyers the same conditions availed of by Roco; full disclosure in exchange for exclusion from these proceedings (par. 7, PCGG's COMMENT dated November 4, 1991). The ACCRA lawyers have preferred not to make the disclosures required by the PCGG.
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> The ACCRA lawyers cannot, therefore, begrudge the PCGG for keeping them as party defendants. In the same vein, they cannot compel the PCGG to be accorded the same treatment accorded to Roco.
>
> Neither can this Court.

The ACCRA lawyers' subsequent motion for reconsideration was likewise to no avail. This gave rise to their filing of petitions for *certiorari* in the Supreme Court to question the Sandiganbayan's ruling for being violative of their right to equal protection of the laws and for failing to consider the attorney-client privilege as prohibiting them from revealing the identity of their client/s and the other information required by the PCGG.

The *ponencia* in *Regala* is a tightly-woven three-part decision which is clear on the bottom-line considerations upon which the majority resolved the ACCRA lawyers' claim of privilege in the case. First and foremost, what evidently struck the Supreme Court was the fact that the ACCRA lawyers had been impleaded in the case for no other purpose than to compel them to disclose their client/s and surrender pertinent documents, and not because the PCGG actually had valid causes of action against them as principal defendants. That this was the Supreme Court's reading of the exclusion incident in the Sandiganbayan is evident from the first part of its discussion, quoted in pertinent portion below:

> It is quite apparent that petitioners were impleaded by the PCGG as co-defendants to force them to disclose the identity of their clients. Clearly, respondent PCGG is not after petitioners but the "bigger fish" as they say in street parlance. **This ploy is quite clear from the PCGG's willingness to cut a deal with petitioners the names of their clients in exchange for exclusion from the complaint**. The statement of the Sandiganbayan in its questioned resolution dated March 18, 1992 is explicit . . .
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> xxx xxx xxx
>
> It would seem that petitioners are merely standing in for their clients as defendants in the complaint. Petitioners are being prosecuted solely on the basis of activities and services performed in the course of their duties as lawyers. **Quite obviously, petitioners' inclusion as co-defendants in the complaint is merely being used as leverage to compel them to name their clients and consequently to enable the PCGG to nail these clients**. Such being the case, respondent PCGG has no valid cause of action as against petitioners

> and should exclude them from the Third Amended Complaint.

Having thus set the tone of a decision favorable to the ACCRA lawyers with its denunciation of the PCGG's motives for impleading them in a complaint only because of their use and value as possible sources of information against a co-defendant suspected to be their client, the Supreme Court proceeded to tackle the main issue of the case: attorney-client privilege, which the ACCRA lawyers were invoking precisely to cut themselves off as sources of information which may be used against their client/s. Prescinding from a discussion of the highly fiduciary nature of the attorney-client relationship and the resulting disqualification of a lawyer under the Rules of Court from testifying on any communication made by a client and his advice given thereon, and emphasizing the importance in any judicial system of the full disclosure to a lawyer by one seeking legal services as a means of "open(ing) the door to a whole spectrum of legal options which would otherwise be circumscribed by limited information engendered by a fear of disclosure," the Court ruled that "under the facts and circumstances obtaining in the instant case," the privilege was available to the ACCRA lawyers and may be invoked by them in refusing to disclose the name of their client/s in the case before the Sandiganbayan.

Relying on the exceptions carved out to the general rule under American jurisprudence that the identity of a client is not privileged information, the Supreme Court held that such identity attains privileged status "where a strong probability exists that revealing the client's name would implicate that client in the very activity for which he sought the lawyer's advice." Thus:

> In *Ex-Parte Enzor*, a state supreme court reversed a lower court order requiring a lawyer to divulge the name of her client on the ground that the subject mat-

ter of the relationship was so closely related to the issue of the client's identity that the privilege actually attached to both. In *Enzor*, the unidentified client, an election official, informed his attorney in confidence that he had been offered a bribe to violate election laws or that he had accepted a bribe to that end. In her testimony, the attorney revealed that she had advised her client to count the votes correctly, but averred that she could not remember whether her client had been, in fact, bribed. The lawyer was cited for contempt for her refusal to reveal his client's identity before a grand jury. Reversing the lower court's contempt orders, the state supreme court held that under the circumstances of the case, and under the exceptions described above, even the name of the client was privileged.

U.S. v. Hodge and Zweig, involved the same exception, *i.e.,* that client identity is privileged in those instances where a strong probability exists that the disclosure of the client's identity would implicate the client in the very criminal activity for which the lawyer's legal advice was obtained.

The *Hodge* case involved federal grand jury proceedings inquiring into the activities of the "Sandino Gang," a gang involved in the illegal importation of drugs in the United States. The respondents, law partners, represented key witnesses and suspects including the leader of the gang, Joe Sandino.

In connection with a tax investigation in November of 1973, the IRS issued summons to Hodge and Zweig, requiring them to produce documents and information regarding payment received by Sandino

> on behalf of any other person, and vice versa. The lawyers refused to divulge the names. The Ninth Circuit of the United States Court of Appeals, upholding non-disclosure under the facts and circumstances of the case, held:
>
> A client's identity and the nature of that client's fee arrangements may be privileged where the person invoking the privilege can show that a strong probability exists that disclosure of such information would implicate that client in the very criminal activity for which legal advice was sought. *Baird v. Koerner*, 279 F. 2d at 680. While in *Baird* we enunciated this rule as a matter of California law, the rule also reflects federal law. Appellants contend that the *Baird* exception applies to this case.
>
> The *Baird* exception is entirely consonant with the principal policy behind the attorney-client privilege. "In order to promote freedom of consultation of legal advisors by clients, the apprehension of compelled disclosure from the legal advisors must be removed; hence, the law must prohibit such disclosure except on the client's consent." 8 J. Wigmore, *supra* sec. 2291, at 545. In furtherance of this policy, the client's identity and the nature of his fee arrangements are, in exceptional cases, protected as confidential communications.[6]

Another exception cited by the Supreme Court was "where the government's lawyers have no case against an attorney's client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony neces-

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6 s*upra*, note 1, at 142-144.

sary to convict an individual of a crime," in which case, "the client's name is privileged." The Court's discussion of pertinent authorities follows:

> In *Baird v. Korner*, a lawyer was consulted by the accountants and the lawyer of certain undisclosed taxpayers regarding steps to be taken to place the undisclosed taxpayers in a favorable position in case criminal charges were brought against them by the U.S. Internal Revenue Service (IRS).
>
> It appeared that the taxpayers' returns of previous years were probably incorrect and the taxes understated. The clients themselves were unsure about whether or not they violated tax laws and sought advice from Baird on the hypothetical possibility that they had. No investigation was then being undertaken by the IRS of the taxpayers. Subsequently, the attorney of the taxpayers delivered to Baird the sum of $12,706.85, which had been previously assessed as the tax due, and another amount of money representing his fee for the advice given. Baird then sent a check for $12,706.85 to the IRS in Baltimore, Maryland, with a note explaining the payment, but without naming his clients. The IRS demanded that Baird identify the lawyers, accountants, and other clients involved. Baird refused on the ground that he did not know their names, and declined to name the attorney and accountants because this constituted privileged communication. A petition was filed for the enforcement of the IRS summons. For Baird's repeated refusal to name his clients he was found guilty of civil contempt. The Ninth Circuit Court of Appeals held that a lawyer could not be forced to reveal the names of clients who employed him to pay sums of

money to the government voluntarily in settlement of undetermined income taxes, unsued on, and with no government audit or investigation into that client's income tax liability pending. The court emphasized the exception that a client's name is privileged when so much has been revealed concerning the legal services rendered that the disclosure of the client's identity exposes him to possible investigation and sanction by government agencies. The Court held:

> The facts of the instant case bring it squarely within that exception to the general rule. Here money was requested by the government, paid by persons who thereby admitted they had not paid a sufficient amount in income taxes some one or more years in the past. The names of the clients are useful to the government for but one purpose – to ascertain which taxpayers think they were delinquent, so that it may check the records for that one year or several years. The voluntary nature of the payment indicates a belief by the taxpayers that more taxes or interest or penalties are due than the sum previously paid, if any. It indicates a feeling of guilt for non-payment of taxes, though whether it is criminal guilt is undisclosed. But it may well be the link that could form the chain of testimony necessary to convict an individual of a federal crime. Certainly the payment and the feeling of guilt are the reasons the attorney here involved was employed – to advise his clients what, under the circumstances, should be done.[7]

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7 *id.* at 146-147.

A third exception likewise based on American jurisprudence – "where disclosure would open the client to civil liability," in which case "his identity is privileged" – was also mentioned by the Supreme Court, along with "other situations which could qualify as exceptions to the general rule." For example, the Court stated, "the content of any client communication to a lawyer lies within the privilege if it is relevant to the subject matter of the legal problem on which the client seeks legal assistance. Moreover, where the *nature* of the attorney-client relationship has been previously disclosed *and it is the identity which is intended to be confidential*, the identity of the client has been held to be privileged, since such revelation would otherwise result in disclosure of the entire transaction."[8]

In holding that the attorney-client privilege extends to protect against disclosure of the information demanded by the PCGG of the ACCRA lawyers, the Supreme Court had reasoned:

> The circumstances involving the engagement of lawyers in the case at bench . . . clearly reveal that the instant case falls under at least two exceptions to the general rule. First, disclosure of the alleged client's name would lead to establish said client's connection with the very fact in issue of the case, which is privileged information, because the privilege, as stated earlier, protects the subject matter or the substance (without which there would be no attorney-client relationship).
>
> The link between the alleged criminal offense and the legal advice or legal service sought was duly established in the case at bar, by no less than the PCGG itself. The key lies in three specific conditions laid

8 *id.* at 144-145, 147.

down by the PCGG which constitutes petitioners' ticket to non-prosecution should they accede thereto:

(a) the disclosure of the identity of its clients;

(b) submission of documents substantiating the lawyer-client relationship; and

(c) the submission of the deeds of assignment petitioners executed in favor of their clients covering their respective shareholdings.

From these conditions, particularly the third, we can readily deduce that the clients indeed consulted the petitioner, in their capacity as lawyers, regarding the financial and corporate structure, framework and set-up of the corporations in question. In turn, petitioners gave their professional advice in the form of, among others, the aforementioned deeds of assignment covering their clients' shareholdings.

There is no question that the preparation of the aforestated documents was part and parcel of petitioners' legal service to their clients. More importantly, it constituted an integral part of their duties as lawyers. Petitioners, therefore, have a legitimate fear that identifying their clients would implicate them in the very activity for which legal advice had been sought, *i.e.*, the alleged accumulation of ill-gotten wealth in the aforementioned corporations.

Furthermore, under the third main exception, revelation of the client's name would obviously provide the necessary link for the prosecution to build its case,

> where none otherwise exists. It is the link, in the words of *Baird*, "that would inevitably form the chain of testimony necessary to convict the (client) of a . . . crime."[9]

And in a pointed return to the original subject of the majority opinion – that the ACCRA lawyers ought not to have been impleaded solely for their utility as suspected attorneys of the principal defendant, from whom information can be drawn on the activities of the latter – the Supreme Court admonished that:

> There are, after all, alternative sources of information available to the prosecutor which do not depend on utilizing a defendant's counsel as a convenient and readily available source of information in the building of a case against the latter. Compelling disclosure of the client's name in circumstances such as the one which exists in the case at bench amounts to sanctioning fishing expeditions by lazy prosecutors and litigants which we cannot and will not countenance. When the nature of the transaction would be revealed by disclosure of an attorney's retainer, such retainer is obviously protected by the privilege. It follows that petitioner attorneys in the instant case owe their client(s) a duty and an obligation not to disclose the latter's identity which in turn requires them to invoke the privilege.
>
> In fine, the crux of petitioners' objections ultimately hinges on their expectation that if the prosecution has a case against their clients, the latter's case should be built upon evidence painstakingly gathered by them

9 *id.* at 148-149.

from their own sources and not from compelled testimony requiring them to reveal the name of the clients, information which unavoidably reveals much about the nature of the transaction which may or may not be illegal. The logical nexus between name and nature of transaction is so intimate in this case that it would be difficult to simply dissociate one from the other. In this sense, the name is as much "communication" as information revealed directly about the transaction in question itself, a communication which is clearly and distinctly privileged. A lawyer cannot reveal such communication without exposing himself to charges of violating a principle which forms the bulwark of the entire attorney-client relationship.

The *uberrimae fidei* relationship between a lawyer and his client therefore imposes a strict liability for negligence on the former. The ethical duties owing to the client, including confidentiality, loyalty, competence, diligence as well as the responsibility to keep clients informed and protect their rights to make decisions have been zealously sustained. . . .

xxx xxx xxx

If we were to sustain respondent PCGG that the lawyer-client confidential privilege under the circumstances obtaining here does not cover the identity of the client, then it would expose the lawyers themselves to possible litigation by their clients in view of the strict fiduciary responsibility imposed on them in the exercise of their duties.[10]

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10 *id.* at 151-152.

The third point and last issue addressed by the Supreme Court in its decision is the patently disparate treatment accorded by the Sandiganbayan to discharged defendant Raul S. Roco and the ACCRA lawyers. Condemning this as a violation of the latter's rights under the equal protection clause of the Constitution, the High Court stated:

> First, as to the bare statement that private respondent (Roco) merely acted as a lawyer and nominee, a statement made in his out-of-court settlement with the PCGG, it is sufficient to state that petitioners have likewise made the same claim not merely out-of-court but also in their Answer to plaintiff's Expanded Amended Complaint, signed by counsel, claiming that their acts were made in furtherance of "legitimate lawyering." Being "similarly situated" in this regard, public respondents must show that there exist other conditions and circumstances which would warrant their treating the private respondent differently from petitioners in the case at bench in order to evade a violation of the equal protection clause of the Constitution.
>
> To this end, public respondents contend that the primary consideration behind their decision to sustain the PCGG's dropping of private respondent as a defendant was his promise to disclose the identities of the clients in question. However, respondents failed to show – *and absolutely nothing exists in the records of the case at bar* – that private respondent actually revealed the identity of his client(s) to the PCGG. *Since the undertaking happens to be the leitmotif of the entire arrangement between Mr. Roco and the PCGG, an undertaking which is so material as to have justified PCGG's*

> *special treatment exempting the private respondent from prosecution, respondent Sandiganbayan should have required proof of the undertaking more substantial than a "bare assertion" that private respondent did indeed comply with the undertaking*. Instead, as manifested by the PCGG, only three documents were submitted for the purpose, two of which were mere requests for re-investigation and one simply disclosed certain clients which petitioners (ACCRA lawyers) were themselves willing to reveal. These were clients to whom both petitioners and private respondent rendered legal services while all of them were partners at ACCRA, and were not the clients which the PCGG wanted disclosed for the alleged questioned transactions.
>
> To justify the dropping of the private respondent from the case or the filing of the suit in the respondent court without him, therefore, the PCGG should conclusively show that Mr. Roco was treated as a species apart from the rest of the ACCRA lawyers on the basis of a classification which made substantial distinctions based on real differences. No such substantial distinctions exist from the records of the case at bench, in violation of the equal protection clause.[11]

While well-reasoned and persuasively argued, the majority opinion in *Regala* did not foreclose dissents. Then Associate Justice and now Chief Justice Hilario G. Davide, Jr. maintained in his separate dissenting opinion that the subject of the *certiorari* petitions was the Sandiganbayan's purported grave abuse of discretion, and the admission of the Third Party Complaint as had been sought by the PCGG "cannot (have been) validly withheld" by the Sandiganbayan because under the law, it was the PCGG's preroga-

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11 *id.* at 155-156.

tive to determine who shall be made defendants in the case. The Chief Justice furthermore refused to fault the PCGG for opposing the ACCRA lawyers' exclusion from the case until they "first voluntarily adopt for themselves the factual milieu created by Roco and bind themselves to perform certain obligations of Roco" – which they had declined to do "because they believed that compliance would breach the sanctity of their fiduciary duty in a lawyer-client relationship," this, when the privilege may only be invoked at the appropriate time "as when, having taken the witness stand, he is questioned as to such confidential communication or advice, or is otherwise judicially coerced to produce (documents)." Nor was the Chief Justice prepared to concede that the attorney-client privilege protected the information sought to be drawn from the ACCRA lawyers as an exception to the general rule. He pointed out that the authorities cited in the *ponencia* involved grand jury proceedings before actual cases were filed, where the evidentiary rules applicable have not been shown, which does not obtain in the *Regala* case. Moreover, the ACCRA lawyers were impleaded as co-defendants and co-conspirators in the offenses charged whereas the American cases involved lawyers "merely advocating the cause of their clients." The attorney-client privilege, stressed the Chief Justice, "is not a shield for the commission of a crime or against the prosecution of the lawyer therefor."

On this last point, Chief Justice Davide was echoed by Associate Justice Reynato S. Puno, who stated in his separate dissent that while the PCGG had eventually "relented on its original stance . . . that petitioners are co-conspirators in crimes" which had barred them from invoking the attorney-client privilege, still, the attorney-client privilege has not been proven by the ACCRA lawyers to cover their refusal to divulge the identity of their client/s in the *Regala* case as an exception to the general rule. Justice Puno noted that there had simply been no opportunity for the ACCRA lawyers to do so. The Sandiganbayan had at the outset refused to recognize any exception where the invoked attorney-client privilege

would apply in their case and thus, its unqualified and absolute order for them to reveal the names of their client/s. But only until the ACCRA lawyers shall have proved by their evidence that their peculiar circumstances vis-a-vis their client/s are covered as exceptions to the general rule, reasoned Justice Puno, should the privilege be held to apply.

The dissents raised a number of valid points, to be sure. It is nonetheless submitted that the decisive considerations in the case, which compelled the majority to hold the attorney-client privilege as extending to the ACCRA lawyers' refusal to divulge their client/s, was correctly appreciated and set out in the *ponencia*. For one, it cannot be gainsaid that the exclusion incident in the Sandiganbayan involving Raul S. Roco and the ACCRA lawyers reduced the latter's situation into one of actual compulsion to disclose information and documents about their client/s. It was that, or face continued prosecution in the case. Thus, while not as yet actually summoned to the witness stand to be examined about their client/s, the issue of privilege has indeed come to a head because the ACCRA lawyers had been forced into circumstances which demanded their silence – or otherwise their revelation of their client/s' identities and transactions. And so, their timely claim of privilege.

It was furthermore an eminently reasonable observation on the part of the majority that in the PCGG's filing of charges against the ACCRA lawyers, the latter were merely "standing in" for their clients as defendants and were impleaded solely on the basis of activities and services performed in the course of their discharge of duties as attorneys. Thus, the wrongful act specifically imputed to the ACCRA lawyers in the Third Amended Complaint was no more than "(the) **setting up, through the use of the coconut levy funds, the financial and corporate framework and structures that led to the establishment of UCPB, UNICOM, COCOLIFE, COCOMARK, CIC, and more than twenty other coconut levy**

funded corporations" - this being the very language used in the Complaint. Little wonder, then, that the ACCRA lawyers' inclusion as defendants was disparaged in the majority opinion as but "leverage to compel them to name their clients and consequently to enable the PCGG to nail these clients." As causes of action went, the PCGG had pitifully little on the ACCRA lawyers.

Last but not least, Raul S. Roco's exclusion from the case simply could not go ignored. He and the ACCRA lawyers were in like circumstances and thus deserving of one and the same treatment. Their common claim was that their involvement was no more than legitimate lawyering for clients. The ACCRA lawyers' continued inclusion in the case, this, when they did all that he had done to secure discharge, was indefensible in the premises.

It is evident from the *ponencia* that the issue of attorney-client privilege was decided in favor of the ACCRA lawyers in *Regala* upon the peculiar facts therein obtaining. Whether the same ruling will hold upon a variation of this factual milieu still remains to be seen.

SUBJECT GUIDE AND DIGESTS SUPREME COURT DECISIONS

(October to December 2000)

Prepared By Tarcisio A. Diño*

Agrarian Reform

Civil Law

Commercial Law

Criminal Law

Labor Law

Land Law

Legal Ethics

Political Law

Remedial Law

Taxation

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AGRARIAN REFORM

Right of Redemption under Rep. Act No. 3844, as amended, should be exercised within two (2) years from the registration of the sale. *(Philbancor Finance, Inc. v. Court of Appeals, G.R. No. 129572, June 26, 2000)*

Right of Tenancy. The right of tenancy attaches to the landholding by operation of law and is not extinguished by the alienation or transfer of the legal possession of the landholding. (*id.*)

Conveyance of Agrarian Rights to *Samahang Nayon* - Valid. The sale or transfer of rights over property covered by a certificate of land transfer is void except when the alienation is made in favor of the government or through hereditary succession. This ruling is intended to prevent a reversion to the old feudal system in which the landowner reacquired vast tracts of land, thus negating the government's program of freeing the tenant from the bondage of the soil. The incurrence of various loans and mortgaging of agricultural land to secure said loans is not abandonment of the agricultural tenancy relationship. However, petitioner has voluntarily surrendered his landholding to the *Samahang Nayon* which, under the circumstances of this case, qualfies as a surrender or transfer, to the government of his rights under the agrarian laws. *(Corpus v. Spouses Grospe, G.R. No. 135297, June 8, 2000)*

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CIVIL LAW

PERSONS

Birth Certificate, Fictitious. Annulment of. Under Article 171 of the Family Code, the child's filiation can be impugned only by the father or, in special circumstances, his heirs. This provision presupposes that the child is the undisputed offspring of the mother. It does not apply to this case where the child is not at all the offspring of its alleged mother and the action is for the cancellation of petitioner's birth certificate. The prescriptive period set forth in Article 170 of the Family Code does not also apply to this case, for the action to nullify the birth certificate does not prescribe as it was allegedly void *ab initio. (Babiera v. Catotal, G.R. No. 138493, June 15, 2000)*

Marriage. Article 83 of the Civil Code of the Philippines (hereinafter to be referred to simply as the "Civil Code," the law applicable to this case) provides that a subsequent marriage contracted during the lifetime of the first spouse is illegal and void *ab initio.* Under the exception to this rule found in paragraph (2) of the said Article, for the subsequent marriage referred to in the three exceptional cases therein provided to be held valid, the spouse present (not the absent spouse) so contracting the later marriage must have done so in good faith. A judicial declaration of absence of the absentee spouse is not necessary as long as the prescribed period of absence is met. The marriage in these exceptional cases are, by explicit mandate of Art. 83, to be deemed valid until declared null and void by a competent court. It follows that in these cases, the burden of proof would be on the party assailing the second marriage. In contrast, under the 1988 Family Code, in order that a subsequent bigamous marriage may exceptionally be considered valid, the following conditions must concur: (1) The prior spouse of the contracting party must have been absent for four

consecutive years, or two years where there is danger of death under the circumstances stated in Article 391 of the Civil Code at the time of disappearance; (2) The spouse present has a well-founded belief that the absent spouse is already dead; and (3) There is, unlike the old rule, a judicial declaration of presumptive death of the absentee for which purpose the spouse present can institute a summary proceeding in court to ask for that declaration. *(Calisterio v. Calisterio, G.R. No. 136467, April 6, 2000)*

Annulment of Marriage. Absence of marriage license on the date of marriage – a ground that was raised squarely, for the first time, on appeal – was considered by the Court. Carefully reviewing the documents and the pleadings on record, the Court found that indeed petitioner did not expressly state in her petition before the trial court that there was incongruity between the date of the actual celebration of their marriage and the date of the issuance of their marriage license. From the documents she presented, the marriage license was issued on September 17, 1994, almost one year after the ceremony took place. The ineluctable conclusion is that the marriage was indeed contracted without a marriage license. There being no claim of an exceptional character, the purported marriage between petitioner and private respondent could not be classified among those enumerated in Articles 72-79 of the Civil Code. Under Art. 80 of the same Code, the marriage between petitioner and private respondent is void from the beginning. *(Sy v. Court of Appeals, G.R. No. 127263, April 12, 2000)*

Property Relations of couples without the benefit of marriage. Under Article 148 of the Family Code, a man and woman who are not legally capacitated to marry each other, but who nonetheless live together conjugally, may be deemed co-owners of property acquired during their cohabitation upon proof that each made an actual contribution to its acquisition. *(Tumlos v. Spouses Fernandez, G.R. No. 137650, April 12, 2000)*

Parents as Guardians of their minor children. *(Villanueva-Mijares v. Court of Appeals, G.R. No. 108921, April 12, 2000)*

PROPERTY, OWNERSHIP AND ITS MODIFICATIONS

Possession. The legal presumption in Article 541 of the Civil Code is merely a disputable presumption. In the absence of actual public and adverse possession, the declaration of land for tax purposes does not prove ownership. *(Cequena v. Bolante, G.R. No. 137944, April 6, 2000)*

Occupation. Under Article 714 of the Civil Code, ownership of a piece of land cannot be acquired by occupation. *(Heirs of Seraspi v. Court of Appeals, G.R. No. 135602, April 28, 2000)*

Possessor in Bad Faith may claim reimbursement only for necessary expenses and not for useful expenses. *(Isaguirre v. De Lara, G.R. No. 138053, May 31, 2000)*

Co-owner. Right of Redemption. The notice required by Art. 1623 of the Civil Code must be given by the vendor or prospective vendor and not by any other person. *(Francisco v. Boiser, G.R. No. 137677, May 31, 2000)*

DIFFERENT MODES OF ACQUIRING OWNERSHIP

SUCCESSION

Wills. The wishes and desires of the testator must be strictly followed. A will cannot be the subject of a compromise agreement which would thereby defeat the very purpose of making a will. *(Rabadilla v. Court of Appeals, G.R. 113725, June 29, 2000).*

Heirs. Institution of. Modal institution distinguished from simple or *fideicommisary* substitution; further distinguished from

conditional testamentary disposition. (*id.*) Meaning of "one degree" in fideicommisary substitution. *(Separate opinion of Justice Vitug)*

- Same. Transmissible Obligations. The general rule is that heirs are bound by contracts entered into by their predecessors-in-interest, except when the rights and obligations arising therefrom are not transmissible by: (1) their nature, (2) stipulation or (3) provision of law. The case at bar involves a contract of lease with option to buy. There is neither contractual stipulation nor legal provision making the rights and obligations under the said contract non-transmissible. Moreover, the rights and obligations therein are, by their nature, transmissible. *(DKC Holdings Corporation v. Court of Appeals, G.R. No. 118248, April 5, 2000)*

OBLIGATIONS AND CONTRACTS

KINDS OF OBLIGATIONS

Solidary Obligation Distinguished from Joint Obligation. A solidary or joint and several obligation is one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. In a joint obligation, each obligor answers only for a part of the whole liability and to each obligee belongs only a part of the correlative rights. Solidary obligations cannot lightly be inferred. There is solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires. *(Industrial Management International Development Corp. v. NLRC, G.R. No. 101723, May 11, 2000).*

Joint Obligation. Petitioner's liability is not solidary but merely joint. Respondent NLRC acted with grave abuse of discretion in upholding the Labor Arbiter's Alias Writ of Execution and subsequent Orders to the effect that petitioner's liability is solidary. When it is not provided in a judgment that the defendants

are liable to pay jointly and severally a certain sum of money, none of them may be compelled to satisfy in full the judgment. *(Industrial Management International Development Corp. v. NLRC, G.R. No. 101723, May 11, 2000)*

EXTINGUISHMENT OF OBLIGATIONS

Prescription. Extinctive under Article 1141 of the Civil Code. *(Heirs of Seraspi v. Court of Appeals, G.R. No. 135602, April 28, 2000)*

- Same. Under Article 1150 of the Civil Code, the time for prescription of all kinds of actions, when there is no special provision which ordains otherwise, is counted from the day they may be brought. It is reckoned only from the date the cause of action accrued. *(Banco Filipino Savings and Mortgage Bank v. Hon. Court of Appeals, G.R. No. 129227, May 30, 2000)*

Laches. There is no absolute rule on what constitutes laches. It is a creation of equity and applied not really to penalize neglect or sleeping upon one's rights but rather to avoid recognizing a right when to do so would result in a clearly inequitable situation. The question of laches is addressed to the sound discretion of the court and each case must be decided according to its particular circumstances. *(Villanueva-Mijares v. Court of Appeals, G.R. No. 108921, April 12, 2000)*

Novation takes place only if the parties expressly so provide; otherwise, the original contract remains in force. In other words, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. Where there is no clear agreement to create a new contract in place of the existing one, novation cannot be presumed to take place, unless the terms of the new contract are fully incompatible with the former agreement on every point. *(Espina v. Court of Appeals, G.R. 116805, June 22, 2000)*

CONTRACTS

Perfection. Offer and Acceptance. The letter of petitioner to respondent constituted acceptance of respondent's offer as contemplated by law. While the same letter enumerated certain "basic terms and conditions," these were imposed on the performance of the obligation rather than on the perfection of the contract. While failure to comply with conditions imposed on the perfection of a contract results in failure of a contract, failure to comply with conditions imposed merely on the performance of an obligation merely gives the other party options and/or remedies to protect his interest. *(Jardine Davies, Inc. v. Court of Appeals, G.R. No. 128066 & 128069, June 19, 2000)*

Relativity. A contract can only bind the parties who entered into it, and it cannot favor or prejudice a third person even if he is aware of such contract and has acted with knowledge thereof. *(Integrated Packaging Corp. v. Court of Appeals, G.R. No. 115117, June 8, 2000)*

Reformation of Instrument. This remedy is grounded on the principle of equity where, in order to express the true intention of the contracting parties, an instrument already executed is allowed by law to be reformed. The right of reformation is necessarily a limitation on the parol evidence rule since, when a writing is reformed, the result is that an oral agreement is by court decree made legally effective. Consequently, the courts, as agencies authorized by law to exercise the power to reform an instrument, must necessarily exercise that power sparingly and with great caution and zealous care. Moreover, the remedy, being an extraordinary one, must be subject to limitations as may be provided by law. Our law and jurisprudence set such limitations, among which is laches. A suit for reformation of instrument may be barred by lapse of time. The prescriptive period for actions based upon a written contract and for reformation of an instrument is ten years

under Article 1144 of the Civil Code. *(Rosello-Bentir v. Hon. Leanda, G.R. No. 128991, April 12, 2000)*

Interpretation. Bilateral contracts embodied in two or more separate writings should be read and interpreted together in such a way as to eliminate seeming inconsistencies and render the parties' intention effectual. *(Acosta v. Court of Appeals, G.R. No. 132088, June 28, 2000)*

Rescission. The power to rescind or resolve is given to the injured party. The rescission of the contracts requires the parties to restore to each other what they have received by reason of the contract. *(Reliance Commodities, Inc. v. Intermediate Appellate Court, G.R. No. 74729, May 31, 2000)*

Unenforceable Contracts. The nullity of an unenforceable contract is of a permanent nature and it will exist as long as the unenforceable contract is not duly ratified. The mere lapse of time cannot give efficacy to such a contract. The defect is such that it cannot be cured except by the subsequent ratification of the unenforceable contract by the person in whose name the contract was executed. *(Villanueva-Mijares v. Court of Appeals, G.R. No. 108921, April 12, 2000)*

Estoppel. Upon request of GTP, respondent bank issued a statement of account regarding the full indebtedness of a party secured by a mortgage on the latter's real estate property. GTP has a contract of sale with said owner of the property which provides, among others, that GTP would assume the mortgage on the property. Accordingly, GTP paid to respondent bank the amount specified in its statement of account. In the instant case arising out of such statement of respondent bank, the latter is estopped from refusing to discharge the mortgage on the property on the claim that it still secures "other unliquidated past due loans." *(Metropolitan Bank & Trust Company v. Court of Appeals, G.R. No. 122899, June 8, 2000)*

SALES

Contract of Sale. Distinguished from Contract to Sell or Conditional Sale. Option Contract. Earnest Money. Conditions imposed upon the perfection of the contract distinguished from conditions imposed on the performance of an obligation. Whenever earnest money is given in a contract of sale, it is considered as part of the purchase price and proof of the perfection of the contract. Although the memorandum of agreement is also denominated as a "Contract to Sell," it was held that the parties contemplated a contract of sale. A deed of sale is absolute in nature although denominated a conditional sale in the absence of a stipulation reserving title in the petitioner until full payment of the purchase price. In such case, ownership of the thing sold passes to the vendee upon actual or constructive delivery thereof. The mere fact that the obligation of the respondent to pay the balance of the purchase price was made subject to the condition that the petitioners first deliver the reconstituted title of the house and lot does not make the contract a contract to sell for such condition is not inconsistent with a contract of sale. *(Laforteza v. Machuca, G.R. No. 137552, June 16, 2000).* The stipulation that the "payment of the full consideration based on a survey shall be due and payable in five (5) years from the execution of a formal deed of sale" is not a condition which affects the efficacy of the contract of sale. It merely provides the manner by which the full consideration is to be computed and the time within which the same is to be paid. *(Heirs of San Andres v. Rodriguez, G.R. No. 135634, May 31, 2000)*

- Same. Object of contract. Subject lot is capable of being determined without the need of any new contract. The fact that the exact area of the adjoining lots is subject to the result of a survey does not make such lot not determinate or determinable. (*id.*)

Rights and Obligations of Seller and Buyer. Private respondent's suspension of its deliveries to petitioner whenever

the latter failed to pay on time is legally justified under the second paragraph of Article 1583 of the Civil Code. *(Integrated Packaging Corp. v. Court of Appeals, G.R. No. 115117, June 8, 2000)*

- Same. Rescission of Sale of Immovable Property. Specifically governed by Article 1592 of the Civil Code which requires, among others, a judicial or notarial demand. A seller cannot unilaterally and extrajudicially rescind a contract of sale where there is no express stipulation authorizing him to extrajudicially rescind. *(Laforteza v. Machuca, G.R. No. 137552, June 16, 2000)*

- Same. Express Warranty of Seller re full payment of taxes and duties on movables sold. Under Art. 1599 of the Civil Code, once an express warranty is breached, the buyer can accept or keep the goods and maintain an action against the seller for damages. *(Harrison Motors Corporation v. Navarro, G.R. No. 132269, April 27, 2000)*

MORTGAGE

Mortgage in good Faith. Petitioner was already aware that a person other than the registered owner was in actual possession of the land when it bought the same at the foreclosure sale. A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. *(Development Bank of the Philippines v. Court of Appeals, G.R. No. 129471, April 28, 2000)*

- Same. Rights of mortgagee. A simple mortgage does not give the mortgagee the right to the possession of the property unless the deed of mortgage has a provision to that effect. *(Isaguirre v. De Lara, G.R. No. 138053, May 31, 2000)*

Extrajudicial Foreclosure. Writ of Possession – a writ of execution employed to enforce a judgment to recover the posses-

sion of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgement. Among the instances when a writ of possession may be issued is in extra-judicial foreclosure of mortgage under Sec. 7 of Act 3135, as amended by Act 4148: (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond. The issuance of a writ of possession is a ministerial function. The order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. The judge issuing the order following the express provisions of law cannot be charged with having acted without jurisdiction or with grave abuse of discretion. As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of said case. Hence, an injunction to prohibit the issuance of a writ of possession is entirely out of place. *(Spouses Ong v. Court of Appeals, G.R. No. 121494, June 8, 2000)*

Release of Mortgage. Please see **Estoppel**.

AGENCY

(Victorias Milling Co., Inc. v. Court of Appeals, G.R. No. 117356, June 19, 2000)

LEASE

Rent. While petitioner objected to the unilateral increase in rental rate, it should not have completely stopped paying rent but should have deposited the original rent with the judicial au-

thorities or a bank in the name of, and with notice to, petitioner. *(Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank, G.R. No. 137980, June 20, 2000)*

Renewal. Contractual provision for renewal of lease, such as "this lease shall be for a period of ……., subject to renewal for another ten (10) years, under the same terms and conditions." – interpreted as **Not** providing for an automatic renewal or extension of the term of the contract. It was not specifically indicated who may exercise the option to renew, neither was it stated that the option was given for the benefit of one party. Thus, pursuant to the *Fernandez ruling* and Article 1196 of the Civil Code, the period of the lease contract is deemed to have been set for the benefit of both parties. Renewal of the contract may be had only upon their mutual agreement. *(Buce v. Hon. Court of Appeals, G.R. No. 136913, May 12, 2000)*

- Same. The stipulation that "this lease shall be for a period of fifteen (15) years x x x, *subject to renewal for another ten (10) years*, under the same terms and conditions" - was likewise interpreted as not providing for an automatic renewal or extension of the term of the contract. Since private respondents were not amenable to a renewal of the lease, they cannot be compelled to execute a new contract when the old contract expired. *(Buce v. Court of Appeals, G.R. No. 136913, May 12, 2000)*

CONTRACT OF CARRIAGE

Action for Breach of Contract of Carriage distinguished from **Quasi-Delict**. In quasi-delict, the negligence or fault should be clearly established because it is the basis of the action; whereas in breach of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the common carrier failed to transport its passenger safely to his destination. It is immaterial that the proximate cause of the collision between the

jeepney and the truck was the negligence of the truck driver. The doctrine of proximate cause is applicable only in actions for quasi-delict, not in actions involving breach of contract. *(Calalas v. Court of Appeals, G.R. No. 122039, May 31, 2000)*

Fortuitous Event (*id.*)

DAMAGES

Actual or Compensatory. It is necessary for a party seeking the award of actual damages to produce competent proof or the best evidence obtainable to justify such award. *(People v. Rios, G.R. No. 132632, June 19, 2000; Integrated Packaging Corp. v. Court of Appeals, G.R. No. 115117, June 8, 2000).)*

- Same. Loss of earning capacity. Formula for computation of. *(People v. Arellano, G.R. No. 122477, June 30, 2000; People v. Reanzares, G.R. No. 130656, June 29, 2000)*

- Same. Damages arising from negligence in maintaining the level of waste water in lagoons. *(Remman v. Court of Appeals, G.R. No. 125018, April 6, 2000)*

Moral Damages. Requisites for recovery of. *(Industrial Insurance Company, Inc. v. Bondad, G.R. No. 136722, April 12, 2000)*

- Same awarded to a corporation. Respondent corporation has sufficiently shown that its reputation was tarnished after it immediately ordered equipment from its suppliers on account of the urgency of the project, only to be cancelled later as petitioner reneged on its contract with respondent corporation. *(Jardine Davies, Inc. v. Court of Appeals, G.R. No. 128066 & 128069, June 19, 2000)*

- Same. In actions for breach of contract of carriage. *(Calalas v. Court of Appeals, G.R. No. 122039, May 31, 2000)*

Exemplary Damages in unfounded litigation. *(Industrial Insurance Company, Inc. v. Bondad, supra)*

Attorney's Fees may be awarded if one who claims it is compelled to litigate with third persons or to incur expenses to protect one's interest by reason of an unjustified act or omission on the part of the party from whom it is sought. (*id.*)

Action for Damages Based on Malicious Prosecution - includes unfounded civil suits instituted just to vex and humiliate the defendant despite the absence of cause of action or probable cause. Requisites. *(Bayani v. Panay Electric Co., Inc., G.R. No. 139680, April 12, 2000)*

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COMMERCIAL LAW

BANKS

Interest Rate. Escalation Clause. Central Bank Circular 494 did not provide a legal basis for petitioner to unilaterally raise the interest rate on the loan. *(Banco Filipino Savings and Mortgage Bank v. Hon. Court of Appeals, G.R. No. 129227, May 30, 2000)*

CORPORATION LAW

Securities and Exchange Commission (SEC) – has authority to order a corporation to render a full accounting of all its assets. *(UBS Marketing Corporation v. Honorable Special Third Division of the Court of Appeals, G.R. No. 130328, May 31, 2000)*

Intra-Corporate Dispute. For the SEC to acquire jurisdiction over any controversy under the provision of Section 5, P.D. No. 902-A, two elements must be considered: (1) the status or relationship of the parties - that is, the controversy must arise "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 in so far as it concerns their individual franchises; and (2) the nature of the question that is the subject of their controversy. This requires that the dispute among the parties be intrinsically connected with the regulation of the internal affairs of the corporation, partnership or association. In this case, petitioners are not stockholders, members or associates of respondent. They are lot buyers and now homeowners in the subdivision developed by the respondent. The controversy is remotely related to the "regulation" of respondent corporation

or to respondent's "internal affairs." *(Arranza v. B.F. Homes, Inc., G.R. No. 131683, June 19, 2000).*

Receivership. The power to overrule or revoke the previous acts of management or Board of Directors of an entity under receivership is within the receiver's authority, as provided for by Section 6 (d) (2) of P.D. No. 902-A. When the acts of a previous receiver or management committee prove disadvantageous or inimical to the rehabilitation of a distressed corporation, the succeeding receiver or management committee may abrogate or cast aside such acts. However, that prerogative is not absolute. It should be exercised upon due consideration of all pertinent and relevant laws when public interest and welfare are involved. (*id.*)

- *Editor's Notes:* Under the Securities Regulations Code (R.A. No. 8799 enacted on July 19, 2000), the SEC jurisdiction over all cases enumerated under Section 5 of P.D. No. 9902-A has been transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court. However, the SEC shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution and also over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

RADIO LAW

Only holders of a legislative franchise may operate and manage a radio station. For violation of this provision alone, the National Telecommunications Commission (NTC) can prevent a party from broadcasting. Primary jurisdiction of the NTC upheld. *(Crusader's Broadcasting System, Inc. v. National Telecommunications Commission, G.R. No. 139583, May 31, 2000)*

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CRIMINAL LAW

FELONIES AND CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

Criminal Liability is incurred by any person committing a felony, although the wrongful act done is different from what was intended. *(People v. Flora, G.R. No.125909, June 23, 2000)*

Conspiracy as a Manner of Incurring Criminal Liability - *(Salvatierra v. Court of Appeals, G.R. No. 115998, June 16, 2000; People v. Mumar, G.R. No. 123155, June 8, 2000; People v. Roche, G.R. No. 115182, April 6, 2000; People v. Ragundiaz, G.R. No. 124977, June 22, 2000; People v. Candare, G.R. No. 129528, June 8, 2000; People v. Legaspi, G.R. No. 117802, April; People v. Cupino, G.R. No. 125688, April 3, 2000)*

- The evidence proved the existence of conspiracy but not the culpability of the appellant. *(People v. Arlalejo, G.R. No. 127841, June 16, 2000).*

- Conspiracy having been established, the two accused should be held liable for two (2) counts of the special complex crime of rape with homicide. *(People v. Ordono, G.R. No. 132154, June 29, 2000)*

- The lack of design or plan to rape and kill the victim prior to the commission of the crime does not negate conspiracy. For conspiracy to exist, proof of an actual planning of the perpetration of the crime is not a condition precedent. It is sufficient that at the time of the commission of the offense the accused had the same purpose and were united in its execution. (*id.*)

JUSTIFYING CIRCUMSTANCES

Self-Defense. *(People v. Saragina, G.R. No. 128281, May 30, 2000).* The number and location of wounds inflicted on the victim effectively negate the claim of self-defense. *(People v. Francisco, G.R. No. 130490, June 19, 2000)*

Defense of Relative. Anyone who admits the killing of a person but invokes the defense of relative to justify the same has the burden of proving the elements of said defense by clear and convincing evidence. *(People v. Francisco, G.R. No. 121682, April 12, 2000)*

EXEMPTING CIRCUMSTANCES

Insanity. An insane person is exempt from criminal liability unless he acted during a lucid interval. If the accused is found insane when he committed the alleged crime, he should be acquitted. Such acquittal does not result in his outright release, but rather in a verdict which is followed by commitment of the accused to a mental institution. Since the presumption is always in favor of sanity, he who invokes insanity as an exempting circumstance must prove it by clear and positive evidence. This evidence must refer to the time preceding the act under prosecution or to the very moment of its execution. *(People v. Estrada, G.R. No. 130487, June 19, 2000)*

Various tests to determine insanity. *(People v. Madarang, G.R. No. 1322319, May 12, 2000).*

Insanity distinguished from rage or passion. There is a vast difference between a genuinely insane person and one who worked himself up into such a frenzy of anger that he fails to use reason or good judgment in what he does. A man does crazy things when enraged but it does not necessarily and conclusively prove that he is insane. *(People v. Villa, G.R. No. 129899, April 27, 2000)*

MITIGATING CIRCUMSTANCES

Voluntary Surrender. The essence of voluntary surrender is spontaneity and the intent of the accused to give himself up and submit himself unconditionally to the authorities either because he acknowledges his guilt or he wishes to save them from the trouble and expense for his search and capture. *(People v. Adoc, G.R. No. 132079, April 12, 2000; Rivera v. Court of Appeals, G.R. No. 125867, May 31, 2000)*

Incomplete Justifying Circumtance of fulfilment of duty. *(People v. Domingo, G.R. No. 124670, April 21, 2000)*

AGGRAVATING CIRCUMSTANCES

Abuse of Public Position. Membership in the CAFGU and use of his government-issued M-14 rifle to kill the victim do not necessarily prove that the accused took advantage of his public position to commit the crime. *(People v. Magayac, G.R. No. 126043, April 19, 2000; People v. Villa, G.R. No. 129899, April 27, 2000)*

Dwelling includes every dependency of a house that forms an integral part thereof, such as staircase or terrace. When a crime is committed in the dwelling of the offended party who did not cause provocation, dwelling may be appreciated as an aggravating circumstance. *(People v. Rios, G.R. No. 132632, June 19, 2000)*

Abuse of Superior Strength *(People v. Mumar, G.R. No. 123155, June 8, 2000; People v. Orio, G.R. No. 128821, April 12, 2000)*

Treachery. When treachery is alleged, the manner of attack must be proven. It cannot be appreciated absent any particulars on the manner in which the aggression commenced or how the act which resulted in death of the victim unfolded. *(People v. Rios, supra; People v. Adoc, supra)*

- Treachery was not established as the shooting was done at the spur of the moment. *(People v. Adoc, supra)*

- However, even though the victim may have been warned of a possible danger to his person, there would still be treachery if the attack was executed in such a manner as to make it impossible for the victim to retaliate. *(People v. Estorco, G.R. No. 111941, April 27, 2000).* There was treachery even as the victim and the appellant were facing each other when the latter stabbed the former. *(People v. Francisco, G.R. No. 121682, April 12, 2000)*

Cruelty or Ignominy. Eight shots on the victim's back cannot *ipso facto* be considered cruelty or ignominy. *(People v. Magayac, G.R. No. 126043, April 19, 2000)*

Multiple Homicide in Robbery with Homicide; Multiple Rape in Robbery with Rape - Not Aggravating. The additional rapes committed on the occasion of robbery should not be appreciated as an aggravating circumstance despite a resultant "anomalous situation" where, in terms of gravity, robbery with rape would be on the same level as robbery with multiple rapes. There is no law making the said additional rape/s or homicide/s as an aggravating circumstance. The enumeration of aggravating circumstance under Art. 14 of the Revised Penal Code is exclusive, unlike the enumeration of mitigating circumstances in Art. 13 of the same Code which provides for analogous circumstances. The remedy lies with the legislature. Consequently, unless and until a law is passed providing that the additional rape/s or homicide/s may be considered aggravating, the Court must construe the penal law in favor of the offender as no person may be brought within its terms if he is not clearly made so by the statute. Under this view, the additional rape committed is not considered an aggravating circumstance. *(People v. Sultan, G.R. No. 132470, April 27, 2000; People v. Regala, G.R. No. 130508, April 5, 2000)*

Multiple Homicide in Robbery with Homicide - Aggravating. In a more recent case, the Court ruled that when more than one person is killed on the occasion of robbery, the additional killing should be appreciated as an aggravating circumstance to avoid the anomalous situation where, from the standpoint of the gravity of the offense, robbery with one killing would be on the same level as robbery with multiple killings. *(People v. Sabredo, G.R. No. 126114, May 11, 2000)*

Use of Deadly Weapon in Rape. Must be alleged in the information because it is in the nature of a qualifying aggravating circumstance which increases the range of the penalty to include death. As it was not so alleged, even though it was proved in this case, the same can only be treated as a generic aggravating circumstance which cannot affect the penalty to be imposed. *(People v. Fraga, G.R. No. 134130-33, April 12, 2000)*

PERSONS CRIMINALLY LIABLE

Principal by indispensable cooperation - culpability not established. Accused was found to be only an accomplice as his only participation in the crime was that he dragged the victim to a taxicab and allegedly drove the same away from the scene of the crime. *(People v. Ragundiaz, G.R. No. 124977, June 22, 2000)*

Accomplice *(People v. Roche, G.R. No. 115182, April 6, 2000)*

PENALTIES

Retroactive Effect of Penal Statutes. Although this case originated in 1997 before the enactment of the IPR Code, the provisions of the said code was applied pursuant to Article 22 of the Revised Penal Code. *(Savage v. Judge Taypin, G.R. No. 134217, May 11, 2000)*

- The retroactive effect of penal laws, insofar as they favor the person guilty of a felony, applies to judicial decisions. *(People v. De los Santos, G.R. No. 121906, April 5, 2000)*

Proper penalty in qualified theft. The "penalty higher than *reclusion perpetua*" is reclusion perpetua for 40 years with the accessory penalties under Art. 40. *(People v. Bago, G.R. No. 122290, April 6, 2000)*

Although Section 17 of R.A. No. 7659 has fixed the duration of reclusion perpetua from 20 years and 1 day to 40 years, there was no clear legislative intent to alter its original classification as an indivisible penalty. *(People v. Francisco, G.R. No. 130490, June 19, 2000)*

Indeterminate Sentence Law *(Mari v. Court of Appeals, G.R. No. 127694, May 31, 2000)*

CIVIL LIABILITY

Indemnity, Moral Damages and Exemplary Damages in qualified rape. *(People v. Alvero, G.R. Nos. 134536-38, April 5, 2000)*

SPECIFIC CRIMES

CRIMES AGAINST PROPERTY

Robbery with Homicide. Elements: (a) taking of personal property perpetrated by means of violence or intimidation against a person; (b) the property taken belongs to another; (c) the taking is characterized by intent to gain; and (d) on the occasion of the robbery or by reason thereof, the crime of homicide, used in its generic sense, is committed. The homicide may precede the robbery or may occur after it. What is essential is the intimate connection between robbery and the killing whether the latter be prior or

subsequent to the former or whether both crimes be committed at the same time. Whenever homicide has been committed as a consequence, or on the occasion, of the robbery, all those who took part as principals in the robbery will also be held guilty as principals of the special complex crime of robbery with homicide although they did not actually take part in the homicide, unless it clearly appears that they endeavoured to prevent the homicide. *(People v. Robles, G.R. No. 101335, June 8, 2000)*

- The phrase "by reason" covers homicide committed before or after the taking of personal property of another, as long as the motive of the offender (in killing a person before the robbery) is to deprive the victim of his personal property which is sought to be accomplished by eliminating an obstacle or opposition, or to do away with a witness, or to defend the possession of stolen property. *(People v. Legaspi, G.R. No. 117802, April 27, 2000)*

Estafa through conversion or misappropriation under Art. 315 (b) of the Revised Penal Code – requires that the offender, who received money, goods, or any other personal property from the offended party (1) in trust or (2) on commission or (3) for administration - should have both material or physical possession and juridical possession of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. In this case, petitioner is a cash custodian primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, a mere bank employee. As such, and having no juridical possession over the missing funds, petitioner cannot be convicted of the crime of estafa. Estafa distinguished from qualified theft. *(Chua-Burce v. Court of Appeals, G.R. No. 109595, April 27, 2000)*

Qualified Theft. *(People v. Bago, G.R. No. 122290, April 6, 2000)*

CRIMES AGAINST HONOR

Serious Slander by Deed done in the heat of anger and in reaction to a perceived provocation. Penalty for this offense is either imprisonment or fine. The Court opted to impose a fine. *(Mari v. Court of Appeals, G.R. No. 127694, May 31, 2000)*

CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

Kidnapping with Murder *(People v. Rimorin, G.R. No. 124309, May 16, 2000)*

Kidnapping for Ransom. The penalty of death is imposable where the detention is committed for the purpose of extorting ransom. The duration of the detention is not material. *(People v. Pavillare, G.R. No. 129970, April 5, 2000; People v. Malapayon, G.R. Nos. 111734-35, June 16, 2000; People v. Mittu, G.R. No. 109939, June 8, 2000)*

Forcible Abduction with Rape. The two (2) elements of forcible abduction are (1) the taking of a woman against her will and (2) with lewd designs. The complex crime of forcible abduction with rape occurs when there is carnal knowledge of the abducted woman under the following circumstances: (1) by using force or intimidation; (2) when the woman is deprived of reason or otherwise unconscious; and (3) when the woman is under 12 years of age or demented. *(People v. Lacanieta, G.R. No. 124299, April 12, 2000)*

- **Same.** Not established. Elements. While the information sufficiently alleged the forcible taking of complainant, the same failed to allege "lewd designs." When a complex crime under Article 48 of the Revised Penal Code is charged, such as forcible abduction with rape, it is axiomatic that the prosecution must allege and prove the presence of all the elements of forcible abduction, as well as all the elements of the crime of rape. When appel-

lant, using a blade, forcibly took away complainant for the purpose of sexually assaulting her, as in fact he did rape her, the rape may then absorb forcible abduction. Hence, the crime committed is simple rape. *(People v. Sabredo, G.R. No. 126114, May 11, 2000).*

- Same. Conspiracy among the accused not established. *(People v. De Lara, G.R. No. 124703, June 27, 2000)*

Grave Coercion (*id.*)

CRIMES AGAINST PUBLIC INTEREST

Forgery. The filing of an information for estafa does not by itself prove that the respondents forged the signatures of petitioner. *(Corpus v. Spouses Grospe, G.R. No. 135297, June 8, 2000)*

Unfair Competition. The issue involving the existence of "unfair competition" as a felony involving design patents referred to in Art. 189 of the Revised Penal Code has been rendered moot and academic by the repeal of that Article by the IPR Code which took effect on January 1, 1998. There is evidently no mention of any crime of "unfair competition" involving design patents in the controlling provisions of the IPR Code on Unfair Competition. It is therefore unclear whether the crime exists at all, for the enactment of RA 8293 did not result in the re-enactment of Art. 189 of the Revised Penal Code. *(Savage v. Judge Taypin, G.R. No. 134217, May 11, 2000)*

CRIMES COMMITTED BY PUBLIC OFFICERS

Malversation Public Fund. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is the shortage in his accounts which he is not able to explain satisfactorily. *(Estrella v. Sandiganbayan, G.R. No. 125160, June 20, 2000)*

Knowingly Rendering an Unjust Judgment. For such charge to prosper, complainant must prove that the judgment is patently contrary to law or is not supported by the evidence and made with deliberate intent to perpetrate an injustice. *(Samaniego v. Aguila, G.R. No. 125567, June 27, 2000)*

CRIMES AGAINST PERSONS

Murder *(People v. Flora, G.R. No.125909, June 23, 2000).* Accused acquitted on the ground of reasonable doubt. *(People v. Castillo, G.R. No. 130188, April 27, 2000)*

Homicide. *(People v. Monieva, G.R. No. 123912, June 8, 2000)*

Qualified Rape (with use of deadly weapon) – not established, as "use of a gun in committing the rape" was not alleged in the information. *(People v. Rojas, G.R. No. 125292, April 12, 2000)*

Qualified Rape – when the victim is under eighteen (18) years old and the offender is her parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. (Sec. 11, R.A. No. 7659). The above circumstances (minority and relationship) partake of the nature of qualifying aggravating circumstances which, if present in the commission of rape, warrant the imposition of the death penalty. To be appreciated, however, the above circumstances must be specifically pleaded in the information and proven during trial. In the following cases, qualified rape was not established: (i) where the information alleged that the victim is the daughter of the appellant but failed to allege that the victim is under 18 years old. *(People v. Arillas, G.R. No. 130593, June 19, 2000)*; (ii) where during trial, the age of the victim and her relationship with the accused-appellant were sufficiently established but the indictment on which the accused-appellant was ar-

raigned failed to allege the same. *(People v. Nava, G.R. No. 130509-12, June 19, 2000; People v. Historillo, G.R. No. 130408, June 16, 2000; People v. Mamac, G.R. No. 130332, May 31, 2000)*; (iii) where the minority of the private complainant was not sufficiently established. The photocopy of private complainant's birth certificate included in the records of this case was not duly certified nor formally offered in evidence. Therefore, no probative value can be given to it. Neither would appellant's admission of his relationship with his victims suffice. *(People v. Tabanggay, G.R. No. 130504, June 29, 2000)*; (iv) where, although it was established that the victim who was under 18 years of age was raped by the common-law spouse of her mother - the relationship alleged in the information was that accused-appellant was the "stepfather" of the rape victim *(People v. Fraga, G.R. No. 134130-33, April 12, 2000)*; (v) where the information did not allege the relation between the offenders and the victim (that the offenders are the step-grandfather and the step-father, respectively, of the victim) *(People v. Alcartado, G.R. Nos. 132379-82, June 29, 2000)*; (vi) The allegation that the rape victim is "the niece" of the accused is not specific enough to satisfy the special qualifying circumstance of relationship. If the offender is merely a relation – not a parent, ascendant, step-parent or guardian or common law spouse of the mother of the victim – it must be alleged in the information that he is "a relative by consanguinity or affinity [as the case may be] within the third civil degree. *(People v. Ferolino, G.R. Nos. 131730-31, April 5, 2000; People v. Alvero, supra)*. Incestuous rape committed before the effectivity of R.A. 7659. *(People v. Guiwan, G.R. No. 117324, April 27, 2000)*

Qualified Rape – with use of a deadly weapon. Use of scythe to intimidate the rape victim – considered as aggravating circumstance of "deadly weapon." *(People v. Austria, G.R. No. 123539, June 27, 2000; People v. Mamac, G.R. No. 130332, May 31, 2000)*. The qualifying circumstance of use of a deadly weapon was introduced as an amendment to Article 335 of the Revised Penal Code by R.A. No. 4111 on June 20, 1964. *(People v. Balora, G.R. No. 124976, May 31, 2000)*

Rape. *(People v. Ramos; People v. Balora, G.R. No. 124976, May 31, 2000; People v. De Guzman, G.R. No. 124368, June 8, 2000; People v. Hofilena, G.R. No. 134772, June 22, 2000)* Incestuous rape committed before the effectivity of R.A. 7659. *(People v. Guiwan, G.R. No. 117324, April 27, 2000)*

- Precise time of commission is not an essential element of the crime. Intimidation in rape includes the moral kind of intimidation or coercion. In incestuous rape, actual force and intimidation is not even necessary. The reason is that in rape committed by a father against his own daughter, the moral ascendancy of the former over the latter substitutes for violence or intimidation. *(People v. Nava, G.R. No. 130509-12, June 19, 2000; People v. Alvero, supra)*

- Element of resistance discussed. *(People v. Garchitorena, G.R. No. 131357, April 12, 2000)*. The law does not impose upon the rape victim the burden of proving resistance where there is intimidation. *(People v. Historillo, G.R. No. 130408, June 16, 2000)*

- "Sweetheart defense" should be substantiated by some documentary and/or other evidence of the relationship. *(People v. Sabredo, G.R. No. 126114, May 11, 2000; People v. Dreu, G.R. No. 126282, June 20, 2000).*

- There is no "presumption of impotence" in favor of the accused-appellant who was already 82 years old when the alleged rape was committed. The presumption has always been in favor of potency. In rape cases, impotence as a defense must be proven with certainty to overcome the presumption in favor of potency. *(People v. Austria, G.R. No. 123539, June 27, 2000)*

- Defense of old age and effect of operation tending to show accused as sexually inutile – not given credence. *(People v. Lustre, G.R. No. 134562, April 6, 2000)*

- Offer of marriage. As a rule, in rape cases, an offer of marriage is an admission of guilt. *(People v. Dreu, G.R. No. 126282, June 20, 2000)*

- Statutory Rape. *(People v. Tanoy, G.R. No. 115692, May 12, 2000)*

- Rape of a mental retardate. *(People v. Antolin, G.R. No. 133880, April 27, 2000; People v. Babera, G.R. No. 130609, May 30, 2000)*

QUASI-OFFENSES

Reckless Imprudence Resulting in Homicide. Was not appreciated as the shooting was intentional. *(People v. Domingo, G.R. No. 124670, April 21, 2000)*

SPECIAL PENAL LAWS

Illegal Possession of Firearm. *(People v. Malapayon, G.R. Nos. 111734-35, June 16, 2000)*

Anti-Carnapping Act of 1972. A person in possession of a stolen article is presumed guilty of having illegally and unlawfully taken the same unless he can satisfactorily explain his possession thereof. *(Marquez v. Court of Appeals, G.R. No. 116689, April 3, 2000)*

Bouncing Checks Law (P.B. BLG. 22). - Elements of offense. *(Villanueva v. People, G.R. No. 135098, April 12, 2000)*. What the law punishes is the mere issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating to its issuance. The mere act of issuing a worthless check is *malum prohibitum*. This law applies even in cases where dishonored checks are issued merely in the form of a guarantee.

(Dichaves v. Judge Apalit, A.M. No. MTJ-00-1274, June 8, 2000). The gravamen of the offense is the act of making or issuing a worthless check that is dishonored upon its presentment for payment. Considering the rule in *mala prohibita* cases, the only inquiry is whether the law has been breached. Criminal intent becomes unnecessary where the acts are prohibited for reasons of public policy and the defenses of good faith and absence of criminal intent are unavailing. The checks issued, assuming that they were not intended to be encashed or deposited in a bank, produce the same effect as ordinary checks. What the law punishes is the issuance of a rubber check itself and not the purpose for which the check was issued nor the terms and conditions relating to its issuance. *(Cueme v. People, G.R. No. 133325, June 30, 2000)*

Anti-Graft and Corrupt Practices Act. Sec. 3, par. (e), R.A. 3019, as amended, provides as one of its elements that the public officer should have acted by causing undue injury to any party, including the government, or by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3, par. (e), or there are two (2) different modes of committing the offense. This does not however indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either mode or under both. The term "private party" or "private person" is used to refer to persons other than those holding public office. However, petitioner is charged with causing the hiring of some 192 casual employees, and the consequent awarding of their honoraria and salaries taken from the peace and order funds of the municipality. The reckoning period is before the casual employees' incumbency when they were still private individuals, and hence, their current positions do not affect the sufficiency of the information. *(Bautista v. Sandiganbayan, G.R. No. 136082, May 12, 2000)*

Illegal Recruitment in Large Scale (Art. 38 [b] in relation to Art. 39 of the Labor Code). Elements: (1) the accused engaged in acts of recruitment and placement of workers defined under Article 13 (b) or in any prohibited activities under Article 34 of the Labor Code; (2) the accused did not comply with the guidelines issued by the Secretary of Labor and Employment, *i.e.*, securing license or authority to recruit and deploy workers, either locally or overseas; and (3) the accused committed the unlawful acts against three or more persons, individually or as a group. *(People v. De Arabia, G.R. No. 128112, May 12, 2000)*

Anti-Piracy and Highway Robbery Law of 1974. In the case of *People v. Puno*, it was held that P.D. No. 532 amended Art. 306 of the Revised Penal Code and that it is no longer required that there be at least four (4) armed persons forming a band of robbers as an essential element of the crime. Hence, the fact that there were only three identified perpetrators is of no moment. P.D. No. 532 only requires proof that persons were organized for the purpose of committing highway robbery indiscriminately - characterized by randomness in the selection of the victims or of committing robbery indiscriminately. *(People v. Agomo-o, G.R. No. 131829, June 23, 2000)*

- **Same**. Conviction for this crime requires proof that several accused were organized for the purpose of committing it indiscriminately. Here, there is no proof that the accused and his cohorts organized themselves to commit highway robbery. Neither is there proof that they attempted to commit similar robberies to show the "indiscriminate" perpetration thereof. On the other hand, what the prosecution established was only a single act of robbery against particular persons. *(People v. Reanzares, G.R. No. 130656, June 29, 2000)*

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LABOR LAW

LABOR POLICIES

Equal Pay; Equal Work. If an employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. The employer has discriminated against the employee; it is for the employer to explain why the employee is treated unfairly. Point-of-hire classification employed by respondent school to justify the distinction in the salary rates of foreign-hires and local hires - an invalid classification. *(International School Alliance of Educators v. Hon. Quisumbing, G.R. No. 128845, June 1, 2000)*

WELFARE LEGISLATION

Compensability of Illness. Under the relevant contract, compensability of the illness or death of seamen need not depend on whether the illness was work-connected or not. It is sufficient that the illness occurred during the term of the employment contract. Even assuming that the ailment was contracted prior to employment, this would not deprive the employee of compensation benefits. For what matters is that his work had contributed, even in a small degree, to the development of the disease and in bringing about his eventual death. *(Seagull Ship Management and Transport, Inc. v. NLRC, G.R. No. 123619, June 8, 2000)*

Workmen's Compensation. To be compensable, an injury must have resulted from an accident arising out of and in the course of employment. It must be shown that it was sustained within the scope of employment while the claimant was performing an act reasonably necessary or incidental thereto while following the orders of a superior. The standard of "work connection" must be satisfied even by one who invokes the 24-hour-duty doc-

trine. Petitioner was not able to demonstrate solidly how his job as a fire truck driver was related to the injuries he had suffered. That he sustained the injuries after pursuing a purely personal and social function – having dinner with some friends – is clear from the records of the case. His injuries were not acquired at his work place; nor were they sustained while he was performing an act within the scope of his employment or in pursuit of an order of his superior. *(Valeriano v. Employment Compensation Commission, G.R. No. 136200, June 8, 2000)*

LABOR RELATIONS

NATIONAL LABOR RELATIONS COMMISSION

Labor Case. Party. The party bringing suit has the burden of proving the sufficiency of the representative character that he claims. The full names of all the real parties in interest, whether natural or juridical persons authorized by law, shall be stated in the caption of the complaint or petition. *(Workers of Antique Electric Cooperative, Inc. v. NLRC, G.R. 120062, June 8, 2000)*

NLRC Decision. Final and executory. *(PGA Brotherhood Association v. NLRC, G.R. No. 131085, June 19, 2000)*. Once a decision or order becomes final and executory, it is removed from the power or jurisdiction of the court which rendered it to further alter or amend it. It thereby becomes immutable and unalterable and any amendment or alteration which substantially affects a final and executory judgment (including the entire proceedings held for the purpose) is null and void for lack of jurisdiction. *(Industrial Management International Development Corp. v. NLRC, G.R. No. 101723, May 11, 2000)*

Appeal. Perfection of appeal within the reglementary period and in the manner prescribed by law is mandatory and jurisdictional. Non-compliance therewith renders the judgment final

and executory. Appeal is perfected when there is proof of payment of the appeal fee and in cases where the employer appeals and a monetary award is involved, there is payment of the appeal bond. A mere notice of appeal without complying with the other requisites will not stop the running of the period for perfecting an appeal. *(Workers of Antique Electric Cooperative, Inc. v. NLRC, supra; Catubay v. NLRC, G.R. No. 119289, April 12, 2000)*

Petition for *Certiorari*. Settled principles governing petition for certiorari involving labor cases. *(De La Salle University v. De La Salle University Employees Association, supra)*

LABOR ORGANIZATIONS

Certification Election. "Managerial employees" defined in relation to their inclusion in the list of voters for purposes of a certification election. The personnel concerned are merely supervisory employees and not managerial employees. *(Paper Industries Corporation of the Philippines v. Hon. Laguesma, G.R. No. 101738, April 12, 2000)*

Collective Bargaining Unit. Factors to determine appropriate collective bargaining unit: (1) the will of the employees (*Globe Doctrine*); (2) affinity and unity of the employees' interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interest Rule); (3) prior collective bargaining history; and (4) similarity of employment status. The basic test of an asserted bargaining unit's acceptability is whether or not it is fundamentally the combination which will best assure to all employees the exercise of their collective bargaining rights. In this case, the foreign-hires do not belong to the same bargaining unit as the local-hires *(International School Alliance of Educators v. Hon. Quisumbing, supra)*. The express exclusion of computer operators and disciplinary officers from the bargaining unit of rank-and-file employees in the 1986 collective bar-

gaining agreement does not bar any renegotiation for their inclusion in the bargaining unit in the future. *(De La Salle University v. De La Salle University Employees Association, supra)*

COLLECTIVE BARGAINING AGREEMENT AND ITS ADMINISTRATION

Amendments. During the freedom period, the parties may not only renew the existing collective bargaining agreement but may also propose and discuss modifications or amendments thereto. *(De La Salle University v. De La Salle University Employees Association, supra)*

Appropriate Bargaining Unit. The employees of St. Benilde should be excluded from the bargaining unit of the rank-and-file employees of De La Salle University, because the two educational institutions have their own separate juridical personality and no sufficient evidence was shown to justify the piercing of the veil of corporate fiction. The Court likewise affirmed the ruling of the voluntary arbitrator for the inclusion of a union shop provision in addition to the existing maintenance of membership clause in the collective bargaining agreement. Adoption of last-in-first-out method in case of lay-off – upheld by the Court – as a valid exercise of management prerogative. (*id.*)

TERMINATION OF EMPLOYMENT

Management Prerogatives. To Demote. *(Leonardo v. NLRC, G.R. No. 125303, June 16, 2000)*

GROUNDS FOR DISMISSAL

Abandonment - not established. *(Icawat v. NLRC, G.R. No. 133573, June 20, 2000)*

Violation of Company Rules, First Offense – committed after 18 years of satisfactory and unblemished service. Employee was found guilty of driving without a valid driver's license. The law warrants the dismissal of an employee without making any distinction between a first offender and a habitual delinquent where the totality of the evidence was sufficient to warrant dismissal. *(Aparente v. NLRC, G.R. No. 117652, April 27, 2000)*

Gross Misconduct – Not established. In this case, the alleged misconduct of petitioner, when viewed in its context, is not of serious and grave character as to warrant his dismissal. *First*, petitioner made the alleged offensive utterances and obscene gestures during an informal Christmas gathering of respondent company's district sales managers and marketing staff. *Second*, petitioner's outburst was a reaction to the decision of management in a case. Admittedly, using the words "bullshit" and "*putang ina*" and making lewd gestures to express his dissatisfaction over said management decision were clearly in bad taste but these acts were not intended to malign or cast aspersion on the person of respondent company's president and general manager. *Third*, respondent company did not seem to consider the offense of petitioner serious and grave enough to warrant immediate investigation on the matter. *(Samson v. NLRC, G.R. No. 121035, April 12, 2000)*

Loss of Confidence. – As a ground for dismissal, the term loss of "trust and confidence" is restricted to managerial employees. Although petitioner's position is called "District Sales Manager," his job description does not mention that petitioner possesses the power to "lay down policies nor to hire, transfer, suspend, lay off, recall, discharge, assign or discipline employees." Absent this crucial element, petitioner cannot be considered a managerial employee. And, even if he were considered a managerial employee, the ground of "loss of confidence" is still without basis as it was not clearly established. A breach of trust is wilful if it is done intentionally, knowingly and purposely, without justifiable

excuse, as distinguished from an act done carelessly, thoughtlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion. (*id.*)

Sexual Harrasment, Illegal Dismissal, Award of Moral and Exemplary Damages in Labor Cases. The gravamen of the offense of sexual harassment is not the violation of the employee's sexuality but the abuse of power by the employer. Strictly speaking, there is no time period within which an employee is expected to complain through proper channels. Private respondent admittedly allowed 4 years to pass before finally coming out with her employer's sexual impositions. Not many women, especially in this country, are made of the stuff that can endure the agony and trauma of a public, even corporate, scandal. If petitioner corporation had not issued the third memorandum that terminated the services of private respondent, we could only speculate how much longer she would keep her silence. Moreover, few persons are privileged indeed to transfer from one employer to another. The dearth of quality employment has become a daily "monster" roaming the streets that one may not be expected to give up one's employment easily but to hold on to it, so to speak, by all tolerable means. Perhaps, to private respondent's mind, for as long as she could outwit her employer's ploys, she would continue on her job and consider them as mere occupational hazards. The uneasiness in her place of work thrived in an atmosphere of tolerance for 4 years, and one could only imagine the prevailing anxiety and resentment, if not bitterness that beset her all that time. Anxiety was gradual in private respondent's 5-year employment. It began when her plant manager showed an obvious partiality for her which went out of hand when he started to make it clear that he would terminate her services if she would not give in to his sexual advances. Sexual harassment is an imposition of misplaced "superiority" which is enough to dampen an employee's spirit and capacity for advancement. It affects her sense of judgment; it changes her life. If for this reason alone, private respondent should be

adequately compensated. *(Philippine Aeolus Automotive United Corporation v. NLRC, G.R. No. 124617, April 28, 2000)*

Separation Pay. An employee who is dismissed for cause is generally not entitled to any financial assistance. Equity considerations, however, provide an exception. In this case, the award to petitioner of separation pay by way of financial assistance equivalent to ½ month's pay for every year of service is equitable, as his infraction of company rules was not so reprehensible nor unscrupulous. *(Aparente v. NLRC, G.R. No. 117652, April 27, 2000)*

Waiver of Backwages. Valid. *(Workers of Antique Electric Cooperative, Inc. v. NLRC, supra)*

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LAND REGISTRATION

Validity of Title Not Subject to Collateral Attack. In the instant case, the original complaint was for recovery of possession filed by petitioner against private respondent - not an original action to question the validity of the transfer certificate of title on which petitioner bases its right. To rule on the issue of validity in a case for recovery of possession is tantamount to a collateral attack on the title. However, private respondent filed a counterclaim against petitioner, claiming ownership of the land and seeking damages. Hence, the Court can rule on the question of validity of the transfer certificate of title for the counterclaim can be considered a direct attack on the same. *(Development Bank of the Philippines v. Court of Appeals, G.R. No. 129471, April 28, 2000)*

Perfection of Title. "Open and Continuous Possession." While the pipelines were "hidden" under the land, it is a matter of public knowledge and judicial notice that the pipes existed and were buried there before World War II. The existence of the pipelines was indicated above the ground by "*pilapils*" constructed by the adjoining landowners themselves since they planted rice alongside the strips of land. The fact that the use of the pipes was discontinued was not relevant since the pipes had remained buried under the land up to the present. By placing the pipelines under the land, there was material occupation of the land by NWSS, subjecting the land to its will and control. Even assuming, *arguendo*, that the pipes were "hidden" from sight, petitioner cannot claim ignorance of the existence of the pipes. *(Santiago v. Court of Appeals, G.R. No. 109111, June 28, 2000)*

Certificate of Title. While the titles presented by petitioners show ownership, it does not pertain to the land claimed, but to the adjoining parcels of land. A torrens certificate of title covers only the land described therein together with improvements existing thereon, if any. (*id.*)

Tax Declarations and Receipts for Payment of Real Property Taxes. Tax declarations do not prove ownership. However, they are strong evidence of ownership when coupled with "open" possession of the land by the applicant for registration. (*id.*). Tax receipts are *prima facie* proofs of ownership or possession of the property for which such taxes have been paid. Coupled with proof of actual possession of the property, they may become the basis of a claim for ownership. By acquisitive prescription, possession in the concept of owner – public, adverse, peaceful and uninterrupted – may be converted to ownership. On the other hand, mere possession and occupation of land cannot ripen into ownership. *(Cequena v. Bolante, G.R. No. 137944, April 6, 2000)*

Torrens System. The Torrens system of land registration does not create nor vest title. It has never been recognized as a mode of acquiring ownership. *(Bernardo v. Court of Appeals, G.R. No. 111715, June 8, 2000)*. The fact that a party was able to secure title in his favor does not operate to vest ownership upon him/her of the property. Ownership of the land presently occupied by private respondent was already vested in him and its inclusion in the original title and the subsequent transfer certificate of title was erroneous. Accordingly, the land in question must be reconveyed to private respondent, the true and actual owner thereof. *(Development Bank of the Philippines v. Court of Appeals, supra)*

Judicial Reconstitution of Title. Notice by publication is a jurisdictional requirement non-compliance of which is fatal to the petition for reconstitution of title. Moreover, actual notice to the occupants of the property is mandatory. Failure to serve such notice on a possessor of the property involved renders the order of reconstitution null and void as said possessor is deprived of his day in court. *(Bernardo v. Court of Appeals, G.R. No. 111715, June 8, 2000)*

Buyer in Good Faith. Sec. 39 of Act No. 496 which provides that every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrance - refers to a lien or encumbrance on the land – not to the right of ownership thereof. *(Development Bank of the Philippines v. Court of Appeals, supra)*

Reconveyance of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title. While a review of the decree of registration is no longer available after the expiration of the one-year period from entry thereof, an equitable remedy is still available. Those wrongfully deprived of their property may initiate an action for reconveyance of the property. *(Villanueva-Mijares v. Court of Appeals, G.R. No. 108921, April 12, 2000; Development Bank of the Philippines v. Court of Appeals, supra; Firestone Ceramics, Inc. v. Court of Appeals, G.R. No. 127022, June 28, 2000)*

Notice of *Lis Pendens* pertains to all suits or actions which directly affect real property and not only those which involve the question of title, but also those which are brought to establish an equitable estate, interest, or right, in specific real property or to enforce any lien, charge, or encumbrance against it. *(Alberto v. Court of Appeals, G.R. No. 119088, June 30, 2000)*

Petition to Compel Surrender of Withheld Duplicate Certificates. *(Limpo v. Court of Appeals, G.R. No. 124582, June 16, 2000)*

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LEGAL AND JUDICIAL ETHICS

LAWYERS

THE LAWYER AND SOCIETY

Morality Issue. All circumstances taken together indicate that respondent was imprudent in managing her personal affairs. However, her relationship, clothed as it was with what respondent believed was a valid marriage, cannot be considered immoral. Immorality connotes conduct that shows indifference to the moral norms of society and the opinion of good and respectable members of the community. To warrant disciplinary action, such conduct must be "grossly immoral," that is, it must be corrupt and false as to constitute criminal act or so unprincipled as to be reprehensible to a high degree. *(Ui v. Atty. Bonifacio, Adm. Case No. 3319, June 8, 2000)*

THE LAWYER AND CLIENT

Effective Representation. A client is entitled to an effective representation. A lawyer should recognize his lack of competence or incapacity to handle a particular task and the disservice he would do his client if he undertakes or continues to undertake the task entrusted to him. If that situation occurs, he should either decline to act or obtain his client's instruction to retain, consult or collaborate with another lawyer to avoid any event detrimental to his client's cause. *(Heirs of Cristobal v. Court of Appeals, G.R. No. 135959, May 11, 2000)*

Duty to Account Promptly. Lawyers must promptly account for money or property they receive on behalf of their clients. Failure to do so constitutes professional misconduct and justifies the imposition of disciplinary sanctions. *(Judge Angeles v. Atty. Uy, A.C. No. 5019, April 6, 2000)*

Dereliction of Duty. Respondent's failure to submit the brief to the appellate court within the reglementary period is not only a dereliction of duty to his client but also to the court as well. *(Torres v. Atty. Orden, A.C. No. 4646, April 6, 2000)*

DISCIPLINARY PROCEEDINGS

Disciplinary proceedings against lawyers are *sui generis*, in that they are neither civil nor criminal actions but rather investigations by the Court into the conduct of its officers. Although these proceedings are not, in the strict sense, ordinary actions where trials are held and the rules of procedure apply, the rules on evidence cannot be shunted aside considering that the exercise of one's profession is at stake. *(Concepcion v. Atty. Fandino, Adm. Case No. 3677, June 21, 2000)*

- In administrative cases against lawyers, the burden of proof rests upon the complainant. Complaints that are *prima facie* groundless as shown by the pleadings filed by the parties need not be referred to the Integrated Bar of the Philippines for further investigation and may be summarily dismissed for utter lack of merit. *(Manubay v. Atty. Garcia, A.C. No. 4700, April 12, 2000)*

Indefinite Suspension from Law Practice *(Dumadag v. Atty. Lumaya, A.C. No. 2614, June 29, 2000)*

JUDGES

Competence, Integrity, and Independence. Respondent judge has failed to live up to these standards. His act of allowing a litigant in his sala to pay for the freight of his personal acquisitions constitutes a blatant violation of Rule 5.04, Canon 5 of the Code of Judicial Conduct prohibiting judges from accepting gift, bequest, favor or loan from anyone except as may be allowed by law. *(Agpalasin v. Judge Agcaoili, A.M. No. RTJ-95-1308, April 12, 2000)*

Decide Cases Promptly. Judges are bound to dispose of the court's business promptly and to decide cases within the required period. *(Gallego v. Judge Doronilla, A.M. No. MTJ-00-1278, June 26, 2000)*

Rendering Wrongful Judgment. *(Almendra v. Judge Asis, A.M. No. RTJ-00-1550, April 6, 2000)*. Unjust judgment – not established. *(Ganzon v. Judge Ereno, A.M. No. RTJ-00-1554, June 1, 2000)*

Bias. Respondent's act of personally furnishing a party copies of orders issued, without the same passing through the court docket, is highly irregular - giving rise to the suspicion that the judge is partial to one of the parties in the case pending before him. *(Co v. Judge Calimag, A.M. No. RTJ-99-1493, June 20, 2000)*. An isolated error of judgment would normally not make a judge susceptible to administrative liability. But, here, respondent's partiality for a party to a case before him is evident in his several orders favoring the accused in the criminal case before him, even going to the extent of disregarding settled rulings. *(Dichaves v. Judge Apalit, A.M. No. MTJ-00-1274, June 8, 2000)*. A judge's act of writing to complainants re compromise agreement in a case pending before his court can easily be misunderstood or put to doubt the judge's impartiality on the matter before him. *(Tapiru v. Judge Biden, A.M. MTJ-00-1262, April 6, 2000).*

Bribery – not established. *(Co v. Judge Calimag, supra)*

Gross Neglect of Duty *(Saylo v. Judge Rojo, A.M. No. MTJ-99-1225, April 12, 2000)*

Grave Misconduct in Office. Defiance Toward the Supreme Court. It was not a matter of negligence, but a deliberate act of defiance of the Supreme Court's authority by a lower court judge. Respondent judge persistently disregarded well-known legal rules in the designation of acting sheriffs. By such action, he repeatedly

usurped the appointing authority of the Supreme Court – which act amounts to grave misconduct in office. In this case, the Supreme Court tempered the severity of the recommended sanction, considering the long service in the government and the judiciary of respondent judge and his obedience to the order of the Court Administrator, thus, evincing remorse and repentance for his unauthorized acts. *(Office of the Court Administrator v. Judge Veneracion, A.M. No. RTJ-99-1432, June 21, 2000)*

Corruption in Office. Receiving bribe from both parties. *(Magarang v. Judge Jardin, A.M. No. RTJ-99-1448, April 6, 2000)*

Misuse of Office. The requirement that a judge be above suspicion extends to the conduct of his private life. While respondent judge may argue that he did not protect his son from arrest, his actuation relative thereto must never serve to fuel suspicion over a misuse of the prestige of his office to enhance personal interest. *(Tapiru v. Judge Biden, supra)*

Duties of Judges Re Application for Bail. Gross Ignorance of the Law. Failure of the judge to conduct the hearing required prior to the grant of bail in capital offenses. *(Marzan-Gelacio v. Judge Flores, A.M. No. RTJ-99-1488, June 20, 2000).* To be held liable for gross ignorance of the law, the judge must be shown to have committed an error that was "gross or patent, deliberate and malicious." *(Zarate v. Judge Balderian, A.M. No. MTJ-00-1261, April 3, 2000)*

Grave Abuse of Discretion. Respondent judge dismissed the information on the ground that the administrative case filed against private respondent with the Office of the Ombudsman had been dismissed. Said dismissal amounts to grave abuse of discretion. Administrative cases are independent from criminal actions for the same act or omission. Besides, the reliance made by respondent judge on the re-election of private respondent as *Kagawad*

in the May 1992 election so as to warrant the dismissal of the information filed against him, citing *Aguinaldo v. Santos* is misplaced. The ruling in said case which forbids the removal from office of a public official for administrative misconduct committed during a prior term does not apply to criminal cases pending against said public official. *(People v. Hon. Toledano, G.R. No. 110220, May 18, 2000)*

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POLITICAL LAW

EMINENT DOMAIN

Expropriation may be initiated by court action or by legislation. In both instances, just compensation is determined by the courts. *(Republic v. Salem Investment Corporation, G.R. No. 137569, June 23, 2000)*. It has two stages: (a) the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit; and (b) the determination by the court of just compensation for the property sought to be taken. The two stages apply to both judicial and legislative expropriation and said stages are not complete until payment of just compensation. It is only upon payment of just compensation that title to the property passes to the government. (*id.*)

- Expropriation suit is incapable of pecuniary estimation and falls within the jurisdiction of the Regional Trial Courts, regardless of the value of the subject property. *(Barangay San Roque v. Heirs of Pastor, G.R. No. 138896, June 20, 2000)*

- P.D. No. 1315 (1975) Expropriation of Landed Estate in Bagong Barrio, Kalookan City as Urban Land Reform Zone under Proclamation No. 1893. *(Militante v. Court of Appeals, G.R. No. 107040, April 12, 2000)*

STATE IMMUNITY FROM SUIT

A suit against a public officer for his official acts is, in effect, a suit against the State if its purpose is to hold the State ultimately liable. *(Calub v. Court of Appeals, G.R. No. 115634, April 27, 2000)*

JUDICIAL DEPARTMENT

Stare Decisis. When a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially the same. In this case, the principle of stare decisis was applied even if the property subject matter of the cases were located in different places. *(Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank, G.R. No. 137980, June 20, 2000)*. Petitioner's argument that the *Banco Filipino* case cannot be applied to the present case since the respondents were not intervenors therein is flawed. Only the judgment in said case cannot bind the respondents as they were not parties thereto, however, the doctrine enunciated therein is a judicial decision and forms part of the legal system of the land. *(Banco Filipino Savings and Mortgage Bank v. Hon. Court of Appeals, G.R. No. 129227, May 30, 2000)*

- **Same**. Petitioner's argument that the *Banco Filipino* case cannot be applied to the present case since respondents were not intervenors therein is flawed. Only the judgment in said case cannot bind the respondents as they were not parties thereto. However, the doctrine enunciated therein is a judicial decision and forms part of the legal system of the land. (*id.*)

***En Banc* Cases** – include all other cases as the Court en banc, by majority of its actual membership, may deem of sufficient importance. *(Firestone Ceramics, Inc. v. Court of Appeals, G.R. No. 127022, June 28, 2000)*. The Court *en banc* is not an appellate court to which a decision or resolution a Division may be appealed. (*id.*, Dissenting opinion of Justice Gonzaga-Reyes)

Judicial Review. The Court has control over a case until the full satisfaction of the final judgment conformably with established legal processes. It has the authority to suspend the execution of a final judgment or to cause a modification thereof as and when it

becomes imperative in the higher interest of justice or when supervening events warrant it. *(People v. De los Santos, G.R. No. 121906, April 5, 2000)*

OMBUDSMAN

Preliminary Investigation. Despite the Ombudsman's noncompliance with the affidavit requirement, petitioner filed his counter-affidavit and answered the charges against him. Hence, having submitted himself to the jurisdiction of the Ombudsman and having allowed the proceedings to go on until the preliminary investigation was terminated and the information filed with the *Sandiganbayan*, petitioner is deemed to have waived whatever right he may otherwise have to assail the manner in which the preliminary investigation was conducted. *(Bautista v. Sandiganbayan, G.R. No. 136082, May 12, 2000)*

Decision Not Final and Executory. A decision of the Office of the Ombudsman finding respondent administratively liable for misconduct and imposing upon him a penalty of one (1) year suspension without pay – is not among those listed in the Ombudsman Act of 1989 as final and unappealable, hence, immediately executory. There is no general legal principle which mandates that all decisions of quasi-judicial agencies are immediately executory. Section 68 of the Local Government Code only applies to administrative decisions rendered by the Office of the President or the appropriate *Sanggunian* against elective local government officials. Similarly, the provision in the Administrative Code of 1987 mandating the execution pending review applies specifically to administrative decisions of the Civil Service Commission involving members of the Civil Service. There is no basis in law for the proposition that the provisions of the Administrative Code of 1987 and the Local Government Code on execution pending review should be applied suppletorily to the provisions of the Ombudsman Act as there is nothing in the Ombudsman Act which pro-

vides for such suppletory application. Courts may not, under the guise of interpretation, enlarge the scope of a statute and include therein situations not provided or intended by the lawmakers. An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion. *(Governor Lapid v. Court of Appeals, G.R. No. 142261, June 29, 2000)*

LOCAL GOVERNMENT

Local Government Officials and Private Counsel. In resolving whether a local government official may secure the services of private counsel in an action filed against him in his official capacity, the nature of the action and the relief sought are to be considered, as where the complaint contained other allegations and a prayer for moral damages, which, if due from the defendants, must be satisfied by them in their private capacity. *(Mancenido v. Court of Appeals, G.R. No. 118605, April 12, 2000)*

Local Government Units and Private Counsel. Local government units may be represented by a private attorney only when the provincial fiscal is disqualified from representing a particular municipality, as in the following instances: when the jurisdiction of a case involving the municipality lies with the Supreme Court; when the municipality is a party adverse to the provincial government or to some other municipality in the same province; when in a case involving the municipality, the provincial prosecutor, his spouse, or his child is involved as a creditor, heir, legatee, or otherwise. (*id.*)

CONSTITUTIONAL LAW

Due Process. A decision is void for lack of due process, as when a party is deprived of the opportunity of being heard. A void judgment never acquires finality. *(The Summary Dismissal Board v. Torcita, G.R. No. 130443, April 6, 2000)*

Right to Counsel. The stage of investigation wherein a person is asked to stand in a police line-up has been held to be outside the mantle of protection of the right to counsel because it involves a general inquiry into an unsolved crime and is purely investigative in nature. *(People v. Pavillare, G.R. No. 129970, April 5, 2000)*. Said right was not violated in this case where the police invited for questioning residents of the compound, including the appellants. They were not yet singled out as the perpetrators of the crime. When the accused was asked a single question at the police station regarding his whereabouts on the evening of November 28, it was not a custodial investigation inasmuch as the query was merely part of the "general exploratory stage." (*id.*)

Search Warrant. For the issuance of search warrants, the Rules of Court requires a finding of probable cause in connection with one specific offense to be determined personally by the judge after examining the complainant and the witnesses he may produce. Since, in this case, there is no crime to speak of, the search warrant is null and void and all property seized by virtue thereof shall be returned in accordance with established jurisprudence. *(Savage v. Judge Taypin, G.R. No. 134217, May 11, 2000)*

- **Same**. A search warrant is merely a process issued by the court in the exercise of its ancillary jurisdiction and not a criminal action which it may entertain pursuant to its original jurisdiction. The authority to issue search warrants is inherent in all courts and may be effected outside their territorial jurisdiction. Petitioners apparently misconstrued the import of the designation of Special Courts for IPR. Administrative Order No. 113-95 merely specified which court could try and decide cases involving violations of IPR. It did not, and could not, vest exclusive jurisdiction with regard to all matters (including the issuance of search warrants and other judicial processes) in any one court. Jurisdiction is conferred upon courts by substantive law, in this case BP Blg. 129, and not by a procedural rule, much less by an administrative

order. The power to issue search warrants for violation of IPR has not been exclusively vested in the courts enumerated in Supreme Court Administrative Order No. 113-95. Certification against forum-shopping is not required in applications for search warrants. (*id.*)

Searches and Seizures. Even if the medicines or drugs seized were genuine and even if they had the proper chemicals or ingredients in their production, if the producer, manufacturer or seller has no permit or authority from the appropriate government agency, the drugs or medicines cannot be returned although the search warrants were declared illegal. The policy of the law enunciated in R.A. No. 8203 is to protect the consumers as well as the licensed businessmen. *(People v. Judge Estrada, G.R. No. 124461, June 26, 2000)*

GOVERNMENT OWNED OR CONTROLLED CORPORATIONS

Definition. Legaspi Oil, Inc., Granexport Manufacturing Corporation and United Coconut Chemicals, Inc. are private corporations. *(Leyson v. Office of the Ombudsman, G.R. No. 134990, April 27, 2000)*

ADMINISTRATIVE LAW

ADMINISTRATIVE DISCIPLINARY ACTIONS

Public School Teachers. Their mass action was for all intents and purposes a strike, a concerted and unauthorized stoppage of, or absence from, work. Dismissal orders of Department Heads are immediately executory even pending appeal. Backwages during period of suspension. *(Acosta v. Court of Appeals, G.R. No. 132088, June 28, 2000)*

- **Same**. Petitioners, who were earlier dismissed for allegedly participating in a mass action/strikes, are entitled to their back salaries upon their reinstatement after they were found guilty only of violating reasonable office rules and regulations and penalized only with reprimand. *(Caniete v. Secretary of Education, G.R. No. 140359, June 19, 2000)*

Philippine National Police (PNP) – The administrative disciplinary machinery for dealing with complaints against any member of the PNP is laid down in Republic Act No. 6975, otherwise known as the "Department of the Interior and Local Government Act of 1990." "Conduct unbecoming of a police officer" explained. *(The Summary Dismissal Board v. Torcita, supra)*

RULE-MAKING POWER OF ADMNISTRATIVE AGENCIES

Home Development Mutual Fund (HDMF). - The HDMF Board has rule-making power as provided in Section 5 of R.A. No. 7742 and Section 13 of P.D. No. 1752. However, rules and regulations which are the product of a delegated power to create new and additional legal provisions that have the effect of law should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the object and purposes of the law, and not in contradiction to, but in conformity with, the standards prescribed by law. *(Romulo, Mabanta, Buenaventura, Sayoc & De los Angeles v. Home Development Mutual Fund, G.R. No. 131082, June 19, 2000)*

- **Same**. Section 1 of Rule VII of the Amendments to the Rules and Regulations Implementing R.A. No. 7742, and HDMF Circular No. 124-B prescribing the Revised Guidelines and Procedure for Filing Application for Waiver or Suspension of Fund Coverage under P.D. No. 1752, as amended by R.A. No. 7742, are null and void insofar as they require that an employer should have both provident fund/retirement plan and a housing plan superior

to the benefits offered by the Fund in order to qualify for waiver or suspension of the Fund coverage. (*id.*)

JURISDICTION AND REGULATORY POWERS

Housing and Land Use Regulatory Board (HLURB). Exclusive jurisdiction and regulatory powers of the HLURB under P.D. No. 957 (issued on July 12, 1976), P.D. No. 1344 (issued on April 2, 1978), Executive Order No. 648 dated February 7, 1981 and Executive Order No. 90 dated December 17, 1986. The HLURB and not the Securities and Exchange Commission (SEC) has jurisdiction over a complaint filed by subdivision homeowners against a subdivision developer (under receivership) for specific performance regarding basic homeowners' needs such as water, security and open spaces. The ruling has consistently been that the HLURB has jurisdiction over complaints arising from contracts between the subdivision developer and the lot buyer or those aimed at compelling the subdivision developer to comply with its contractual and statutory obligations to make the subdivision a better place to live in. The fact that respondent is under receivership does not divest the HLURB of that jurisdiction. The appointment of a receiver does not dissolve a corporation, nor does it interfere with the exercise of its corporate rights. Receivership is aimed at the preservation of, and at making more secure, existing rights; it cannot be used as an instrument for the destruction of those rights. No violation of the SEC order suspending payments to creditors would result as far as petitioners' complaint before the HLURB is concerned. Such claims are basically not pecuniary in nature although it could incidentally involve monetary considerations. All that petitioners' claims entail is the exercise of proper subdivision management on the part of the SEC-appointed Board of Receivers towards the end that homeowners shall enjoy the ideal community living that respondent portrayed they would have when they bought real estate from it. Neither may petitioners be considered as having "claims" against respondent within the context of

P.D. No. 902-A, as amended by P.D. Nos. 1653, 1758 and 1799, to warrant suspension of the HLURB proceedings. Under the complaint for specific performance before the HLURB, petitioners do not aim to enforce a pecuniary demand. Their claim for reimbursement should be viewed in the light of respondent's alleged failure to observe its statutory and contractual obligations to provide petitioners a "decent human settlement" and "ample opportunities for improving their quality of life." *(Arranza v. B.F. Homes, Inc., G.R. No. 131683, June 19, 2000)*

Seizure of Conveyances Used in Gathering Timber or Other Forest Products Without License. Authority of the Secretary of the Department of Environment and Natural Resources. Subject vehicles seized in accordance with law are validly deemed in *custodia legis* and are not subject to an action for replevin. *(Calub v. Court of Appeals, G.R. No. 115634, April 27, 2000)*

ELECTION LAWS

Certificate of Candidacy. Failure to specify the public office he was seeking in his certificate of candidacy was not a fatal defect in this case. *(Conquilla v. COMELEC, G.R. No. 139802, April 28, 2000)*

Ballots. Counting of contested ballots. *(Ferrer v. COMELEC, G.R. No. 139489, April 10, 2000)*

Timeliness of Motion. Motion for Reconsideration was timely filed on June 1, 1998 considering that 31 May was a Sunday, hence, he had until the next working day, which was June 1, within which to ask for reconsideration. *(Conquilla v. COMELEC, G.R. No. 139802, April 28, 2000)*

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REMEDIAL LAW

COURTS

Jurisdiction. The Quezon City court and the Manila court have concurrent jurisdiction over the case. However, when the Quezon City court acquired jurisdiction over the case, it excluded all other courts of concurrent jurisdiction from acquiring jurisdiction over the same. The Manila court is, therefore, devoid of jurisdiction over the complaint filed resulting in the herein assailed decision which must perforce be declared null and void. *(Ching Kian v. China National Cereals Oil and Foodstuffs Import and Export Corp. , G.R. 131502, June 8, 2000)*

- The issue is whether jurisdiction over the subject matter of the complaint is vested with the regular courts or the Energy Regulatory Board (ERB). The complaint does not charge any violation of either currency exchange rate adjustment (CERA) or power cost adjustment (PCA). Respondents only allege that petitioner charged them with the full rate of electric consumption despite absence of any increase in the cost of energy. Hence, the subject matter of the complaint is within the jurisdiction of the regular trial court. The regional trial court is a court of general jurisdiction. On the other hand, Republic Act No. 6173, as amended by Presidential Decree No. 1206, empowered ERB to regulate and fix power rates to be charged by electric companies. The power to fix rates of electric consumption does not carry with it the power to determine whether or not petitioner is guilty of overcharging customers for consumption of electric power. This falls within the jurisdiction of the regular courts. *(Cagayan Electric Power and Light Company, Inc. v. Collera, G.R. No. 102184, April 12, 2000)*

CIVIL PROCEDURE

ORDINARY CIVIL ACTIONS

Cause of Action. Elements. *(Spouses Diaz v. Diaz, G.R. No. 135885, April 28, 2000)*. The trial court and the Court of Appeals should not have been too rigid in applying the rule that in resolving a motion to dismiss on the ground of failure to state a cause of action, only the averments of the complaint and no other are to be considered. The rule admits of exceptions. First, all documents attached to a complaint, the due execution and genuineness of which are not denied under oath by the defendant, must be considered as part of the complaint, without need of introducing evidence thereon. Second, other pleadings submitted by the parties, in addition to the complaint, may be considered in deciding whether the complaint should be dismissed for lack of cause of action. *(Alberto v. Court of Appeals, G.R. No. 119088, June 30, 2000)*

Joinder. The joinder of two causes of action is mandated by the need to avoid multiplicity of suits and to promote the efficient administration of justice. While the rule allows a plaintiff to join as many separate claims as he may have, there should be some unity in the problem presented and a common question of law and fact involved - subject always to the restrictions regarding jurisdiction, venue and joinder of parties. *(Bernardo v. Court of Appeals, G.R. No. 111715, June 8, 2000)*

PARTIES

Death of Party. Absence of Notice of Death. Under Section 21 of Rule 3 of the Revised Rules of Court, the action for recovery of money, debt or interest thereon, has to be dismissed if the defendant dies before final judgment in the Court of First Instance, without prejudice to the plaintiff thereafter presenting his claim as a money claim in the settlement of the estate of the deceased de-

fendant. The claim becomes a mere incident in the testamentary or intestate proceedings of the deceased where the whole matter may be fully terminated jointly with the settlement and distribution of the estate. In the present case, however, the records do not show that any notice of death was filed by the counsel of record of the deceased defendant. Thus, neither the Makati Court nor the other party was made aware of such death. Absent said notice, the trial court could not be expected to know or take judicial notice of the death of the defendant. Neither could the petitioners have been made aware of the trial court's judgment adverse to their father, for all notices and orders of the court were sent to the counsel of record, who did not inform the parties concerned of his client's death. The failure of said counsel of record to serve notice on the court and the adverse parties regarding his client's death binds herein petitioners as much as the client himself could be so bound. True, a judgment may be annulled for want of jurisdiction or lack of due process of law. But while petitioners were not properly substituted for the deceased party as defendant, absent any notice of his death, it could not be said that petitioners were deprived of due process of law, for as far as the trial court was concerned, they were not parties to the case. To rule otherwise would be a more obvious and grievous transgression of due process. *(Heirs of Lorilla v. Court of Appeals, G.R. No. 118655, April 12, 2000)*

Pleadings. The allegations in the pleading determine the nature of the action and the court shall grant relief warranted by the allegations and the proof even if no such relief is prayed for. Thus, even if the complaint seeks the declaration of nullity of the contract, the Court of Appeals correctly ruled that the factual allegations contained therein ultimately seek the return of the excess interest paid. *(Banco Filipino Savings and Mortgage Bank v. Hon. Court of Appeals, G.R. No. 129227, May 30, 2000)*

Amendment to Pleadings Not Allowed - when evidence is offered on an issue not alleged in the pleadings and objected to by

the other party. *(Spouses Mercader v. Development Bank of the Philippines, G.R. No. 1360699, May 12, 2000)*

Answer. The period to file an answer is not interrupted by a petition for certiorari, unless a temporary restraining order or writ of preliminary injunction is issued against further proceedings in the case. An application for certiorari is an independent action which is not part or continuation of the trial that resulted in the rendition of the judgment complained of. *(Spouses Diaz v. Diaz, G.R. No. 135885, April 28, 2000)*

Certificate of Non-Forum Shopping. The provisions of Administrative Circular No. 04-94 requiring the inclusion of a certification of non-forum shopping do not apply to compulsory counterclaims. *(Sps. Ponciano v. Hon. Parentela, G.R. No. 133284, May 9, 2000)*

Effect of Failure to Plead. Default. Excusable delay in filing answer. Any error imputable to the trial court in not declaring a defendant in default can be reviewed in an appeal from the final decision on the merits of the case - not by certiorari as a special civil action. *(Ampeloquio v. Court of Appeals, G.R. No. 124243, June 15, 2000)*

SUMMONS

Extra-Territorial Service of Summons. When the defendant is a non-resident and is not found in the country, summons may be served on him extra-territorially in accordance with Section 17, Rule 14 of the Rules of the Court. There are only four instances when extra-territorial service of summons is proper: (1) when the action affects the personal status of the plaintiff; (2) when the action relates to, or the subject of which is, property within the Philippines, in which the defendant claims a lien or interest, actual or contingent; (3) 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 (4) when the defendant non-resident's property has been attached within the Philippines. In these instances, service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient. *(Banco de Brazil v. Court of Appeals, G.R. No. 1215760-78, June 16, 2000)*

- Extrajudicial service of summons applies only where the action is *in rem*, an action against the thing itself instead of against the person; or in an action *quasi in rem*, where an individual is named as defendant and the purpose of the proceeding is to subject his interest therein to the obligation or loan burdening the property. This is so inasmuch as, *in rem* and *quasi in rem* actions, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the court acquires jurisdiction over the *res*. However, where the action is *in personam* (one brought against a person on the basis of his personal liability), jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. When the defendant is a non-resident, personal service of summons within the state is essential to the acquisition of jurisdiction over the person. This cannot be done, however, if the defendant is not physically present in the country, and thus, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him. (*id.*)

- In the instant case, private respondent's suit against petitioner is premised on petitioner's being one of the claimants of subject vessel. Thus, it can be said that private respondent initially sought only to exclude petitioner from claiming interest over the subject vessel. However, private respondent testified during the presentation of evidence that, for being a nuisance candidate, petitioner caused irreparable damage to private respondent. There-

fore, while the action is *in rem,* by claiming damages, the relief demanded went beyond the res and sought a relief totally alien to the action. Any relief granted *in rem* or *quasi in rem* actions must be confined to the *res*, and the court cannot lawfully render a personal judgment against the defendant. Clearly, the publication of summons effected by private respondent is invalid and ineffective for the trial court to acquire jurisdiction over the person of petitioner, since by seeking to recover damages from petitioner for alleged commission of an injury to his person or property caused by petitioner's being a nuisance defendant, private respondent's action became *in personam*. (*id.*)

Service of Pleadings and Other Papers. Service of Notice. - When a party is represented by counsel, service of notice should be made upon counsel and not upon the party. *(Mancenido v. Court of Appeals, G.R. No. 118605, April 12, 2000)*

Motion for Extension of Time to File Motion for New Trial or Reconsideration. No such motion may be filed with the Metropolitan or Municipal Trial Court, Regional Trial Court or Court of Appeals. Said motion may be filed only in cases pending before the Supreme Court. *(Heirs of Cristobal v. Court of Appeals, G.R. No. 135959, May 11, 2000)*

DISMISSAL OF ACTIONS

- ***Res Judicata*** *(Cruz v. Court of Appeals, G.R. No. 135101, May 31, 2000)*

- Forum-Shopping. *Res Judicata. Litis Pendentia*. The issuance of a writ of possession is a ministerial function and summary in nature. It cannot be said to be a judgment on the merits but simply an incident in the transfer of title. Hence, a separate case for annulment of mortgage and foreclosure sale cannot be barred by *litis pendentia* or *res judicata. (Spouses Ong v. Court of Appeals, G.R. No. 121494, June 8, 2000)*

Intervention - may be granted only where its allowance will not unduly delay or prejudice the rights of the original parties to a case. Generally, it will be allowed "before rendition of judgment by the trial court," as Rule 19, Sec. 2 expressly provides. After trial and decision in a case, intervention can no longer be permitted. Certainly, it cannot be allowed on appeal without unduly delaying the disposition of the case and prejudicing the interest of the parties. *(Limpo v. Court of Appeals, G.R. No. 124582, June 16, 2000)*

Summary Judgment. Genuine Issue has been defined as an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is sham, fictitious, contrived or patently unsubstantiated as not to constitute a genuine issue for trial. In proceedings for summary judgment, the court is merely expected to act chiefly on the basis of what is in the records of the case. The hearing contemplated in the Rules is not *de riguer* as its purpose is merely to determine whether the issues are genuine or not, and not to receive evidence on the issues set up in the pleadings. The requirement in Rule 35, Sec. 3 that the opposing party be furnished a copy of the motion 10 days before the time specified for the hearing applies to the motion for summary judgment itself and not to the motion to resolve such motion. *(Ley Construction and Development Corporation v. Union Bank of the Philippines, G.R. 133801, June 27, 2000)*

Judgments, Final Orders, Their Execution and Effect. – As a rule, the portion of a decision that becomes the subject of execution is that ordained or decreed in the dispositive part thereof. Exceptions to the rule. *(Espina v. Court of Appeals, G.R. 116805, June 22, 2000)*

- **Finality of Judgment.** When a judgment becomes final and executory, it becomes immutable and unalterable and any amendment or alteration (including the entire proceedings held

for that purpose), which substantially affects a final and executory judgment, is null and void for lack of jurisdiction. A writ of execution must conform to the judgment to be executed and must adhere strictly to the very essential particulars. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity. *(Equatorial Realty Development, Inc. v. Mayfair Theatre, Inc. G.R. No. 136221, May 12, 2000)*

- In this case, the trial court could not have favorably acted on respondent's motion (for payment of attorney's fees) filed in 1996, or more than 13 years after finality of the judgment and long after the court has lost its jurisdiction over the case. *(Lizardo v. Montano, G.R. No. 138882, May 12, 2000)*

- **Interlocutory Orders** are always under the control of the court and may be modified or rescinded upon sufficient grounds shown at any time before final judgment. It is immaterial that the judge who exercises such powers is not the one who issued the rescinded or amended order since the former is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action. *(Ley Construction and Development Corporation v. Union Bank of the Philippines, G.R. 133801, June 27, 2000)*

- **Execution.** When a judgment becomes final and executory, it is the ministerial duty of the court to issue a writ of execution to enforce the judgment. However, a writ of execution may be refused on equitable grounds as when there was a change in the situation of the parties that would make the execution inequitable or when certain circumstances which transpired after judgment become final rendered execution of judgment unjust. Respondent's contention that there was a change in the situation of the parties making execution inequitable because petitioner accepted employment from another agency without resigning from respondent is patently without merit. Now, the rule is that back wages awarded

to an illegally dismissed employee shall not be diminished nor reduced by the earnings derived by him elsewhere during the period of his illegal dismissal. *(Torres v. NLRC, G.R. No. 107014, April 12, 2000)*

- **Writ of Execution.** The issuance of a writ of execution is a ministerial duty of the court after judgment becomes final and executory and leaves no room for the exercise of discretion. A writ of mandamus lies to compel the issuance of a writ of execution. *(Lumapas v. Judge Tamin, A.M. No. RTJ-99-1519, June 27, 2000)*

- **Redemption of Property Sold on Execution** *(Villanueva v. Hon. Malaya, G.R. No. 94617, April 12, 2000)*

New Trial. Newly Discovered Evidence. Requisites. *(Villanueva v. People, G.R. No. 135098, April 12, 2000)*

ANNULMENT OF JUDGMENT

Under Rule 38 of the Rules of Court, a final and executory judgment may be set aside through a petition for relief from judgment within the period prescribed therefor. However, even beyond such period, a party aggrieved by a judgment may petition for its annulment on two (2) grounds: (a) that the judgment is void for want of jurisdiction or lack of due process of law; or (b) that it has been obtained by fraud. The nullity of a judgment based on lack of jurisdiction may be shown not only by what patently appears on the fact of such decision but also by documents and testimonial evidence found in the records of the case and upon which such judgment is based. *(Bernardo v. Court of Appeals, G.R. No. 111715, June 8, 2000)*

A trial court cannot – apart from reconsidering its decision, granting new trial or allowing a relief from judgment – review much less set aside a decision on the merits. Such power pertains

exclusively to the appellate courts. *(Ley Construction and Development Corporation v. Union Bank of the Philippines, supra)*

APPEAL

Petition to be Allowed to Appeal as Pauper. The restrictive policy enunciated in the 1964 Revised Rules of Court was not carried over to the 1997 Rules of Civil Procedure. A petition to be allowed to appeal as pauper may be entertained by the appellate court. The Court resolved to apply the present rules restrospectively in this case. *(Martinez v. People, G.R. No. 132852, May 31, 2000)*

Docket Fees. Payment of docket and other legal fees within the prescribed period is both mandatory and jurisdictional. Failure to do so is a ground for the dismissal of an appeal. The bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel the Court to suspend procedural rules. *(Lazaro v. Court of Appeals, G.R. No. 137761, April 6, 2000)*

Notice to file appellant's brief must be given to the party appellant and not his/her counsel. *(Aguam v. Court of Appeals, G.R. No. 137672, May 31, 2000)*

Elevation of Records of Case. No error was committed by the Court of Appeals when it ordered the trial court to elevate the original record of the case and to desist from proceeding any further in said case. Once a written notice of appeal is filed, appeal is perfected and the trial court loses jurisdiction over the case, both over the record and subject of the case. *(Mancenido v. Court of Appeals, G.R. No. 118605, April 12, 2000)*

Appellant's Brief. The Court of Appeals may dismiss an appeal for failure to file appellant's brief on time. However, the dismissal is directory, not mandatory. This discretion must be ex-

ercised within the tenets of justice and fair play, having in mind the circumstances obtaining in each case. *(Aguam v. Court of Appeals, G.R. No. 137672, May 31, 2000)*

Execution Pending Appeal. The prevailing doctrine, as provided for in Par. 3, Section 2 of Rule 39 of the 1997 Rules of Civil Procedure is: discretionary execution is permissible only when "good reasons" exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the period to appeal. "Good reasons" consist of compelling circumstances justifying immediate execution lest judgment become illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may apparently have no case but to delay. One good reason is the deteriorating condition of the subject matter (a vessel) of the case. *(Yasuda v. Court of Appeals, G.R. No. 112569, April 12, 2000)*

- Petitioner also claims that the order allowing execution pending appeal had become final and executory because the defendants in the trial court who are the principals of private respondent surety company did not appeal the order, thus, private respondent is deemed to have bowed to said order and could no longer question its propriety. This is erroneous. An order for execution pending appeal is not appealable pursuant to Paragraph 2(f), Section 1, Rule 41 of the Revised Rules of Court. This provision enumerates the judgments or final orders that may be appealed from. It also specifies the interlocutory or other orders from which no appeal can be taken. In the latter instance, the aggrieved party may resort to a special civil action under Rule 65. (*id.*)

Appeals From Quasi-Judicial Agencies to the Court of Appeals. At the time petitioners brought their case to the Court of Appeals, the procedure governing appeals to said court from quasi-judicial agencies was embodied in Revised Administrative Circular No. 1-95, which relevantly provides that the petition for review

need not implead the court or agency either as petitioner or respondent. The Office of the President is included within the scope of said circular. The Office of the President in this case (involving the issue of whether a private land should be exempted from the coverage of P.D. No. 27) is not an indispensable party but merely a *pro forma* party. *(Samaniego v. Aguila, G.R. No. 125567, June 27, 2000)*

Appeal by Certiorari to the Supreme Court. Factual Issues. The question presented is factual and is not reviewable by the Supreme Court in an appeal via certiorari under Rule 45 of the Rules of Court. *(Calusin v. Court of Appeals, G.R. No. 128405, June 21, 2000)*. A review of the factual findings of the lower court is not a function that is normally undertaken in petitions for review on certiorari under the Rule 45. Factual findings of the Court of Appeals are conclusive on the parties and carry even more weight when said court affirms the factual findings of the trial court. Thus, the Court's jurisdiction in petitions for review on certiorari is limited only to reviewing errors of law. A re-evaluation of the factual issues by the Court is justified only when the findings complained of are totally devoid of support in the records or are so glaringly erroneous as to constitute serious abuse of discretion. *(Marquez v. Court of Appeals, G.R. No. 116689, April 3, 2000)*

RULES ON SUMMARY PROCEDURE

The Rules apply to 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 the civil liability arising therefrom. *(Aguilar v. Dalanao, A.M. No. MTJ-00-1275, June 8, 2000)*

PROVISIONAL REMEDIES

Temporary Restraining Order *(Marcos v. Judge Agcaoili, A.M. No. RTJ-98-1405, April 12, 2000)*

Preliminary Injunction issued in an action to enforce a contract that prohibits an employee from working in a competing enterprise within two years from resignation - has the same life-time as the prohibition – two years also. Upon the expiration of said period, a suit questioning the validity of the issuance of the writ becomes *functus oficio. (Ticzon v. Video Post Manila, Inc., G.R. No. 136342, June 15, 2000)*

SPECIAL PROCEEDINGS

Settlement of Estate (Please see ***Parties*** under ***Ordinary Civil Actions***)

SPECIAL CIVIL ACTIONS

***Certiorari* Under Rule 65** – is an original action, independent from the principal action, and not a part nor continuation of the trial which resulted in the rendition of the judgment complained of. It does not interrupt the course of the principal action nor the running of the reglementary periods involved in the proceedings, unless an application for a restraining order or writ of preliminary injunction to the appellate court is granted. It is not a mode of appeal where the appellate court reviews the errors of fact or of law committed by the lower court. The issue in a special civil action for certiorari is whether the lower court acted without jurisdiction or in excess of jurisdiction or with grave abuse of discretion. In an appeal by certiorari under Rule 45, the petitioner and respondent are also the original parties to the action in the lower court. But in certiorari as an original action, the parties are the aggrieved party versus the lower court or quasi-judicial agency and the prevailing party, who thereby respectively become the petitioner and respondents. Private respondent herein, as the entity which posted the bonds and aggrieved by the trial court's order of execution pending appeal, has substantial interest in the case and has personality to bring the special civil action of certiorari. *(Yasuda v. Court of Appeals, G.R. No. 112569, April 12, 2000)*

- **Same**. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise thereof will amount to nothing more than errors of judgment which are reviewable by timely appeal and not the special civil action of certiorari. The granting of leave to file amended pleading is a matter particularly addressed to the sound discretion of the trial court and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case or that it was made to delay the action. As to the wisdom or soundness of the trial court's order dismissing petitioner's affirmative defense of prescription, this involves a matter of judgment which is not properly reviewable by a petition for *certiorari*, which is intended to correct defects of jurisdiction solely and not errors of procedure or matters in the trial court's findings or conclusions. *(Spouses Refugia v. Hon. Alejo, G.R. No. 138674, June 22, 2000)*

- The Court of Appeals went beyond its authority when, after interpreting the questioned provision of the lease contract, it proceeded to order the petitioner to vacate the subject premises, where, in this case, the question of possession was not among the issues agreed upon by the parties nor threshed out before the court *a quo* nor raised by private respondent on appeal. *(Buce v. Court of Appeals, G.R. No. 136913, May 12, 2000)*

- In the interest of justice, the Supreme Court has often treated a petition for review on certiorari as a special civil action for certiorari. Certiorari cannot be resorted to as a shield from the adverse consequence of petitioner's own omission to file the required motion for reconsideration. *(Seagull Shipmanagement and Transport, Inc. v. NLRC, G.R. No. 123619, June 8, 2000)*

Mandamus - lies to compel the performance of a clear legal duty or ministerial function imposed by law upon the defendant or respondent resulting from office, trust or station. It cannot be

used to compel the Sugar Regulatory Administration to issue rules and regulations governing the importation of sugar in the absence of "a standard for the control and regulation of sugar importation" vested on it under the law. *(Pacheco v. Court of Appeals, G.R. No. 124863, June 19, 2000)*

Prohibition does not lie to enjoin the implementation of a writ of possession. *(Spouses Ong v. Court of Appeals, G.R. No. 121494, June 8, 2000)*

Expropriation. Expropriation suit is incapable of pecuniary estimation and falls within the jurisdiction of the regional trial courts, regardless of the value of the subject property. *(Barangay San Roque v. Heirs of Pastor, G.R. No. 138896, June 20, 2000)*

Ejectment. The metropolitan trial court should not have disregarded private respondent's answer (though filed out of time) which raised the defense of agrarian relations – and should have proceeded to determine whether or not it had jurisdiction over the subject matter of the case. *(Corpin v. Vivar, G.R. No. 137350, June 19, 2000)*

- Execution Pending Appeal. Section 21 of Rule 70 of the 1997 Rules of Civil Procedure explicitly provides that the judgment of the regional trial court in ejectment cases appealed to it shall be immediately executory and can be enforced despite the perfection of an appeal to a higher court. Consequently, respondent's claim that the pendency of defendant's motion for reconsideration and the re-raffle of the case to another sala does not justify his failure to enforce the writ of execution issued by the court. When a writ is placed in the hands of a sheriff, it is his duty to proceed with reasonable celerity and promptness to execute it according to its mandate. *(La'o v. Hatab, A.M. No. P-99-1337, April 5, 2000)*

Contempt. Failure to attend a hearing does not constitute direct contempt. At most, the act constitutes only indirect contempt which can be sanctioned only after the proper charge has been filed and the respondent has been given the opportunity to be heard. *(Zarate v. Judge Balderian, A.M. No. MTJ-00-1261, April 3, 2000)*

CRIMINAL PROCEDURE

Prosecution of Civil Action. Rules governing filing of separate civil action. Vicarious liability of employer for fault or negligence of his employee. *(Rafael Reyes Trucking Corporation v. People, G.R. No. 129029, April 3, 2000)*

Prejudicial Question. A civil action for the declaration of nullity of documents and for damages does not constitute a prejudicial question in the criminal case for estafa involving trust receipts transactions. Two (2) requisites of a prejudicial question: (a) The civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed. *(Ching v. Hon. Court of Appeals, G.R. No. 110844, April 27, 2000)*

- The pendency of a civil case for the declaration of nullity of petitioner's marriage is not a prejudicial question in the case for concubinage. For a civil case to be considered prejudicial to a criminal action as to cause the suspension of the latter, pending the final determination of the civil case, it must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined. In a case for concubinage, the accused need not present a final judgment declaring his marriage void for he can adduce evidence in the criminal case of nullity of his marriage other than proof of a final judgment

declaring his marriage void. With regard to petitioner's argument that he could be acquitted of the charge of concubinage should his marriage be declared null and void, suffice it to state that even a subsequent pronouncement that his marriage is void from the beginning is not a defense. In the case at bar, the parties to the marriage should not be permitted to judge for themselves its nullity, for the same must be submitted to the judgment of the competent courts and only when the nullity of the marriage is so declared can it be held as void; and, so long as there is no such declaration, the presumption is that the marriage exists for all intents and purposes. Therefore, he who cohabits with a woman not his wife prior to the judicial declaration of nullity of the marriage assumes the risk of being prosecuted for concubinage. *(Beltran v. People, G.R. No. 137567, June 20, 2000)*

Participation of Offended Party in the Prosecution of Criminal Case. Three instances when the offended party is a criminal case cannot take part in the criminal prosecution: (1) in the civil action has been waived; (2) if the right to institute a separate civil action has been reserved; and (3) if the civil action was filed prior to the criminal action. *(Dichaves v. Judge Apalit, A.M. No. MTJ-00-1274, June 8, 2000)*

Complaint. A complaint presented by a private person when not sworn to by him, is not necessarily void. The want of an oath is a mere defect of form which does not affect the substantial rights of the defendant on the merits. Such being the case, it is not permissible to set aside a judgment for such a defect. Also, the failure of the prosecution to formally offer in evidence the sworn complaint of the offended party or the failure to adhere to the rule is not fatal and does not oust the court of its jurisdiction to hear and decide the case. If the complaint is forwarded to the Court as part of the record of the preliminary investigation of the case, the court can take judicial notice of the same without the necessity of its formal introduction as evidence of the prosecution. *(People v. Historillo, G.R. No. 130408, June 16, 2000)*

Information. The records disclosed that the accused actually committed more than three acts of rape. However, considering the he was charged with only three counts of rape, the Court can only affirm the trial court's judgment of conviction and its imposition of the death penalty for each of the three counts of rape alleged and proved. *(People v. Alvero, supra)*

- Information alleging that the dates of the commission of the rape was "sometime in the month of May 1966," or "sometime in the month of June 1996" or "sometime in the year 1987" - not fatally defective. The allegation of the exact time and date of the commission of the crime are not important in a prosecution for rape – as they are not essential elements of rape and have no substantial bearing on their commission. Rule 110, Section 11 of the Rules of Court provides that it is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. *(People v. Alvero, G.R. Nos. 134536-38, April 5, 2000; People v. Ferolino, G.R. Nos. 131730-31, April 5, 2000)*

- The rationale of the rule is to inform the accused of the nature and cause of the accusation against him. To claim this substantive right, the accused must follow procedural rules which were laid down to assure an orderly administration of justice. The accused must raise the issue of defective information on the ground that it does not conform substantially to the prescribed form in a motion to quash or a motion for bill of particulars. An accused who fails to take this seasonable step will be deemed to have waived the defect in said information. Moreover, during the trial of this case, the defense never objected to the presentation of evidence by the prosecution to prove that the offense was committed in the middle of June 1987. *(People v. Razonable, G.R. No. 128085-87,*

April 12, 2000; People v. Santos, G.R. No. 131103 & 143472, June 29, 2000)

- In interpreting an information, what controls is the description of the offense charged and not its designation. In this case, the proper offense charged is robbery with homicide. *(People v. Reanzares, G.R. No. 130656, June 29, 2000)*

Bail *(Marzan-Gelacio v. Judge Flores, A.M. No. RTJ-99-1488, June 20, 2000)*

Arraignment. Any objection involving a warrant of arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. *(People v. Legaspi, G.R. No. 117802, April 27, 2000)*

- Suspension of Arraignment When the Accused Appears to be Suffering from an Unsound Mental Condition - lies within the discretion of the trial court. The test is whether the accused, even with the assistance of counsel, would have a fair trial. This is "present insanity" which refers to the competency to stand trial and relates to the appropriateness of conducting the criminal proceeding in light of the defendant's present capacity to participate meaningfully and effectively therein. The test is whether he has the capacity to comprehend his position, understand the nature and object of the proceedings against him, to conduct his defense in a rational manner, and to cooperate, communicate with, and assist his counsel to the end that any available defense may be interposed. In this case, by depriving the appellant of a mental examination, the trial court effectively deprived him of a fair trial and violated the basic requirements of due process. The proceedings before the said court must be nullified. *(People v. Estrada, G.R. No. 130487, June 19, 2000)*

- Arraignment and Plea of Guilty to Capital Offense. Right to Counsel. When an accused enters such a plea, the trial court is mandated to see to it that the exacting standards laid down by the rules (Rule 116) are strictly observed. In this case, the accused was not apprised at all of the consequences of his plea, let alone specifically warned that, given his plea of guilt, the death sentence decreed under Republic Act No. 7659 would nevertheless be imposed, contrary to what he might have entertained or been advised. It is important that a *searching inquiry* be conducted after the accused pleads guilty to a capital offense and it must focus on: (1) the voluntariness of the plea and (2) a complete comprehension of the legal effects of the plea so that the plea of guilt can be truly said to be based on a free and informed judgment. The trial court should be convinced that the accused has not been coerced or placed under a state of duress either by actual threats or physical harm coming from malevolent or avenging quarters, and this it can do either by eliciting from the accused himself the manner in which he has been brought in the custody of the law and whether he had the assistance of competent counsel during the custodial and preliminary investigation or by ascertaining from him the conditions of his detention and interrogation during the investigation. Likewise, a series of questions directed at the defense counsel on whether or not counsel conferred with the accused and had completely explained to him the meaning of a plea of guilty are well-taken steps. There is no showing that appellant or his counsel *de officio* were furnished with a copy of each of the complaint with the list of witnesses against him. No valid judgment can be rendered upon an invalid arraignment. *(People v. Durango, G.R. No. 135438-39, April 5, 2000)*

Plea of Guilt to Capital Offense. Requirements. The trial court is enjoined: (a) to conduct *a searching inquiry* into the voluntariness and full comprehension of the consequence of the plea; (b) to require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability;

and (c) to ask the accused if he so desires to present evidence in his behalf and allow him to do so if he so desires. *(People v. Magat, G.R. No. 130026, May 31, 2000)*. While the Court has in a catena of cases set aside convictions based on a plea of guilt in capital offenses because of the improvidence of the plea, it did so only when such plea is the sole basis of the judgment. *(People v. Magat, G.R. No. 130026, May 31, 2000)*

Plea Bargaining. In this case, the accused pleaded guilty to the offense charged and only bargained for a lesser penalty. The order of the trial court convicting said accused on his plea of guilt is *void ab initio*. The only instance where a plea bargaining is allowed under the Rules is when an accused pleads guilty to a lesser offense. *(People v. Magat, G.R. No. 130026, May 31, 2000)*

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. *(Salvatierra v. Court of Appeals, G.R. No. 115998, June 16, 2000)*

EVIDENCE

RULES OF ADMISSIBILITY

DOCUMENTARY EVIDENCE

Best Evidence Rule. The rule cannot be invoked unless the content of a writing is the subject of judicial inquiry, in which case, the best evidence is the original writing itself. The rule pertains to the admissibility of secondary evidence to prove the contents of a document. *(People v. Bago, G.R. No. 122290, April 6, 2000)*. In the absence of evidence to prove that the original copies of the document were lost or destroyed or cannot be otherwise produced, photocopies of said document are inadmissible. *(Concepcion v. Atty. Fandino, Adm. Case No. 3677, June 21, 2000)*

TESTIMONIAL EVIDENCE

Witness. That a witness is not listed as a prosecution witness in the information does not necessarily make him an "eleventh hour witness." The list is not exclusive since it states "and others" were to be presented. Moreover, the prosecution has the prerogative to call witnesses other than those named in the complaint or information as, in any case, the defense still has the opportunity to cross-examine. *(People v. Candare, G.R. No. 129528, June 8, 2000)*

- An ordinary witness cannot establish the value of jewelry and the trial court can only take judicial notice of the value of goods which is a matter of public knowledge or is capable of unquestionable demonstration. *(People v. Reanzares, G.R. No. 130656, June 29, 2000)*

- Credibility of. *(People v. Taneza, G.R. No. 121668, June 20, 2000; People v. Ferolino, G.R. Nos. 131730-31, April 5, 2000)*

- Mental retardate as witness. Not disqualified from testifying in court by reason of such handicap alone. *(People v. Lubong, G.R. No. 132295, May 31, 2000)*

- Rape victim as witness. *(People v. Veloso, G.R. No. 130333, April 12, 2000)*. Age of victim of rape must be established by birth or baptismal certificate and not merely on the basis of the victim's as well as her father's testimony. *(People v. Veloso, G.R. No. 130333, April 12, 2000)*. As a general rule, the Court will not disturb the findings of the trial court on matters relating to the victim's credibility. *(People v. Ramos, G.R. No. 120280, April 12, 2000)*. That it took the complainant more than five (5) years from the time the first rape was allegedly committed to report the incident to her mother and to the police – did not affect her credibility. Such delay was explained in this case, where the complainant was below 12 years

old when she was raped for the first time by her own father. *(People v. Santos, G.R. No. 131103 & 143472, June 29, 2000)*

- Child, victim-of-rape, as witness. Delay in filing cases does not necessarily impair the credibility of the victim. *(People v. Razonable, G.R. No. 128085-87, April 12, 2000; People v. Austria, G.R. No. 123539, June 27, 2000)*. Their testimony is generally accorded full weight and credit. *(People v. Fraga, G.R. No. 134130-33, April 12, 2000)*.

- Relative of the victim as witness. *(People v. Flora, G.R. No.125909, June 23, 2000)*. The fact that the witness is the wife of the victim does not make her testimony less believable. No law disqualifies a person from testifying in a criminal case in which her relative is involved if the former was really at the scene of the crime and witnessed the execution of the criminal act. *(People v. Francisco, G.R. No. 130490, June 19, 2000)*

Delay in filing cases does not necessarily impair the credibility of the victim. *(People v. Razonable, supra)*. The witness' fear constrained him for ten years from revealing the crime and identifying the perpetrators to the authorities. Such delay did not in any way taint his credibility in this case. *(People v. Rimorin, G.R. No. 124309, May 16, 2000)*. Delay in filing the case does not detract from the credibility of the victim: her hesitation being attributable to her age, the moral ascendancy of her father (the offender) and the latter's threats against the former. A rape victim cannot be expected to keep an accurate account of her traumatic experience. *(People v. Historillo, G.R. No. 130408, June 16, 2000)*

- Delay affected credibility. It took the complainant more than 12 years to finally decide to charge accused-appellant of rape allegedly committed in 1984. The long delay in reporting the incident makes it difficult for the Court not to have compelling doubts on the veracity of the episode. *(People v. De la Cruz, G.R. No. 133921, June 29, 2000)*

- In this case, the infirmity in the testimony of a witness strengthened it and erased the suspicion that it has been rehearsed. 14 hour lag before witness disclosed the identity of the killer did not impair said witness' credibility. *(People v. Lozada, G.R. No. 130589, June 29, 2000)*

- The witness' testimony detailed the events leading to the victim's death with such thoroughness, it raises the suspicion that it had been rehearsed. Her testimony sounds so perfect that instead of inspiring belief, it becomes suspect. Time and again, the Court has upheld the primacy of physical evidence over biased and uncorroborated testimony. *(People v. Roche, G.R. No. 115182, April 6, 2000)*

- Discrepancies between the affidavit and the testimony of a witness in open court do not necessarily impair credibility of the testimony, for affidavits are generally taken *ex parte* and are often incomplete or even inaccurate for lack of searching inquiries by the investigating officer. *(People v. Sabredo, G.R. No. 126114, May 11, 2000).* So long as the witnesses' testimonies agree on substantial matters, the inconsequential contradictions and inconsistencies dilute neither the witnesses' credibility nor the verity of their testimonies. *(People v. Agomo-o, G.R. No. 131829, June 23, 2000)*

- Trial court's assessment of the credibility of witnesses should be upheld, if it is not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence which, if considered, would materially affect the result of the case. *(People v. Garchitorena, G.R. No. 131357, April 12, 2000; People v. Alvero, supra; People v. Alcartado, G.R. Nos. 132379-82, June 29, 2000)*

Admissions. Statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence. By analogy, statements made by herein accused to a radio announcer should be held admissible.

The interview was not in the nature of an investigation as the response of the accused was made in answer to questions asked by the radio reporter, not by the police or any other investigating officer. When the accused talked to the radio announcer, they did not talk to him as a law enforcement officer, as in fact he was not; hence, their uncounselled confession to him did not violate their constitutional rights. Section 12, pars (1) and (3), Art. III, of the Constitution do not cover the verbal confessions of the two (2) accused to the radio announcer. What the Constitution bars is the compulsory disclosure of incriminating facts or confessions. *(People v. Ordono, G.R. No. 132154, June 29, 2000)*

- **Taped Interview** deemed admissible in evidence under the following circumstances: (a) it was the original copy of the taped interview; (b) It was not altered; (c) the voices therein were the voices of the accused; and (d) the defense never submitted anything to the contrary. *(People v. Ordono, G.R. No. 132154, June 29, 2000)*

- **Implied Admission.** A plea for forgiveness is analogous to an offer to compromise, which may be received in evidence as an implied admission of guilt in a case for rape. *(People v. Tabanggay, G.R. No. 130504, June 29, 2000)*

- **Lie Detector Test.** The procedure of ascertaining the truth by means of a lie detector test has never been accepted in our jurisdiction; thus, any findings based thereon cannot be considered conclusive. *(People v. Reanzares, G.R. No. 130656, June 29, 2000)*

Extrajudicial Confession. A confession to be admissible in evidence must satisfy four (4) fundamental requirements: (a) it must be voluntary; (b) it must be made with the assistance of *competent and independent counsel*; (c) it must be express; and (4) it must be in writing. In providing that during the taking of an extrajudicial confession the accused's parents, older brothers and sis-

ters, his spouse, the municipal mayor, municipal judge, district school supervisor, or priest or minister of the gospel as chosen by the accused may be present, RA 7438 does not propose that they appear in the alternative or as a substitute for counsel without any condition. It is explicitly stated therein that before the abovementioned persons can appear, two (2) conditions must be met: (a) counsel of the accused must be absent, and (b) a valid waiver must be executed. The apparent consent of the two (2) accused in continuing with the investigation was of no moment; a waiver to be effective must be made in writing and with the assistance of counsel. Consequently, any admission obtained from the two (2) accused emanating from such uncounselled interrogation would be inadmissible in evidence in any proceeding. Securing the assistance of the PAO lawyer five (5) days later does not remedy the omission either. Admission obtained during custodial investigation without the benefit of counsel although reduced into writing and later signed in the presence of counsel are still flawed under the Constitution. If the lawyer's role is diminished to being that of a mere witness to the signing of a prepared document albeit an indication therein that there was compliance with the constitutional rights of the accused, the requisite standards guaranteed by Art. III, Sec. 12, par. (1) of the Constitution are not met. It is not enough for the interrogator to merely enumerate to the person under investigation his rights as provided in Sec. 12, Art. III of the Constitution; the interrogator must also explain the effect of such provision in practical terms, *e.g.*, what the person under interrogation may or may not do, and in a language the subject fairly understands. *(People v. Ordono, G.R. No. 132154, June 29, 2000)*

EXCEPTIONS TO THE HEARSAY RULE

Dying Declaration. *(People v. Taneza, G.R. No. 121668, June 20, 2000; People v. Contega, G.R. No. 133579, May 31, 2000)*

Declaration Against Interest is not admissible if the declarant is available to testify as a witness. Such declarant should be confronted with the statement against interest as a prior inconsistent statement. *(Cequena v. Bolante, G.R. No. 137944, April 6, 2000)*

PRESUMPTIONS

Disputable Presumptions. Sec. 3, par. [e], Rule 131 of the Rules of Court on suppression of evidence is only a disputable presumption and does not apply in the present case as the evidence allegedly omitted is accessible/available to the defense. *(People v. Reanzares, G.R. No. 130656, June 29, 2000)*

Presumption of Regularity. Public Document. Being a notarized document, the " Deed of Sale with Assumption of Mortgage" has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document should be upheld. *(Bernardo v. Court of Appeals, G.R. No. 107791, May 12, 2000)*

- While it is true that official documents like petitioner's birth certificate enjoy the presumption of regularity, the specific facts attendant to this case, as well as the totality of the evidence presented during trial, sufficiently negate such presumption. *(Babiera v. Catotal, G.R. No. 138493, June 15, 2000)*

Refusal to Produce Evidence. When the evidence tends to prove a material fact which imposes a liability on a party, and he has it in his power to produce evidence which from its very nature must overthrow the case made against him if it is not founded on facts, and he refuses to produce such evidence, the presumption arises that the evidence, if produced, would operate to his prejudice and support the case of his adversary. *(Metropolitan Bank & Trust Company v. Court of Appeals, G.R. No. 122899, June 8, 2000)*

PRESENTATION OF EVIDENCE

AUTHENTICATION AND PROOF OF DOCUMENTS

Ancient Document *(Cequena v. Bolante, G.R. No. 137944, April 6, 2000)*

Offer and Objection. An allegation that does not merit any credence need not be rebutted. *(People v. Arillas, G.R. No. 130593, June 19, 2000)*

WEIGHT AND SUFFICIENCY OF EVIDENCE

Proof Beyond Reasonable Doubt. Accused-appellant makes much of the fact that the witness used the words "probably," "maybe," and "I guess." However, conviction in criminal cases does not entail absolute certainty; neither does it exclude the possibility of error. What is required is moral certainty or that degree of proof that produces conviction in an unprejudiced mind. *(People v. Flora, G.R. No.125909, June 23, 2000)*

- Sole credible testimony of rape victim is enough for conviction. *(People v. Hofilena, G.R. No. 134772, June 22, 2000)*

Circumstantial Evidence. When circumstantial evidence constitutes an unbroken chain of natural and rational circumstances corroborating each other, it cannot be overcome by doubtful evidence submitted by the accused-appellants, such as alibi. *(People v. Bago, G.R. No. 122290, April 6, 2000; People v. Santos, G.R. No. 122935, May 31, 2000)*. Requisites for judgment of conviction based purely on circumstantial evidence to be upheld. *(People v. De Guzman, G.R. No. 124368, June 8, 2000; People v. Adoc, G.R. No. 132079, April 12, 2000)*

- Alibi. An alibi becomes less plausible as a defense when it is invoked and sought to be crafted mainly by the accused himself and his immediate relative/s. Such defense should have been corroborated by a disinterested but credible witness. *(People v. Flora, G.R. No.125909, June 23, 2000). Alibi was not given credence. (People v. Legaspi, G.R. No. 117802, April 27, 2000)*

- An NBI chemist's finding that the paraffin test on the person of the appellant is negative is not conclusive to show that said appellant has not fired a gun. *(People v. Legaspi, G.R. No. 117802, April 27, 2000)*

- There is no law requiring a police line-up as essential to proper identification. Thus, even if there was no police line-up, there could still be proper identification as long as such identification was not suggested to the witness by the police. *(People v. Lubong, G.R. No. 132295, May 31, 2000)*

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TAXATION

THE NATIONAL INTERNAL REVENUE CODE

Tax Refund of excess income tax withheld. *(BPI-Family Savings Bank, Inc. v. Court of Appeals, G.R. No. 122480, April 12, 2000)*

Period of Limitation. B.P. Blg. 700 (which reduced the period of limitation for assessment and collection of internal revenue taxes from five years to three years) was approved on April 5, 1984. The shorter period for assessment and collection applies to taxes paid beginning 1984. Clearly, the tax assessment made on December 10, 1987 for the year 1983 was still covered by the 5-year statutory prescriptive period which should be computed at the time of the filing of the "final annual percentage tax return," when it can be finally ascertained if the taxpayer still has an unpaid tax, and not from the tentative quarterly payments. *(Protector's Services, Inc. v. Court of Appeals, G.R. No. 118176, April 12, 2000)*

Protest. Period within which to file a protest before the Commissioner of Internal Revenue under Section 270 of the National Internal Revenue Code of 1997. (*id.*)

Suspension of the Running of the Statute of Limitation. (*id.*)

Gross Receipts refer to all amounts received by the prime or principal contractor as the total price, undiminished by the amount paid to the subcontractor under a subcontract agreement. Gross receipts cannot be diminished by employer's SSS, SIF and Medicare contributions, nor by salaries paid to the security guards. (*id.*)

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ISSN 0118-9247