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Volume 28 of the **Journal of the Integrated Bar of the Philippines** commences with three articles, a book review, and the regular digest and summary of selected Supreme Court decisions in the different fields of law.

In the lead article, *Fiduciary Duties of Corporate Directors Under the SEC's New Code of Corporate Governance,* **SOLEDAD M. CAGAMPANG-DE CASTRO,** Senior Partner of De Castro and Cagampang, discusses certain features of the new Code of Corporate Governance under the Securities and Exchange Commission (SEC) with particular emphasis on the principles relating to the fiduciary duties of corporate directors and other corporate officers. According to the author, this Code, the adoption of which is an evident effort to gain investor confidence specifically in the Philippine Stock Market, is a manual of proper conduct by which corporate officers can comply with their three-fold duties, namely, diligence, loyalty and obedience.

VICENTE B. AMADOR, Senior Partner of Sycip Salazar Hernandez and Gatmaitan, and Professorial Lecturer at the University of the Philippines College of Law, analyzes in the second article, *Significant Developments In Intellectual Property (IP) Law: Treaties, Statutes and Jurisprudence,* various decisions involving trademarks, patents and copyright in relation to the Intellectual Property Code (IP Code) Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) World Intellectual Property Organization Copyright Treaty (WCT), which treaties, among others, have created and recognized new rights of investors and authors. The writer stresses that the paper is written in the context of the Philippines' accession to and ratification of treaties on intellectual property that require it to comply with certain minimum obligations imposed upon member countries.

In the third article, **ARTURO M. DE CASTRO,** Professor of Law at the Ateneo de Manila University School of Law and a private practitioner, posits the view in *Lack of Probable Cause as a Ground for a Motion to Quash the Information* that lack of probable cause is a ground to prevent the issuance of a warrant of arrest, or if one has already been issued, to quash the information or dismiss the case in extremely meritorious cases clearly showing lack of probable cause, as when the accused has absolutely no participation in the commission of the offense charged.

Next, **JAVIER P. FLORES**, Managing Partner of Flores and Associates, reviews *JBL: Ipse Loquitur*, a book, edited by Ruben F. Balane, containing ten monographs in civil law of the late Justice JBL Reyes and twenty of his speeches tackling subjects like justice, human rights and morality in legal education.

The final item is a digest or summary of selected Supreme Court decisions covering the period July through December 2001 prepared by **TARCISIO A. DIÑO**, partner of Villareal Rosacia Diño and Patag. The digest is grouped under the following headings: (a) Agrarian Reform Law; (b) Civil Law; (c) Commercial Law; (d) Criminal Law; (e) Labor Law; (f) Land Law; (g) Legal and Judicial Ethics; (h) Political Law; and (i) Remedial Law.

FIDUCIARY DUTIES OF CORPORATE DIRECTORS UNDER THE SEC'S NEW CODE OF CORPORATE GOVERNANCE

*By Soledad M. Cagampang-de Castro**

INTRODUCTION

The new Code of Corporate Governance (the "Governance Code") under SEC Memorandum Circular No. 2 (Series of 2002) of the Securities and Exchange Commission has brought into focus the principles relating to the fiduciary duties of corporate directors and officers under the Philippine legal system, as supplemented by American law and jurisprudence.[1] The adoption of the Governance Code with limited application to public and listed companies[2] is an evident effort to gain investor confidence, specifically in the Philippine stock market.[3]

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1 SEC Memorandum Circular No. 2 Series of 2002, "Code of Corporate Governance" (Preamble) ". . . the Commission in its Resolution No. 135, Series of 2002 dated April 4, 2002, approved the promulgation and implementation of this Code . . ."; See also Manual on Corporate Governance (Model Corporation).

2 The Code is made applicable to public and listed corporations. It pertimently provides that it shall be applicable to corporations whose securities are registered or listed, corporations which are grantees of permits/licenses from the Commission and public companies. This Code also applies to branches or subsidiaries of foreign corporations operating in the Philippines whose securities are registered or listed."

3 The Preamble of the Governance Code states the following objectives:

> "In accordance with the State's policy to actively promote corporate governance reforms aimed to raise investor confidence, develop capital market and help achieve high sustained growth for the corporate sector and the economy, . . ., which shall be applicable to corporations whose securities are registered or listed, corporations which are grantees of permits/licenses and secondary franchises from the Commission and public corporations.

CORPORATE DIRECTORS AND OFFICERS AS "AGENTS" AND "TRUSTEES": A REEXAMINATION OF CONCEPTS

With the adoption of the Governance Code, an examination of the various principles under such legal concepts as "agency" and "trust" *vis-à-vis* the fiduciary duties of corporate directors is relevant in order to determine the nature and extent of such duties and the magnitude of the responsibilities of the board of directors in the governance of the corporation, as well as, those of the individual directors and the officers of a corporation.

"Corporate Governance," as defined in the Governance Code, refers to "a system whereby shareholders, creditors and other stakeholders of a corporation ensure that management enhances the value of the corporation as it competes in an increasingly global market place."[4] It prescribes that the board of directors is primarily responsible for the governance of the corporation. The board should be independent from management.[5]

The Governance Code pinpoints responsibility for governance on the board of directors. Specifically, the board is tasked to foster the long-term success of the corporation and secure its sustained competitiveness which it should exercise in the best interest of the corporation and its shareholders.[6] To ensure good governance of the corporation, the board should establish the corporation's vision and mission, strategic objectives, policies and procedures that may guide and direct the activities of the company and the means to attain them, as well as the mechanism for monitoring management's performance. While the management of the day-to-day affairs of the institution is the responsibility of the

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4 Sec. I. Definitions: B.

5 Sec. II. The Board Governance.

6 Sec. II .6. Duties, Functions and Responsibilities.

management team, the board is, however, responsible for monitoring and overseeing management action.[7]

The Governance Code categorically identifies the position of director as one of trust and confidence and declares that directors are fiduciaries, not mere agents. By the nature of their position and their special relationship to the corporation, its stockholders and other stakeholders, their power and authority over management and with respect to the property and assets of the corporation, they stand as fiduciaries and trustees of the corporation who are governed by the rules of trust. Thus, Section 6 (1st par.) of the Governance Code states:

> It is the Board's responsibility to foster the long-term success of the corporation and secure its sustained competitiveness in a manner consistent with its fiduciary responsibility, which it should exercise in the best interest of the corporation and its shareholders.

In defining the "General Responsibility" of directors, the Governance Code provides:

> A director's office is one of trust and confidence. He should act in the best interest of the corporation in a manner characterized by transparency, accountability and fairness. He should exercise leadership, prudence and integrity in directing the corporation towards sustained progress over the long term. A director assumes certain responsibilities to different constituencies or stakeholders, who have the right to expect that the institution is being run in a prudent and sound manner.[8]

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7 Sec. II.6.a. 2nd par. General Responsibility.

8 *Ibid.* 1st par.

The duties and functions of the board of directors are specifically laid down in the Governance Code with a similar mandate at the start of the enumeration of duties and functions.[9]

> To insure a high standard of best practice for the company and its stakeholders, the Board should conduct itself with utmost honesty and integrity in the discharge of its duties, functions and responsibilities . . .:

Note, however, that more recent pronouncements of the Philippine Supreme Court have applied the rules on "agency" to persons who act for and in behalf of the corporation. Thus, in *BA Savings Bank v. Roger Sia,* et al., it stated:[10]

> A corporation has no powers except those expressly conferred on it by the Corporation Code and those that are implied by or are incidental to its existence. In turn, a corporation exercises said powers through its board of directors and/or duly authorized officers and agents. Physical acts can be performed only by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the oard of directors.
>
> All acts within the powers of a corporation may be performed by agents of its selection; and except so far as limitations or restrictions which may be imposed by special charter, by law or statutory provisions, the same general principles of law which govern the relation of agency for a natural person govern the officer or agents of corporation, of whatever status or

9 *Ibid.* b.

10 *BA Savings Bank v. Roger Sia, et al.,* (336 SCRA 484) (2000).

> rank, in respect to his power to act for the corporation; and agents once appointed, or members acting in their stead are subject to the same rules, liabilities and incapacities as are agents of individual and private persons.

What is the difference between "agents" and "fiduciaries/trustees" as applied to persons acting for and in behalf of the corporation? When are the rules of "agency" and/or "trust" properly applicable with respect to persons acting for and in behalf of the corporation? The rules of "agency" and "trust" are separately treated in the statute books.

The fiduciary character of the position of "trustee" is one of "trust and confidence." This is not so in the case of an "agent." Thus, Art. 1440 of the Civil Code provides:[11]

> *Article 1440.* A person who establishes a trust is called a trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.

On the other hand, in agency, no such qualification of "trust and confidence" appears in the definition. Agency appears to be merely a service contract. Skill and judgment are not indispensable requirements. Thus, Article 1868 of the Civil Code states:[12]

> *Article 1868.* By the contract of agency a person binds himself to render some service or to do

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11 Art. 1440 under Title V of the Civil Code on "Trusts."

12 Article 1868 under Title X of the Civil Code on "Agency."

> something in representation or on behalf of another, with the consent or authority of the latter."

The applicability of "agency" and "trust" in corporate relationships arises from the basic nature of a corporation as a juridical entity or a person by legal fiction. It cannot act on its own but only through natural persons. As a logical consequence, corporate representatives or agents, as a general rule, cannot be held personally liable for acts done for and in behalf of the corporation.

In a recent case,[13] the Supreme Court pinpointed the basis of authority for corporate representatives which defines the extent of their authority and their corresponding liability, to wit:

> As a corporate officer, **his power to bind the corporation as its agent must be sought from statute, charter, by-laws, a delegation of authority to a corporate officer, or from the acts of the board of directors formally expressed or implied from a habit or custom of doing business.**[14] In this case, no such sources of petitioner's authority from which to deduce whether or not he was acting beyond the scope of his responsibilities as corporate vice-president are mentioned, much less proven. It is thus logical to conclude that the board of directors or by-laws of the corporation vested petitioner with certain executive duties one of which is a case for the corporation. (Emphasis supplied).

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13 *Lao v. CA*; *Co v. CA* and *Lao Associated Anglo-American Tobacco Corp. v. CA and Lao*, et al., 325 SCRA 694 (2000).

14 *Ibid.* citing *Reahs Corporation v. NLRC*, 271 SCRA 247 (1997) see also (7) Rustan *Pulp and Paper Mills, Inc. v. IAC*, 214 SRA 665, 673 (1992).

In sum, the following principles can be deduced from the foregoing:

(a) A corporation can act only through representatives that are duly authorized to act.
(b) Not all natural persons who act for and in behalf of the corporation, by so doing, assume fiduciary obligations to the corporation.
(c) Only directors are trustees with fiduciary responsibility.
(d) All other persons who are not directors but who act for and in behalf of the corporation are mere agents and their authority to act for and in behalf of the corporation is subject to limitations imposed by law, the corporate charter and by-laws, and the scope of authority delegated to such agent by the board of directors.

THE BOARD OF DIRECTORS AS THE SEAT OF CORPORATE POWER AND AUTHORITY

The situs of business decisions is the Board of Directors.[15] The affairs of a business enterprise are to be handled by a board of directors elected from among the stockholders.[16] The board is charged with the duty to act for the interest of the corporation and that of the stockholders according to its best judgment. Thus, questions of policy and management are left to the honest judgment and decision of the board and corporate officers and a court is

15 Corporation Code, Sec. 23.

16 *Montelibano v. Bacolod Murcia Miling Co.*, 5 SCRA 36 (1962); In*Ingersoll v. Malabon Sugar Co*., 53 Phil. 745 (1927) "The general rule is that contracts intra vires entered into by the board of directors are binding upon the corporation and that the courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to a wanton destruction of the rights of the minority."

without authority to substitute its judgment and decision for that of the board of directors. The business judgment of the board of directors are to be respected.[17]

Thus, the Corporation Code of 1980 states:

> Sec. 23. **The Board of Directors or trustees**. Unless otherwise provided in this Code, **the corporate powers of all corporations formed under this Code shall be exercised, all business conducted, and all property of such corporations controlled and held by the board of directors or trustees** to be elected from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.[18] (Emphasis supplied).

The Governance Code paraphrases Section 23 of the Corporation Code and defines the board of directors as referring "to the collegial body that exercises the corporate powers of all

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17 See Campos and Lopez Campos, Notes and Selected Cases on Corporation Law (1969 ed.) pp.471, citing Ingersoll, *ibid*., citing *Casey v. Woodruff*, 49 N.Y.S. 2d. 625 (1944).

18 Note, however, that the foregoing is the general operative rule as there are instances where stockholders' affirmative vote is necessary. And stockholders participate directly in the decision-making process only in specific acts prescribed by law, whether by direct vote or written assent, either in person or through representatives by proxy or voting trust agreements.Thus, essentially, stockholders vote is required in matters which are essentially fundamental in character, or what may be considered as not in pursuance to or to accomplish the purpose of its incorporation, or otherwise affect the very existence of the corporation (CC Sec.37); Increase or decrease in capital stock (CC. Sec.38); To incur, create or increase bonded indebtedness (CC Sec. 38); To invest funds in any purpose other than the main purpose for which the corporation was organized (CC Sec. 42); Amendment of Articles of Incorporation (CC Sec. 37); Adoption and amendment of By-Laws (CC Secs.46/ 48); Sale, lease, exchange or other disposition of all or substantially all of the corporate property and assets, including good will (CC Sec.40); Approval of a plan of merger or consolidation (CC Sec. 77); Election of directors (CC Sec.24); Removal of Directors (CC Sec.28). See also Cagampang, S., The Fiduciary Duties of Corporate Directors Under Philippine Law, l972, Phil. Law Journal.

19 *Supra* note 1, Sec. 1 A.

corporations formed under the Corporation Code. It conducts all business and controls or holds all property of such corporations."[19]

Unlike the Corporation Code, a distinct feature of the Governance Code is its detailed enumeration of the duties, functions and responsibilities of the board of directors, the directors, the corporate secretary, the chairman and CEO - those who would be considered to have fiduciary duties by virtue of their position and responsibility in the corporation, notable of which are: (a) establishment of the corporation's vision and mission, strategic objectives; policies and procedures; mechanism for monitoring management's performance; (b) installation of a process of selection of directors and officers; adopt a professional development program for employees and officers and succession planning for senior management; (c) adoption of an investor relations program; a system of internal checks and balances; (d) constituting an audit compliance committee;[21] and (e) internal control responsibilities which include the establishment of organizational and procedural controls supported by an effective management information system and risk management reporting system and mechanisms to monitor the adequacy and effectiveness of the organization's governance, operations, information systems, to include reliability of financial and operational information, effectiveness and efficiency of operations, safeguarding of assets and compliance with laws, rules, regulations and contracts.[22]

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20 *Ibid.* Section II 6.b. of the Governance Code.

21 *Ibid*. Section II 6.d.

22 *Ibid*. Section II 6.c.

DIRECTORS AS FIDUCIARIES: THE DIRECTORS UNDER THE CODE OF GOOD CORPORATE GOVERNANCE.

A distinct feature of the Governance Code is the separate treatment of directors from the board. Thus, there is also an enumeration of duties, functions and responsibilities of directors, which is apart from that of the board of directors. These appear to be specific guidelines on conduct by which individual directors can comply with their duties as fiduciaries of the corporation and its stockholders.[23]

The Governance Code reiterates the established principles of trust applicable to directors as fiduciaries or trustees as enunciated in various cases in corporation law and jurisprudence. It is also a "how to" book by indicating how the duties and responsibilities can be complied with. Thus, .the Code states:

> A director's office is one of **trust and confidence**. He should **act in the best interest** of the corporation in a manner **characterized by transparency, accountability and fairness**. He should exercise **leadership, prudence and integrity** in directing the corporation towards sustained progress over the long term. A director assumes certain responsibilities to different constituencies or stake-holders, who have the right to expect that the institution is being run in a **prudent and sound manner**.[24] (Emphasis supplied).

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23 *Ibid*. Section II 6.a.

24 *Ibid*. par. 1

In contrast, the Corporation Code of l980 enforces this fiduciary duty negatively by imposition of liabilities as a consequence of breach of such duty. Thus:

> Section 31. *Liability of directors, trustees or officers.* Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or **who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty** as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
> (Emphasis supplied).

MEANING AND EXTENT OF FIDUCIARY DUTIES OF DIRECTORS

The Governance Code's categorical reference to the "fiduciary responsibilities" of corporate directors and trustees carries with it the applicable built-in concepts and principles established under existing jurisprudence on the fiduciary character of directors' position. Such "fiduciary responsibility" directly relates to the three-fold duties of diligence, loyalty and obedience.

DUTY OF DELIGENCE

"Diligence" includes knowledge, skill, care, and prudence. Directors are expected to manage the corporation with diligence and they can be held liable not only for willful dishonesty but also for negligence. Section 31 of the Corporation Code embodies, in a negative manner, this duty of diligence, to wit:

> Section 31. . . . Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or **who are guilty of gross negligence . . . in directing the affairs of the corporation** . . . shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. (Emphasis supplied).

The meaning and extent of this duty of diligence are positively explained in *Steinberg v. Velasco*, decided in 1929, where the Supreme Court cited American Ruling Case Law thus:[25]

> *Want of knowledge, Skill or Competency* - It has been said that directors are not liable for losses resulting to the corporation from want of knowledge on their part; for mistakes of judgment **provided they were honest, and provided they are fairly within the scope of the powers and discretion confided to the managing body**. But the acceptance of the office of a director of a corporation implies a **competent knowledge of the duties assumed and directors cannot excuse imprudence on the ground of their ignorance or inexperience; and if they commit an error of judgment through mere recklessness or want of ordinary prudence or skill**, they may be held liable for the consequences. Like a mandatory, to whom he has been likened, **a director is bound not only to exercise proper care and diligence, but ordinary skill and judgment. As he is bound to exercise ordinary skill and judgment, he cannot set up that he did not possess them**. (Emphasis supplied).

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25 See *Supra* note 17, Campos and Lopez Campos, pp.471, citing Ingersoll, *Ibid*., citing *Casey v. Woodruff*, 49 N.Y.S. 2d 625 (1944).

The duty of diligence is understood to mean that those who voluntarily take the position of directors and invite confidence in that relation, undertake that they possess at least ordinary knowledge and skill and that they will use them in the discharge of their functions as such.[26] Thus, directors of a corporation are required to exercise reasonable and ordinary care, skill and diligence in conducting its business and the failure to observe this standard of care imposes liability on a defaulting director -that is, the care, skill and diligence which the ordinary prudent man would exercise in similar circumstances.[27] Such required degree of care and diligence would vary depending on the nature of the business of the corporation.[28]

Although they are not expected, nor is it desirable for them to interfere in the administrative details of the business, they should keep themselves sufficiently informed about the general condition of the business, and to some extent, of the manner in which it is being conducted, so that they may be met and solved. If due to their fault or negligence, the assets of the corporation are wasted or lost, each of them, is held responsible for any amount of loss which may have been proximately caused by his wrongful act or omission.[29]

The Governance Code shows the way to exercise this duty of diligence thus:

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26 *Supra*, note 17, Campos and Campos p. 470, citing *Hun v. Cary*, 82 N.Y. 65 (1880).

27 *Otis & Co. v. Pennsylvania R. Co.* et al., 61 F. Supp. 905, affirmed 155 F. 2d 522; *ibid*., Campos and Lopez-Campos, pp. 472-478.

28 *Ibid*., citing *Litwin v. Allen*, et al., 25 N.Y.S. 2d 667 (1940). The nature of the business is also an important factor. Thus, a director of a bank is usually held to a higher degree of diligence than that of an ordinary commercial corporation.

29 *Ibid*. citing *Barnes v. Andrews*, 298 F. 614 (1924).

> A director should devote sufficient time to familiarize himself with the institution's business. He should be constantly aware of the institution's condition and be knowledgeable enough to contribute meaningfully to the Board's work. He should attend and actively participate in Board and committee meetings, request and review meeting materials, ask questions and request explanations.
>
> Before deciding on any matter brought before the board of directors every director should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.

BUSINESS JUDGMENT RULE

Corollary to this duty of diligence is the protection afforded to directors under the "business judgment rule." Thus, the board of directors is given a wide latitude in the management of the affairs of a corporation provided always that judgment, and that means an honest, unbiased judgment, is reasonably exercised by them.[30] The directors are entrusted with the management of the affairs of the corporation. If in the course of management they arrive at a decision for which there is a reasonable basis, and they acted in good faith, as the result of their independent judgment, and uninfluenced by any consideration other than what they honestly believe to be for the best interest of the corporation, it is not the function of the court to say that it would have acted differently and to charge the directors for any loss or expenditures incurred.[31]

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30 *Ibid*., citing *Otis & Co. v. Pennsylvania R. Co.* et al., 61 F. Supp. 905, affirmed 155 F. 2d 522 (12) *Ibid*., citing *Casey v. Woodruff*, 49 N.Y.S. 2d at p. 643; see *supra* note 17, Campos and Lopez-Campos, pp. 472-478.

31 *Ibid.* citing *Casey v. Woodruff, supra* at p. 642.

In *Montelibano, et al. v. Bacolod-Murcia Milling Co. Inc.* decided in 1962, the Court, quoting American jurisprudence, stated:[32]

> They (Board of Directors) hold such office charged with the duty to act for the corporation according to their best judgment and in so doing they cannot be controlled in the reasonable exercise and performance of such duty. Whether the business of a corporation should be operated at a loss during depression or close down at a smaller loss is a purely business and economic problem to be determined by the directors of the corporation and not by the court. It is a well known rule of law that questions of policy or management are left solely to the honest decisions of officers and directors of a corporation and the court is without authority to substitute its judgment for that of the board of directors; the board is the business manager of the corporation and so long as it acts in good faith its orders are not reviewable by the courts. (Fletcher Corporations, Vol. 2 p. 390).

Again the Governance Code prescribes how the board should decide and this provision appears to be consistent with the duty of diligence:

> To act judiciously - Before deciding on any matter brought before the Board of directors, every director should thoroughly evaluate the issues, ask questions and seek clarifications when necessary.
>
> To exercise independent judgment - A director should view each problem/situation objectively.

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32 *Montelibano, et. al. v. Bacolod-Murcia Milling Co., Inc*., G.R. No. 15092, May 18,1962.

> When a disagreement with others occurs, he should carefully evaluate the situation and state his position. He should not be afraid to take a position even though it might be unpopular. Corollarily, he should support plans and ideas that he thinks are beneficial to the corporation.

DUTY OF LOYALTY
GOOD FAITH

Under this duty of loyalty, the directors must exercise not only care and diligence, but utmost good faith in the management of corporate affairs. The duty of loyalty is comprehensive. It covers situations involving the "self-dealing" director, the "interlocking" director, the "bad faith" of directors and "conflict of interest."

The duty of loyalty is implicitly embodied in the Governance Code's admonition that :

> A director's office is one of trust and confidence. He shall act in a manner characterized by transparency, accountability and fairness.

There is a specific provision that is aimed against directors' self-dealing or conflict of interest:

> The basic principle to be observed is that a **director should not use his position to make profit or to acquire benefit to advantage for himself and/or his related interests**. He should avoid situations that may compromise his impartiality. **If an actual or potential conflict of interest should arise on the part of directors or senior executives, it should be fully disclosed and the concerned director should not**

> **participate in the decision making**. A director who has a continuing conflict of interest of a material nature should consider resigning. (Emphasis supplied).

In contrast, the Corporation Code prescribes various procedures to address the problem of conflict of interest and self-dealing and the "good faith" requirement. Situations encompassed under the duty of loyalty are implicitly embodied in Sections 32 and 33 of the Corporation Code of 1980, and sanctions are imposed under Section 31 of the Code.

Under the old Corporation Law, there was no specific provision that covers the "self-dealing director," the "interlocking" directorships and "conflict of interest" situations. However, the conditions for validity as developed and as prescribed under case law for the validity of contracts, or transaction of self-dealing directors were effectively codified in the Corporation Code of 1980.

Section 32 of the Corporation Code provides the safeguards and the sanctions to ensure against self-dealing Thus, it states:

> Section 32. *Dealings of directors, trustees or officers with the corporation.* A contract of the corporation with one or more of its directors or trustees or officers is voidable, at the option of such corporation, unless all the following conditions are present:
>
> 1. That the presence of such director or trustee in the board meeting in which the contract was approved was not necessary to constitute a quorum for such meeting;
> 2. That the vote of such director or trustee was not necessary for the approval of the contract;
> 3. That the contract is fair and reasonable under the circumstances; and

4. That in the case of an officer, the contract has been previously authorized by the board of directors.

The same provision requires stockholders approval if the first conditions are not met. However, there must be full disclosure of the adverse interest of the director or trustee during such meeting of stockholders and that the contract is fair and reasonable under the circumstances. Please note that contracts that are self-dealing are not *per se* null and void. The corporation can seek its nullity. But if the conditions prescribed in the law are met, such self-dealing contracts are valid and cannot be nullified.

INTERLOCKING DIRECTORS

It is not unusual for one person to be a director of several corporations. His directorships need not be dictated by his personal investments in different corporations but his services and expertise may have proven to be valuable to the companies that elect him as director. Unlike the old corporation law which had no provision for this situation, the Corporation Code of l980 has provisions on interlocking directorships and prescribes the following guidelines:

> Section 33. *Contracts between corporations with interlocking directors.* Except in cases of fraud, and provided the contract is fair and reasonable under the circumstances, a contract between two or more corporations having interlocking directors shall not be invalidated on that ground alone: Provided, That if the interest of the interlocking director in one corporation is substantial and his interest in the other corporation or corporations is merely nominal, he shall be subject to the provisions of the preceding section [Section 32] insofar as the latter corporation or corporations are concerned.

> Stockholdings exceeding twenty (20%) percent of the outstanding capital stock shall be considered substantial for purposes of interlocking directors.

There are interlocking directorates between two or more corporations when some or all of the directors of one corporation are also directors of the other corporations. The above provision does not invalidate the contracts between the corporations with interlocking directors but they are voidable if there is substantial difference in the shareholdings of the interlocking director in the contracting corporations in which case, the rule against self-dealing directors under Section 32 of the Corporation Code will apply.

CONFLICT OF INTEREST AND CORPORATE OPPORTUNITY

The duty of loyalty of a director precludes the director from acquiring an opportunity that is open to the corporation because that is in effect competing with the corporation, oftentimes with the advantage of inside information thus depriving it of the profits that it could have otherwise earned. Whether the particular opportunity is one which properly belongs to the corporation is a question of fact which must be decided in the light of the circumstances of each case. This rule is premised on the principles of "trust."

Where a fiduciary relationship exists, the duty of the trustee is to manage the property and affairs of the corporation with an eye single to the advantage of the corporation itself. In line with the general principles of equity, it is not proper for the fiduciary to take those opportunities unto himself. Where a fiduciary is engaged in a business in competition with his corporation he cannot actively use his position and power over his corporation so as to prevent the corporation from seeking certain businesses in competition with himself. It is the position of domination and control that makes the taking of corporate opportunity objectionable.[33]

The provisions relating to conflict of interest under the Governance Code read:

> A director's office is one of trust and confidence. He shall act in a manner characterized by transparency, accountability and fairness.
>
> The basic principle to be observed is that a director should not use his position to make profit or to acquire benefit to advantage for himself and/or his related interests.

And Section 31 of the Corporation Code prescribes the sanctions:

> Section 31. *Liability of directors, trustees or officers.* Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or . . . or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
>
> When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profit

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33 *Supra* Note 17, Campos and Lopez-Campos, pp. 530-547; citing *Singer et al. v. Carlisle, et al.* 1940, 26 N.Y.S. 2d 172; *Irving Trust Co. v. Deutsch, et al.*, 73 F. 2d 121.

which otherwise would have accrued to the corporation.

The foregoing provision of the Corporation Code appears to be an uncompromising rule following the established rules of equity against conflict of interest between the fiduciary and the *cestui que* trust. As eloquently stated in an old American case:[34]

> A director of a corporation is in the position of a fiduciary. He will not be permitted improperly to profit at the expense of his corporation. Undivided loyalty will ever be insisted on. Personal gain will be denied to a director when it comes because he has taken a position adverse to or in conflict with the best interests of his corporation . The fiduciary relationship imposes a duty to act in accordance with the highest standards which a man of the finest sense of honor might impose upon himself. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the disintegrating erosion of particular exceptions. While there is a lofty moral ideal implicit in this rule, it actually accomplishes a practical beneficent purpose. It recognizes the frailty of human nature; it realizes that where a man's immediate fortunes are concerned he may sometimes be subject to the blindness often intuitive and compulsive. The rule is designed on the one hand to prevent clouded conception of fidelity and a moral deference that blurs the vision, and on the other hand to stimulate the most luminous critical sense and the finest exercise of judgment uncontaminated by the dross of prejudice, of divided allegiance or of self interest.

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34 *Litwin v. Allen, et al.,* 25 N.Y.S. 667; see also *ibid.* pp. 566.

DUTY OF OBEDIENCE

The duty of obedience simply means that directors are bound to observe the limits of their authority. They should not perform acts which are beyond the powers of the corporation , nor should they assume to act in situations where the law has given such prerogative to the stockholders. Should they go beyond the limits, they are personally responsible for any damages which the corporation may suffer unless they acted in good faith and with due care in the exercise of their business judgment.[35]

The Governance Code admonishes the board of directors thus:

> Section II.6.b. - ix. Keep Board authority within the powers of the institution as prescribed in the articles of incorporation, by-laws, and in existing laws, rules and regulations. Conduct and maintain the affairs of the institution within the scope of its authority as prescribed in its charter and in existing laws, rules, and regulations.

The above principle is embodied in the concept of ultra vires pronounced in Section 45 of the Corporation Code:

> Section 45. *Ultra vires acts of corporations.* No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code in its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred.

And sanctions are imposed for the commission of such unauthorized acts:

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35 *Supra* note 1, Section II 6. b.ii.

> Section 31. *Liability of directors, trustees or officers.* Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or . . . shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Aside from the foregoing statutory mandate, the duty of obedience springs from the basic nature of the corporation as a juridical entity which can act only through representatives whose authority to act for and in behalf of the corporation and their corresponding responsibility must necessarily be circumscribed by the document or other basis whereby such authority to act is delegated. Thus, the Supreme Court explains the nature of a corporation as follows:[36]

> It is basic that a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of another legal entity to which it may be related.[37] As a general rule, a corporation may not be made to answer for acts or liabilities of its stockholders or those of the legal entities to which it may be connected and vice-versa . . . [38]

The Supreme Court further explained:

> Prescinding from the foregoing, the general rule is that officers of a corporation are not personally liable for their official acts **unless it is shown that**

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36 *ARB Construction Co., Inc. v. CA*, 332 SCRA 426.

37 *Ibid.* citing *Reahs Corporation v. NLRC*, 271 SCRA 247 (1997); see also (7) *Rustan Pulp and Paper Mills, Inc. v. IAC*, 214 SRA 665, 673 (1992).

> **they have exceeded their authority**. Article 31 of the Corporation Code is in point. **Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation** . . . shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members other persons.[39] (Emphasis supplied).

There are other instances when corporate officers may be held personally liable for corporate acts. Such exceptions were outlined in *Tramat Mercantile, Inc. v. Court of Appeals* as follows:[40]

1. He assents (a) to a patently unlawful act of the corporation, or (b) for bad faith or gross negligence in directing its affairs, or (c) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons;
2. He consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto;
3. He agrees to hold himself personally and solidarily liable with the corporation ; or
4. He is made, by a specific provision of law, to personally answer for corporation action.

In a recent case, the issue was whether an officer should be held solidarily liable with the corporation for whatever damages would be imposed upon them for filing the complaint for and in

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38 *Ibid*. citing *Equitable Banking Corp. v. NLRC,* 273 SCRA 352 (1997); see also Malayang Samahan ng mga Manggagawa sa *Greenfield v. Ramos,* 326 SCRA 428, 446 (2000).

39 *ARB Construction Co., Inc. v. CA,* 332 SCRA 426 ibid. citing *Nicario v. NLRC,* 295 SCRA 619 (1998).

40 *FCY Construction Group, Inc. et al., v. CA,* 324 SCRA 270, 278 (2000) citing *Tramat Mercantile v. CA,* 238 SCRA 14 (1994).

behalf of the corporation for malicious prosecution. Based on the same principle in agency, that suit should be against the principal not the agent, unless the latter acted on his own or exceeded the limits of his agency, the Supreme Court ruled as follows:[41]

> As a corporate officer, **his power to bind the corporation as its agent must be sought from statute, charter, by-laws, a delegation of authority to a corporate officer, or from the acts of the board of directors formally expressed or implied from a habit or custom of doing business**. In this case, no such sources of petitioner's authority from which to deduce whether or not he was acting beyond the scope of his responsibilities as corporate vice-president are mentioned, much less proven. It is thus logical to conclude that the board of directors or by-laws of the corporation vested petitioner with certain executive duties one of which is a case for the corporation.
>
> [U]pon well established principles of pleading, lack of authority of an officer of a corporation to bind it by contract executed by him in its name is a defense which should have been specifically pleaded by the corporation. The corporation's failure to interpose such a defense could only mean that the filing of the case by the officer was with the consent of and authority of the corporation. Thus the officer cannot be held solidarily liable with the corporation for damages awarded to respondent in accord with law and jurisprudence.

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41 *Lao v. CA*; *Co v. CA* and *Lao Associated Anglo-American Tobacco Corp. v. CA and Lao, et al*., 325 SCRA 694 (2000).

Another instance where separateness of the corporate personality is not a shield against liability of persons acting for and in behalf of the corporation is the case of piercing the corporate veil. In these instances, the person(s) in controll of the corporation are made liable for corporate obligations. In a recent case, the Supreme Court has the opportunity to make important pronouncements with respect to the doctrine of piercing the corporate veil.[42]

From the foregoing, we can infer that consistent with the duty of obedience, personal liability of directors as well as other persons acting for and in behalf of a corporation attaches in cases where (a) consistent with the rule of agency, the person acted without, or outside of or beyond his authority; and (b) consistent with the rule of trust, the fiduciary acted in breach of trust. The instances enumerated in Article 31 of the Corporation Code have a

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42 *Lim v. CA, et al*., 323 SCRA 102, (2000).

It is settled that a corporation is clothed with personality separate and distinct from that of the persons composing it. It may not generally be held liable for the personal indebtedness of its stockholders or those of the entities connected with it.

Rudimentary is the rule that a corporation is invested by law with a personality distinct and separate from its stockholders or members. In the same vein, a corporation by legal fiction and convenience is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it.(*Mataguina Integrated Wood Products, Inc. v. CA 263 SCRA 490*). Nonetheless the shield is not at all times invincible. Thus, in *First Philippine International Bank v. CA* (252 SCRA 259), we (the Supreme Court) enunciated:

> ". . . When the fiction is urged as a means of perpetuating a fraud or an illegal act or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, the achievement or perfection of a monopoly or generally the perpetuation of knavery or crime, the veil with which the law covers and isolates the corporation from the members or stockholders who compose it will be lifted to allow or its consideration merely as an aggregation of individuals. . . ."

Piercing the veil of corporate entity requires the court to see through the protective shroud which exempts the stockholders from liabilities that ordinarily they could be subject to, or distinguishes one corporation from a seemingly separate one, were it not for the existing corporate fiction. *(Traders Royal Bank v. CA 269 SCRA 15).*

common element which involves breach of fiduciary duties on the part of a director of the corporation.

CONCLUDING STATEMENTS

Considering the vast powers and extensive authority of the board of directors over the business and the property of the corporation, it stands to reason that the position of director should assume a fiduciary character. It is a position of trust for which the board and the individual directors are accountable to the ultimate owners of such enterprise -- the stockholders. These stockholders have contributed and pooled their resources to form the corporate enterprise and they entrusted the management and control of their corporate enterprise to their duly elected board of directors. Being so charged, the office of the director is assumed with fiduciary duties to act for the benefit of the corporation and its stockholders.

It is perhaps the general lack of awareness and lack of specificity on the nature and extent of the fiduciary duties of directors, especially of publicly listed corporations, that have led to rampant self-dealings and conflict of interest situations. And the investing public became the unwary and helpless victim of corporate misdeeds. Thus, the Code of Corporate Governance with its detailed provisions on specific duties and responsibilities of directors, the board of directors and certain corporate officers, is a welcome development. The Code should be an effective tool towards compliance with the stringent standards under the threefold duties of fiduciaries and trustees, specifically, directors as fiduciaries or trustees of the corporation, the stockholders and other stakeholders.

There is no express reference to "fiduciary duty" in the Corporation Code but it is from the prescribed liability as

"directors" or "trustees" for the corporation that we discern such duty as "fiduciary" as established by case law and by accepted principles of equity. On the other hand, by stating categorically that directors have "fiduciary responsibilities" and that **"a director's office is one of trust and confidence"** the present Code of Corporate Governance finds its usefulness as it leaves no more doubt among businessmen who are mostly non-lawyers, that indeed directorships in corporations are not only a matter of honor and financial advancement. If they are elected directors of the corporation, they become fiduciaries or trustees of the corporate enterprise with specific legal obligations that carry sanctions that are legally prescribed.

An examination of various provisions of the Code of Corporate Governance leads to the conclusion that this is a manual of proper conduct by which directors and the board and certain officers can comply with the established threefold duties of directors. The enumerated duties and responsibilities as stated in the Governance Code do not adequately encompass the true meaning and coverage of the duty of diligence, loyalty and obedience under established jurisprudence. Thus, there is still a need to rely on these case law and principles to determine compliance of this three-fold duty of diligence, loyalty and obedience.

In sum, the new Code of Corporate Governance is valuable as a pragmatic guideline, rather than as an exclusive enumeration of duties and functions, for compliance with the well established principles underlying the fiduciary duties of corporate directors under Philippine corporation law and jurisprudence. This is where the Governance Code finds its value and usefulness.

SIGNIFICANT DEVELOPMENTS IN INTELLECTUAL PROPERTY (IP) LAW: TREATIES, STATUTES & JURISPRUDENCE

By Vicente B. Amador[*]

INTRODUCTION

The Intellectual Property Code of the Philippines, Republic Act No. 8293 (the "IP Code") took effect on January 1, 1998. On many points, its provisions substantially revised those of the old Trademark Law and Patent Law which were in effect from 1946 to 1997 and those of the Intellectual Property Decree, which was effective from 1972 to 1997. The Supreme Court has not yet promulgated any decision interpreting and applying the IP Code provisions. The decisions recently issued by the Supreme Court still involved the interpretation of the provisions of the old Trademark Law, Patent Law and the Intellectual Property Decree. Therefore, the cases cited in this paper, which were resolved under the old Trademark Law, have to be interpreted in light of pertinent provisions of the IP Code. In most cases, it is believed the cases may be decided differently under the IP Code.

In addition, this paper addresses the question whether, and to what extent, the provisions of the IP Code have implemented the mandate of the Constitution "to protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when

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beneficial to the people"[1] and its own precept that "the use of intellectual property bears a social function."[2]

This inquiry is made in the context of the Philippines' accession to and ratification of treaties on intellectual property that require it to comply with certain minimum obligations imposed upon member countries. Adherence to these treaties has placed pressure upon developing countries, including the Philippines, to effectively enforce the intellectual property rights of nationals of other member countries of these treaties, at the same time that it bound itself to recognize that the "use of intellectual property bears a social function."

This paper examines this issue in light of the specific provisions of the Agreement on Trade Related Aspects of Intellectual Property Rights (the "TRIPS Agreement") and the World Intellectual Property Organization Copyright Treaty (the "WCT").

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1 SECTION 10. Science and technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services. It shall support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life.

SECTION 13. The State shall protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as may be provided by law.

2 SECTION 2. Declaration of State Policy. - The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

These treaties created and recognized new rights of inventors and authors: the exclusive right of importation under the TRIPS Agreement, and the authors' rights of digital transmission, or the right of "making their works available" under the WCT.

THE TRIPS AGREEMENT

The TRIPS Agreement is the first successful attempt to treat protection of intellectual property as an item of trade negotiations among nations. This may have resulted from the concerns expressed by intellectual property rights holders in industrialized countries that ineffective protection of intellectual property rights is a disincentive to the entry of foreign investments in the countries with lax enforcement mechanisms. It may also have been the result of the effective use of trade sanctions against countries that fail to provide the measure of protection of intellectual property rights that meets the expectations of the rights holders in industrialized countries.

However, the inclusion of protection of intellectual property as an item of trade negotiations has been criticized as inappropriate. While trade treaties like the General Agreement on Tariff and Trade are intended to ensure open trade among member countries, the TRIPS Agreement is not directly aimed at liberalizing market access and freer markets. In fact, it has been a long-standing criticism from a perspective of competition law that intellectual property rights hinder rather than promote competition and market access and thus amount to an antithesis of freer trade envisaged by the overall system of World Trade Organization rules. By definition, intellectual property rights are exclusive marketing rights or monopolies that States grant for a limited period of time. The monopoly rights created by intellectual property protection serves the purpose of stimulating innovation and investment by securing the potential of appropriate returns on the investment of time,

financial and human resources. But such exclusive rights also amount to a limitation of competition.[3]

The preamble of the TRIPS Agreement recognizes the tension between monopoly rights in intellectual property and free competition and market access that it seeks to encourage and promote.[4] The TRIPS Agreement attempts to create a balance between monopoly rights in intellectual property by recognizing limitations on those rights.

TRADEMARKS

The most significant provision of the TRIPS Agreement relating to protection of trademark owners is the explicit recognition that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. These rights shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.[5]

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3 The TRIPs Agreement without a Competition Agreement, Thomas Cottier* and Ingo Meitinger,** (*Professor of Law, Institute of European and International Economic Law, University of Berne, Switzerland; member of the ILA International Trade Law Committee. **Research Fellow, Institute of European and International Economic Law, University of Berne, Switzerland) available at http://www.feem.it/web/activ/wp/abs99/65-99.pdf, accessed on July 17, 2002.

4 Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

5 Article 16, par. 1.

The TRIPS Agreement also broadens the scope of Article 6bis of the Paris Convention (1967) on protection of well-known marks. This it does by making such protection available not only to goods and services identical or similar to those for which a well-known mark is registered, but also to goods or services which are not similar to those in respect of which a trademark is registered. However, it requires that the use of the trademark in relation to those goods or services would indicate a connection between those goods and services and the owner of the registered trademark and that the interests of the owner of the registered trademark are likely to be damaged by such use.[6]

Additionally, while Article 6bis of the Paris Convention is silent on the criteria for well-known marks beyond implying that such determination is to be made "by the competent authority of the country of registration or use," the TRIPS Agreement recognizes that renown of a mark may transcend national boundaries. Hence, it says that "in determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark."[7]

The IP Code literally implements the TRIPS Agreement provision on the protection of well-known marks. This it does not only by barring the registration of marks that are confusingly similar to well-known marks, whether or not registered in the Philippines,[8] but also by extending the protection of such mark, where it is registered in the country, even to goods or services which are not similar to those with respect to which registration is applied for, if the use of the mark in relation to those goods or

6 Article 16, par. 3.

7 Article 16, par. 2.

8 Section 123.1 (e).

services would indicate a connection between those goods and services and the owner of the registered mark and if the interests of the owner of the registered mark are likely to be damaged by such use.[9] Furthermore, in determining whether a mark is well-known, account shall be taken of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.[10]

At the same time, however, TRIPS recognizes that trademarks may be used by persons other than the owners even without their consent if such unlicensed use is considered "fair use."[11]

The Intellectual Property Code recognizes the right of the registered trademark proprietor to its exclusive use in commerce but this exclusivity only applies against the use by others in the course of trade of identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered. Furthermore, this subsequent use becomes actionable only if it causes a likelihood of confusion among consumers. The statute therefore grants this right of exclusivity as a necessary means of preventing confusion on the part of consumers that will otherwise result if trademark proprietors are allowed to appropriate and use trademarks without any limitation. In granting exclusive rights to trademark proprietors, the statute intends to serve the broader social objective of creating consumers who can make informed judgment when they purchase branded products or services. The law of unfair competition also serves the same purpose. While the prohibition against unfair competition works

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9 Section 123.1 (f).

10 Section 123.1 (e).

11 Article 17, Exceptions. - Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive term, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

to the benefit of the trader who has gained goodwill among consumers for his products or services, it is equally intended to protect consumers against deception by unscrupulous traders or other manufacturers. In brief, the law on trademarks ensures that traders compete for consumer patronage by means fair and square because the state has an interest in the efficient conduct of business and in avoiding ruinous competition among traders and manufacturers.

Since trademarks are protected only to the extent that they have acquired the goodwill of consumers, trademark applications cannot mature into registration if the trademarks are not used in commerce within three years from the filing date of the application.[12]

While trademarks are considered property and may be licensed for use by others, the registrant in such a case is obliged "to exercise effective control over the quality of the goods or services of the licensee in connection with which the mark is used."[13] If he fails in this obligation, the license is not valid and it is even possible that he may lose his trademark rights by abandonment. If the registrant allows the use of his trademark "to misrepresent the source of the goods or services" on which it is used, the trademark registration may be canceled.[14]

PATENTS

The TRIPS Agreement introduced a new right for patent owners - the right of importation - in addition to the universally recognized rights of making, using, offering for sale, or selling the

12 Section 124.4.

13 Section 150.

14 Section 151.

product. The said rights are exercisable by holders of product patents. Where the subject matter of a patent is a process, the patent holder has the right to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.[15]

The TRIPS Agreement defines specific limitations of patent rights.[16] In addition, it recognizes "the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives"; and "the special needs of the less-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base."[17]

Conformably with the TRIPS patent limitations, the IP Code enumerates specific acts that may be undertaken by third parties without any liability to the patent holder.[18] For instance, a patent holder cannot prevent the use of a patented product which has been put on the market in the Philippines by the owner of the product, or with his specific consent, insofar as such use is performed after the product has been so put on the said market.[19]

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15 Article 28, Rights Conferred.

16 Article 30, Exceptions to Rights Conferred.

Members may provide limited exceptions to the exclusive rights conferred by a patent provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

17 Preamble, TRIPs Agreement.

18 Section 72.

19 Section 72.1.

This provision is an application of the so-called exhaustion of right by reason of the first sale of the patented product under which the patent holder is prevented from seeking to restrain users of the patented product after it has been put on the market by the owner of the product or with his specific consent. Similarly, an act is shielded from any infringement liability if it is done privately and on a non-commercial scale or for a non-commercial purpose provided that it does not significantly prejudice the economic interests of the owner of the patent;[20] or if the act consists of making or using exclusively for the purpose of experiments that relate to the subject matter of the patented invention,[21] among others.

The TRIPS Agreement also allows the granting of a right by public authorities, against the will of a patent owner, in order to make use of a patent.[22] It allows, but does not require, Members to prohibit anti-competitive licensing practices.[23]

Consistently with TRIPS, the IP Code prescribes the conditions for compulsory licensing of patents.[24] Among others, these conditions include national emergencies or other

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20 Section 72.2.

21 Section 72.3.

22 Article 31, Other Use Without Authorization of the Right Holder.

23 Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

24 Section 93, IP Code.

circumstances of extreme urgency; considerations of public interest such as national security, nutrition, health or the development of other vital sectors of the national economy so requires; situations where a judicial or administrative body has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive; or if the patented invention is not being worked in the Philippines on a commercial scale, although capable of being worked, without satisfactory reason. In this last case, however, the importation of the patented article shall constitute working or using the patent.[25]

Protection is granted to encourage inventors not only to innovate but more importantly to disclose their invention to the public through the specification and claims which must describe the invention in a manner sufficient to enable a person of ordinary skill in the art to practice the invention.[26] The law requires the inventors to make a full disclosure of the best mode of practicing his invention so that no further inventing is necessary to put it into practice.[27] This enables the public to exploit the invention when the patent expires and the invention becomes a part of the public domain.

If the inventor does not make a full disclosure of the best mode of practicing his invention, any patent that he may obtain is subject to cancellation. He is penalized for trying to obtain patent protection without the benefit of full disclosure of the best way of practicing that invention, thereby depriving the public of its benefits. The mandatory requirement of full disclosure is therefore intended for the benefit of the public. Full disclosure is the price that the patentee pays for the exclusive rights that he gets through a patent. The state has an interest in making the invention and its technology

25 Section 93.1, 93.2,93.3 and 93.5.

26 Section 35

27 *Alexander Miburn Company v. Davis-Bournounville Company*, 270 U.S. 390.

accessible and usable by all who may be interested in it when the patent expires.

Even during the subsistence of the patent, the statute allows other users to experiment with the patented invention for the purpose of improving upon it without imposing any risk of liability for patent infringement. This is another indication that the patent holder does not possess an unlimited right to his invention during the subsistence of his letters patent. The patent documents and the inventor's disclosures are open to the public for purposes of experimentation so that others may carry the invention forward several steps and thereby advance the technology in that specific field covered by the patent. In fact, a person who successfully improves upon a patented invention is himself entitled to an improvement patent although the original patent of which it is an improvement remains the property of the first inventor. In this manner, the statute grants the patentee certain exclusive rights in its attempt to encourage technological innovation for the general public benefit.

In addition, the law expects the patentee to exploit his exclusive rights by practicing his invention and thereby extend its benefits to the public. If he maintains it on paper and does not exploit his invention before the expiration of four years from the date of filing of the application or three years from the date of the patent, whichever expires last,[28] others may be granted a license to exploit the invention under the circumstances mentioned in the IP Code.[29] Additionally, while the patentee is granted certain exclusive rights, these rights cannot be exercised to stifle competition. If the patentee's manner of exploiting his patent is determined by judicial or administrative process to be anti-competitive, the product output resulting from a compulsory license granted for the exploitation of

28 Section 94.1.

29 Section 93.

the patent may not be limited to the supply of the Philippine market but may cover other territories;[30] and the need to correct the anti-competitive practice may be taken into account in fixing the amount of remuneration.[31]

COPYRIGHT

The TRIPS Agreement expands protection for copyright works by explicitly providing that computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention.[32] In addition, it requires that copyright protection shall be recognized for compilations of data or other material, whether in machine-readable or other form which by reason of the selection or arrangement of their contents constitute intellectual creations. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.[33]

The TRIPS Agreement also creates for owners of copyright in computer programs and cinematographic works the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. However, a Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs this obligation does not apply to rental where the program itself is not the essential object of the rental.[34]

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30 Section 100.4.

31 Section 100.6.

32 Article 10, paragraph 1.

33 Article 10, paragraph 2.

34 Article 11.

While recognizing that member countries may provide limitations on copyright, the TRIPS Agreement requires that they confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.[35]

While there was an attempt by industrialized countries to create importation rights for copyright owners, the proposal was opposed by developing countries. In its final form, TRIPS provides that "for the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights." [36]

TREATY V. NATIONAL LAW

Prior to the IP Code, at least one case raised the following issue: in the event Philippine law imposes certain requirements for trademark protection, which may not be required under a treaty to which the Philippines adheres, may a foreign right holder enforce his rights under the treaty provisions alone?

While the Supreme Court reached a negative conclusion in an earlier case, the IP Code appears to have significantly reinforced the legal capacity of foreign trademark owners who are nationals of countries that are members of international conventions and treaties to which the Philippines adheres by explicitly considering treaty provisions as part of national law. This renders treaty obligations enforceable before Philippine courts in contrast to a

35 Article 13.

36 Article 6.

prior limited enforceability of treaty provisions under a Supreme Court precedent when these provisions conflict with national law.

Under the old Trademark Law, the absence of actual use in Philippines commerce of a foreign trademark may also adversely affect the registered owner's capacity to enforce it in the Philippines. In a pre-IP Code precedent, *Philip Morris, Inc., Benson & Hedges (Canada), Inc., and Fabriques of Tabac Reunies, S.A. v. The Court of Appeals and Fortune Tobacco Corporation*,[37] the Supreme Court ruled that if national law imposes a requirement of actual use of the mark in commerce as a condition for trademark protection it must prevail over a treaty provision to the contrary. The Supreme Court said:

> In assailing the justification arrived at by respondent court when it recalled the writ of preliminary injunction, petitioners are of the impression that actual use of their trademarks in Philippine commercial dealings is not an indispensable element under Article 2 of the Paris Convention in that:
>
> . . . .
>
> (2) . . . no condition as to the possession of a domicile or establishment in the country where protection is claimed may be required of persons entitled to the benefits of the Union for the enjoyment of any industrial property rights. (P. 28, Petition; p. 29, Rollo in G. R. No. 91332.)

37 *Philip Morris v. Court of Appeals*, 224 SCRA 579 [1993].

> Yet petitioners' perception along this line is nonetheless resolved by Sections 2 and 2-A of the Trademark Law which speak loudly about *necessity* of *actual commercial* use of the trademark *in the local forum*:
>
> . . . .
>
> Following universal acquiescence and comity, our municipal law on trademark regarding the *requirement of actual use* in the Philippines *must subordinate an international agreement* inasmuch as the apparent clash is being decided by a municipal tribunal (*Mortensen v. Peters, Great Britain, High Court of Judiciary of Scotland*, 1906, 8 Sessions 93; Paras, International Law and World Organization, 1971 Ed., p. 20). Withal, the *fact that international law has been made part of the law of the land does not by any means imply the primacy of international law over national law in the municipal sphere*. Under the doctrine of incorporation as applied in most countries, rules of international law are given a standing equal, not superior, to national legislative enactments (Salonga and Yap, Public International Law, Fourth ed., 1974, p. 16). (Emphasis supplied).

The IP Code may have abandoned this precedent by affording foreign trademark owners, who are nationals of countries that are members of an international convention or a treaty relating to intellectual property rights to which the Philippines also adheres, the benefits "necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise

entitled by this Act."[38] Effectively, therefore, these nationals may sue for the enforcement of their rights under an applicable treaty or under the IP Code.

DISQUALIFYING CIRCUMSTANCES

REVERSE RECIPROCITY

Under the reverse reciprocity provision of the IP Code, foreign trademark owners suing for enforcement of their trademark rights in the Philippines are subject to the same limitations and restrictions that their national law imposes upon Philippine nationals suing in their home country.[39]

The reverse reciprocity provision serves to put foreign right holders in exact parity of treatment as Filipinos suing in the right holders' country by applying to them when they sue before Philippine courts the same limitations and restrictions that their national law imposes upon Filipinos suing under the foreign holders' national law.

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38 Section 3 - International Conventions and Reciprocity. — Any person who is a national or who is domiciled or has a real and effective industrial establishment in a country which is a party to any convention, treaty or agreement relating to intellectual property rights or the repression of unfair competition, to which the Philippines is also a party, or extends reciprocal rights to nationals of the Philippines by law, shall be entitled to benefits to the extent necessary to give effect to any provision of such convention, treaty or reciprocal law, in addition to the rights to which any owner of an intellectual property right is otherwise entitled by this Act. (n)

39 Section 231 - Reverse Reciprocity of Foreign Law. — Any condition, restriction, limitation, diminution, requirement, penalty or any similar burden imposed by the law of a foreign country on a Philippine national seeking protection of intellectual property rights in that country, shall reciprocally be enforceable upon nationals of said country, within Philippine jurisdiction. (n)

DOING BUSINESS WITHOUT LICENSE

Regardless of treaty provisions, however, foreign right holders may be unable to enforce their intellectual or industrial property rights in the Philippines if they transact business in the Philippines without the required license to do business in the Philippines. This rule of disqualification has been earlier provided under the Corporation Code[40] and is now explicitly incorporated under the IP Code.

In earlier cases, foreign trademark owners have been disqualified from enforcing their trademark rights for having done business in the Philippines without the required license to do business. Under the IP Code, such a foreign national may sue for infringement or unfair competition only if it "does not engage in business in the Philippines."[41] Foreign corporations that do business in the Philippines without a license may be sued but are disqualified from suing before Philippine courts.[42] In *La Chemise Lacoste, S.A. v. Hon. Oscar C. Fernandez, Presiding Judge of Branch XLIX, Regional Trial Court, National Capital Judicial Region, Manila and Gobindram Hemandas,*[43] the Supreme Court held that a foreign corporation, whose products are sold in the Philippines by an

40 Section 133.

41 Section 160 - Right of Foreign Corporation to Sue in Trademark or Service Mark Enforcement Action. — Any foreign national or juridical person who meets the requirements of Section 3 of this Act and does not engage in business in the Philippines may bring a civil or administrative action hereunder for opposition, cancellation, infringement, unfair competition, or false designation of origin and false description, whether or not it is licensed to do business in the Philippines under existing laws. (Sec. 21-A, R.A. No. 166a).

42 Section 133 - Doing business without a license. — No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; but such corporation may be sued or proceeded against before Philippine courts or administrative tribunals on any valid cause of action recognized under Philippine laws. (69a).

43 G.R. No. L-63796-97, May 2, 1984, 129 SCRA 373.

independent distributor selling the goods in its own name and for its own account, is not deemed doing business in the Philippines:

> In the present case, however, the petitioner is a foreign corporation not doing business in the Philippines. The marketing of its products in the Philippines is done through an exclusive distributor, Rustan Commercial Corporation. The latter is an independent entity which buys and then markets not only products of the petitioner but also many other products bearing equally well-known and established trademarks and tradenames. In other words, Rustan is not a mere agent or conduit of the petitioner.

The petitioner in that case, therefore, may sue in the Philippines. An independent distributor, as in the *La Chemise Lacoste* case, takes title to the goods bearing the foreign mark and sells them in its own name and for its own account. Where the foreign trademark owner retains title to the goods bearing its trademark, notwithstanding delivery to the distributor, the arrangement may be considered a mere consignment of the goods rather than an outright sale. The distributor then may be considered an agent of the foreign trademark owner, who may be disqualified from enforcing its trademark rights unless it has obtained a license to do business in the Philippines.

SIGNIFICANT TRADEMARK JURISPRUDENCE

TRADEMARK INFRINGEMENT

Under Section 155 of the IP Code the following acts constitute infringement when undertaken without the consent of the owner of a registered trademark:

> Use in commerce of any reproduction, counterfeit, copy or colorable imitation of a registered mark *or the same container or a dominant feature thereof* in connection with the sale, distribution, advertising of any goods or services *including other preparatory steps necessary to carry out the sale* of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or reproduce, counterfeit, copy or colorably imitate a registered mark *or a dominant feature thereof* and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used in commerce upon or in connection with the *sale, offering for sale, distribution, or advertising of* goods or services or *in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.* (Emphasis supplied).

Infringement takes place at the moment any of the above acts are committed regardless of whether or not there is any actual sale of goods or services using the infringing material.[44] Registration of the mark is an essential requirement for a cause of action for trademark infringement because it is constructive proof of the registrant's ownership of the mark.[45] Colorable imitation is sufficient for infringement. Similarity is the test for infringement of trademark, but this is not such similitude as amounts to identity. If an exact reproduction, counterfeit, copy or imitation of the genuine trademark were required, it would make the remedy available in very few cases because most traders desirous of filching the trade of others in this way will use colorable imitations, or suggestive

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44 Section 155.

45 *Godofredo Lorenzana and Tiburcio Evalle v. Cristina L. Macagba*, G.R. No. L-33373, October 22, 1987.

reproductions of the trademark that they intend to appropriate rather than exact counterfeits.[46]

UNFAIR COMPETITION

If the trademark or trade dress is not registered, the trademark owner's cause of action against the unauthorized user is unfair competition. Under Section 168.3 of the IP Code, the following shall be deemed guilty of unfair competition:

> (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;
>
> (b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

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46 *Teodoro Kalaw Ng Khe, Trading as Hoc Chuan Ho v. Lever Brother Co.*, G.R. No. L-46817, April 18, 1941.

> (c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

No inflexible rule can be laid down as to what will constitute unfair competition. Each case is, in a sense, a law unto itself. Unfair competition is always a question of fact. The question to be determined in every case is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's goods. To state it in another way, the issue is whether defendant, as a matter of fact, is, by his conduct, passing off defendant's goods as plaintiff's goods or his business as plaintiff's business. The universal test is whether the public is likely to be deceived.[47]

For example, a complaint states a cause of action for unfair competition where it alleges that the label that the defendant is using on his packages of cigarettes closely imitates the label and mark of the plaintiff.[48] This gives his cigarettes the appearance of the cigarettes manufactured and offered for sale by the plaintiff. In addition to this, for purposes of visual inspection, a copy of the plaintiff's trademark is exhibited along with copies of the two different labels used by the defendant. Both of them are in many respects strikingly similar to the plaintiff's trademark. When intent to deceive the public and defraud a competitor may be inferred from similarity in the appearance of the goods as packed or offered for sale, it is clear that the allegations of the complaint, taken in

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47 *Alhambra Cigar and Cigarette Manufacturing Co. v. Pedro N. Mojica*, G.R. No. L-8937, March 21, 1914.

48 *LA INSULAR Cigar and Cigarette Factory, Inc., v. B. E. Jao Oge, proprietor of cigarette factory "La Ciudad,"* G.R. No. L-16588, November 19, 1921.

connection with the exhibits, show actionable imitation on the part of the defendant.[49]

In contrast, one court correctly rejected a charge of unfair competition where the seized goods, which were presented to the court, would easily show that there was no attempt on the part of the manufacturer or seller to pass off these goods as products of Louis Vuitton.[50] From the price tags attached to a seized bag, the article carried a price of One Hundred Forty-Seven (P147.00) Pesos, while a genuine bag of Louis Vuitton would cost about Four Thousand (P4,000.00) Pesos To Five Thousand (P5,000.00) Pesos. It is apparent that the seized articles did not come close to the appearance of a genuine Louis Vuitton product. Further, the buckle of the bag also carried the logo of Gucci, another trademark. From the appearance of all the seized goods, it was very apparent that these goods were roughly done. The quality and textures of the materials were such that ordinary purchasers exercising ordinary care would easily determine that they were locally manufactured and would not confuse them with genuine Louis Vuitton products.[51]

LIKELIHOOD OF CONFUSION STANDARD

Whether the action is for trademark infringement or unfair competition, the trademark owner must show that consumers are likely to be confused by unauthorized use of its colorable imitations of its trademark and trade dress. The possibility of consumer confusion either as to the goods themselves or their origin must be evaluated on the basis of considerations that the courts have

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49 *Id.*

50 *Louis Vuitton S.A. v. Judge Francisco Diaz Villanueva*, Presiding Judge, Branch 36, The Metropolitan Trial Court at Quezon City, Metro Manila, A.M. No. MTJ-92-643, November 27, 1992.

51 *Id.*

developed through the years. The Supreme Court has summarized these considerations in one case:

> It has been correctly held that side-by-side comparison is not the final test of similarity. Such comparison requires a careful scrutiny to determine in what points the labels of the products differ. The ordinary buyer does not usually make such scrutiny nor does he usually have the time to do so. The average shopper is usually in a hurry and does not inspect every product on the shelf as if he were browsing in a library. Where the housewife has to return home as soon as possible to her baby or the working woman has to make quick purchases during her off hours, she is apt to be confused by similar labels even if they do have minute differences. The male shopper is worse as he usually does not bother about such distinctions.
>
> The question is not whether the two articles are distinguishable by their label when set side by side but whether the general confusion made by the article upon the eye of the casual purchaser who is unsuspicious and off his guard is such as to likely result in his confounding it with the original. As observed in several cases, the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods is the touchstone.
>
> It has been held that in making purchases, the consumer must depend upon his recollection of the appearance of the product which he intends to

purchase. The buyer having in mind the mark/label of the respondent must rely upon his memory of the petitioner's mark. Unlike the judge who has ample time to minutely examine the labels in question in the comfort of his sala, the ordinary shopper does not enjoy the same opportunity.

A number of courts have held that to determine whether a trademark has been infringed, we must consider the mark as a whole and not as dissected. If the buyer is deceived, it is attributable to the marks as a totality, not usually to any part of it. The court therefore should be guided by its first impression, for a buyer acts quickly and is governed by a casual glance, the value of which may be dissipated as soon as the court assumes to analyze carefully the respective features of the mark.

It has also been held that it is not the function of the court in cases of infringement and unfair competition to educate purchasers but rather to take their carelessness for granted, and to be ever conscious of the fact that marks need not be identical. A confusing similarity will justify the intervention of equity. The judge must also be aware of the fact that usually a defendant in cases of infringement does not normally copy but makes only colorable changes. Well has it been said that the most successful form of copying is to employ enough points of similarity to confuse the public with enough points of difference to confuse the courts.

We also note that the respondent court failed to take into consideration several factors which should have affected its conclusion, to wit: age, training and

> education of the usual purchaser, the nature and cost of the article, whether the article is bought for immediate consumption and also the conditions under which it is usually purchased. Among these, what essentially determines the attitude of the purchaser, specifically his inclination to be cautious, is the cost of the goods. To be sure, a person who buys a box of candies will not exercise as much care as one who buys an expensive watch. As a general rule, an ordinary buyer does not exercise as much prudence in buying an article for which he pays a few centavos as he does in purchasing a more valuable thing. Expensive and valuable items are normally bought only after deliberate, comparative and analytical investigation. But mass products, low priced articles in wide use, and matters of everyday purchase requiring frequent replacement, are bought by the casual consumer without great care.[52]

"DOMINANT FEATURE" TEST

In applying the above considerations to specific cases, the courts have examined whether or not the unauthorized trademark or trade dress carries the "dominant feature" of the owner's trademark or trade dress. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception are likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. The ordinary customer does not scrutinize the details of the label; he forgets or

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52 *Del Monte Corporation v. Court of Appeals*, G.R. No. L-78325, January 25, 1990; 181 SCRA, at pages 417-419.

overlooks these, but retains a general impression, or a central figure, or a dominant characteristic.[53]

It is therefore not necessary that every word of trademark should be appropriated to constitute trademark infringement. It is sufficient that enough be taken to deceive the public in the purchase of a protected article. For one trade name to be an infringement upon another, it need not be exactly like it in form and sound. It is enough if the one so resembles the other as to deceive or mislead persons of ordinary caution into the belief that they are dealing with the one concern when in fact they are dealing with the other.[54] Another line of decisions, however, has taken a different approach, the "holistic" analysis, which essentially allows unauthorized users to rely upon all the insubstantial differences between the prior trademark or trade dress and its unauthorized copy. Using this approach and other considerations, the Second Division of the Supreme Court, declared in *Emerald Garment Manufacturing Corporation v. Hon. Court of Appeals, Bureau of Patents, Trademarks and Technology Transfer and H.D. Lee Company, Inc.*[55] that the trademark "Stylistic Mr. LEE" is not confusingly similar to the trademark "LEE" for sports jeans.

However, the IP Code rejected the "holistic test" in favor of the "dominant feature" approach. The IP Code states that the unauthorized use of the "dominant feature" of a registered mark is an infringement of the owner's right.[56]

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53 *Co Tiong v. Director of Patents*, 95 Phil. 1.

54 *Philippine Nut Industry, Inc. v. Standard Brands Incorporated and Tiburcio S. Evalle as Director of Patents*, G.R. No. L-23035, July 31, 1975.

55 G.R. No. 100098, December 29, 1995.

56 Section 155.1.

> use in commerce of any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a *dominant feature* thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive . . . . (emphasis added).

IMITATION OF PRODUCT FEATURES AND FUNCTIONALITY DOCTRINE

Imitating product features is a more insidious form of copying where the unauthorized user copies the features of the product that attract consumers while employing a distinguishable trademark. While most decisions on trademark infringement deal with colorable imitations of registered marks[57] or product trade dress,[58] other decisions have sustained infringement actions based on imitation of product features.

In *Converse Rubber Corporation and Edwardson Manufacturing Corporation v. Jacinto Rubber & Plastics Co., Inc., and Ace Rubber & Plastics Corporation*,[59] the Supreme Court held:

> From said examination, We find the shoes manufactured by defendants to contain, as found by the trial court, *practically all the features* of those of the plaintiff Converse Rubber Corporation and manufactured, sold or marketed by plaintiff Edwardson Manufacturing Corporation, except for their respective brands, of course. We fully agree with the trial court that "the respective designs, shapes,

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57 *Asia Brewery, Inc. v. The Hon. Court of Appeals and San Miguel Corporation*, G.R. No. 103543, July 5, 1993, holding that the mark BEER PALE PILSEN is not confusingly similar to the registered mark SAN MIGUEL PALE PILSEN; *Marvex Commercial Co., Inc. v. Petra Hawpia and Co. and The Director of Patents*, G.R. No. L-19297, December 22, 1966, holding that the mark LIONPAS is confusingly similar to the mark SALONPAS for medicated plaster.

58 *Philippine Nut Industry, Inc. v. Standard Brands Inc.*, G.R. No. L-23035, July 31, 1975, holding that under the "dominant-feature" test, the mark "PHILIPPINE PLANTERS CORDIAL PEANUT" is confusingly similar to the mark "PLANTERS COCKTAIL PEANUTS"; *Del Monte Corporation and Philippine Packing Corporation v. Court of Appeals and Sunshine Sauce Manufacturing Industries*, G.R. No. 78325, January 25, 1990, ruling that the Sunshine Fruit Catsup label is a colorable imitation of the trademark "DEL MONTE" and its logo.

59 G.R. Nos. L-27425 & L-30505, April 28, 1980, 97 SCRA 158.

> the colors of the ankle patches, the bands, the toe patch and the soles of the two products are exactly the same . . . (such that)" at a distance of a few meters, it is impossible to distinguish "Custombuilt" from "Chuck Taylor." These *elements are more than sufficient* to serve as basis for a charge of unfair competition. Even if not all the details just mentioned were identical, with the general appearances alone of the two products, any ordinary, or even perhaps even a not too perceptive and discriminating customer could be deceived, and, therefore, Custombuilt could easily be passed off for Chuck Taylor. Jurisprudence supports the view that under such circumstances, the imitator must be held liable. (*Id.* 97 SCRA, at pages 168-169, emphasis supplied).

The Supreme Court reached the same conclusion in its recent decision in *Venancio Sambar v. Levi Strauss & Co. and Levi Strauss (Phil.), Inc.*,[60] where it declared that the mark "Europress" with back pockets bearing a design similar to the trademark of Levi Strauss is liable to create confusion among consumers. Affirming the findings of the Court of Appeals, the Supreme Court said:

> In its comment, private respondents aver that the Court of Appeals did not err in ruling that there was infringement in this case. The back pocket design of Europress jeans, a double arc intersecting in the middle was the same as Levi's' mark, also a double arc intersecting at the center. Although the trial court found differences in the two designs, these differences were not noticeable. Further, private respondents said, infringement of trademark did not require exact similarity. *Colorable imitation*, enough to cause

60 G.R. No. 132604, March 6, 2002.

> confusion [among] the public, *was sufficient* for a trademark to be infringed. (Emphasis supplied).

These precedents suggest that the courts may consider the unauthorized imitation of product features as actionable infringement or unfair competition even if commercially distinguishable trademarks are used on the counterfeit products.

FUNCTIONALITY OF TRADE DRESS

The IP Code grants protection to trademarks because they enable consumers to distinguish the goods and services of one manufacturer or trader from those of others. This way, trademarks help prevent consumer confusion. The IP Code provision that protects "features"[61] of products may, as in the Converse case, be applied only to features that serve as trademarks, not features that serve functional purposes. This may be gleaned from the provision that excludes from registrability marks that "consist of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value."[62] The IP Code also precludes the registrability of such functional features as industrial designs.[63]

By excluding these functional features from registrability as marks or industrial designs, the law makes them available for use by competitors without risk of liability for infringement of marks or industrial designs. The net effect is encouragement of competition by making functional features freely available for use by competing manufacturers.

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61 Section 168.3.

62 Section 123 (k), IP Code.

63 Section 113.2. Industrial designs dictated essentially by technical or functional considerations to obtain a technical result or those that are contrary to public order, health or morals shall not be protected. (n)

The Supreme Court has decided at least one case where it declared that the features of the trade dress of a product that serve functional purposes may be imitated by competitors without any risk of liability for trademark infringement or unfair competition.

Asia Brewery Inc. v. San Miguel Corporation[64] involved an action for trademark infringement and unfair competition by SMC, which is the registered owner of the trademark SAN MIGUEL PALE PILSEN, against Asia Brewery, which manufactured and sold a rival beer product bearing the generic mark BEER PALE PILSEN and using the same kind of steinie bottle. The Supreme Court held that these similarities do not amount to an actionable infringement and unfair competition, reasoning:

> ABI does not use SMC's steinie bottle. Neither did ABI copy it. ABI makes its own steinie bottle which has a fat bulging neck to differentiate it from SMC's bottle. The amber color is a functional feature of the beer bottle. As pointed out by ABI, all bottled beer produced in the Philippines is contained and sold in amber-colored bottles because amber is the most effective color in preventing transmission of light and provides the maximum protection to beer. As was ruled in *California Crushed Fruit Corporation v. Taylor B. and Candy Co., 38 F2d 885*, a merchant cannot be enjoined from using a type or color of bottle where the same has the useful purpose of protecting the contents from the deleterious effects of light rays. Moreover, no one may have a monopoly of any color. Not only beer, but most medicines, whether in liquid or tablet form, are sold in amber-colored bottles.

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64 *Asia Brewery, Inc. v. The Hon. Court of Appeals and San Miguel Corporation,* En Banc, G.R. No. 103543. July 5, 1993.

> That the ABI bottle has a 320 ml. capacity is not due to a desire to imitate SMC's bottle but because that bottle capacity is the standard prescribed under Metrication Circular No. 778, dated 4 December 1979, of the Department of Trade, Metric System Board.
>
> With regard to the white label of both beer bottles, ABI explained that it used the color white for its label because white presents the strongest contrast to the amber color of ABI's bottle; it is also the most economical to use on labels, and the easiest to "bake" in the furnace (p. 16, TSN of September 20, 1988). No one can have a monopoly of the color amber for bottles, nor of white for labels, nor of the rectangular shape which is the usual configuration of labels. Needless to say, the shape of the bottle and of the label is unimportant. What is all important is the name of the product written on the label of the bottle for that is how one beer may be distinguished from the others.

The functionality doctrine is typically applied by manufacturers that claim exclusive right to the functional features of their products after the expiration of patent protection on them. The latest decision to this effect is the United States Supreme Court's decision in *TrafFix Devices, Inc. v. Marketing Displays, Inc.*[65] In TrafFix, respondent, Marketing Displays, Inc. ("MDI"), holds now-expired utility patents for a "dual-spring design" mechanism that keeps temporary road and other outdoor signs upright in adverse wind conditions. MDI claims that its sign stands were recognizable to buyers and users because the patented design was visible near the sign stand's base. After the patents expired and petitioner TrafFix

65 No. 99-1571, March 20, 2001, available at http://laws.findlaw.com/US/000/99-1571.html, accessed on July, 18, 2002.

Devices, Inc., began marketing sign stands with a dual-spring mechanism copied from MDI's design, MDI brought suit under the Trademark Act of 1964 for trade dress infringement. The District Court granted TrafFix's motion for summary judgment, holding that no reasonable trier of fact could determine that MDI had established secondary meaning in its alleged trade dress, *i.e.*, consumers did not associate the dual-spring design's look with MDI; and, as an independent reason, that there could be no trade dress protection for the design because it was functional.

The U. S. Supreme Court held that MDI's dual-spring design is a functional feature for which there is no trade dress protection, and that MDI's claim is barred. The Supreme Court explained:

> Trade dress protection must subsist with the recognition that in many instances there is no prohibition against copying goods and products. In general, unless an intellectual property right such as a patent or copyright protects an item, it will be subject to copying. As the Court has explained, copying is not always discouraged or disfavored by the laws which preserve our competitive economy. *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U. S. 141, 160 (1989). Allowing competitors to copy will have salutary effects in many instances. "Reverse engineering of chemical and mechanical articles in the public domain often leads to significant advances in technology. *Ibid.*
>
> The principal question in this case is the effect of an expired patent on a claim of trade dress infringement. A prior patent, we conclude, has vital significance in resolving the trade dress claim. A utility patent is strong evidence that the features therein claimed are functional. If trade dress protection is sought for those features the strong evidence of

functionality based on the previous patent adds great weight to the statutory presumption that features are deemed functional until proved otherwise by the party seeking trade dress protection. Where the expired patent claimed the features in question, one who seeks to establish trade dress protection must carry the heavy burden of showing that the feature is not functional, for instance by showing that it is merely an ornamental, incidental, or arbitrary aspect of the device.

In the case before us, the central advance claimed in the expired utility patents (the Sarkisian patents) is the dual-spring design; and the dual-spring design is the essential feature of the trade dress MDI now seeks to establish and to protect. The rule we have explained bars the trade dress claim, for MDI did not, and cannot, carry the burden of overcoming the strong evidentiary inference of functionality based on the disclosure of the dual-spring design in the claims of the expired patents.

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The rationale for the rule that the disclosure of a feature in the claims of a utility patent constitutes strong evidence of functionality is well illustrated in this case. The dual-spring design serves the important purpose of keeping the sign upright even in heavy wind conditions; and, as confirmed by the statements in the expired patents, it does so in a unique and useful manner. . . .

In finding for MDI on the trade dress issue the Court of Appeals gave insufficient recognition to the

importance of the expired utility patents, and their evidentiary significance, in establishing the functionality of the device. The error likely was caused by its misinterpretation of trade dress principles in other respects. As we have noted, even if there has been no previous utility patent the party asserting trade dress has the burden to establish the non-functionality of alleged trade dress features. MDI could not meet this burden. Discussing trademarks, we have said "`[i]n general terms, a product feature is functional,' and cannot serve as a trademark, `if it is essential to the use or purpose of the article or if it affects the cost or quality of the article.' " *Qualitex,* 514 U. S., at 165 (quoting *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U. S. 844, 850, n. 10 (1982)). Expanding upon the meaning of this phrase, we have observed that a functional feature is one the "exclusive use of [which] would put competitors at a significant non-reputation-related disadvantage." 514 U. S., at 165. The Court of Appeals in the instant case seemed to interpret this language to mean that a necessary test for functionality is "whether the particular product configuration is a competitive necessity." 200 F. 3d, at 940. See also *Vornado,* 58 F. 3d, at 1507 ("Functionality, by contrast, has been defined both by our circuit, and more recently by the Supreme Court, in terms of competitive need"). This was incorrect as a comprehensive definition. As explained in *Qualitex*, *supra*, and *Inwood*, *supra*, a feature is also functional when it is essential to the use or purpose of the device or when it affects the cost or quality of the device. The *Qualitex* decision did not purport to displace this traditional rule. Instead, it quoted the rule as *Inwood* had set it forth. It is proper to inquire into a "significant non-reputation-related disadvantage" in cases of

> aesthetic functionality, the question involved in *Qualitex*. Where the design is functional under the *Inwood* formulation there is no need to proceed further to consider if there is a competitive necessity for the feature. In *Qualitex*, by contrast, aesthetic functionality was the central question, there having been no indication that the green-gold color of the laundry press pad had any bearing on the use or purpose of the product or its cost or quality.

The United States Court of Appeals for the Federal Circuit reiterated the above ruling in *Valu Engineering, Inc. v. Rexnord Corporation*.[66] In this case, Valu Engineering, Inc. ("Valu") appealed a decision of the Trademark Trial and Appeal Board ("Board") sustaining Rexnord Corporation's ("Rexnord") opposition to registration of Valu's cross-sectional designs of conveyor guide rails as trademarks on the Principal Register. The Court of Appeals held that the Board correctly concluded that Valu's cross-sectional designs of conveyor guide rails are *de jure* functional, and affirmed the Board's refusal to register Valu's designs. The Court of Appeals explained the "functionality" doctrine as a bar to trademark protection:

> Beginning at least with the decisions in *Kellogg Co. v. National Biscuit Co.*, 305 U.S. 111, 119-120 (1938), and Morton-Norwich, 671 F. 2d at 1336-37, 213 USPQ at 11-12, the Supreme Court and this court's predecessor have held that a mark is not registrable if the design described is functional, because "patent law, not trade dress law, is the principal means for providing exclusive rights in useful product features." *Elmer v. ICC Fabricating*, 67 F. 3d 1571, 1580, 36 USPQ2d 1417, 1423 (Fed. Cir. 1995). The First Circuit likewise

66 No. 001565-1566, January 23, 2002.

has noted that "[t]rademark and trade dress law cannot be used to evade the requirements of utility patents, nor the limits on monopolies imposed by the Patent Clause of the Constitution." *I.P. Lund Trading ApS v. Kohler*, 163 F. 3d 27, 38, 49 USPQ2d 1225, 1232 (1st Cir. 1998). Commentators share this view: "trademark law cannot properly make an 'end run' around the strict requirements of utility patent law by giving equivalent rights to exclude." J. Thomas McCarthy, 1 McCarthy on Trademarks and Unfair Competition § 7:64, 7-147 (4th ed. 2001).

The functionality doctrine thus accommodates trademark law to the policies of patent law:

> The functionality doctrine prevents trademark law, which seeks to promote competition by protecting a firm's reputation, from instead inhibiting legitimate competition by allowing a producer to control a useful product feature. It is the province of patent law, not trademark law, to encourage invention by granting inventors a monopoly over new product designs or functions for a limited time, 35 U.S.C. §§ 154,173, after which competitors are free to use the innovation. If a product's functional features could be used as trademarks, however, a monopoly over such features could be obtained without regard to whether they qualify as patents and could be extended forever (because trademarks may be renewed in perpetuity). *Qualitex Co. v. Jacobson Prods. Co.*, 514 U.S. 159, 165 (1995).

> Our decisions distinguish *de facto* functional features, which may be entitled to trademark protection, from *de jure* functional features, which are not. "In essence, *de facto* functional means that the design of a product has a function, *i.e.*, a bottle of any design holds fluid." In re R.M. Smith, Inc., 734 F. 2d 1482, 1484, 222 USPQ 1, 3 (Fed. Cir. 1984). *De facto* functionality does not necessarily defeat registrability. Morton-Norwich, 671 F. 2d at 1337, 213 USPQ at 13 (A design that is *de facto* functional, *i.e.*, "'functional' in the lay sense . . . may be legally recognized as an indication of source."). *De jure* functionality means that the product has a particular shape "because it works better in this shape." Smith, 734 F. 2d at 1484, 222 USPQ at 3.

The San Miguel, TrafFix and Valu Engineering decisions best illustrate the principle that monopoly rights under industrial property protection cannot be extended to certain functional product features which should be freely available to other manufacturers in the interest of encouraging competition. In SMC, Asia Brewery's use of the steinie bottle whose color is intended to protect the beer content against sunlight cannot be considered an act of infringement and unfair competition since it has a purely functional purpose. Depriving competitors of the right to use it will be a form of intellectual property misuse since it will confer upon SMC a monopoly over a functional feature that that will give its products a competitive edge in quality over those of its competitors. Where the functional feature of the product has been the subject of expired patents, there is even a clearer abuse of industrial property right on the part of the right holder who seeks to obtain extended protection to functional features covered by expired patents which have become part of the public domain and may therefore be imitated by competitors without any liability.

ACTUAL USE REQUIREMENT FOR FOREIGN TRADEMARKS

A contentious issue in trademark litigation has been whether actual use in commerce is an essential requirement for a cause of action for trademark infringement or unfair competition. This issue has frustrated the efforts of some foreign trademark owners to enforce their rights to trademarks or service marks that they have registered, but have not used, in the Philippines. In a pre-IP Code precedent, the Supreme Court dealt with the effect of lack of actual use of a foreign service mark in Philippines commerce in *Kabushi Kaisha Isetan and Trading,* also known as *Isetan Co., Ltd. v. The Intermediate Appellate Court, The Director of Patents, and Isetann Department Store, Inc.*[67] The Supreme Court held:

> The records show that the petitioner has never conducted any business in the Philippines. It has never promoted its tradename or trademark in the Philippines. It has absolutely no business goodwill in the Philippines. It is unknown to Filipinos except the very few who may have noticed it while travelling abroad. It has never paid a single centavo of tax to the Philippine government. Under the law, it has no right to the remedy it seeks.

Similarly, in *Philip Morris, Inc., Benson & Hedges Canada, Inc., and Fabriques of Tabac Reunies, S.A. v. The Court of Appeals and Fortune Tobacco Corporation*,[68] the Supreme Court reiterated that a locally unused foreign trademark cannot be protected against appropriation by others in the Philippines. It relied upon the provisions of Sections 2 and 2-A of the old Trademark Law that required lawful use of a trademark in Philippines commerce for its protection in the Philippines. The Supreme Court said:

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67 G.R. No. L-75420 November 15, 1991, 203 SCRA 583.

68 G.R. No. 91332, July 16, 1993, 224 SCRA 576.

> [P]etitioners may have the capacity to sue for infringement irrespective of lack of business activity in the Philippines on account of Section 21-A of the Trademark Law but the question of whether they have an exclusive right over their symbol as to justify issuance of the controversial writ will depend on actual use of their trademarks in the Philippines in line with Sections 2 and 2-A of the same law. It is thus incongruous for petitioners to claim that when a foreign corporation not licensed to do business in the Philippines files a complaint for infringement, the entity need not be actually using its trademark in commerce in the Philippines. Such a foreign corporation may have the personality to file a suit for infringement but it may not necessarily be entitled to protection due to absence of actual use of the emblem in the local market.

The dissenting opinion in that case, however, advocated a liberal application of the use requirement on the ground that "through advertisement, a well-established and well-earned reputation may be gained in countries where the trademark owner has itself no established business connection."

> The third advertisement function of trademarks has become of special importance given the modern technology of communication and transportation and the growth of international trade. Through advertisement in the broadcast and print media, the owner of the trademark is able to establish a nexus between its trademark products and the public in regions where the owner does not itself manufacture or sell its own products. Through advertisement, a well-established and well-earned reputation may be gained in countries where the trademark owner has

> itself no established business connection. Goodwill may thus be seen to be much less closely confined territorially than, say, a hundred or fifty years ago. It is no longer true that "a trademark of itself cannot travel to markets where there is no article to wear the badge and no trader to offer the article." Advertisement of a trademark is geared towards the promotion of use of the marked article and the attraction of potential buyers and users; by fixing the identity of the marked article in the public mind, it prepares the way for growth in such commerce whether the commerce be handled by the trademark owner itself or by its licensees or independent traders. Id, 224 SCRA at pages 625-626.

Courts may well continue to apply the *Philip Morris* decision described above in cases involving unused foreign marks that are not considered well-known within the meaning of Article 6bis of the Paris Convention to which the Philippines adheres. The reason for this probability is that, notwithstanding its adoption of a limited first-to-register system, the IP Code still requires that a registered mark be used in commerce as a condition for its maintenance in the registry of marks.[69]

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69 Section 124.2 - The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

Section 145 - Duration — A certificate of registration shall remain in force for ten (10) years: Provided, That the registrant shall file a declaration of actual use and evidence to that effect, or shall show valid reasons based on the existence of obstacles to such use, as prescribed by the Regulations, within one (1) year from the fifth anniversary of the date of the registration of the mark. Otherwise, the mark shall be removed from the Register by the Office. (Sec. 12, R.A. No. 166a).

PROTECTION FOR WELL-KNOWN MARKS

The provisions of the TRIPS Agreement and the IP Code on protection of well-known marks may have improved the chances of their foreign owners in enforcement actions involving such marks even in the absence of actual use of their marks in commerce in the Philippines.

The subsequent adherence of the Philippines to the TRIPS Agreement may have overturned the *Philip Morris* and *Isetan* decisions, at least as far as well-known marks are concerned. Instead, the dissenting opinion in Philip Morris may now be more consistent with the provisions of the IP Code that implemented the TRIPS Agreement.

At least insofar as well-known trademarks are concerned, the TRIPS Agreement does not require they must be used in commerce in the country in which protection is claimed.[70] The IP Code implements this treaty provision literally by providing that well-known trademarks will be protected in the Philippines against registrations by other applicants "whether or not it is registered here." The intent to give trademarks stronger legal protection than they have heretofore received is evident from the fact that they need not be known to the public in general. Instead, they need only be known "in the relevant sector of the public" as a result, not of actual use, but of "knowledge in the Member [Country] concerned, which has been obtained as a result of the promotion of the trademark."[71]

Moreover, it now appears that well-known trademarks are protected both prior to and after their registration in the Philippines. Under the IP Code, a well-known mark is protected in the country

70 Article 16(2).

71 Section 123.1(e).

even if not registered, to the extent that the IP Code bars the registration of an identical or confusingly similar mark that is used for identical or similar goods or services.[72] If a mark is registered in the Philippines, that bars the registration of an identical or confusingly similar mark that is used even on dissimilar goods or services.[73]

Consistent with Article 6bis of the Paris Convention, which leaves it to the "competent authority of the country of registration or use" to determine what marks may be considered well-known,[74] the Supreme Court in *La Chemise Lacoste, S.A. v. Hon. Oscar C. Fernandez and Gobindram Hemandas,*[75] upheld the Court of Appeals decision that LACOSTE is a well-known trademark as determined by the Minister of Trade:

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72 Section 123.1(e) - Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: Provided, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public; rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark.

73 Section 147.2 - The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: Provided, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: Provided, further, That the interests of the owner of the registered mark are likely to be damaged by such use. (n)

74 Article 6bis [Marks: Well-Known Mark] provides:

> (1) The countries of the Union undertake, *ex officio* if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions shall also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith.

75 G.R. No. 65659, May 21, 1984.

> We have carefully gone over the records of all the cases filed in this Court and find more than enough evidence to sustain a finding that the petitioner is the owner of the trademarks "LACOSTE", "CHEMISE LACOSTE", the crocodile or alligator device, and the composite mark of LACOSTE and the representation of the crocodile or alligator. Any pretensions of the private respondent that he is the owner are absolutely without basis. Any further ventilation of the issue of ownership before the Patent Office will be a superfluity and a dilatory tactic.

The implementing rules of the IP Code now provide clear criteria for a mark to be considered well known in the Philippines. While it may seem that the owner of a well-known mark is under a heavy burden to prove the international renown of its mark,[76] it

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76 Implementing RULE 102 provides:

> Criteria for determining whether a mark is well-known. — In determining whether a mark is well-known, the following criteria *or any combination thereof* may be taken into account:
>
> (a) the duration, extent and geographical area of any use of the mark, in particular, the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
>
> (b) the market share, in the Philippines and in other countries, of the goods and/or services to which the mark applies;
>
> (c) the degree of the inherent or acquired distinction of the mark;
>
> (d) the quality-image or reputation acquired by the mark;
>
> (e) the extent to which the mark has been registered in the world;
>
> (f) the exclusivity of registration attained by the mark in the world;
>
> (g) the extent to which the mark has been used in the world;
>
> (h) the exclusivity of use attained by the mark in the world;
>
> (i) the commercial value attributed to the mark in the world;
>
> (j) the record of successful protection of the rights in the mark;
>
> (k) the outcome of litigations dealing with the issue of whether the mark is a well-known mark; and
>
> (l) the presence or absence of identical or similar marks validly registered for or used on identical or similar goods or services and owned by persons other than the person claiming that his mark is a well-known mark."

bears emphasis that any combination of the specific criteria may suffice to prove that a mark is well known.

RIGHT OF EXHAUSTION

A new right that has been introduced by TRIPS as part of multilateral trade negotiations is the so-called right of exhaustion, also referred to by the IP Code as the right of "first public distribution,"[77] in respect of copyright works, and the right of "importation"[78] in the case of patented products.[79] In a policy statement of the *International Chamber of Commerce* entitled *Exhaustion of Intellectual Property Right*,[80] it took the position that the concept of exhaustion of intellectual property rights is of great importance to companies. The reason is that "it influences the extent to which the distribution of goods protected by their intellectual property rights can be controlled." Under the exhaustion concept, after an intellectual property right holder has sold a product to which its intellectual property rights are attached, it cannot prevent the subsequent resale of that product because its intellectual property rights in it are considered exhausted by the first sale.

The concept of exhaustion may work on a national, regional or international scale. Under a system of national exhaustion, a right holder in Country A whose rights arise from its national law loses his right to control resale of the protected products once they are sold in Country A with his consent. However, he may be able to prevent the importation of goods by unauthorized parties in

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77 Section 177.3.

78 Section 71.1(a) and (b).

79 Article 28 (1) of TRIPS states that a patent confers on its owner the exclusive right of importation of the patented product.

80 Available at http://www.iccwbo.org/home/statements_rules/statements/2000/exhaustion_of_intellectual_property_rights.asp, accessed July 17, 2002.

Country B and other countries following the same rule of national exhaustion because in Country B and similar countries he has not yet exhausted his rights by reason of first sale.

Under a regime of regional exhaustion followed by the European Union, the right holder cannot prevent the subsequent resale of the protected product within the region once the product has been made available in any country within the region with his consent. However, the right holder can prevent the importation of the protected product into the region from other countries.

In countries that follow the rule of international exhaustion, the right holder cannot prevent further resale of the protected product in other countries once it has been put on the market with his consent anywhere in the world. This legal treatment applies in both the country of first sale and the country of subsequent sale.[81]

It is easily seen that the regime of international exhaustion is most consistent with the objectives of free and open world trade while the regime of national exhaustion is most obstructive of these objectives. The former allows the free and open trading even of protected products once the right holder has made it available in the market in any country of the world. The regime of national exhaustion, in contrast, restricts free and open trade by granting the right holder control over the resale and import of the protected product in all countries worldwide until he has exhausted his rights by his first sale of the product in each of such countries.

The concept of exhaustion of intellectual property rights is therefore an artificial restraint on trade - with its effects varying

81 For further discussion on exhaustion of rights, see Parallel Imports and the Exhaustion of Rights: The World Focus, available at http://www.shlegal.com/docs/parallelimports.pdf,accessed, July 18, 2002.

from the most restrictive to the least restrictive – since the protected goods whose trading in the market is restricted by the exhaustion regime are admittedly genuine and lawful products put on the market by the right holder himself. It has been said that parallel imports or gray goods – the products subject to the operations of the exhaustion concept – are one of the most enigmatic phenomena of international trade. On the other hand, they strictly follow the rules of the market; yet on the other hand, the laws of the market are not the only ones that apply to this kind of activity. While industrial producers are pressing for general barriers in order to maintain price differences of goods among various countries, consumers find such differences puzzling in a world that is increasingly heading towards international trade and the removal of trade barriers.[82]

Although it was recognized that parallel importation would indeed fit nicely within the objectives of international free trade advocated by GATT, agreement could not be reached by the members to allow generally for parallel importation. In order to overcome this stalemate situation, Article 6 of TRIPS now provides that "for purposes of dispute settlement under this Agreement,... nothing shall be used to address the issue of exhaustion of intellectual property rights." The dispute settlement mechanism in general allows every member to bring an action against another state if there is insufficient compliance with the principles of GATT/WTO Agreement in general. Yet according to Article 6, whatever national stance is taken on the matter of exhaustion, no complaint can be heard in this respect. While this certainly means that no country can be put on the dock for deciding for or against international exhaustion, it does not necessarily mean that the TRIPS Agreement as such would not favor one or the other position. As this exception relates to procedural matters, it only means that

82 Parallel Imports and International Trade, Christopher Heath, available at http://www.wipo.org/sme/em/documents/pdf/atrip-gva-99_6.pdf, accessed on July 17, 2002.

members of the GATT/WTO Agreement cannot be made subject to sanctions, no matter how they decide on the issue. Nevertheless, the Agreement may favor explicitly or implicitly a certain solution to the issues of international exhaustion and parallel imports.[83]

In contrast, the *ICC Policy Statement* states that one view of exhaustion, shared by a small minority of ICC members, is that international exhaustion of rights will allow for greater competition. This in turn will benefit consumers and remove artificial barriers to entry into individual markets. This view holds that increasing globalization, mass international travel and the advent of international commerce will render all distinctions of a national nature obsolete.

However, the great majority of ICC members believe that introducing a regime of international exhaustion in the absence of a single global market will in fact be detrimental to trade and investment. They maintain that such absence will undermine the incentive provided by intellectual property rights to invest in innovation and brand reputation. Companies who invest in innovation and on the reputation of their branded products need to recover the cost of their investments. If the returns from the internationally successful products are reduced because of the effects of parallel trading, the potential for investment in commercially riskier products may be jeopardized. In the long term, therefore, international exhaustion would discourage investment in innovation and brand reputation. This has negative consequences for social and consumer welfare.[84]

In his WIPO paper, Heath rejects the economic argument that parallel imports are a disincentive to investments. While

83 *Ibid.*

84 See Note 80 above.

preventing parallel imports may enable right holders to "respond to price differences in different markets," it should "not be overlooked that patentees can also perpetuate such price differences by shutting off markets, which runs against the grain of a global economy." On the legal side, he finds it difficult to accept that the right of importation should follow rules different from the rights of production and sale. The importation right concerns exploitation equal to that of production and sale. If, under the classical doctrine of exhaustion, further rights in commercial exploitation are exhausted upon the first sale of a patented article, and if such exhaustion is also assumed when such patented article is marketed abroad (when a regime of international exhaustion is followed), then the exhaustion applies to all aspects of other commercial exploitation, including importation. The correctness of this argument becomes particularly obvious in the case of re-imports. If a patented article is put on the market in, say, Japan, by the patentee or with his consent, then further acts of economic exploitation are exhausted. If the patentee therefore would not be able to prevent further acts of sale and distribution, then it is difficult to see how and why the patentee should be able to exert any influence over this article once it has been exported into another country and subsequently re-imported. If a patentee is granted a bundle of rights under his patent, such as production, sale and importation, then upon the act of first sale, the whole bundle becomes exhausted once and for all. Consequently, no importation right can be invoked later on the very article that has been marketed previously, regardless of where it took place.

As to the general principles of the GATT-TRIPS Agreement, Heath argues that, first, the Agreement as such is concerned with removing rather than erecting trade barriers, and, second, that the TPIPS Agreement, far from giving one-sided favors to intellectual property owners, is meant to promote "the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of

rights and obligations."[85] To read a prohibition of parallel imports into an agreement that is meant to "ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade" requires a lot of imagination indeed.

EXHAUSTION UNDER THE IP CODE

TRADEMARK EXHAUSTION

Under a regime of exhaustion as applied to trademark rights, once goods have been placed on the relevant market by the trademark owner or under his sponsorship, the owner's rights are exhausted. Third parties may resell the marked goods and use the mark in promoting such sales, without interference from the owner of the mark - provided the goods have not undergone any change, such as being with other goods or being repackaged.[86]

The IP Code prohibits the use of a trademark, which is a reproduction, counterfeit copy, or colorable imitation on the registered trademark without the consent of the registrant, where such use is likely to cause confusion or deception among purchasers.[87] Parallel importation cannot be considered an act of infringement under this provision, since the trademark on the goods is genuine and has been affixed with the consent or authority of the trademark owner. Infringement exists only if the trademark has been affixed to the goods without the consent of the trademark owner.

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85 Article 7, TRIPS.

86 See WIPO, Background Reading Material on Intellectual Property, pp. 175-76 (1990).

87 Section 155.

The IP Code allows a trademark owner to record his registered trademark with the Bureau of Customs and then to ban the importation of goods bearing a copy or simulation of such registered mark.[88] This implies that the provision cannot be used to prevent the importation of goods bearing authentic trademarks.

The Philippine Civil Code seems to offer better protection for aggrieved distributors of branded goods. At least two court decisions have confirmed that an exclusive distributor has "proprietary interests" which can be legally protected under the Civil Code, even though these interests are outside the traditional notions of trademark infringement and unfair competition. In *Yu v. Court of Appeals*,[89] plaintiff Yu was the exclusive distributor in the Philippines of the House of Mayfair wall covering products. Yu sued the defendant for importing the same goods and selling them in the Philippines. Yu proved that the defendant misled Mayfair, which believed that the defendant was purchasing goods to be sent to Nigeria. Defendant actually shipped the goods to and sold them in the Philippines. Defendant professed ignorance of the exclusive distributorship agreement between plaintiff and Mayfair, and claimed that said contract was binding only between the parties to it. The trial court denied Yu's application for injunction. The Court of Appeals affirmed.

The Supreme Court declared that plaintiff was entitled to injunction. It held that the lack of privity is "beside the point." Defendant's liability "does not emanate from the four corners of the contract" but its "accountability is an independent act generative of civil liability."

The Supreme Court said that "injunction is the appropriate remedy to prevent a wrongful interference with contracts by

88 Section 166.

89 217 SCRA 328.

strangers to such contracts where the legal remedy is insufficient and the resulting injury is irreparable." Amplifying this point, the Supreme Court stated: "To our mind, the right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect and which may otherwise not be diminished, nay, rendered illusory by the expedient act of utilizing or interposing a person or firm to obtain goods from the supplier to defeat the very purpose for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor."

Apart from recognizing a "proprietary interest" in an exclusive distributorship agreement, which "a party may protect," the Supreme Court in the Yu case also took into account defendant's misleading the supplier of goods - acquiring the goods under the pretext that they would be shipped to Nigeria. The Supreme Court held that this conduct amounts to an actionable inducement of breach of contract under Article 1314 of the Civil Code, explaining that "a ploy of this character is akin to the scenario of a third person who induces a party to renege on or violate his undertaking under a contract, thereby entitling the other party to relief therefrom."

The reasoning in Yu was relied on in *U-Bix Corporation v. Ariancorp International, Inc.*[90] In that case, plaintiff U-Bix was the exclusive Philippine distributor of "Murata" fax machines in the Philippines. U-Bix sought an injunction and damages against Ariancorp for importing "Murata" fax machines and selling them in the Philippines.

The trial court rendered a judgment awarding damages to U-Bix and enjoining Ariancorp from importing and selling "Murata"

90 C.A.-GR CV No. 41620, August 9, 1995.

fax machines. The Court of Appeals affirmed that judgment and agreed with the trial court that Ariancorp "had intruded into and infringed upon the exclusive distributorship of plaintiff for Murata facsimile machines in the Philippines by importing and selling the same products, which acts constitute abuse of right and unfair competition."

The Civil Code provision on unfair competition is totally different from and much broader than the unfair competition or passing off action under the IP Code. The Civil Code provides that "unfair competition in agricultural or industrial enterprises, or in labor through the use of force, intimidation, deceit, machination or any other unjust, oppressive or high-handed method shall give right to a cause of action by the person who thereby suffers damage."[91]

Although these two decisions have the effect of excluding parallel goods from the market, this does not result from the operation of the exhaustion principle. They apply only in a limited factual context where the supplier of the products have been misled into selling them to the importer on the pretext that they are to be shipped to countries other than the Philippines where the trademark owner already has an exclusive distributor. The decisions do not apply to the more typical situations where branded goods are freely imported into the country by parallel traders in the absence of exclusive distributors or even in the presence of non-exclusive distributors.

The IP Code still follows the general rule of trademark exhaustion since only counterfeit products are barred from being imported into the country. The trademark provisions of the IP Code therefore are not trade-restrictive and serve to encourage competition by allowing parallel imports of branded products.

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91 Article 28.

PATENT EXHAUSTION

The TRIPS Agreement provided that "a patent shall confer on its owner" – where the subject matter of the patent is a product – the right "to prevent third parties not having the owner's consent from the act of making, using, offering for sale, selling or importing for these purposes that product" and - where the subject matter of the patent is a process - the right "to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process." The IP Code literally reiterated the TRIPS Agreement provisions.[92]

However, the IP Code appears to have incorporated a rule of exhaustion – the exact scope of which it has left undefined – when it provides that "the owner of a patent has no right to prevent third parties from performing, without his authorization, the [exclusive rights] referred to in Section 71 hereof in the following circumstances: "using a patented product" which has been put on market in the Philippines by the owner of the product, or with his express consent, insofar as such use is performed after that product has been so put on said market."

On surface impression, this provision may appear to have adopted a trade-restrictive regime of national exhaustion because it speaks of exhaustion of rights in a patented product of which the patent holder has the "exclusive right of importation" and "which has been put on the market in the Philippines." The validity of this interpretation, however, may depend upon the identification of the "owner of the product" who is "using a patented product which has been put on the market in the Philippines." This may be read as adopting a regime of national exhaustion only if the

92 Section 71.1(a) and (b).

person who put the product on the market in the Philippines is the owner of the patent since it is the owner itself which exhausts its rights by reason of first sale. However, this is obviously a person other than the "owner of the patent" who cannot in fact prevent such "owner of the product" from using it. Since it is the "owner of the patent" who has the exclusive right of importation into the Philippines, and this provision speaks of a patented product "which has been put on the market by the owner of the product" – rather than by the "owner of the patent" – this person can then only be a purchaser or an importer of the product. The product must in turn be a genuine product manufactured under the patent since the patent holder otherwise could prevent its use as an infringing product.

Section 72.1 thus assumes that the "owner of the product" which "has been put on the market in the Philippines" is different from the "owner of a patent" mentioned in Section 72, who cannot restrain the use of the product. The rights of the patent holder to prevent further dealing in the patented product may therefore be exhausted by the lawful purchase of the product by an unrelated party. This interpretation is plausible if it is accepted that the patent owner itself has already exhausted its rights by the first sale of product elsewhere. It is the exhaustion of the patent owner's rights by first sale of the patented product elsewhere that allows the "owner of the product" mentioned Section 72.1 to use the patented product "which has been put on the market in the Philippines by the owner of the product."

While this interpretation appears to be based on the literal language of Section 72.1, it may be argued that it renders the patent holder's exclusive right of importation under Section 72 meaningless. This argument may be persuasive only if it were conceded that the patent owner's right may be exercised by the patent owner without any time limitation. In fact, the rule of international exhaustion compels the patent owner to make his patented product commercially available worldwide at the risk of

losing control over further dealings in his product once he decides to put it on the market in any country. If he cannot himself meet the demands of the market, parallel traders are then permitted under Section 72.1 to help meet the needs of the market. This interpretation is not unreasonable in light of Heath's observation that the TRIPS Agreement itself is meant to "ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade." Similarly, this interpretation is consistent with the declared state policy under the IP Code to "promote the diffusion of knowledge and information for the promotion of national development and the common good." (Section 2, IP Code). At best, however, this discussion is of purely academic relevance. Only the courts can interpret the exact meaning of Section 72 and give that interpretation the force and effect of law.

COPYRIGHT EXHAUSTION

WIPO COPYRIGHT TREATY

The WIPO Copyright Treaty was adopted during the diplomatic conference on Certain Copyright and Neighboring Rights Questions in Geneva on December 20, 1996. Under Philippine Senate Resolution No. 244, the Philippine Senate ratified the Philippines' accession to the treaty earlier this year.

The adoption of the WIPO Copyright Treaty was a response to "the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works."[93] The WIPO Copyright Treaty attempts to maintain a workable balance between protection of intellectual property rights and the social objectives of granting

93 Preamble, WIPO Copyright Treaty.

such protection. While the Treaty itself did not specifically use the words "fair use," the Agreed Statement confirms the parties' understanding that "the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention." Similarly, these provisions should be understood to permit Contracting Parties to devise "new exceptions and limitations that are appropriate in the digital network environment. It is also understood that Article 10 (2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted under the Berne Convention."[94] Thus, the parties to the Treaty may provide that limitations on copyright under their national laws shall also be applicable to works in digital form.[95]

Like the TRIPS Agreement, the WIPO Copyright Treaty allows the parties to adopt their own rules on the exhaustion of intellectual property rights.

> (1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their works through sale or other transfer of ownership.
>
> (2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or

94 WIPO Copyright Treaty, Agreed Statement, paragraph 8.

95 In the Philippines, these limitations are provided in Sections 184,185, 186, 187,188, 189 and 190. The fair use limitation appears in section 185.

other transfer of ownership of the original or a copy of the work with the authorization of the author. [96]

Hence, the WIPO Copyright Treaty permits the Contracting Parties to adopt either a national or international rule of exhaustion of copyright.

THE IP CODE

The IP Code adopts an uncircumscribed rule of exhaustion in Section 177.3 which confirms that the author shall have, among others, the right to carry out, authorize or prevent "the first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership."

Section 177.3 embodies the first sale doctrine in copyright law. Under this doctrine, the copyright holder has the exclusive right to control the first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership but this right is exhausted after such first sale or transfer of ownership. The copyright owner's distribution right is therefore exhausted by the first authorized sale of the original or copies of the work. The owner of the lawfully acquired original or copies of the work may then dispose of the original or copies in any manner by sale, donation or destruction without any liability to the copyright proprietor.

Thus, it has been held that one who has sold a copyrighted article, without restriction, has parted with all right to control the sale of it. The purchaser of a book, once sold by authority of the

96 Article 6, Right of Distribution. The Agreed Statement states that as used in these Articles, the expressions "copies" and "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

owner of the copyright, may sell it again, although he could not publish a new edition of it. The owner of the copyright in this case did sell copies of the book in quantities and at a price satisfactory to it. It has exercised the right to vend. What the complainant asks for embraces not only the right to sell the copies, but to qualify the title of a future purchaser by the reservation of the right to have the remedies of the statute against an infringer because of the printed notice of its purpose so to do unless the purchaser sells at a price fixed in the notice. To add to the right of exclusive sale the authority to control all future retail sales, by a notice that such sales must be made at a fixed sum, would give a right not included in the terms of the statute, and extend its operation, by construction, beyond its meaning, when interpreted with a view to ascertaining the legislative intent in its enactment.[97] The act that exhausts the copyright proprietor's distribution right is the first transfer of ownership, not a mere transfer of possession. If mere physical possession of the work is transferred by rental, for instance, the copyright proprietor's distribution right is not exhausted.[98]

The first sale of the work therefore exhausts only the distribution right, not other rights of copyright, and exhaustion occurs only when the possessor has lawfully acquired the original or copies of the work. Hence, the possessor of a lawful copy may only distribute the work without liability for violation of the copyright proprietor's distribution right but may not reproduce it or create a derivative work from it. If the possessor acquired a piratical copy of a novel, the copyright proprietor's distribution right is not exhausted and the possessor of such copies may not further reproduce the work or adapt it to motion picture version, except under pain of copyright infringement liability.

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97 *Bobbs-Merrill Co. v. Straus*, 210 U.S. 339 (1908).

98 *Beebe Bourne, D/B/A Bourne Co. v. The Walt Disney Company And Buena Vista Home Video*, United States Court Of Appeals For The Second Circuit, October 18, 1995.

It is not clear, however, whether the first public distribution exhausts the author's rights in the country only when it occurs in the Philippines – which is a rule of national exhaustion – or even when the author's work is first distributed anywhere else – which is a rule of international exhaustion. Admittedly, since the author, with respect to his works, only has "the right of first public distribution," he cannot prevent the further dissemination of his works after the first sale or other transfer of ownership to such works. The essential question is whether a distribution of the work anywhere exhausts the author's copyright in the Philippines.

As in the exhaustion of patent rights, copyright exhaustion serves the primordial objective for granting copyright protection. This protection is granted to authors only as an incident of the state objective of promoting the progress of science and the useful arts. Thus, it has been held "the immediate effect of our copyright law is to secure a fair return for an author's creative labor. But the ultimate aim is, by this incentive, to stimulate artistic creativity for the general public good. This sole interest of the state and the primary objects in conferring the monopoly lie in the general benefits derived by the public from the labors of authors."[99]

Since the WIPO Copyright Treaty permits the Contracting Parties to adopt their own regime of copyright exhaustion, it would be perfectly consistent with the State objective to "promote the diffusion of knowledge and information for the promotion of national development and progress and the common good" to interpret Section 177 (3) as establishing a rule of international exhaustion so that works first publicly distributed anywhere could be made lawfully available to Filipinos. If works "first published in another country but also published in the Philippines within thirty days, irrespective of the nationality or residence of the authors" are, among others, protected in the Philippines, it is logical

99 *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151.

to maintain that the importation of such works by persons other than the authors is permissible once they have been distributed elsewhere since their importation into the Philippines triggers the element of local publication.[100] The regime of international exhaustion therefore works equitably for both the authors and the public in this situation.

However, this interpretation of the IP Code provisions has been clouded by the enactment of the Electronic Commerce Act, Section 33(b) of the Act[101] provides:

> SEC. 33. Penalties. - The following Acts shall be penalized by fine and/or imprisonment, as follows:
>
> . . . .
>
> b) Piracy or the unauthorized copying, reproduction, dissemination, distribution, importation, use, removal, alteration, substitution, modification, storage, uploading, downloading, communication, making available to the public, or broadcasting of protected material, electronic signature or copyrighted works including legally protected sound recordings or phonograms or information material on protected works, through the use of telecommunication networks, such as, but not limited to, the internet, in a manner that infringes intellectual property rights shall be punished by a minimum fine of one hundred thousand pesos (P100,000.00) and a maximum commensurate to the damage incurred and a mandatory imprisonment of six (6) months to three (3) years;

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100 Section 221.

101 The effectivity the Act on June 14, 2002 even preceded the Senate ratification of accession to the WIPO Copyright Treaty.

While Section 177.3 of the IP Code creates a limited right of "first public distribution" for copyright which is exhausted "by the first sale or other transfer of ownership" of his works, Section 33(b) of the Act – which equally applies to "copyrighted works, including legally protected sound recordings" when traded "through the use of telecommunications networks, such as but not limited to, the internet" – creates an inexhaustible right of importation for authors uncircumscribed by any rule of exhaustion.

This disparity of treatment between physical copies of the works and their digital counterparts leads to undesirable consequences in the implementation of the exhaustion principle. The dissemination of a physical copy of a book on quantum physics or biotechnology cannot be restricted by the author after he has exhausted his right of "first public distribution" of his works by reason of first sale or other forms of transfer of ownership. In contrast, if the same author has published his same works in digital format, he will enjoy an inexhaustible right of importation under Section 33(b) of the Act.

If the author is more interested in preserving his inexhaustible right of importation of digital copies of his works, he will opt to avoid the dissemination of physical copies and make his works exclusively available in digital format. His election of this alternative form of publication renders his work inaccessible, unattractive or unaffordable for majority of Philippine readers. Reading electronic books requires as a minimum a computer or a handheld device the cost of which is beyond the reach of the majority. Unlike a physical copy of a book, a digital copy is almost always encrypted any may be accessed and used only by a single reader, or may be used only with specific computer or handheld device. It cannot therefore be resold or lent by the user to others unlike a physical copy. The effect therefore is to restrict the dissemination of knowledge and information through the artificial restraint of the exclusive right of importation.

A contrary interpretation deserves consideration at this point.

The use in Section 33(b) of the Act of the phrase "in a manner that infringes intellectual property right" has been read as an indication that the right of importation may violated only if the importation is an infringement in the sense intended under Section 172 of the IP Code. This argument fails to consider the fact that, as a matter of law, the right of importation refers exclusively to genuine works rather than pirated ones since the latter are illegal and infringing regardless of their origin. In addition, it is senseless to speak of a copyright author as having the exclusive right of importation if the subject of such right is interpreted as infringing works in the sense contemplated by Section 177 of the IP Code. In other words, the clear meaning of Section 33(b) of the Act is that importation even of genuine copies of the work is a criminal act because it is a violation of the author's exclusive right of importation of genuine copies of his works. In itself, the unauthorized importation of the genuine copies is an actionable infringement.

Since this right of importation appears to be inexhaustible, it cannot be rendered ineffective by a national, regional or international regime of exhaustion. The situation is made worse by the criminalization of importation of copyrighted works without the authorization of the copyright owner. This is contrary to international consensus evident from pertinent treaty provisions[102]

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102 Article 61, of TRIPS provides that "Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity * * *"

Even the proposed Cybercrime Treaty, the final draft of which is now under consideration by the European Union and other major countries, only reiterates the provisions of the TRIPS Agreement for the imposition of criminal penalties "where such acts are committed intentionally, on a commercial scale and by means of a computer system." Moreover, the parties "may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available."

and from national laws[103] that criminalize piracy – which refers to admittedly infringing works, rather than genuine and non-infringing ones – only when committed "on a commercial scale" or for "purposes of trade and industry."

CONCLUSION

Consistent with the minimum obligations imposed by the TRIPS Agreement upon member countries, the IP Code grants effective protection to nationals of member countries in respect of their intellectual property rights. The IP Code may be interpreted to have recognized the right of such foreign nationals to enforce their rights under current treaties in addition to their rights under the IP Code. The IP Code may also have reinforced the protection for well-known marks by recognizing that renown of a mark may be acquired through knowledge of the relevant sector of the public, rather than the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark. This may have the effect of dispensing with the prior requirement of actual use of the mark in the Philippines for the protection of well-known marks.

The TRIPS Agreement and the WIPO Copyright Treaty both try to achieve a proper balance between the protection of intellectual property rights and the need to encourage open and free trade, in the case of TPIPS Agreement, and the objective of disseminating knowledge and information, in the case of the WIPO Copyright Treaty.

On account of different country practices on the legal treatment of the right of exhaustion – which confirms the absence

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103 See Country Reports – The People's Republic of China, Indonesia, Malaysia, Singapore, The Third Asia – Pacific Copyright & Neighboring Right Seminar, 10th –12th March 1999, Tokyo, Japan.

of unanimity upon which a universal treaty obligation may be based – both treaties essentially leave it to the member countries to determine under what conditions intellectual property rights may be considered exhausted. No country member may, therefore, be subjected to the dispute settlement mechanisms in these treaties for its treatment of the right of exhaustion in light of the declared statutory objectives for the grant of protection to intellectual property rights under its national law.

In the case of patent exhaustion, it may be possible to maintain that international exhaustion applies so that once the patented product is put on the market anywhere in the world, the patent holder cannot prevent its use in the Philippines by the owner of the product. This legal treatment gives Philippine industries easy access to technological innovations in the market without violating the patent holders' rights. In the case of trademark exhaustion, no exclusive right of importation is recognized on the part of the trademark owner, save for a limited right available to exclusive Philippine distributors who can prevent importation of parallel goods under exceptional circumstances involving use of deceitful means by the importer to bring in the branded products. The situation, which arises under exceptional circumstances, is not likely to prevent consumers' access to lawfully traded and branded products. For copyright works, however, the E-Commerce Act grants authors of works in digital format an inexhaustible right of importation – notwithstanding the fact that no such obligation is imposed under the WIPO Copyright Treaty, and the fact that the IP Code only grants a limited right of first public distribution for authors of non-digital copyright works. The nearly absolute control that the E-Commerce Act grants to authors of copyright works in digital format is anathema to the statutory objective of granting copyright protection for the dissemination of knowledge and information for the general public good.

LACK OF PROBABLE CAUSE AS A GROUND FOR A MOTION TO QUASH THE INFORMATION

*By Arturo M. De Castro**

Is lack of probable cause a recognized and accepted ground for a motion to quash an information under Philippine law and jurisprudence on criminal procedure?

In what stages and under what conditions may lack of probable cause be successfully invoked as a ground to quash a criminal Information?

This article shall address and answer these and related questions on probable cause or lack of it as a means to dismiss or quash a criminal charge.

Probable cause defined

Probable cause is the existence of facts that engender a well-grounded belief that an offense has been committed and that the respondent is probably guilty thereof. In the language of the Supreme Court:

> (P)robable cause has been defined as the existence of such facts and circumstances as would excite the

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> belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[1]

In the determination of probable cause, an inquiry into the sufficiency of evidence to warrant conviction is not required. It is enough that there is reasonable and well-grounded belief that the act or omission complained of constitutes the crime charged and the respondent is probably guilty thereof. Full and exhaustive display of the respective evidence of the parties takes place during the trial on the merit which requires proof of guilt beyond reasonable doubt for conviction of the accused of the offense charged.

Stages of the criminal proceedings when lack of probable cause may be invoked for dismissal of the criminal charge

1. During Preliminary Investigation

After the filing of the criminal complaint, the investigating prosecutor shall dismiss the complaint "if he finds no ground to continue with the investigation" (Section 3(b), Rule 112, New Rules of Criminal Procedure).

If the investigating prosecutor issues a subpoena to the respondent together with the copy of the complaint with its supporting affidavits, and the respondent submits a counter-affidavit and controverting evidence, the investigating prosecutor may set a hearing if there are facts and issues to be clarified from a

1 *Pilapil v. Sandiganbayan*, 221 SCRA 349 (1993).

party or witness. After investigation, the criminal charge shall be dismissed if the investigating prosecutor determines that "there is no sufficient ground to hold the respondent for trial."[2]

2. After the filing of the information and before the issuance of a warrant of arrest the accused may ask for judicial determination of probable cause.

After the investigating prosecutor has found the existence of probable cause and has filed the information in court, the accused may ask for a judicial determination of the existence of probable cause prior to the issuance of a warrant of arrest. The judge is under obligation to personally evaluate the resolution of the prosecutor and its supporting evidence, whether or not a motion for that purpose is filed by the accused. "He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. . . . In case of doubt on the existence of probable cause, the judge may order the prosecution to present additional evidence within five days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information."[3]

Section 6, Rule 112 of the New Rules of Criminal Procedure has modified the ruling of the Supreme Court in *Amarga v. Abbas*,[4] *People v. Villanueva*[5] and *Oscar Gozos, et al., v. Hon. Paterno Tac-An*[6]

2 Section 3(b), Rules 112, New Rules of Criminal Procedure.

3 Section 6, Rule 112, New Rules of Criminal Procedure.

4 98 Phil. 739, 742-743 (1956).

5 110 SCRA 465, 470 (1981).

6 Resolution dated February 15, 1999 in G.R. No. 123191 (*Oscar Gozos et al. v. Hon. Paterno Tac-an, et al.*).

that if the judge, from his review of the evidence for the purpose of issuing a warrant of arrest, finds no probable cause to order the arrest of the accused, he should not dismiss the case but should first require the prosecution to submit, within a reasonable time, additional evidence to establish the existence of probable cause, and if the prosecutor fails or refuses to do so, the judge may dismiss the case for lack of probable cause.

Under the new rule, the judge may dismiss the case outright if, in his evaluation, the evidence on record clearly fails to establish probable cause. He shall require submission of additional evidence from the prosecution only in case of doubt.

3. After the issuance of a warrant of arrest, the accused may file a motion to quash on the ground of lack of probable cause.

Even when the court has issued a warrant of arrest, the accused may still file a motion to quash for lack of probable cause. In fact, it is one of the requirements that the accused has filed a motion to quash for lack of probable cause in the trial court before he may file a petition for certiorari, mandamus or prohibition in the Court of Appeals to restrain or enjoin the prosecution of the criminal offense as a narrow and restricted exception to the general rule that the prosecution of a criminal offense may not be enjoined. Along with violation of constitutional rights, lack of probable cause invoked in a motion to quash before the trial court is a recognized exceptional ground to restrain or enjoin a criminal proceeding (*Ocampo v. Ombudsman*, 225 SCRA 725; *Brocka v. Enrile*, 192 SCRA 183; *Salonga v. Cruz Pano*, 134 SCRA 438).

Lack of probable cause is a recognized ground to quash warrant of arrest and dismiss the case under established jurisprudence.

It is within the authority of the trial court to order the discharge of the accused against whom no probable cause is found sufficient to warrant his arrest and to hold him for trial.[7]

Under the 1987 Constitution which requires that the judge, in deciding whether to issue a warrant of arrest or not, must personally determine the existence of a probable cause,[8] the judge may either (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest, or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.[9]

The judge may call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances so require.[10]

Although lack of probable cause is not enumerated as a ground for a motion to quash the information under the Rules on Criminal Procedure, by established jurisprudence, a motion to

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7 Section 6, Rule 112, New Rules of Criminal Procedure.

8 Section 2, Article III, 1987 Constitution.

9 *Soliven v. Makasiar*, 167 SCRA 393, 398 (Nov. 14, 1988).

10 *Lim Sr. v. Felix*, 194 SCRA 292, 306 (Feb. 19, 1991).

quash the information on the ground that there is clearly no *prima facie* case or probable cause may be filed.[11]

Upon finding of clear lack of probable cause, it is the imperative and mandatory constitutional duty of the court to dismiss the case. It is a part of the inherent freedom of every citizen to be spared the agony, not only of arbitrary arrest and punishment, but also that of unwarranted and vexatious prosecution. In the language of the Supreme Court in *Salonga v. Cruz Pano*:[12]

> Infinitely, more important than conventional adherence to general rules of criminal procedure is respect for the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution. The integrity of a democratic society is corrupted if a person is carelessly included in the trial of around forty persons when on the very face of the record no evidence linking him to the alleged conspiracy exists. (134 SCRA 448)
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> . . . It is, therefore, imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a prima facie case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

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11 *Salonga v. Cruz Pano*, 134 SCRA 438 (Feb. 18, 1985); *Brocka v. Enrile*, 192 SCRA 183 [Dec. 10 1990]; *Ocampo v. Ombudsman*, 225 SCRA 725 (Aug. 30, 1993).

12 134 SCRA 462.

Lack of probable cause is available as a ground to Quash the Information only in extremely meritorious cases clearly showing lack of probable cause.

Lack of probable cause may be invoked as a ground to quash the information in extremely meritorious cases, falling under the exceptions enumerated in *Brocka v. Enrile*,[13] *Ocampo v. Ombudsman*,[14] and *Venus v. Desierto*,[15] where there is clearly no probable cause, in which case a motion to quash may be filed, and if denied, the court may interfere in the discretion of the investigating officer to determine the existence of probable cause. In other cases where lack of probable cause is not clear, the discretion of the investigating prosecutor is paramount and may not be interfered with by the courts, in the absence of grave abuse of discretion. Otherwise, the functions of the court would be hampered, and the courts would be swamped with petitions to review the exercise of discretion of the investigating prosecutors if the courts are compelled to review the existence of probable cause each time the investigating prosecutors decide to file an information in court or dismiss a complaint by a private complainant. As explained by the Supreme Court in *Venus v. Desierto.*[16]

> Conformably with the general rule that criminal prosecutions may not be restrained either through a preliminary or final injunction or a writ of prohibition,

13 192 SCRA 183, 188-189 (1990).

14 225 SCRA 725 (1995).

15 298 SCRA 196, 214-215 (1998).

16 *Ibid.*

this Court ordinarily does not interfere with the discretion of the Ombudsman to determine whether there exists reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts. There are, however, settled exceptions to this rule, such as those enumerated in *Brocka v. Enrile*, to wit:

> a. To afford protection to the constitutional rights of the accused (Hernandez vs. Albano, et al., L-19272, January 25, 1967, 19 SCRA 95);
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> b. When necessary for the orderly adminis-tration of justice or to avoid oppression or multiplicity of actions (Dimayuga, et al., vs. Fernandez, 43 Phil. 304; Hernandez vs. Albano, supra; Fortun vs. Labang, et al., L-38383, May 27, 1981, 104 SCRA 607);
>
> c. When there is a prejudicial question which is sub judice (De Leon vs. Mabanag, 70 Phil. 202);
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> d. When the acts of the officer are without or in excess of authority (Planas vs. Gil, 67 Phil. 62);
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> e. Where the prosecution is under an invalid law, ordinance or regulation (Young vs. Rafferty, 33 Phil. 556; Yu Cong Eng vs. Trinidad, 47 Phil. 385, 389);

f. When double jeopardy is clearly apparent (Sangalang vs. People and Alvendia, 109 Phil. 1140);

g. Where the court has no jurisdiction over the offense (Lopez vs. City Judge, L-25795, October 29, 1966, 18 SCRA 616);

h. Where it is a case of persecution rather than prosecution (Rustia vs. Ocampo, CA-G.R. No. 4760, March 25, 1960);

i. Where the charges are manifestly false and motivated by the lust for vengeance (Recto vs. Castelo, 18 L.J. (1953), cited in Ranoa vs. Alvendia, CA G.R. No. 30720-R, October 8, 1962; Cf. Guingona, et al., vs. City Fiscal, L-60033, April 4, 1984, 128 SCRA 577);

j. Where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied (Salonga vs. **Paño, et al., L-59524, February 18, 1985, 134 SCRA 438)** (Emphasis supplied)**; and**

k. Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (Rodriguez vs. Castelo, L-6374, August 1, 1953) cited in Regalado, Remedial Law Compendium, p. 188, 1988 Ed.)

Ocampo provided the basis for the general rule insofar as the Ombudsman is concerned, thus:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumer-able petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.

In Young vs. Office of the Ombudsman, however, we held that this Court may interfere with the discretion of the Ombudsman in case of clear abuse of discretion.

CONCLUSION

Lack of probable cause is a ground to prevent the issuance of a warrant of arrest, or if one has already been issued, to quash the Information or dismiss the case in extremely meritorious cases clearly showing lack of probable cause, as when the accused has absolutely no participation in the commission of the offense charged. Freedom from the agony and burden of arrest, detention and public trial without justifiable ground is part of the basic civil liberties enjoyed by individuals in a democracy. Although the discretion of the investigating prosecutor to determine the existence of probable cause to hold the respondent for trial is paramount and may not be interfered with by the courts as a general rule, writs of injunction or prohibition may be obtained from the courts in extremely meritorious cases showing grave abuse of the investigating prosecutors in the exercise of discretion in determining the existence of probable cause necessary to hold the accused for trial.

BOOK REVIEW

JBL IPSE LOQUITUR

Edited By Ruben F. Balane

*A Book Review By Javier P. Flores**

"All human and civil rights and obligations can be distilled into the cardinal precept to render justice. It is both a right and a duty, for to be entitled to justice, one must be willing to do justice unto others. Altogether too many of us forget that justice is not limited to the Courts, but that its observance concerns and weighs upon every man."

The beauty of these spoken words lies not only in their eloquence but also in the audacity in which they were spoken. They were delivered on December 10, 1977 on the occasion of Human Rights Day at the University of the East. At that time, martial law rule was all too fresh a memory. An interim legislative assembly was to govern the land under a President-Prime Minister elected neither by the people nor parliament, one who was to hold power indefinitely, with the authority to issue decrees and orders with god-like arrogance. Against this backdrop spoke Jose Benedicto Luis Reyes y Luna, or JBL as he is fondly remembered.

The courage of JBL lies not only in speaking out against injustice, it lies also in being anchored to his moral bearings in a profession where ethics is often the first to be cast overboard. To commemorate the one hundredth birth anniversary of the man and the exemplary jurist, the UP Law Complex published a volume of his monographs, speeches and essays. In this volume, one can

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listen to JBL speaking through the ages on varied topics from the mundane to the noble: to elucidate upon the law, to share a vision of an integrated Bar, to give views on the objectives of a legal education.

A credit to the editor, himself a distinguished member of the academe, is the finding of the man's more elusive works, ferreted from libraries and perhaps long forgotten files offered here as a peek into JBL's thoughts and vision. As any student of law could see in the man's various decisions, the depth and authenticity of JBL's writings speak for themselves without need for commentary. Here, JBL is made even more vivid in a book aptly entitled *JBL: Ipse Loquitur* (U.P Law Complex, 556 pages) edited by Ruben F. Balane, once a holder of the JBL Reyes Professorial Chair in Civil Law.

Composed of two parts, the book begins with ten monographs in civil law. The second part consists of twenty speeches, four of which were his addresses to new members of the bar. The speeches tackle subjects such as justice, human rights, and morality in legal education, among others. The appendix of the book is an authoritative two-part lecture on the copious output of JBL as a jurist entitled "A Harvest of Eighteen Years: A survey of Jose B.L. Reyes' Leading Supreme Decisions on Civil Law."

From his lectures, one is treated to an exposition of principles from whence our laws have evolved. In this sense, JBL treats law as if it were history, not simply of the development of people and concepts, but of morals and ethics. In JBL's lecture entitled "Revision of Contracts in View of Supervening Events," JBL discusses *pacta sunt servanda*, or the rule that contracts are generally entitled to compulsory observance. This binding effect, JBL states, can be traced to "[t]he influence of the Christian Church and religion with

its emphasis on truthfulness and its abhorrence of hypocrisy, lying and falsehood." JBL then puts forward the doctrine of *rebus sic stantibus* as the equitable exception to the rule, or the doctrine that a party may seek the modification of a contractual provision if a supervening event renders its execution unusually more difficult, but not exactly impossible. The doctrine dates back to the time of Emperor Justinian and it only returned to vogue amid the economic dislocation of the two World Wars.

But more than culling lessons from the past and standing on the shoulders of innumerable giants of civil law, JBL puts forth a series of proposals for the amendment of the law as it stands as can be seen in his lectures, "Reflections on the Reform of hereditary Succession" and "Rules on Conflict of Laws."

Despite his strong ethical grounding, JBL cautions against the haphazard application of the principle of equity. In his lecture "The Trend Toward Equity versus Positive Law in Philippine Jurisprudence," JBL states that equity must remain subordinate to positive law and that it may be applied only amid the persistence of doubt-a doubt that is not satisfied by the thorough application of all statutory rules. A contrary treatment would allow the unhappy circumstance JBL described:

> "Every judgment on the basis of equity becomes an *ad hoc* adjudication, unusable for other cases, so that previous awards do not serve as a guide, a variability that adversely affects the people's quest for justice, since situations basically similar can lead to different conclusions. Hence, equity as a legal tool demands circumspection and realization of the fact that, unless carefully controlled, its tendency is to make the Judiciary assume legislative power."

The articles can also be a basis for teachers to teach civil law. In his lecture on "Property Relations Between Husband and Wife," JBL distills the law on the matter as gleaned from the Civil Code, jurisprudence, and even rules of procedure and puts it down line by line like a syllabus, requiring only inputs from the Family Code.

It is in the monograph "Observations on the New Civil Code on Points not Covered by Amendments Already Proposed," published in seven installments, that JBL exhibits his mastery of civil law as he points out the ambiguities and defects of the Civil Code, article by article. In his comments on partnership, for example, he complains of the disharmony between provisions recognizing the partnership as a separate juridical entity and the provision that declares a partner to be a co-owner of a specific partnership property that should belong to the partnership as an entity. This, he decries, is a result of "light-headed copying."

His wit (or sarcasm) is likewise evident in "Observations." In his comments on legitime, he asks why the term "forced heir," which has already acquired widespread acceptance, has been replaced with the term "compulsory heir." "Is this not a case of amending itch?" JBL asks. In his comments on the non-liability of the community of property for ante-nuptial debts, JBL says that the article appears to favor "balasubism" as it leaves some creditors unable to collect.

In the second part of the collection, JBL, in four speeches addressed to new members of the bar, consistently counsels:

> "[Y]ou should never forget that a law practitioner can have no surer guiding star than honor, rather than law; for as postulated by the great lawyers of antiquity, 'not everything that is permitted is

> honorable.' The clear implication is that you should deal with fellow men as you would like to be treated in their place. Here is the essence of Christ's command to love your neighbor, of which the great rabbi Hillel remarked: 'This is the law: everything else is commentary.'"

JBL's advice, seven years after his death, remains true now as on the day it was given, not only for new lawyers, but also for practitioners enmeshed with the intricacies of the law that they fail to see the grander picture -- that it is justice they serve and that law is merely a means to an end. A myopic view makes mercenaries out of lawyers, working exclusively to extricate their client from problems of the moment.

In two speeches, "Objective of Legal Education in Present-Day Philippine Society" and "Morality in Legal Education," JBL teaches us that the foundation of law study must be ethics. Thus he advocates the teaching of ethics in four years of law school:

> "I submit that the principles of ethical conduct and professional responsibility should be taught and stressed throughout the entire four years of law study, and particularly during the initial semesters, in order to acquaint students as early as possible with the high moral exigencies of the profession. Then those who should find its canons too exacting, or confining to excess, can transfer to other professions having less demanding standards with minimal loss of time and expense."

On the occasion of Professor Balane's lecture on JBL's decisions, JBL said that he would be content to be remembered simply as "one who did his best to strengthen the Rule of Justice

among us. Just that -- no more." Professor Balane, in this book that is a legacy of both the jurist and the editor, shows that JBL, by being someone who only wanted to do his best for justice, has become to us that "constant benchmark in the eternal ebb and flow of life and history."

SUBJECT GUIDE AND DIGESTS SUPREME COURT DECISIONS

(January to June 2001)

*Prepared By Tarcisio A. Diño**

Agrarian Reform

Civil Law

Commercial Law

Criminal Law

Labor Law

Land Laws

Legal Ethics

Political Law

Remedial Law

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AGRARIAN REFORM

Emancipation Patent. Right of Retention. The issuance of an emancipation patent does not bar the landowner from exercising his right of retention. *(Vda. de la Cruz v. Abille, G.R. No. 130196, Feb. 26, 2001).*

CIVIL LAW

PRELIMINARY TITLE

Effect of Laws. As a rule, laws take effect upon completion of their publication in the Official Gazette or in a newspaper of general circulation in the Philippines. A statute, however, like RA 7169, may provide that it shall take effect upon its approval. *(Philippine Veterans Bank Employees Union v. Hon. Vega, G.R. No. 105364, June 28, 2001).*

HUMAN RELATIONS

Good Faith. The creditor, for reasons known only to itself, insisted on going after the sureties notwithstanding the fact that a reliable institution, backed by government funds, was offering to assume the debtor's obligations, not as mere surety but as substitute principal debtor. The bank's actuation in this regard runs counter to the good faith covenant in contractual relations, provided for in Article 19 and Article 1159 of the Civil Code. *(Babst v. CA, G.R. 99398, Jan. 26, 2001).*

Unjust Enrichment. The doctrine contemplates payment when there is no duty to pay and the person who receives the payment has no right to receive it. In this case, petitioner merely

argues that the other two defendants whom he represents were liable together with him. This is not a case of unjust enrichment. *(Puyat v. Zabarte, G.R. No. 141536, Feb. 26, 2001).*

Abuse of Right. The sheriff's acts constituted not only an abuse of a right, but an invalid exercise of a right that had been suspended when he received the TRO from the Court. Clearly, the demolition of respondent's house by petitioner, despite the latter's receipt of the TRO, was not only an abuse but also an unlawful exercise of such right. *(Amonoy v. Spouses Gutierrez, G.R. No. 140420, Feb. 15, 2001).*

Civil Liability of Accused. Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. The first is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability. The second is an acquittal based on reasonable doubt on the guilt of the accused. In this latter instance, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability, which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is "for the same act or omission." Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the criminal case. However, the judgment in the criminal proceeding cannot be read in evidence in the civil action to establish any fact there determined, even though both actions involve the same act or omission. The reason for this is that the parties are not the same and, secondarily, different rules of evidence are applicable. Hence, notwithstanding petitioner's acquittal, the CA, in determining whether Article 29 applied, was not precluded from looking into the question of petitioner's negligence or reckless imprudence. *(Manantan v. CA, G.R. No. 107125, Jan. 29, 2001).*

PERSONS

MARRIAGE

Annulment. Psychological incapacity, as a ground for the declaration of nullity of marriage under Article 36 of the Family Code. Explained in light of *Santos* and *Molina* cases. *(Pesca v. Pesca, G.R. No. 136921, April 17, 2001).*

Final Judicial Decree of Nullity of Previous Marriage Required for Purposes of Remarriage. The 1969 marriage between petitioner and SSC, having been solemnized without the necessary marriage license and not being one of the marriages exempt from the marriage license requirement, is undoubtedly void *ab initio.* However, absent a judicial decree declaring such marriage void as required under Article 40 of the Family Code, the subsequent marriage between respondent and SSC in 1992 is likewise void *ab initio. (Cariño v. Cariño, G.R. No. 132529, Feb. 2, 2001).*

For Purposes other than Remarriage, No Judicial Action Necessary to Declare Absolute Nullity of Marriage. For other purposes, such as the determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even after the death of the parties thereto, and even in a suit not directly instituted to question the validity of said marriage, so long as it is essential to the determination of the case. In such instances, evidence testimonial or documentary, must be adduced, to prove the existence of grounds rendering such a previous marriage an absolute nullity. These need not be limited solely to an earlier final judgment of a court declaring such previous marriage void. *(Cariño v. Cariño, G.R. No. 132529, Feb. 2, 2001).*

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

In Void Marriages. Considering that the two marriages are void *ab initio*, the applicable property regime would not be absolute community or conjugal partnership of property, but rather, that governed by Article 147 or Article 148 of the Family Code relating to "Property Regime of Unions Without Marriage." Article 148, as it relates to bigamous marriages, applies to the property regime of respondent and CCS. In this regime, properties acquired by the parties through their *actual joint contribution* shall belong to the co-ownership. Wages and salaries earned by each party belong to him or her exclusively. As to the property regime of petitioner and SCC, Article 147 governs, as it applies to unions of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void for other reasons, like the absence of a marriage license. In contrast to Article 148, under Article 147, wages and salaries earned by either party during the cohabitation shall be owned by them in equal shares and will be divided equally between them, even if only one party earned the wages and the other did not contribute thereto. Conformably, even if the disputed "death benefits" were earned by CSS alone as a government employee, Article 147 creates a co-ownership in respect thereto, entitling the petitioner to share one-half thereof as her share in the property regime. The other half pertaining to CCS shall pass by intestate succession to his legal heirs. *(Cariño v. Cariño, G.R. No. 132529, Feb. 2, 2001).*

THE FAMILY

Suit Involving Members of the Same Family. Art. 222 of the Civil Code requiring earnest efforts toward a compromise as a condition precedent before suit may be filed or maintained between members of the same family – applies only to ordinary civil actions. *(Vda. de Manalo v. CA, G.R. No. 129242, Jan. 16, 2001).*

PROPERTY, OWNERSHIP AND ITS MODIFICATION

CO-OWNERSHIP

Property Under Co-ownership. (a) Sale of Definite Portion By Co-owner. A co-owner has an absolute right to sell part of his/her undivided interest in the co-owned property which he may exercise even without the consent of the other co-owners. While a co-owner cannot rightfully dispose of a particular portion of the co-owned property prior to a partition among all the co-owners, this should not signify that the vendee does not acquire anything at all in case a physically segregated area of the co-owned lot is in fact sold to him. Since the co-owner/vendor's undivided interest could properly be the object of the contract of sale between the parties, what the vendee obtains by virtue of such sale are the same rights as the vendor had as co-owner, in an ideal share equivalent to the consideration given under their transaction. In other words, the vendee steps into the shoes of the vendor as co-owner and acquires a proportionate abstract share in the property held in common. *(Spouses Manuel v. CA, G.R. No. 108228, Feb. 1, 2001).*

(b) Sale of Entire Property By Co-owner. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner will only transfer the rights of said co-owner to the buyer, thereby making the buyer a co-owner of the property. (*id.*)

(c) Partial Partition. Where transferees of an undivided portion of land allowed a co-owner of the property to occupy a definite portion thereof and had not disturbed the same for a period too long to be ignored, the possessor is in a better condition or right than the said transferees. Such undisturbed possession had the effect of a partial partition of the co-owned property which entitles the possessor to the definite portion which he occupies. (*id.*).

Co-ownership *(City of Mandaluyong v. Francisco, G.R. No. 137152, Jan. 29, 2001).*

Redemption by a co-owner under R.A. 1597, relating to the Tondo Foreshore Lands. *(Recaña v. CA, G.R. No. 123850, Jan. 5, 2001).*

POSSESSION

Builder in Good Faith. There is no genuine issue of fact as to the ownership of subject property because the admissions made by petitioner in its answer are tantamount to an admission that respondent spouses owned the property in question. Hence, petitioner can no longer claim that it was a builder in good faith. Good faith consists in the belief of the builder that the land he is building on is his and his ignorance of any defect or flaw in his title. In this case, since petitioner, by its own admission, had knowledge of respondent spouses' title over the subject lot, it was clearly in bad faith when it introduced improvements thereon. *(Evadel Realty v. Spouses Soriano, G.R. No. 144291, April 20, 2001).*

DIFFERENT MODES OF ACQUIRING OWNERSHIP

DONATION

Acceptance. A parcel of land was donated to the Bureau of Public Schools subject to the condition that the same be "exclusively used for school purposes." The donation was accepted for the Bureau by the BPS District Supervisor as authorized under Section 47 of the 1987 Administrative Code. A school building was immediately constructed after the donation was executed. Actual knowledge by respondents of the construction and existence of the school building fulfilled the legal requirement that the acceptance of the donation by the donee be communicated to the donor. The

condition of the donation was not in any way violated when the lot donated was exchanged with another one. The purpose for the donation remained the same, which is for the establishment of a school. In fact, the exchange of the lot for a much bigger one was in furtherance and enhancement of the purpose of the donation. *(Republic v. Silim, G.R. No. 140487, April 2, 2001).*

PRESCRIPTION

Prescription of Actions. Action for revival of judgment is governed by Article 1144 (3) of the Civil Code and Section 6, Rule 39 of the 1997 Rules on Civil Procedure. Such action must be brought within ten (10) years from the time said judgment became final. While prescription does not run against the State, the same may not be invoked by the government in this case since it is no longer interested in the subject matter. With the transfer of Camp Wallace to the BCDA, the government no longer has an interest or right to protect. Consequently, the Republic is not a real party in interest and it may not institute the instant action. Nor may it raise the defense of imprescriptibility, the same being applicable only in cases where the government is a party in interest. *(Shipside Incorporated v. CA, G.R. No. 143377, Feb. 20, 2001).*

The statute of limitations begins to run when the bank gives the depositor notice of the payment, which is ordinarily when the check is returned to the alleged drawer as a voucher with a statement of his account. *(Philippine Commercial International Bank v. CA, G.R. No. 121413, Jan. 29, 2001).*

Interruption of prescription under Article 1155 of the Civil Code does not apply. Contrary to petitioner's assertion, he is not a "creditor" nor the respondent, a debtor, as no obligation yet exists. Respondent has no obligation to reconvey the subject lots because of the existing Contract of Sale. Although allegedly voidable, it is

binding unless annulled by a proper action in court. Not being a determinate contract that can be extrajudicially demanded, it cannot be considered an obligation either. In the absence of an existing obligation, petitioner cannot be considered a creditor, and Article 1155 of the Civil Code cannot be applied to his action. *(Mialhe v. CA, G.R. No. 108991, Mar. 20, 2001).*

Prescription cannot be a ground for a motion to dismiss if the contract is alleged to be void *ab initio.* It is axiomatic that the action or defense for the declaration of nullity of a contract does not prescribe. *(Gochan v. Young, G.R. No. 131889, Mar. 12, 2001).*

The suit before the trial court was an action for annulment of the contract of sale on the alleged ground of vitiation of consent by intimidation. Thus, the reckoning period for prescription would be that pertaining to an action for annulment of contract; that is, 4 years from the time the defect in the consent ceases. *(Mialhe v. CA, G.R. No. 108991, Mar. 20, 2001).*

OBLIGATIONS AND CONTRACTS

OBLIGATIONS

Extinguishment of. (a) **Payment.** Consignation - act of depositing the thing due with the court or judicial authority whenever the creditor cannot accept or refuses to accept payment, and it generally requires a prior tender of payment. Tender of payment may be extra-judicial, while consignation is necessarily judicial, and the priority of the first is the attempt to make a private settlement before proceeding to the solemnities of consignation. Tender and consignation, where validly made, produces the effect of payment and extinguishes the obligation. *(Meat Packing Corporation of the Philippines v. Sandiganbayan, G.R. No. 103068, June 22, 2001).*

(b) **Novation.** [i] Substitution of a new debtor in place of the original one must be with the consent of the creditor. Under Article 1293 of the Civil Code, such consent of the creditor need not be given at the time of the substitution. It is sufficient that the creditor's consent be given at any time and in any form whatever, while the agreement of the debtors subsists. There can be implied consent of the creditor to the substitution of debtors. *(Babst v. CA, G.R. 99398, Jan. 26, 2001).* Said consent may be implied, as in this case, where due to the failure of BPI to register its objection to the take-over by DBP of ELISCON's assets at the creditors' meeting held in June 1981 and thereafter, BPI is deemed to have consented to the substitution of DBP for ELISCON. *(Babst v. CA, G.R. No. 99398, Jan. 26, 2001).* The consent of the creditor cannot just be presumed. Even though Presidential Proclamation No. 50 can be considered an "insuperable cause," it does not necessarily make the contracts and obligations affected thereby exceptions to the above-quoted law, such that the substitution of debtor can be validly made even without the consent of the creditor. *(Chuidian v. Sandiganbayan, G.R. No. 139941, Jan. 19, 2001).*

[ii] Novation is never presumed. The parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one. Accordingly, there is no novation when the new agreement entered into between the parties was intended to give life to the old one. In this case, the "*Kasunduan ng Pag-aayos*" before the Barangay did not novate the real estate mortgage between the same parties, as the will to novate does not appear by express agreement of the parties, nor that the old and the new contracts are incompatible in all points. In fact, petitioner expressly recognized in the *Kasunduan* the existence and validity of the old obligation where she acknowledged her long overdue account which was secured by a mortgage and asked for a 90-day grace period to settle her obligation. *(Idolor v. CA, G.R. No. 141853, Feb. 7, 2001; Evadel Realty v. Spouses Soriano, G.R. No. 144291, April 20, 2001).*

CONTRACTS

Essential Elements. (a) Consent. Fraud. *(International Corporate Bank v. Union Bank of the Philippines, G.R. No. 141968, Feb. 12, 2001).*

Reformation. Reformation may not be proper for failure to fully meet the requisites in Article 1359 of the Civil Code. The contested deed of absolute sale was not intended to reflect the true agreement between the parties but merely to comply with the collateral requirements of the Land Bank. However, the fact that the complaint filed by petitioner before the trial court was categorized to be one for reformation of instrument should not preclude the Court from passing upon the issue of whether the transaction was in fact an equitable mortgage as the same was squarely raised in the complaint and had been the subject of arguments and evidence of the parties. *(Spouses Octavio v. CA, G.R. No. 139884, Feb. 15, 2001).*

Void Contracts. Compensation for additional construction work allowed on the basis of "*quantum meruit*" despite the illegality and void nature of the implied contracts between the DPWH and petitioners-contractors. Said illegality proceeds from an express declaration or prohibition by law, and not from any intrinsic illegality. It would be the apex of injustice and highly inequitable to defeat petitioners-contractors' right to be duly compensated for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from said housing project and reaped the fruits of petitioners-contractors' honest labor. The doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen. *(EPG Construction Co. v. Vigilar, G.R. No. 131544, Mar. 16, 2001).*

ESTOPPEL

By Laches. Petitioner bank can no longer raise the issue of jurisdiction. It participated in the proceedings from the start to finish. It filed its position paper with the Labor Arbiter. When the decision of the Labor Arbiter was adverse to it, the bank appealed to the NLRC. When the NLRC decided in its favor, the bank said nothing about jurisdiction. Even before the CA, it never questioned the proceedings on the ground of lack of jurisdiction. It was only when the CA ruled in favor of private respondent did the bank raise the issue of jurisdiction. While jurisdiction over the subject matter of a case may be raised at any time of the proceedings, this rule presupposes that laches or estoppel has not supervened. *(Prudential Band and Trust Company v. Reyes, G.R. No. 141093, Feb. 20, 2001).* Respondent actively took part in the proceedings before the CA by filing its appellee's brief with the same. Its participation, when taken together with its failure to object to the appellate court's jurisdiction during the entire duration of the proceedings before said court, demonstrates a willingness to abide by the resolution of the case by such tribunal and, accordingly, respondent is now most decidedly estopped from objecting to the CA's assumption of jurisdiction over petitioner's appeal. *(Alday v. FGU Insurance Corporation, G.R. No. 138822, Jan. 23, 2001).*

By Deed. A party to a deed and his privies are precluded from asserting as against the other and his privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it. Although the certificate of title became indefeasible after the lapse of one year from the date of the decree of registration, the attendance of fraud in its issuance created an implied trust in favor of petitioners and gave them the right to seek reconveyance of the lot wrongfully obtained by the latter. *(Spouses Manuel v. CA, G.R. No. 108228, Feb. 1, 2001).*

Doctrine of Promissory Estoppel. An exception to the general rule that a promise of future conduct does not constitute an estoppel. To make out a claim of promissory estoppel, a party bears the burden of establishing the following elements: (1) a promise reasonably expected to induce action or forbearance; (2) such promise did in fact induce such action or forbearance; and (3) the party suffered detriment as a result. The doctrine presupposes the existence of a promise on the part of one against whom estoppel is claimed. The promise must be plain and unambiguous and sufficiently specific so that the judiciary can understand the obligation assumed and enforce the promise according to its terms. *(Mendoza v. CA, G.R. No. 116710, June 25, 2001).*

SALE

Sale En Masse. Subject lots were sold en masse, not separately. The unusually low price for which they were sold to the vendee, not to mention his vehement unwillingness to allow redemption therein, only serves to heighten the dubiousness of the transfer. *(Cometa v. CA, G.R. No. 141855, Feb. 6, 2001).*

Sale of Condominium Unit. A buyer of a condominium unit is justified in suspending payment of his monthly amortizations where the seller fails to give the former a copy of the contract to sell despite repeated demands therefor. *(Goldloop Properties, Inc. v. CA, G.R. No. 122088, Jan. 26, 2001).*

Delivery. Unless the buyer specifically designated someone to receive the delivery of materials and his name is written on the proposal opposite the words "Authorized Receiver/Depository," the seller is under obligation to deliver to the buyer only and to no other person; otherwise, the delivery would be invalid and the seller would not be discharged from liability. *(Lagon v. Hooven Comalco Industries, Inc., G.R. No. 135657, Jan. 17, 2001).*

LEASE

Period of Lease. (a) A verbal contract of lease between owner and lessee on a month-to-month basis is a lease with a definite period and expires after the last day of any given 30-day period, upon proper demand and notice by the lessor to vacate. The appellate court should not have extended the period of lease considering that the potestative authority of the court to fix a longer term for a lease under Article 1687 of the Civil Code applies only to cases where there is no period fixed by the parties. Furthermore, Article 1675 of the Civil Code excludes cases falling under Article 1673 (which provides among others, that the lessor may judicially eject the lessee when the period agreed upon or that which is fixed has expired) from the cases wherein, pursuant to Article 1687, courts may fix a longer period of lease. Where petitioner has been deprived of its possession over the leased premises for so long a time, and it is shown that, indeed, the private respondent was the recipient of substantial benefits while petitioner was unable to have the full use and enjoyment of a considerable portion of its valuable property, such militates against further deprivation by fixing a period of extension. Since this case has been pending from the time it was filed in 1994 until now, private respondent has effectively obtained an extension of nearly seven (7) years which is long enough for her to find another place. *(La Jolla, Inc. v. CA, G.R. No. 115851, June 20, 2001).*

(b) Even though a monthly rent is paid and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over a year. The unilateral act of the lessor in terminating the lease should not be recognized as writing *finis* to the argument when the second situation in Art. 1687 is involved. Considering that the authority of the court is potestative and predicated not only on the presumed intention of the parties but on equity as well, the application and interpretation of the provision must not be too restrictive to the

point of rendering the remedy of seeking for extension meaningless such as by the simple and expedient process of the lessor promptly giving notice of termination thus making the lessor, rather than the Court, the final arbiter on the presumptive period of the lease. Having made substantial or additional improvements on the lot, the difficulty of looking for another place to which he could transfer such improvements, the length of his occupancy of the lot and the impression he acquired that he could stay on the premises for as long as he paid the rentals – an extension of the lease to two (2) years was considered fair and reasonable. *(Chua v. CA, G.R. No. 140886, April 19, 2001).*

Sublease. A sublessee can invoke no right superior to that of his sublessor. The sublessee's right, if any, is to demand reparation for damages from his sublessor, should the latter be at fault. The sublessee can only assert such right of possession as could have been granted him by the sublessor, his right of possession depending entirely upon that of the latter. Considering that the lessor and real owner of the property manifested objections to the improvements introduced by the petitioners and the subsequent termination of the lease contract between the lessor and the lessee-sub-lessor, the sublessees are not in a position to assert any right to remain in the land. *(Shin v. CA, G.R. No. 113627, Feb. 6, 2001).*

Right of First Refusal. Petitioner was not entitled to the right of first refusal under PD 1517, since he was using the premises not for residential but for business purpose. Petitioner cannot seek refuge in Sec. 5, BP 877 which provides that "no lessor or his successor-in-interest shall be entitled to eject the lessee upon the ground that the leased premises have been sold or mortgaged to a third person regardless of whether the lease or mortgage is registered or not. For here, the ground for ejectment is the expiration of the term of the lease. *(Chua v. CA, G.R. No. 140886, April 19, 2001).*

WORK AND LABOR

COMMON CARRIERS

Extraordinary Diligence. Petitioners failed to prove that they observed extraordinary diligence. *First*, petitioner did not present evidence on the skill or expertise of the bus driver or the condition of the vehicle at the time of the incident. *Second*, the bus was overloaded at that time. *Third*, the bus was overspeeding. *(Baritua v. Mercader, G.R. No. 136048, Jan. 23, 2001).*

Contract of Air Carriage generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages. In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith. Where in breaching the contract of carriage the defendant airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of obligation which the parties had foreseen or could have reasonably foreseen. In that case, such liability does not include moral and exemplary damages. In the instant case, assuming *arguendo* that breach of contract of carriage may be attributed to respondent, petitioners' travails were directly traceable to their failure to check-in on time, which led to respondent's refusal to accommodate them on the flight. *(Morris v. CA, G.R. No. 127957, Feb. 21, 2001).*

TRUSTS

Implied Trust may be proven by oral evidence. *(Intestate Estate of Alexander Ty v. CA, G.R. No. 112872, April 19, 2001).*

MORTGAGE

Equitable Mortgage. The fact that the complaint filed by petitioner before the trial court was categorized to be one for reformation of instrument should not preclude the Court from passing upon the issue of whether the transaction was in fact an equitable mortgage as the same has been squarely raised in the complaint and has been the subject of arguments and evidence of the parties. There is no conclusive test to determine whether a deed of absolute sale on its face is really a simple loan accommodation secured by a mortgage. The decisive factor is the intention of the parties, as shown not necessarily by the terminology used in the contract but by all the surrounding circumstances, such as the relative situation of the parties at that time, the attitude, acts, conduct, declarations of the parties, the negotiations between them leading to the deed, and generally, all pertinent facts having a tendency to fix and determine the real nature of their design and understanding. As such, documentary and parol evidence may be submitted and admitted to prove the intention of the parties. The conditions which give way to a presumption of equitable mortage, as set out in Article 1602 of the Civil Code, apply with equal force to a contract purporting to be one of absolute sale. Moreover, the presence of even one of the circumstances laid out in Article 1602, and not a concurrence of the circumstances therein enumerated, suffices to construe a contract of sale to be one of equitable mortgage. *(Spouses Octavio v. CA, G.R. No. 139884, Feb. 15, 2001).*

Mortgage by Estate. The case at bar involves foreclosure of mortgage arising out of settlement of estate, wherein the administrator mortgaged a property belonging to the estate of the decedent, pursuant to an authority given by the probate court. Thus, the Rules on Special Proceedings come into play decisively. (Section 7, Rule 89). Case law now holds that the Rule grants to the mortgagee three distinct, independent and mutually exclusive remedies that can be alternately pursued by the mortgage

creditor for the satisfaction of his credit in case the mortgagor dies, to wit: (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription without right to file a claim for any deficiency. The plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate. The third mode includes extrajudicial foreclosure sales, the result of which is that the creditor waives any further deficiency claim. *(Philippine National Bank v. CA, G.R. No. 121597, June 29, 2001).*

Notice Requirement. Section 3, Act No. 3135 requires (1) the posting of notices of sale in three public places, and (2) the publication of the same in a newspaper of general circulation. Personal notice is not necessary. Nevertheless, the parties are not precluded from exacting additional requirements. Precisely, the purpose of the foregoing stipulation is to apprise respondent of any action which petitioner might take on the subject property, thus according him the opportunity to safeguard his rights. An incisive scrutiny of *The Olizon case* shows that the Court has not actually dispensed with the posting requirement. *(Metropolitan Bank and Trust Company v. Wong, G.R. No. 120859, June 26, 2001).*

Accommodation Mortgage under Article 2085 of the Civil Code. Not necessarily void simply because the accommodation mortgagor did not benefit from the same. The term "mortgagor" in Section 25 of PD 694 pertains only to a debtor-mortgagor and not to an accommodation mortgagor. Forcing the accommodation mortgagor to pay for what the principal debtors owe to respondent bank is to punish her for the accommodation and generosity she accorded to the debtor. The ruling in *Sy v. Court of Appeals* and other cases that the General Banking Act and PD 694 shall prevail over Act No. 3135 with respect to the redemption price, does not

apply here inasmuch as in the said cases the redemptioners were debtors themselves or their assignees. Accommodation mortgagors are not in any way liable for the payment of loan or principal obligation of the debtor/borrower. The liability of the accommodation mortgagors extends only up to the loan value of their mortgaged property and not to the entire loan itself. Hence, it is only just that they be allowed to redeem their mortgaged property by paying only the winning bid price thereof (plus interest thereon) at the public auction sale. *(Belo v. Philippine National Bank, G.R. No. 134330, March 1, 2001).*

Indivisibility of mortgage arises only when there is a debt, that is, there is a debtor-creditor relationship. But this relationship is wanting in the case at bar in the sense that petitioners are assignees of an accommodation mortgagor and not of a debtor-mortgagor. Hence, it is fair and logical to allow the petitioners to redeem only the property belonging to their assignor. *(Belo v. Philippine National Bank, G.R. No. 134330, March 1, 2001).*

Extrajudicial Foreclosure. A purchaser in an extrajudicial foreclosure sale is entitled to a writ of possession therefor. A simple ex parte petition for the issuance of a writ of possession has become a protracted litigation and, to date, has been pending for more than twelve (12) years. What is manifest is the abuse by the petitioner of the legal processes, effectively defeating justice which has long been denied the private respondent. *(Laureano v. BORMAHECO, G.R. No. 137619, Feb. 6, 2001).*

Right of Redemption. [i] Pursuant to Sec. 78 of the General Banking Act, a mortgagor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, shall have the right, within one year after the sale of the real estate to redeem the property. The one-year period is actually to be reckoned from the date of the registration of the sale. Filing of action to annul mortgage does not

toll the running of the period. The period of redemption is not interrupted by the filing of an action assailing the validity of the mortgage. [ii] Redemption Price. The apparent conflict between the provisions of Act No. 3135 and the General Banking Act is resolved in favor of the latter, being a special and subsequent legislation. The amount at which the foreclosed property is redeemable is the amount due under the mortgage deed or the outstanding obligation of the mortgagor plus interest and expenses in accordance with Section 78 of the General Banking Act. It was manifest error to apply in this case the provisions of Section 30, Rule 39 of the Rules of Court in fixing the redemption price of the subject foreclosed property. *(Union Bank of the Philippines v. CA, G.R. No. 134068, June 25, 2001).*

COMPROMISE

With respect to the agreement between the parties to amicably settle their difference relating to BP Blg. 22, such resort to an alternative dispute settlement mechanism is not contrary to law, public policy, or public order. *(Tam Wing Tak v. Hon. Makasiar, G.R. No. 122452, Jan. 29, 2001).*

AGENCY

Attorney's power to compromise. Article 1878 Civil Code. Sec. 23, Rule 138, Rules of Court. Attorneys cannot, without special authority, compromise their client's litigation or receive anything in discharge of their client's claims but the full amount in cash. *(People v. Carpo, G.R. No. 132676, April 4, 2001).*

DEPOSIT

(Calibo v. CA, G.R. No. 120528, Jan. 29, 2001).

PLEDGE

In a contract of pledge, the creditor is given the right to retain his debtor's movable property in his possession, or in that of a third person to whom it has been delivered, until the debt is paid. For the contract of pledge to be valid, it is necessary that: (1) the pledge is constituted to secure the fulfillment of a principal obligation; (2) the pledgor is the absolute owner of the thing pledged; and (3) the person constituting the pledge has the free disposal of his property, and in the absence thereof, that he be legally authorized for the purpose. *(Calibo v. CA, G.R. No. 120528, Jan. 29, 2001).*

SURETY

Liability. Surety's liability is limited to the amount of the bond. But it is liable for legal interest thereon for its incurrence of default and the necessity of judicial collection. *(Republic v. CA, G.R. No. 103073, Mar. 13, 2001).*

While a surety is solidarily liable with the principal debtor, his obligation to pay only arises upon the principal debtor's failure or refusal to pay. A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. A surety is an insurer of the debt; he promises to pay the principal's debt if the principal will not pay. *(Babst v. CA, G.R. No. 99398, Jan. 26, 2001).*

LOAN

Interest Rate. (a) Determined at Sole Will of One Party, Not Valid. The stipulation in the trust receipt agreement is not valid as there is no reference rate provided for in the agreement, leaving the determination thereof to the sole will and control of

petitioner. While it may be acceptable, for practical reasons given the fluctuating economic conditions, for banks to stipulate that interest rates on a loan be not fixed but instead made to depend upon prevailing market conditions, there should always be a reference rate upon which to peg such variable interest rates. A stipulation ostensibly signifying an agreement to "any increase or decrease in the interest rate," without more, is not valid for it leaves solely to the creditor the determination of what interest rate to charge against the outstanding loan. *(Solidbank v. CA, G.R. No. 114286, April 19, 2001).*

(b) Unilateral Increase. Respondent bank increased the interest rates on the promissory notes without the prior written consent of the petitioner. As held in several cases, the unilateral determination and imposition of increased interest rates violates the principle of mutuality of contracts ordained in Article 1308 of the Civil Code. No one receiving a proposal to change a contract to which he is a party is obliged to answer the proposal, and his silence per se cannot be construed as an acceptance. *(Mendoza v. CA, G.R. No. 116710, June 25, 2001).*

(c) Outrageous and Inordinate. While the Usury Law ceiling on interest rate was lifted by CB Circular 905, nothing in said circular grants lenders *carte blanche* authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets. In *Medel*, the Court declared that while interest of 5.5% per month is not usurious, it must be reduced equitably for being inequitous, unconscionable and excessive. In this case, the interest of 72% per annum is outrageous and inordinate and was reduced to 12% per annum. *(Spouses Solangon v. Salazar, G.R. No. 125944, June 29, 2001).*

EXTRA-CONTRACTUAL OBLIGATIONS

TORTS

Res Ipsa Loquitur. Respondent company's negligence consists in allowing incompetent crew to man its vessel. As shown by petitioner, both the captain and the chief mate did not have formal training in marine navigation. The former was a mere elementary graduate while the latter is a high school graduate. Their experience in navigation was only as a watchman and a quartermaster, respectively. *(Ludo and Luym Corporation v. CA, G.R. No. 125483, Feb. 1, 2001).*

DAMAGES

Actual Damages. Net Income Loss of an individual in the construction business. *(People v. Tio, G.R. No. 132482-83, Feb. 20, 2001).*

Moral Damages. Allowed in breaches of contract where the defendant acted fraudulently or in bad faith. Good faith, however, is always presumed and any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith, with malice, or with ill motive. *(Mirasol v. CA, G.R. No. 128448, Feb. 1, 2001).* It is a requisite that the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner. In the instant case, assuming *arguendo* that breach of contract of carriage may be attributed to respondent, petitioners' travails were directly traceable to their failure to check in on time, which led to respondent's refusal to accommodate them on the flight. *(Morris v. CA, G.R. No. 127957, Feb. 21, 2001).* To recover moral damages in an action for breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive or abusive. In this case, there is no such fraud or bad faith. The person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the

law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive.

Hooven's bad faith lies not so much on its breach of contract – as there was no showing that its failure to comply with its part of the bargain was motivated by ill will or done with fraudulent intent – but rather on the appalling temerity to sue petitioner for payment of an alleged unpaid balance of the purchase price notwithstanding knowledge of its failure to make complete delivery and installation of all the materials under the contract. *(Lagon v. Hooven Comalco Industries, Inc., G.R. No. 135657, Jan. 17, 2001).*

Nominal Damages. *(Francisco v. Ferrer, G.R. No. 142029, Feb. 28, 2001).*

Attorney's Fees. Granted, considering the fact that petitioner was drawn into this litigation by respondent and was compelled to hire an attorney to protect and defend his interest. *(Lagon v. Hooven Comalco Industries, Inc., G.R. No. 135657, Jan. 17, 2001).*

COMMERCIAL LAW

CORPORATION LAW

Corporation. A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. In exceptional circumstances, such as in labor cases, corporate directors and officers are solidarily liable with the corporation for the termination of employment of corporate employees done with malice or in bad faith. Even assuming that the respondent company officials are also officers and incorporators of the satellite companies, such circumstance does not in itself amount to fraud. *(Malayang Samahan ng Mga Manggagawa sa M. Greenfield v. NLRC, G.R. No. 113907, April 20, 2001).*

Corporate Name. The act of the Commission on Higher Education of enjoining petitioner from using the word "university" in its corporate name and ordering it to revert to its authorized name does not violate its proprietary right or constitute irreparable damage to the school. *(Indiana Aerospace University v. Commission on Higher Education, G..R. No. 139371, April 4, 2001).*

Power To Sue of a corporation is lodged with its board of directors or trustees. As a minority stockholder and member of the board of directors, petitioner had no such power or authority to sue on the corporation's behalf and he failed to show any proof of such specific power or authorization. *(Tam v. Hon. Makasiar, G.R. No. 122452, Jan. 29, 2001)*

Merger. In the merger of two existing corporations, one of the corporations survives and continues the business, while the

other is dissolved and all its rights, properties and liabilities are acquired by the surviving corporation. *(Babst v. CA, G.R. No. 99398, Jan. 26, 2001).*

Derivative Suit. (a) The complaint alleges all the components of a derivative suit. The allegations of injury to the spouses can co-exist with those pertaining to the corporation. The personal injury suffered by the spouses cannot disqualify them from filing a derivative suit in behalf of the corporation. It merely gives rise to an additional cause of action for damages against the erring directors. *(Gochan v. Young, G.R. No. 131889, Mar. 12, 2001).* (b) The suit of respondent cannot be characterized as derivative, as she was not acting for the benefit of the corporation. Quite the contrary, she was suing on her own behalf, out of a desire to protect and preserve her preemptive rights. Petitioners fail to appreciate the distinction between the act itself and its net result. The act of filing the suit did not in any way bind the corporation. The result of such act affected it, however. *(Lim v. Lim-Yu, G.R. No. 138343, Feb. 19, 2001).*

Ultra Vires Acts. Personal liability of corporate director, trustee or officer. *(Atrium Management Corporation v. CA, G.R. Nos. 109491 and 121794, Feb. 28, 2001).*

Intra-Corporate Disputes. RA 8799, which became effective on August 8, 2000, transferred the jurisdiction of the Securities and Exchange Commission (SEC) over cases involving intra-corporate disputes to the regional trial courts. *(Gochan v. Young, G.R. No. 131889, March 12, 2001).*

Sec Jurisdiction. *(TCL Sales Corporation v. CA, G.R. No. 129777, Jan. 5, 2001; Intestate Estate of Alexander Ty v. CA, G.R. No. 112872, April 19, 2001).*

BANKS AND BANKING

Banks. Doctrine of Comparative Negligence. Proximate Cause. (a) The main issue is whether the drawer/payor (Ford) has the right to recover from the collecting bank (PCIBank) and the drawee bank (Citibank) the value of check No. SN-04867 (hereafter "Check-1") and checks Nos. SN-10597 and 16508 (hereafter Checks 2-3") drawn by Ford against Citibank as payment to the Commissioner of Internal Revenue (CIR). It was established that instead of paying the checks to the CIR for the settlement of the appropriate quarterly percentage taxes of Ford, the checks were diverted and encashed for the eventual distribution among the members of a syndicate. The direct perpetrators of the offense are now fugitives from justice. They have, even if temporarily, escaped liability for the embezzlement of millions of pesos. The task then is to determine who among the present parties, namely: Ford, PCIBank and Citibank - must bear the burden of loss of millions, which boils down to the question of liability based on the degree of negligence among the parties concerned. It appears that although the employees of Ford initiated the transactions attributable to an organized syndicate, their actions were not the proximate cause of the encashment of the checks. The Board of Directors of Ford did not confirm the request of Ford's employee Rivera to recall Check-1 and replace it with PCIBank's Manager's check, one that was not in the ordinary course of business and which should have prompted PCIBank to validate the same. PCIBank failed to verify the authority of Rivera, showing lack of care and prudence in the circumstances. As authorized collecting bank of the Bureau of Internal Revenue, PCIBank was duty bound to consult its principal regarding the unwarranted instruction given by the payor or its agent. The relationship between the payee or holder of commercial paper and the bank to which it is sent for collection is, in the absence of an agreement to the contrary, that of principal and agent. Even considering *arguendo*, that the diversion of the amount of a check payable to the collecting bank in behalf of the designated payee

may be allowed, still such diversion must be properly authorized by the payor. Check-1 was crossed with the phrase "Payee's Account Only," thus warning PCIBank that said check should be deposited only in the account of the CIR. It was deposited at PCIBank Ermita Branch. It was coursed through the ordinary banking transaction, sent to Central Bank Clearing with the indorsement at the back "all prior indorsements and/or lack of indorsements guaranteed," (hereafter "Clearing Indorsement") and was presented to Citibank for payment. Thereafter, PCIBank instead of remitting the proceeds to the CIR, prepared two of its Manager's checks and enabled the syndicate to encash the same. Under the circumstances, PCIBank had the responsibility to make sure that Check-1 was deposited in payee's account only, to scrutinize the check and know its depositor before it could make the Clearing Indorsement. Lastly, banking business requires that the one who first cashes and negotiates the check must take some precautions to learn whether or not it is genuine. And if one cashing the check through indifference or other circumstance assists the forger in committing the fraud, he should not be permitted to retain the proceeds of the check from the drawee whose sole fault was that it did not discover the forgery or defect in the title of the person negotiating the instrument before paying the check. For this reason, a bank which cashes a check drawn upon another bank, without requiring proof as to the identity of persons presenting it, or making inquiries with regard to them, cannot hold the proceeds against the drawee when the proceeds of the check were afterwards diverted to the hands of a third party. As PCIBank's negligence was established to be the proximate cause of the loss, PCIBank was held liable for the amount corresponding to the proceeds of Check-1. (Philippine Commercial International Bank v. CA, G.R. No. 121413, Jan. 29, 2001).

(b) Checks 2-3 were made payable to the CIR and were received by the pro-manager (hereafter "Pro-Manager") of PCIBank San Andres who, in turn, passed the checks to an Asst. Manager

(hereafter "Asst. Manager") of PCIBank Meralco, who helped open a checking account in the name of a fictitious person. The Pro-Manager deposited a worthless check in the checking account in exactly the same amount of the Checks 2-3. The syndicate tampered with the checks and succeeded in replacing the worthless check and the eventual encashment of Checks 2-3. The Pro-Manager and Asst. Manager apparently performed their activities using facilities in their official capacity or authority but for their personal and private gain. No evidence was presented confirming the conscious participation of PCIBank in the embezzlement. As a general rule, however, a banking corporation is liable for the wrongful or tortuous acts and declarations, or negligence of its officers or agents within the course and scope of their employment. It may be held liable for such tortuous acts even as regards those species of tort of which malice is an essential element. A bank holding its officers and agents to be worthy of confidence will not be permitted to profit by the frauds these officers or agents were enabled to perpetrate in the apparent course of their employment; nor will it be permitted to shirk its responsibility for such frauds, even though no benefit may accrue to the bank therefrom. (*id.*).

(e) In regard to Checks 2-3, Citibank was likewise negligent in the performance of its duties as drawee bank. It failed to notice that the clearing stamps at the back of the checks did not bear any initials. Had this been duly examined, the switching of the worthless checks for Checks 2-3 would have been discovered in time. Citibank failed to perform what was incumbent upon it, which is to ensure that the amount of Checks 2-3 should be paid only to its designated payee. That Citibank did not discover the irregularity seasonably constitutes negligence in carrying out the bank's duty to its depositors -- to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. In this case, Citibank and PCIBank were held equally liable for the losses relating to Checks 2-3. (*id.*).

(f) Ford was not completely blameless in its failure to detect the fraud. Ford's failure to examine its passbook, statements of account, and cancelled checks and to give notice within a reasonable time of any discrepancy which it may in the exercise of due care and diligence find therein, mitigated the bank's liability. The award of interest to Ford was reduced from 12% to 6% per annum. (*id.*).

Disclosure Regulations for Publicly Listed Shares. That petitioner, in regard to its banking functions, is already subject to the supervision of the *Bangko Sentral ng Pilipinas* does not exempt it from complying with the reasonable disclosure regulations issued by the Securities and Exchange Commission. *(Union Bank of the Philippines v. SEC, G.R. No. 1389949, June 6, 2001).*

Law on Secrecy of Bank Deposits. The Law on Secrecy of Bank Deposits, as amended, declares bank deposits to be absolutely confidential, except in six (6) instances enumerated therein. Before an *in camera* inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified and the inspection limited to the subject matter of the pending case. Bank personnel and the account holder must be notified to be present during the inspection, and such inspection must cover only the account identified in the pending case. Here, there is yet no pending litigation before any court of competent authority. What exists is an investigation by the Office of the Ombudsman, which would not warrant the opening of the bank account for inspection. *(Marquez v. Hon. Desierto, G.R. No. 135882, June 27,. 2001).*

Philippine Veterans Bank. The enactment of RA 7169 as well as subsequent developments have rendered the liquidation *functus officio.* Consequently, respondent judge has been stripped of the authority to issue orders involving acts of liquidation. Liquidation connotes winding up or settlement with creditors and

debtors. It is the winding up of a corporation so that assets are distributed to those entitled to receive them. It is the process of reducing assets to cash, discharging liabilities and dividing the surplus or loss. On the opposite end of the spectrum is rehabilitation which connotes a reopening or reorganization. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. *(Philippine Veterans Bank Employees Union v. Hon. Vega, G.R. No. 105364, June 28, 2001).*

LAW ON INTELLECTUAL PROPERTY

Trademark. (a) Colorable Imitation. [i] "*Flavor Master*" is a colorable imitation of the trademark "MASTER ROAST" and "MASTER BLEND." Colorable imitation denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, as to cause him to purchase the one supposing it to be the other. In determining if colorable imitation exists, jurisprudence has developed two kinds of tests – the Dominancy Test and the Holistic Test. The test of dominancy focuses on the similarity of the prevalent features of the competing trademarks which might cause confusion or deception and thus constitute infringement. The holistic test mandates that the entirety of the marks in question must be considered in determining confusing similarity. In infringement or trademark cases in the Philippines, particularly in ascertaining whether one trademark is confusingly similar to or is a colorable imitation of another, no set rules can be deduced. Each case must be decided on its own merits. *(Societé Des Produits Nestlé, S.A. v. CA, G.R. No. 112012, April 4, 2001).*

[ii] *"Gold Top"* and "GOLD TOE." Totality of similarities test and a resort to either the Dominancy Test or the Holistic Test show that colorable imitation exists between respondent's "GOLD TOE" and petitioner's "Gold Top." Union Convention for the Protection of Industrial Property adopted in Paris on 20 March 1883 otherwise known as the Paris Convention of which the Philippines and the United States are members applied in this case. Respondent is domiciled in the United States and is the registered owner of the "Gold Toe" trademark. Hence, it is entitled to the protection of the Convention. A foreign-based trademark owner, whose country of domicile is a party to an international convention relating to protection of trademarks, is accorded protection against infringement or any unfair competition under the Trademark Law. *(Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc. 139300, Mar. 14, 2001).*

(b) Registration of Trademark. The law states that an application for a trademark or tradename shall, among others, state the date of first use. The fact that the marks were indeed registered by respondents shows that it did use them on the date indicated in the Certificate of Registration. Registration with the supplemental register gives no presumption of ownership of the trademark. *(Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc. 139300, Mar. 14, 2001).*

ARBITRATION

R.A. 876 expressly authorizes arbitration of domestic disputes. Foreign arbitration as a system of settling commercial disputes was likewise recognized when the Philippines adhered to the United Nations "Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958." As a rule, contracts, including a stipulation to submit to arbitration, are binding only on the parties and their respective assigns and

successors-in-interest. The object of arbitration is to allow the expeditious determination of a dispute. As there are other party-litigants who are not privy to or bound by the arbitration clause, the issue in this case could not be speedily and efficiently resolved in its entirety if simultaneous arbitration, proceedings and trial, or suspension of trial pending arbitration is allowed. The interest of justice would only be served if the trial court hears and adjudicates the case in a single and complete proceeding. *(Del Monte Corporation-USA v. CA, G.R. No. 136154, Feb. 7, 2001).*

NEGOTIABLE INSTRUMENTS LAW

Checks. Stale check. *(International Corporate Bank v. Union Bank of the Philippines, G.R. No. 141968, Feb. 12, 2001).*

Defective Title of Person Who Negotiates an Instrument. (Section 55).

Holder Not in Due Course. The Negotiable Instruments Law does not provide that a holder not in due course cannot recover on the instrument. However, a holder not in due course is subject to defenses as if it were non-negotiable. One such defense is absence or failure of consideration. *(Atrium Management Corporation v. CA, G.R. Nos. 109491 and 121794, Feb. 28, 2001).*

FINANCING COMPANY ACT

Financing Company. Assignment of Credit. The developer-builder of the condominium building in obtaining a credit line of P5 M from private respondent, assigned 20 contracts to sell with accounts receivable from its condominium unit buyers to private respondent with recourse to assignor and on a non-collection basis. Succinctly, private respondent is a financing company as so defined by the Financing Company Act. The assignment of contracts to sell

falls within the purview of the Act. An assignment of credit is an act of transferring, either onerously or gratuitously, the right of an assignor to an assignee who would then be capable of proceeding against the debtor for enforcement or satisfaction of the credit. The transfer of rights takes place upon perfection of the contract, and ownership of the right, including all appurtenant accessory rights, is thereupon acquired by the assignee. The assignment binds the debtor only upon acquiring knowledge of the assignment but he is entitled, even then, to raise against the assignee the same defenses he could set up against the assignor. Petitioners' insistence that subject transaction be considered a simple loan since private respondent did not communicate with the debtors, condominium unit buyers, to collect payment from them, is untenable. In an assignment of credit, the consent of the debtor is not essential for its perfection, his knowledge thereof or lack of it affecting only the efficaciousness or inefficaciousness of any payment he might make. What the law requires in an assignment of credit is not the consent of the debtor but merely notice to him. A creditor may therefore validly assign his credit and its accessories without the debtor's consent. The purpose of the notice is only to inform the debtor that from the date of the assignment, payment should be made to the assignee and not to the original creditor. *(Project Builders, Inc. v. CA, G.R. No. 99433, June 19, 2001).*

Purchase Discount. The 14% ceiling provided for purchase discount is exclusive of interest and other charges. A purchase discount is distinct from interest. The term purchase discount refers to the difference between the value of the receivable purchased or credit assigned, and the net amount paid by the finance company for such purchase or assignment, exclusive of fees, service charges, interests and other charges incident to the extension of credit. There is thus no impingement of the Usury Law even when the controversy might have arisen prior to the adoption by the Central Bank Monetary Board of its Resolution No. 224 on interest ceilings. *(Project Builders, Inc. v. CA, G.R. No. 99433, June 19, 2001).*

TRUST RECEIPTS

Colinares v. Court of Appeals appears to be foursquare with the facts obtaining in the case at bar. There, it was held that the transaction in question was a simple loan and not a trust receipt agreement. The debtor received the goods subject of the trust receipts before the trust receipt itself was entered into. Prior to the date of execution of the trust receipt, ownership over the goods was already transferred to the debtor. This situation is inconsistent with what normally obtains in a pure trust receipt transaction, wherein the goods belong in ownership to the bank and are only released to the importer in trust after the loan is granted. The Trust Receipts Law does not seek to enforce payment of the loan, rather it punishes the dishonesty and abuse of confidence in the handling of money, or goods to the prejudice of another, regardless of whether the latter is the owner. The *mala prohibita* nature of the alleged offense notwithstanding, intent as a state of mind was not proved to be present in petitioners' situation. Petitioners employed no artifice in dealing with PBC and never did they evade payment of their obligation nor attempt to abscond. Instead petitioners sought favorable terms precisely to meet their obligation. Also, petitioners were not importers acquiring the goods for re-sale, contrary to the express provision embodied in the trust receipt. They were contractors who obtained the fungible goods for their construction project. At no time did title over the construction materials pass to the bank but directly to the petitioners. *(Solidbank v. CA, G.R. No. 114286, April 19, 2001).*

MOTOR VEHICLE

The registered owner of any vehicle, even if not for public service, is primarily responsible to third persons for deaths, injuries and damages it caused. This is true even if the vehicle is leased to

third persons. For as long as respondent bank remained the registered owner of the car involved in the vehicular accident, it could not escape primary liability for the death of petitioner's son. *(Aguilar v. Commercial Savings Bank, G.R. No. 128705, June 29, 2001).*

INSURANCE

If the insurer has granted the insured a credit term for the payment of the premium and loss occurs before the expiration of the term, recovery on the policy should be allowed even though the premium is paid after the loss but within the credit term. There is nothing in Section 77 of the Insurance Code which prohibits the parties in an insurance contract to provide a credit term within which to pay the premiums. That agreement is not against law, morals, good customs, public order or public policy. *(UCPB General Insurance Co., Inc. v. Masagana Telamart, Inc., G.R. No. 137172, April 4, 2001).*

CRIMINAL LAW

FELONIES

Criminal Liability - is incurred by any person committing a felony, although the actual victim be different from the one intended. *(People v. Cabareño, G.R. No. 138645, Jan. 16, 2001).*

Conspiracy as a Manner of Incurring Criminal Liability. (a) Established. *(People v. Baldago, G.R. No. 140277, June 6, 2001; People v. Bolivar, G.R. No. 130597, Feb. 21, 2001; People v. Peralta, G.R. No. 128116, Jan. 24, 2001; People v. Tamanon, G.R. No. 1350566, Feb. 15, 2001).*

[i] In the instant case, nothing less than direct proof of previous agreement to kill the victim, plus an eyewitness account of how the conspirators effected their plan, were submitted into evidence. The Court is not prohibited from instituting a finding of conspiracy, in reversal of the findings of the lower court to the contrary, when its existence is manifest from the evidence at hand. Much as the Court is prevented from disturbing the acquittals granted by the trial court, the Court reiterates the existence of conspiracy among the accused and holds herein accused-appellant liable as one of the conspirators. Unlike the case of *Artalejo* where the Court found that the evidence proved only the existence of a conspiracy but not the culpability of accused-appellant therein – the evidence in the instant case shows that the conspirators, including accused-appellant, implemented their plan to full effect. *(People v. Uganap, G.R. No. 130605, June 19, 2001).*

[ii] It is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and

coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim. *(People v. Givera, G.R. No. 132159, Jan. 18, 2001; People v. Abendan, G.R. Nos. 132026-27, June 28, 2001).*

[iii] Once conspiracy is established (the act of one being the act of all), it is not necessary that the prosecution yet prove that all the conspirators actually hit and killed the victim. *(People v. Dulot, G.R. No. 137770, Jan. 30, 2001).*

[iv] Although the absence of conspiracy, as with other findings of fact by the trial court, will not be disturbed on appeal, where the same is consistent with the evidence presented, the Court is not prohibited from instituting a finding of conspiracy, in reversal of the trial court, when its existence is manifest from the evidence at hand. *(People v. Uganap, G.R. No. 130605, June 19, 2001).*

(b) Not Established. - Criminal conspiracy must always be founded on facts, not on mere inferences, conjectures and presumptions. It must be proven just like any other crime accusation, that is, independently and beyond reasonable doubt. *(People v. Rama, G.R. No. 136304, Jan. 25, 2001).* Mere presence, even with approval but without active participation of the accused is not enough for purposes of his conviction. *(People v. Carpo, G.R. No. 132676, April 4, 2001).* Thus, it was held: [i] The acts of accused-appellant in allowing the three unidentified men to board his tricycle despite the victim's payment for the unoccupied seats, and in deviating from the usual route, which were the basis of his conviction - are not sufficient evidence to prove or suggest a concerted action, much less unity of purpose, in perpetrating the slay of the victim. While it may elicit suspicion on the accused-appellant's actuation, this is no evidence to prove the existence of criminal conspiracy. Conspiracy, to be a basis for conviction, should be proved as clearly and convincingly as the commission of the crime itself, for conspiracy is not the product of negligence but of

intention on the part of the cohorts. *(People v. Dindo, G.R. No. 129305, Jan. 18, 2001).* [ii] Evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required. That accused-appellant and co-accused were drinking together at the pub house would not be sufficient to justify the conclusion that conspiracy existed. Neither could the fact they left the scene together, without the performance of any other act. Moreover, accused-appellant's behavior after the stabbing incident belies his guilt and active involvement in its commission. Despite knowledge that he was a prime suspect, accused-appellant unabashedly went to the house of one of the deceased, and braved possible harm or injury to himself in the event that the latter's relatives acted in retaliation. *(People v. Gonzales, G.R. No. 128282, April 30, 2001).*

JUSTIFYING CIRCUMSTANCES

Self-defense - cannot be proved other than by sufficient and credible evidence which would exclude any vestige of criminal aggression on the part of the person invoking it. Neither can it be justifiably entertained where it is not only uncorroborated but is, in itself, extremely doubtful. *(People v. Flores, G.R. No. 138841, April 4, 2001).* In invoking self-defense, complete or incomplete, the *onus probandi* is shifted to the accused to prove by clear and convincing evidence all its elements, especially, unlawful aggression on the part of the victim which is a *sine qua non*. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001; People v. Flores, G.R. No. 138841, April 4, 2001).* Unlawful aggression is an assault or attack, or a threat thereof in an imminent and immediate manner which places the defendant's life in actual peril. In this case, the superficiality of the injuries allegedly sustained by petitioner at the hands of the victim is no indication that his life and limb were in actual peril at the time of the killing. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001).* If unlawful aggression on the part of the victim is absent, there can be no self-defense - complete or incomplete. *(Calim v. CA, G.R. No. 140065,*

Feb. 13, 2001; People v. Peralta, G.R. No. 128116, Jan. 24, 2001; People v. Basadre, G.R. No. 131851, Feb. 22, 2001; Del Rosario v. People, G.R. No. 141749, April 17, 2001; People v. Camacho, G.R. No. 138629, Jun 20, 2001). The party invoking this justifying circumstance has the burden of proof. For this reason, the Rules of Court allows the reversal of proceedings by requiring said party to present evidence ahead of the prosecution. *(People v. Tan, G.R. No. 116200-02, June 21, 2001).*

Defense of Relative. Unlawful aggression on the part of the victim is indispensable. That petitioner sustained injuries does not signify that he was a victim of unlawful aggression. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001).*

Performance of Duty. Two (2) requisites must concur before this defense can prosper: (1) the accused must have acted in the performance of a duty or in the lawful exercise of a right or office, and (2) the injury caused or the offense committed should be the necessary consequence of the due performance of duty. Appellant was not in the performance of his duties at the time of the shooting for the reason that the girls he was attempting to arrest were not committing any act of prostitution in his presence. If at all, the only person he was authorized to arrest during that time was "R", who offered him the services of a prostitute, for acts of vagrancy. Even then, the fatal injuries that the appellant caused the victim were not a necessary consequence of appellant's performance of his duty as a police officer. The record shows that appellant shot the victim not once but twice after a heated confrontation ensued between them. His duty to arrest the female suspects did not include any right to shoot the victim to death. *(People v. Peralta, G.R. No. 128116, Jan. 24, 2001).*

EXEMPTING CIRCUMSTANCES

Insanity. Defense in rape - not given credence. *(People v. Legaspi, G.R. No.1336164-65, April 20, 2001).*

Accident. Having claimed that the shooting was accidental, petioner must prove the same by clear and convincing evidence. However, the burden of proving the commission of the crime remained with the prosecution. *(People v. CA, G.R. No. 1036613, Feb. 23, 2001).*

MITIGATING CIRCUMSTANCES

Minority. Privileged mitigating. *(People v. Bolivar, G.R. No. 130597, Feb. 21, 2001).*

Incomplete Self-defense. When this mitigating circumstance is invoked by the accused, the prosecution is not relieved of the burden of proving the crime charged in the information. In order that incomplete self-defense may be successfully appreciated, it is necessary that a majority of the requirements of self-defense be present, particularly, the requisite of unlawful aggression on the part of the victim. *(People v. CA, G.R. No. 103613, Feb. 23, 2001).* Sufficient provocation as a requisite of incomplete self-defense is different from sufficient provocation as a mitigating circumstance. As an element of self-defense, it pertains to its absence on the part of the person defending himself; while as a mitigating circumstance, it pertains to its presence on the part of the offended party. *(People v. CA, G.R. No. 103613, Feb. 23, 2001).*

Passion and Obfuscation. Not appreciated. The acts of the accused were done in the spirit of revenge and lawlessness, for which no mitigating circumstance of passion or obfuscation can arise. *(People v. CA, G.R. No. 103613, Feb. 23, 2001).*

Voluntary Surrender. (a) Appreciated. That accused-appellant admitted that he surrendered because of fear of reprisal, does not detract from the spontaneity of his surrender and the fact that he had saved the State the time and trouble of searching for him. *(People v. Amazan, G.R. No. 136251, Jan. 16, 2001).* The fact that accused-appellant yielded his weapon to his superior at the time of the incident, albeit with some persuasion from the latter, should be considered in his favor. *(People v. Amion, G.R. No. 140511, Mar. 1, 2001).* (b) Not appreciated. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001; People v. Dichoson, G.R. No. 118986-89, Feb. 19, 2001).* Petitioner fled to Bais City and only decided to have the police fetch him, four days after the incident, for fear that the victim's relatives might avenge his death. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001).*

Offer to Plead Guilty. Appreciated. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001).* Not appreciated - as the prosecution refused the offer of accused-appellant to plead guilty only to the crime of homicide with the condition that the charge against the rest of the accused-appellants be dropped. *(People v. Tamanon, G.R. No. 1350566, Feb. 15, 2001).* **Confession of Guilt.** To be considered a mitigating circumstance, the offender must have voluntarily confessed his guilt before the court, prior to the presentation of evidence for the prosecution. In the instant case, appellant did not only plead "not guilty" upon arraignment, but waited for the prosecution to rest its case. It was only during his turn to present evidence that he confessed having committed the crime charge. *(People v. Palermo, G.R. No. 120630, June 28, 2001).* For voluntary confession to be appreciated as an extenuating circumstance, the same must not only be unconditional but the accused must admit to the offense charged. *(People v. Gano, G.R. No. 134373, Feb. 28, 2001).*

Analogous Circumstances. That petitioner voluntarily took the cow to the municipal hall to place it unconditionally in the custody of the authorities and thus save them the trouble of

recovering the cow, - can be considered analogous to voluntary surrender and should be considered in favor of the petitioner. *(Canta v. People, G.R. No. 140937, Feb. 28, 2001).*

AGGRAVATING CIRCUMSTANCES

In General. Qualifying and Generic. (a) The Revised Rules of Criminal Procedure (effective December 1, 2000) requires that every complaint or information must expressly and specifically allege not only the qualifying but also the generic aggravating circumstances; otherwise, the same will not be considered by the court even if proved during the trial. The Revised Rules is applicable in all criminal cases, not only in cases where the aggravating circumstance would increase the penalty to death. *(People v. Legaspi, G.R. No. 1361164-65, April 20, 2001; People v. De Villa, G.R. No. 124639, Feb. 1, 2001).* (b) Prior to the Revised Rules of Criminal Procedure. - At the time the trial court rendered its decision, the non-allegation of generic aggravating circumstances in the information was immaterial, since the rule then prevailing was that generic aggravating circumstances duly proven in the course of the trial could be taken into account by the trial court in determining the imposable penalty, even if such circumstances were not alleged in the information. However, if the appreciation by the trial court of generic aggravating circumstances though not alleged in the information would result in the imposition of the death penalty upon the accused-appellant, the Court cannot appreciate them. Consequently, in this case, the Court held that the aggravating circumstances of nighttime and dwelling which were not alleged in the information for rape committed with the use of a deadly weapon, cannot be considered in raising the penalty imposable upon accused-appellant, from *reclusion perpetua* to death. Parenthetically, the above rule is inapplicable to the crime of robbery also committed by accused-appellant, as the same does not involve the imposition of the death penalty. For said crime,

what remains applicable is the old rule that generic aggravating circumstance, if duly proven in the course of the trial, could be taken into account by the trial court in determining the proper imposable penalty, even if such circumstances were not alleged in the information. *(People v. Legaspi, G.R. No. 136164-65, April 20, 2001).*

Taking Advantage of Public Position. That accused-appellant used his service firearm in shooting the victim should not be considered as taking advantage of public position. For such to be considered aggravating, the public official must use the influence, prestige and ascendancy which his office gives him in realizing his purpose. *(People v. Amion, G.R. No. 140511, March 1, 2001).*

Disregard of Respect Due to Age. *(People v. Tilos, G.R. No. 138385, Jan. 16, 2001; People v. Painitan, G.R. No. 137665, Jan. 16, 2001).*

Dwelling cannot be appreciated as the accused-appellant and the victim lived in the same house. *(People v. Arrojado, G.R. No. 130492, Jan. 31, 2001).* Was not appreciated separately as it was deemed absorbed in treachery. *(People v. Catapang, G.R. No. 128126, June 25, 2001).*

Abuse of Confidence. *(People v. Arrojado, G.R. No. 130492, Jan. 31, 2001).*

Aid of Armed Men. Requisites: [i] that armed men or persons took part in the commission of the crime, directly or indirectly; and [ii] that the accused availed himself of their aid or relied upon them when the crime was committed. *(People v. Amion, G.R. No. 140511, March 1, 2001).*

In Consideration of Price, Reward or Promise. *(People v. Uganap, G.R. No. 130605, June 19, 2001).*

Explosion. *(People v. Carpo, G.R. No. 132676, April 4, 2001).*

Evident Premeditation. (a) Established. *(People v. Uganap, G.R. No. 130605, June 19, 2001).* Where conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be appreciated. *(People v. Givera, G.R. No. 132159, Jan. 18, 2001).* (b) Not established. *(Calim v. CA, G.R. No. 140065, Feb. 13, 2001; People v. Aytalin, G.R. No. 134138, Jun 21, 2001; People v. Flores, G.R. No. 138841, April 4, 2001).* [i] The circumstance of premeditation does not automatically follow a finding of conspiracy or *vice versa.* Where conspiracy is merely implied from concerted actions at the time of the commission of the offense, evident premeditation can not be appreciated, absent proof showing how and when the plan to kill the victim was hatched or the time that elapsed before it was carried out, in order to determine if the accused had sufficient time between its inception and its fulfillment to dispassionately consider and accept all its consequences. *(People v. Dulot, G.R. No. 137770, Jan. 30, 2001).* [ii] There was no proof of the time when appellant allegedly determined to commit the crime against the victim. The appellant did not even know the victim and *vice versa* prior to their confrontation at the place of the shooting incident. Appellant's act of tailing the victim's group is not an overt act that reflects appellant's determination to kill the victim. Appellant followed the jeep in order to effect and arrest women whom he suspected to be prostitutes. *(People v. Peralta, G.R. No. 128116, Jan. 24, 2001).*

Abuse of Superior Strength. (a) Established. *(People v. De Leon, G.R. No. 129057, Jan. 22, 2001).* An attack made by an armed man upon a woman, who died as a result thereof, is murder, because his sex and weapon gave him superiority of strength. *(People v. Olivo, G.R. No. 130335, Jan. 18, 2001).* (b) Not Appreciated. *(People v. Tamanon, G.R. No. 1350566, Feb. 15, 2001; People v. Tilos,*

G.R. No. 138385, Jan. 16, 2001; People v. Painitan, G.R. No. 137665, Jan. 16, 2001). It appears that the attack was made on the victim alternately and not simultaneously. *(People v. Pablo, G.R. No. 120394-97, Jan. 16, 2001).*

Treachery. (a) Established. *(People v. Natividad, G.R. 138017, Feb. 23, 2001; People v. Baltazar, G.R. No. 129933, Feb. 26, 2001; People v. Maderas, G.R. No. 138975, Jan. 29, 2001; People v. Basadre, G.R. No. 131851, Feb. 22, 2001).* [i] The victim was peacefully walking along the rice field with his friends when accused-appellant, with the use of a long firearm and without warning, fired upon the unarmed teenagers giving the latter no opportunity to repel the aggression or defend themselves. *(People v. de Leon, G.R. No. 126287, April 16, 2001).* [ii] Accused-appellant shot the unsuspecting victim while the latter was on board a tricycle. *(People v. Catapang, G.R. No. 128126, June 25, 2001).* [iii] Appreciated, even if the attack was frontal. *(People v. Perez, G.R. No. 134756, Feb. 13, 2001; People v. Bolivar, G.R. No. 130597, Feb. 21, 2001; People v. Zuniega, G.R. No. 126117, Feb. 21, 2001).*

(b) Not Established. *(People v. Aytalin, G.R. No. 134138, June 21, 2001; People v. Flores, G.R. No. 138841, April 4, 2001; People v. Cabareño, G.R. No. 138645, Jan. 16, 2001; People v. Givera, G.R. No. 132159, Jan. 18, 2001).* [i] Where no particulars are known as to how the killing began, its perpetration with treachery cannot be merely supposed. Even if treachery becomes evident at a subsequent stage, if it was not so at the start and the attack was continuous, it cannot be considered in the judgment. Treachery cannot be considered if the eyewitness did not see the commencement of the assault. *(People v. Leal, G.R. No. 139313, June 19, 2001).* [ii] No one saw the killing. In the absence of any witness, the manner and mode of attack employed by accused-appellant could not be established with certitude. Treachery may not be deduced from mere presumptions. *(People v. Pagador, G.R. Nos. 140006-10, April 20, 2001).* [iii] Absent any particulars as to the manner in which the aggression

commenced or how the act which resulted in the death of the victim unfolded, treachery cannot be established. *(People v. Oliva, G.R. No. 106826, Jan. 18, 2001).* [iv] The shooting incident was a result of the heated argument between the victim and the appellant. The suddenness of the attack does not, of itself, suffice to support a finding of *alevosia*, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. In the case at bar, the victim provoked the appellant when the former engaged the latter in a heated argument. It was not shown that appellant deliberately or consciously thought of shooting the victim prior to the confrontation. According to the three (3) prosecution witnesses, they saw appellant holding his firearm as he approached the jeep. The victim was not therefore unaware of the danger of being shot for the reason that appellant was already brandishing his weapon while he was approaching the jeep. *(People v. Peralta, G.R. No. 128116, Jan. 24, 2001).* [v] By hacking the victim with a *guinunting* as the victim was putting down his glass, accused-appellant apparently did not give the victim an opportunity to defend himself or to strike back. However, treachery cannot be appreciated as the prosecution failed to prove beyond reasonable doubt its subjective element, *i.e.*, that accused-appellant deliberately chose the method of assault with the particular objective of accomplishing the act without risk to himself arising from any defense that the victim might put up. *(People v. Camacho, G.R. No. 138629, June 20, 2001).* [vii] Treachery cannot be assumed and its existence must be established as fully as the crime itself. *(People v. Flores, G.R. No. 138841, April 4, 2001).*

Use of Motor Vehicle. Not aggravating as the police vehicle was not used directly or indirectly to facilitate the criminal act. *(People v. Amion, G.R. No. 140511, March 1, 2001).*

Cruelty. There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal

act. The test is whether accused-appellant deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse. In this case, the deceased was stoned, stabbed and beheaded. *(People v. Valdez, G.R. No. 128105, Jan. 24, 2001).*

Outraging or Scoffing at the Corpse or Person of the Victim. *(People v. Olivo, G.R. No. 130335, Jan. 18, 2001)*

PENALTIES

IN GENERAL

Retroactive Effect of Penal Laws. (a) The murder in this case took place after the effectivity on December 31, 1993 of RA 7659, which increased the penalty for murder from *reclusion temporal* maximum to death to *reclusion perpetua* to death. In view of the presence of the aggravating circumstance of abuse of confidence and in accordance with Art. 63 (1) of the Revised Penal Code, the trial court should have imposed the penalty of death on accused-appellant. However, the Revised Rules of Criminal Procedure was applied to this case. Thus, the aggravating circumstance of abuse of confidence, not having been alleged in the information, could not be appreciated to raise accused-appellant's sentence to death. *(People v. Arrojado, G.R. No. 130492, Jan. 31, 2001).* (b) Also, in another case, price or reward, that was not alleged in the information, was not appreciated. *(People v. Uganap, G.R. No. 130605, June 19, 2001).*

DURATION AND EFFECT

Duration. *Reclusion perpetua* remains indivisible notwithstanding the fixing of its duration from twenty years and one

day to forty years. Hence, the trial court erred in imposing on accused-appellant the penalty of 30 years of *reclusion perpetua.* In line with the *People v. Lucas* ruling, accused-appellant should suffer the entire extent of forty years. *(People v. Arrojado, G.R. No. 130492, Jan. 31, 2001).*

Proper Nomenclature. Courts must employ the proper nomenclature specified in the Revised Penal Code, such as *reclusion perpetua* not life imprisonment; or ten days of *arresto menor*, not ten days of imprisonment. *(People v. Latupan, G.R. Nos. 112453-56, June 28, 2001).* Unlike life imprisonment, *reclusion perpetua* carries with it accessory penalties provided in the Revised Penal Code and has a definite extent and duration. Life imprisonment is invariably imposed for serious offenses penalized by special laws, while *reclusion perpetua* is prescribed in accordance with the Revised Penal Code. *(People v. Ellasos, June 6, 2001).*

APPLICATION OF PENALTIES

Complex Crime. (a) The killing of LA and JA and the wounding of JM and LEA resulted not from a single act but from several and distinct acts of stabbing. The accused-appellant is liable, not for a complex crime of double murder, but for two separate counts of murder and separate counts of physical injuries. *(People v. Latupan, G.R. Nos. 112453-56, June 28, 2001).* (b) Since the three (3) murders and attempted murder were produced by a single act (the explosion caused by the hurling of a grenade into the bedroom of the victims), the case comes under Art. 48 of the Revised Penal Code on complex crimes. *(People v. Carpo, G.R. No. 132676, Apr. 4, 2001).*

Single Indivisible Penalty. (a) Death. Pursuant to Article 63, paragraph 1 of the Revised Penal Code. In all cases in which the law prescribes a single indivisible penalty, it shall be applied

by the court regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed. Even assuming *arguendo* that aggravating or even mitigating circumstances have been proven in the instant case, the same should no longer be taken into account because the prescribed penalty for qualified rape is death, which is single and indivisible. *(People v. Palermo, G.R. No. 120630, June 28, 2001).*

(b) *Reclusion Perpetua.* Even if the aggravating circumstance of dwelling is proven to have attended the commission of the crime, the appropriate penalty for simple rape would still be *reclusion perpetua. (People v. Mangompit, Jr., G.R. No. 139962-66, Mar. 7, 2001).*

CIVIL LIABILITY

Civil Indemnity. Moral Damages. The recent case law on rape permits the automatic grant of civil indemnity and moral damages to the victim once the fact of rape has been established. The award of civil indemnity is mandatory upon the finding of the fact of rape. The indemnification for the victim shall be in the increased amount of P75,000 if the crime of rape is effectively qualified by any of the circumstances under which the death penalty is authorized by the applicable amendatory laws, and that moral damages may additionally be awarded to the rape victim without need of pleading or proof of the basis thereof as has heretofore been practiced. *(People v. Palermo, G.R. No. 120630, June 28, 2001).*

SPECIFIC CRIMES

CRIMES AGAINST PUBLIC ORDER

Rebellion. In the instant case, there was no evidence that the killing was in connection with or in furtherance of rebellious

acts. It was not even established that accused-appellant was indeed a member of the NPA. *(People v. Oliva, G.R. No. 106826, Jan. 18, 2001).*

CRIMES COMMITTED BY PUBLIC OFFICERS

Bribery. *(Mamba v. Judge Garcia, A.M. No. MTJ-96-1110, June 25, 2001).*

CRIMES AGAINST PERSON

DESTRUCTION OF LIFE

Parricide. (a) Established. Suicide theory rejected. *(People v. Velasco, G.R. No. 128089, Feb. 13, 2001; People v. Castillo, G.R. No. 139339, Jan. 19, 2001).* (b) Not established. In every criminal prosecution, the evidence presented must be sufficient to prove *corpus delicti* – that is, the actual offense committed. In this case, it has been established that accused-appellant beat his wife with a piece of wood. However, the prosecution failed to provide the crucial link between the assault and the death, that the beatings inflicted by accused-appellant upon his wife were the proximate cause of her death. *(People v. Matyaong, G.R. No. 140206, June 21, 2001).*

Murder. *(Please see AGGRAVATING CIRCUMSTANCES).*

Homicide. *(Please see AGGRAVATING CIRCUMSTANCES).*

PHYSICAL INJURIES

Absence of Intent to Kill. Inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove

the fact beyond reasonable doubt. When such intent is lacking but wounds were inflicted, the crime is not frustrated murder but physical injuries only. *(People v. Pagador, G.R. Nos. 140006-10, April 20, 2001).*

RAPE

Rape. (a) Either attempted or consummated. There can be no frustrated rape. *(People v. Aca-ac, G.R. No. 1142500, April 20, 2001).* Attempted Rape. *(People v. Francisco, G.R. Nos. 135201-02, Mar. 15, 2001; Mendoza v. People, G.R. No. 141512, April 16, 2001).*

(b) Rape established. *(People v. Mendi, G.R. No. 112978-81, Feb. 19, 2001; People v. Albior, G.R. No. 115079, Feb. 19, 2001).* Physical resistance need not be established in rape cases where threats and intimidation are employed on the victim. The crime committed, however, is not the complex crime of forcible abduction with rape. Forcible abduction is absorbed in the crime of rape if the real objective of the accused is but to rape the victim. *(People v. Rapisora, G.R. No. 138086, Jan. 25, 2001).*

(c) Precise time of the commission of rape is not an essential element of the crime. Even a variance of a few months between the time set out in the indictment and that established by the evidence during trial does not constitute an error so serious as to warrant the reversal of a conviction solely on that score. *(People v. Serdanilla, G.R. No. 137696, Jan. 24, 2001).*

(d) Rape of a mental retardate (classified as a person "deprived of reason") falls under subparagraph (b), not subparagraph (d) of Article 266-A (1) of the Revised Penal Code. *(People v. Magabo, G.R. No. 139471, Jan. 23, 2001).*

Rape Committed with Use of Deadly Weapon. Penalized by *reclusion perpetua* to death. *(People v. Balano, G.R. No. 138474, March 28, 2001).*

Qualified rape. (a) The attendance of any of the circumstances enumerated in Section 11 of RA 7659 would mandate the imposition of the single indivisible penalty of death. Such circumstances are in the nature of qualifying circumstances which should be alleged in the information and proved at the trial. *(People v. Villa, G.R. No. 124639, Feb. 1, 2001; People v. Guntang, G.R. No. 135234-38, March 8, 2001; People v. Nardo, G.R. No. 133888, March 1, 2001; People v. Pagdayawon, G.R. No. 130522, Feb. 15, 2001)*. Statutory Rape - punished by death. *(People v. Pagdayawon, G.R. No. 130522, Feb. 15, 2001).*

(b) Not Established. [i] To merit the punishment of death, the aggravating circumstance of the accused-appellants' membership in the Philippine National Police or complainant's being under police custody when raped must be properly alleged in the information. For the prosecution's failure to do so, these facts cannot be appreciated as aggravating circumstances. *(People v. Murillo, G.R. Nos. 128851-56, Feb. 19, 2001).* [ii] Knowledge of the offender of the mental disability of the victim at the time of the commission of rape qualifies the crime and makes it punishable by death under Article 266-B, par. 10 of the Revised Penal Code, as amended by R.A. 8353. An allegation in the information of such knowledge of the offender is necessary as a crime can only be qualified by circumstances pleaded in the indictment. *(People v. Magabo, G.R. No. 139471, Jan. 31, 2001).* [iii] Omission of complainant's age (minority) in the accusatory portion of the information removed the offense from the qualified form of rape punishable by death. *(People v. Elpedes, G.R. No. 137106-07, Jan. 31, 2001; People v. Rondilla, G.R. No. 134368, Feb. 8, 2001).* Where the information was silent as to the age of the complainant but in her affidavit which formed part of the information, it was categorically stated that she was 13 years old when the rape was committed - the Court did not consider this proper or sufficient to supply the deficiency regarding the age of the victim. Such omission of complainant's age in the accusatory portion of the information, resulting in appellant being charged

only with simple rape. *(People v. Awing, G.R. No. 133919-20, Feb. 19, 2001).* [iv] The victim's age, while alleged in the information, was not proven adequately, for failure of the prosecution to present the victim's birth certificate or similarly acceptable proof of her age as a minor. *(People v. San Agustin, G.R. Nos. 135560-61, Jan. 24, 2001)*, as where the victim's minority was sought to be established solely on the victim's testimony regarding her birth date. *(People v. Naag, G.R. No. 136394, Feb. 15, 2001).* Although the presentation of birth certificate or other corroborative evidence is not indispensable to prove the victim's age for purposes of imposing the death penalty, this becomes necessary when the complainant's age at the time of the commission of the rape is alleged to be between 15 and 17 years old. At these ages, it is not easy to determine by mere physical appearance the age of complainant. *(People v. Gonzales, G.R. No. 139445-46, June 20, 2001).* [iv] For failure to allege in the information the relationship between the offender and the complainant. *(People v. Delamar, G.R. No. 136102, Jan. 31, 2001; People v. Quiegan, G.R. Nos. 133556-603, Feb. 19, 2001).* [v] Where, the information alleged that accused-appellant is the *stepfather* of the complainant but the Court seriously doubted the validity of the marriage between accused-appellant and the complainant's mother, considering that the marriage between the complainant's mother and her father was still subsisting then. *(People v. Velasquez, G.R. No. 132635 & 143872-75, Feb. 21, 2001).*

Special Protection of Children Against Child Abuse. Violation of Section 5, RA 7610. *(People v. Optana, G.R. No. 133922, Feb. 12, 2001).*

Rape With Homicide - Special complex crime. *(People v. Rayos, G.R. No. 133823, Feb. 7, 2001).*

SUPPORT AND/OR ACKNOWLEDGMENT

Under Art. 345 of the Revised Penal Code, those guilty of rape shall also be sentenced to acknowledge the offspring, unless the law prevents him from so doing; and in every case, to support the offspring. (a) Thus, the trial court correctly ordered accused-appellant to acknowledge and support complainant's child. *(People v. Gonzales, G.R. No. 139445-46, June 20, 2001).* (b) The accused (stepfather of complainant) was ordered to provide financial support to each child. *(People v. Awing, G.R. Nos. 133919-20, Feb. 19, 2001).* (c) However, in this case, where accused-appellant is married and in view of the difference of about three (3) months between the date of the commission of rape and the date of birth of complainant's child, accused-appellant cannot be ordered to acknowledge and support the child of complainant. *(People v. Dichoson, G.R. No. 118986-89, Feb. 19, 2001).*

CRIMES AGAINST PERSONAL LIBERTY

Kidnapping and Serious Illegal Detention. Primary element of the crime of kidnapping is actual confinement, detention and restraint of the victim. In prosecution for kidnapping, the intent of the accused to deprive the victim of the latter's liberty, in any manner, must be established by indubitable proof. *(People v. Ubongen, G.R. No. 126024, Apr. 20, 2001).*

CRIMES AGAINST PROPERTY

Robbery with Homicide (Special Complex Crime). (a) Where the accused killed three (3) persons by reason, or on the occasion, of the robbery, should the multiplicity of homicides be appreciated as an aggravating circumstance? For sometime, this ticklish issue was the subject of conflicting views when in some cases it was

held that the additional rapes / homicides committed on the occasion of robbery would not increase the penalty; while in other cases, the ruling was, the multiplicity of rapes / homicides committed would be appreciated as an aggravating circumstance. *People v. Regala* settled the issue. There, the Court ruled that no law provides that the additional rape or homicide should be considered as aggravating circumstances. The enumeration of aggravating circumstances under Article 14 of the Revised Penal Code is exclusive, as opposed to the enumeration in Article 13 of the same Code regarding mitigating circumstances, where paragraph 10 provides for analogous circumstances. *(People v. Gano, G.R. No. 134373, Feb. 28, 2001).*

(b) 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 in killing a person after the robbery to do away with a witness or to defend the possession of the stolen property. *(People v. Torres, G.R. No. 130661, June 27, 2001).*

(c) Whenever a homicide has been committed as a consequence or on the occasion of a robbery, all those who took part as principals in the robbery will also be held guilty as principals in the special complex crime of robbery with homicide, even if they did not all actually take part in the homicide; unless it appears that those who did not do so endeavored to prevent the homicide. *(People v. Lago, G.R. No. 121272, June 6, 2001).*

(d) Established. *(People v. Del Rosario, G.R. No. 131036, June 20, 2001; People v. Torres, G.R. No. 130661, June 27, 2001).*

(e) Not established. From all indications, accused-appellant, a CAFGU member, was primarily interested in taking the life of

the two deceased whom he suspected of exacting quota from the Barangay captain and the taking of the subject engine was merely an afterthought that arose subsequent to the killing of the victim. Such taking after the culprit has successfully carried out the primary criminal intent to kill the victim, and hence the use of violence or force is no longer necessary, is theft. *(People v. Consejero, G.R. No. 118334, Feb. 20, 2001).* Only the fact and causes of deaths were established with moral certainty. Hence, there can be no robbery with homicide. *(People v. Conde, G.R. No. 113269, April 10, 2001).*

Robbery With Rape (Special Complex Crime). Art. 294, par. 1 of the Revised Penal Code covers cases of multiple rapes. The juridical concept of the crime does not limit the consummation of rape against one single victim or to one single act, making other rapes in excess of that number as separate, independent offense or offenses. All rapes are merged in the composite, integrated whole that is *robbery with rape*, so long as the rapes accompanied the robbery. It does not matter too whether the rape occurred before, during, or after the robbery. *(People v. Seguis, G.R. No. 135034, Jan. 18, 2001).* In this case, there is no special complex crime of robbery with rape. The crimes committed were the separate crimes of rape and theft. Rape was the primary intent of the accused-appellant and his taking away of the belongings of the victim was a mere afterthought. Accused-appellant should only be convicted of theft when he took the personal properties of the victim, as the element of violence and intimidation was no longer present. While he inflicted force upon her person, that was with the view and in pursuance of rape, not of the taking. When the asportation happened, the victim was near lifeless and incapable of putting any form of opposition. *(People v. Naag, G.R. No. 136394, Feb. 15, 2001).*

Qualified Theft Through Falsification of Commercial Document. Accused took P36,480.30 with grave abuse of confidence by forging the signature of officers authorized to sign the subject

check and had the check deposited in the account of a fictitious payee without any legitimate transaction with the bank. Theft is qualified if it is committed with grave abuse of confidence. The fact that accused-appellant, as assistant cashier of the bank had custody of the aforesaid checks and had access not only in the preparation but also in the release of cashier's checks, suffices to designate the crime as qualified theft. Falsification of the subject cashier's check was a necessary means to commit the crime of qualified theft resulting in a complex crime under Article 48 of the Revised Penal Code, which provides that where an offense is a necessary means for committing the other, the penalty for the more serious crime in its maximum period shall be imposed. *(People v. Salonga, G.R. No. 131131, June 21, 2001).*

Qualified Theft (Theft of Large Cattle). **Anti-Cattle Rustling Law of 1974.** PD 533 is not a special law. The penalty for its violation is in terms of the classification and duration of penalties prescribed in the Revised Penal Code, thus indicating that the intent of the lawmaker was to amend the Revised Penal Code with respect to the offense of theft of large cattle. *(Canta v. People, G.R. No. 140937, Feb. 28, 2001).*

Estafa. (Article 315, paragraph 2 [d], Revised Penal Code). In this case, the person who issued the checks is not the lawful owner of the checking account from which the checks were drawn. At the time the checks were issued, the payee would never recover from the checks because the drawee bank would not recognize the signature of the drawer. In other words, the dishonor of the checks will not only be on account of lack or insufficiency of funds in the account but also because the checks are invalid for having been issued by an unauthorized person. Hence, there was no valid issuance of the checks. Yet, the accused (issuer of the checks) may still be held liable for estafa, even if he is not the owner of the checking account in question, if it is shown that he conspired with the accused-at-large (owner of the checking account) by knowingly

signing the latter's checks to ensure the payee's inability to encash the said checks. *(People v. Gulion, G.R. No. 141183, Jan. 18, 2001).*

CRIMES AGAINST CHASTITY

Acts of Lasciviousness. Not attempted rape. *(People v. Amadore, G.R. No. 140669-75, April 20, 2001).* In crimes against chastity, such as acts of lasciviousness, relationship is considered as aggravating. *(People v. Mariño, G.R. No. 132550, Feb. 19, 2001).* Not statutory rape. *(People v. Collado, G.R. Nos. 135667-70, March 1, 2001).*

Forcible Abduction with Rape. *(People v. Ablaneda, G.R. No. 131914, April 30, 2001).*

SPECIAL PENAL LAWS

*BOUNCING CHECKS LAW (*BP BLG.22*)*

Insufficient Funds. Knowledge Of. (a) To hold a person liable under the first paragraph of Section 1 of *BP Blg. 22*, it is not enough to establish that a check issued was subsequently dishonored. It must be shown further that the person who issued the check knew at the time of issue that he did not have sufficient funds in or to his credit with the drawee bank for the payment of such check in full upon its presentment. Because this element involves a state of mind which is difficult to establish, Section 2 of the law creates a *prima facie* presumption of such knowledge when it is shown that the drawer received a notice of dishonor and, within five banking days thereafter, failed to satisfy the amount of the check or to make arrangement for its payment. If such notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption or *prima facie* evidence

as provided for in Section 2 cannot arise, since there would be no way of reckoning the crucial five-day period. Although the offense charged is *malum prohibitum,* the prosecution is not excused from its responsibility of proving beyond reasonable doubt all the elements of the offense, one of which is knowledge of the insufficiency of funds. *(Danao v. CA, G.R. No. 122353, June 6, 2001).*

(b) The check in question was not issued without sufficient funds nor dishonored due to insufficiency of funds. Said check was stamped "payment stopped-funded" and "DAUD" meaning drawn against uncollected deposits. Even with uncollected deposits, the bank may honor the check at its discretion in favor of favored clients. *(Tan v. People, G.R. No. 141466, Jan. 19, 2001).*

(c) The law does not require a maker to maintain funds in his bank account for only 90 days. Neither does it discharge him of the duty to maintain sufficient funds in the account within a reasonable time therefrom. Private respondent deposited the checks 157 days after the date of the check. Hence, the said check cannot be considered stale. Only the presumption of knowledge of insufficiency of funds was lost, but such knowledge could still be proven by direct or circumstantial evidence. *(Wong v. CA, G.R. No. 117857, Feb 2, 2001).*

Penalty. Pursuant to the policy guidelines in Administrative Circular No.l2-2000, which took effect on November 21, 2000, the penalty imposed on petitioner should now be modified to a fine of not less than, but not more than, double the amount of the check that was dishonored. *(Wong v. CA, G.R. No. 117857, Feb 2, 2001).*

CARNAPPING

RA 6539 imposes the penalty of life imprisonment to death when the owner, driver or occupant of the carnapped motor vehicle

is killed in the commission of the carnapping. RA 7659 amended RA 6539 by changing the penalty to *reclusion perpetua* to death when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof. *(People v. Ellasos, June 6, 2001).*

ILLEGAL RECRUITMENT

Large Scale Illegal Recruitment. *(People v. Valle, G.R. No. 126933, Feb. 23, 2001).* Considered an offense involving economic sabotage when illegal recruitment is committed by a syndicate or committed in large scale. *(People v. Navarra, G.R. No. 119361, Feb. 19, 2001).*

(a) A conviction for this crime must be based on a finding in each case of illegal recruitment of three or more persons whether individually or as a group. The law does not require that at least three victims testify at the trial; nevertheless, it is necessary that there is sufficient evidence proving that the offense was committed against three or more persons. *(People v. Del Piedra, G.R. No. 121777, Jan. 24, 2001).*

(b) That appellant did not receive any payment for the promised or offered employment is of no moment. From the language of the statute, the act of recruitment may be "for profit or not." *(People v. Del Piedra, G.R. No. 121777, Jan. 24, 2001).*

(c) Appellant interposed the defense that the approval of her application for a service contractor's authority should be given a retroactive effect as to make all her previous recruitment activities valid. This issue, however, was not raised in the trial court. She cannot now be allowed to raise it for the first time on appeal without offending basic rules of fair play, justice and due process. *(People v. Chua, G.R. No. 128280, April 4, 2001).*

THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED

Illegal Possession of Drugs. *(People v. De Guzman, G.R. No. 117952-53, Feb. 14, 2001).* Shabu. Not established. In this case, it is undisputed that five (5) pieces of small plastic bags containing shabu were seized during the buy-bust operation. However, there is want of evidence to establish the fact of possession of the same by accused-appellant, the very crime for which he was charged. *(People v. Mariano, G.R. No. 133990, June 26, 2001).*

ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019), AS AMENDED

Prescription. (a) The longer prescriptive period of 15 years, as provided in Sec. 11 of R.A. 3019, as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused, cannot be given retroactive effect. While petitioner may not have knowledge of the alleged crime at the time of its commission, the registration of subject deed of sale with the Register of Deeds constitutes constructive notice thereof to the whole world, including the petitioner. In the interpretation of law on prescription of crimes, that which is more favorable to the accused is to be adopted. *(People v. Pacificador, G.R. No. 139405, Mar. 13, 2001).* (b) Prescriptive period for violation of R.A. No. 3019 computed from the discovery of the commission thereof and not from the day of such commission. *(PCGG v. Hon. Desierto, G.R. No. 140232, Jan. 19, 2001).*

Gross Inexcusable Negligence (Sec. 3[e] of RA 3019). Simple negligence of duty. *(De la Victoria v. Mongaya, A.M. No. P-00-1436, Feb. 19, 2001).*

ILLEGAL POSSESSION OF FIREARM

The crime is immediately consummated upon mere possession of a firearm devoid of legal authority, since it is assumed that the same is possessed with *animus possidendi*. *(People v. De Guzman, G.R. No. 117952-53, Feb. 14, 2001).* In this case, the appellant must be acquitted for failure of the prosecution to prove non-possession of a license. *(People v. Mendi, G.R. No. 112978-81, Feb. 19, 2001; People v. Lenantud, G.R. No. 128629, Feb. 22, 2001).*

LABOR LAW

PRE-EMPLOYMENT

Recruitment and Placement. Article 13 (b) of the Labor Code defining "recruitment and placement" is not a "perfectly vague act" whose obscurity is evident on its face which thus violates the due process clause. If at all, the provision is merely couched in imprecise language that was salvaged by proper construction. *(People v. Del Piedra, G.R. No. 121777, Jan. 24, 2001).*

POEA Standard Employment Contract on the Employment of All Filipino Seamen On Board Ocean-Going Vessels (Standard Employment Contract). Petitioner's act of committing private respondent for treatment at the Manila Doctors Hospital and paying the hospital bills therein is tantamount to "company-designation" of said hospital. *(German Marine Agencies, Inc. v. NLRC, G.R. No. 142049, Jan. 30, 2001).*

CONDITIONS OF EMPLOYMENT

Labor-only Contracting. The appellate court found that: (1) The so-called subcontractor did not have a license to engage in subcontracting; (2) The salaries of private respondents were actually paid by SSI and were given to the subcontractor who in turn gave the salaries to private respondents; (3) It was SSI which hired the private respondents and placed them under their respective subcontractors; and (4) Private respondents used SSI's tools and equipment in their work. *(Sandoval Shipyards, Inc. v. Pepito, G.R. No. 143428, June 25, 2001).*

WELFARE LEGISLATION

Disability Compensation. Strict rules of evidence are not applicable in claims for compensation. Disability should not be understood more on its medical significance but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. The POEA Standard Employment Contract for Seamen is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. Its provisions must therefore be construed and applied fairly, reasonably and liberally in their favor. *(Philippine Transmarine Carriers, Inc. v. NLRC, G.R. No. 123891, Feb. 28, 2001).*

LABOR RELATIONS

Certification Election and Issue of the Existence of Employer-employee Relationship. However final it may become, the decision in a certification election case, by the very nature of such proceeding, is not such as to foreclose all further dispute as to the existence or non-existence of an employer-employee relationship. *(Sandoval Shipyards, Inc. v. Pepito, G.R. No. 143428, June 25, 2001).*

Collective Bargaining Agreement. Retroactive effect of new CBA which the parties will sign. *(LMG Chemicals Corporation v. Secretary of Labor, G.R. No. 127422, April 17, 2001).*

Strikes and Lockouts. The authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute. *(LMG Chemicals Corporation v. Secretary of Labor, G.R. No. 127422, April 17, 2001).*

Abandonment of office – Not established. *(Canonizado v. Aguirre, G.R. No. 133132, Feb. 15, 2001).*

Execution of Decisions, Orders, or Awards. Article 224 of the Labor Code does not govern the procedure for filing a petition for certiorari with the Court of Appeals from the decision of the NLRC but to the execution of final decisions, orders or awards and requires the sheriff or a duly deputized officer to furnish both the parties and their counsel with copies of the decision or award for that purpose. *(Ginete v. Sunrise Manning Agency, G.R. No. 142023, June 21, 2001).*

Technical Rules Not Binding. The fact that all the documents submitted in evidence by an employee were prepared by him does not make them self-serving since they have been offered in the proceedings before the Labor Arbiter and ample opportunity was given to the employer to rebut their veracity and authenticity. The seriousness of the allegations in the complaint-affidavit in the case at bar cannot just be perfunctorily rejected absent any showing that the petitioner-affiant was lying when he made the statements contained therein. There being none, it was grave abuse of discretion on the part of NLRC to ignore or simply sweep under the rug the petitioner's complaint-affidavit and conclude that it was merely hearsay evidence without finding that there was adequate reason not to believe the allegations contained therein. The rules of evidence are not supposed to be strictly observed in proceedings

before the NLRC and the POEA Adjudication Office. *(Sevillana v. I.T. International Corp., G.R. No. 99047, Apr. 16, 2001).*

POST EMPLOYMENT

Regular Employment. Assistant Vice President of the Foreign Department of a bank. *(People v. Tio, G.R. No. 132482-83, Feb. 20, 2001).* Route manager, a managerial level position. *(Gonzales v. NLRC, G.R. No. 131653, Mar. 26, 2001).*

Termination of Employment. (a) **Valid**. [i] Procedural due process requires, for the validity of the employee's dismissal, that an employer furnish the employee sought to be dismissed with two (2) written notices before termination may be validly effected. They are: (a) a notice apprising the employee of the particular acts or omission for which the dismissal is sought; and (b) a subsequent notice informing the employee of the decision to dismiss him. While the letter does not bear on its face that petitioner acknowledged receipt thereof, it is undisputed that petitioner freely, voluntarily and actively participated in the administrative investigation of the charges filed against him, as evidenced by his signature affixed on each page of the minutes of the hearings conducted on various dates. After said investigation, petitioner received a notice of dismissal. Under these circumstances, there is no basis for the Arbiter's ruling that private respondent breached legal procedure prior to the termination of petitioner's employment. Substantial due process was also complied with. Separation from employment was due to loss of trust and confidence, a just and valid ground for dismissal under Article 282 (c) of the Labor Code. *(Gonzales v. NLRC, G.R. No. 131653, March 26, 2001).*

[ii] There is no basis to award backwages as illegal dismissal was not established. *(Security and Credit Investigation, Inc. v. NLRC, G.R. No. 114316, Jan. 26, 2001).*

[iii] Petitioner's filing of illegal dismissal case has no basis considering that at the time he filed his complaint, he was supposed still to be on an extended leave, authorized by private respondent, while petitioner was waiting for the action of management on his request for transfer from "*laot*" to "*tabi*" and to be able to regain his failing health.

(b) **Illegal Dismissal.** Article 277 (b) of the Labor Code puts the burden of proving that the dismissal of an employee was for a valid or authorized cause on the employer. Said provision of law does not distinguish whether the employer admits or does not admit the dismissal. In all termination cases, strict compliance by the employer with the demands of both procedural and substantive due process is a condition *sine qua non* for the same to be declared valid. *(Sevillana v. I.T. International Corp., G.R. No. 99047, April 16, 2001).*

[i] Ground of loss of trust and confidence unsubstantiated. *(People v. Tio, G.R. No. 132482-83, Feb. 20, 2001).* [ii] Respondent was not guilty of dishonesty. *(Shangri-la Hotel v. Dialogo, G.R. No. 141900, April 20, 2001).*

Backwages. Full backwages to illegally dismissed employee. *(People v. Tio, G.R. No. 132482-83, Feb. 20, 2001).*

LAND LAWS

PUBLIC LAND ACT (CA 141)

Disposition of Public Land. Sections 3 and 4 of Commonwealth Act No. 141, as amended, otherwise known as the Public Land Act, give to the Director of Lands, primarily, and to the Secretary of Agriculture and Natural Resources (now Secretary of the Department of Environment and Natural Resources [DENR]), ultimately, the authority to dispose and manage public lands. In this regard, courts have no authority to inquire into the validity of decree of registration issued by the Director of Lands. Only the DENR Secretary can review, on appeal, such decree. DENR's jurisdiction over public lands does not negate the authority of courts of justice to resolve questions of possession and their decisions stand in the meantime that the DENR has not settled the respective rights of public land claimants. But once the DENR has decided, particularly, with the grant of homestead patent and issuance of an OCT and then TCT later, its decision prevails. *(Omandam v. CA, G.R. No. 128750, Jan. 18, 2001).*

Alienable Land. Unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain. Hence, occupation thereof, however long, cannot ripen into ownership. *(Seville v. National Development Company, G.R. No. 129401, Feb. 2, 2001).*

Judicial Confirmation of Imperfect Title. A person in open, continuous, exclusive and notorious possession of a public land for more than 30 years acquires an imperfect title thereto. That title may be the subject of judicial confirmation, pursuant to Section 48 of the Public Land Act. *(Seville v. National Development Company, G.R. No. 129401, Feb. 2, 2001).*

Prohibition on Alienation or Encumbrance of Land. The Public Land Act expressly provides that the prohibited transaction is void and has the effect of nullifying the grant or award. In contrast, the Deed of Sale with Mortgage entered into with the NHA merely gave NHA the option to rescind the contract, in case of an unauthorized alienation, transfer or encumbrance of the property. *(Del Rosario v. Bonga, G.R. No. 136308, Jan. 23, 2001).*

ANCESTRAL LANDS

(Cutaran v. DENR, G.R. No. 134958, Jan. 31, 2001).

LAND REGISTRATION ACT (Act 496)

Application for Registration. Must state the names and addresses of all occupants and adjoining owners if known; and, if not known, what search has been made to find them. (Divina v. CA, G.R. No. 117734, Feb. 22, 2001). Failure and intentional omission to disclose the fact of actual physical possession by another person during registration proceedings constitutes actual fraud. Likewise, it is fraud to knowingly omit or conceal a fact, upon which benefit is obtained to the prejudice of a third person. *(Spouses Manuel v. CA, G.R. No. 108228, Feb. 1, 2001).*

Decree of Registration. Adjudication in a registration of a cadastral case does not become final and incontrovertible until the expiration of one year after the entry of the final decree. As long as the final decree is not issued, and the one year within which it may be revised has not elapsed, the decision remains under the control and sound discretion of the court rendering the decree, which court after hearing, may set aside the decision or decree or adjudicate the land to another party. *(Divina v. CA, G.R. No. 117734, Feb. 22, 2001).*

Certificate of Title. (a) Although the certificate of title became indefeasible after the lapse of one year from the date of the decree of registration, the attendance of fraud in its issuance created an implied trust in favor of petitioners and gave them the right to seek reconveyance of the parcel of land wrongfully obtained. *(Del Campo v. CA, G.R. No. 108228, Feb. 1, 2001).* (b) Not subject to collateral attack. A collateral attack is made when in another action to obtain a different relief, the certificate of title is assailed as an incident in said action. Petitioners raised the issue of invalidity of the titles as a defense in an answer/counterclaim to respondents' action for recovery of ownership. This partakes of the nature of a collateral attack and an indirect challenge to the final judgment and decree of registration which resulted in the issuance of the titles. *(Vda. de Villanueva v. CA, G.R. No. 117971, Feb. 1, 2001; Seville v. National Development Company, G.R. No. 129401, Feb. 2, 2001).*

Servitude. The only servitude which a private property owner is required to recognize in favor of the government is the easement of a public highway, way, private way established by law, or any government canal or lateral thereof where the certificate of title does not state that the boundaries thereof have been pre-determined. This implies that the same should have been pre-existing at the time of registration of the land in order that the registered owner may be compelled to respect it. Conversely, where the easement is not pre-existing and is sought to be imposed only after the land has been registered under the Land Registration Act, proper expropriation proceeding should be had, and just compensation paid to the registered owner. *(Eslaban v. Onorio, G.R. No. 146062, June 28, 2001).*

Dealings With Land After Original Registration. *(a* Accion Reivindicatoria - *an action to recover ownership over real property. (Evadel Realty v. Spouses Soriano, G.R. No. 144291, April 20, 2001).*

(b) Notice of *Lis Pendens* - is filed for the purpose of warning all persons that the title to certain property is in litigation and that

if they purchase the same, they are in danger of being bound by an adverse judgment. Only the particular property subject of litigation is covered by the notice. In this case, only the 200 square meter portion of the entire area is embraced by the notice. For purposes of annotating a notice of lis pendens, there is nothing in the rules which requires the party seeking annotation to show that the land belongs to him. In fact, there is no requirement that the party applying for annotation must prove his right or interest over the property in question. Even on the basis of an unregistered deed of sale, a notice of lis pendens may be annotated. Such annotation can not be considered as a collateral attack against the certificate of title. *(Spouses Lim v. Vera Cruz, G.R. No. 143646, April 4, 2001).*

Reversion. Petitioners' claim that the land should be reconveyed to them cannot be allowed. Considering that the land was public before the miscellaneous sales patent was issued to LSBDA, petitioners have no standing to ask for the reconveyance of the property to them. The proper remedy is an action for reversion which may be instituted only by the Office of the Solicitor General, pursuant to Section 101 of the Public Land Act. Unless a public land is shown to have been reclassified as alienable or actually alienated by the State to a private person, that piece of land remains part of the public domain. Hence, occupation thereof, however long, cannot ripen into ownership. *(Seville zv. National Development Company, G.R. No. 129401, Feb. 2, 2001).*

Real Property Tax. For purposes of real property taxation, the registered owner of a property is deemed the taxpayer and, hence, the only one entitled to a notice of tax delinquency and the resultant proceedings relative to an auction sale. Petitioners, who allegedly acquired the property through an unregistered deed of sale, are not entitled to such notice, because they are not the registered owners. *(Talusan v. Tayag, G.R. No. 133698, April 4, 2001).*

RECONSTITUTION OF LOST OR DESTROYED TORRENS CERTIFICATES OF TITLE (RA 26)

Judicial Reconstitution. Based On Owner's Duplicate Certificate. In the present case, the source of the petition for reconstitution was petitioner's duplicate copies of the two TCTs mentioned in Section 3(a). Clearly, the petition is governed, not by Section 12 and 13, but by Section 10 of RA 26. Nothing in this provision requires that notice be sent to owners of the adjoining lots. Verily, the requirement is found in Section 13, which does not apply to petitions based on an existing owner's duplicate of the TCT. For petitions based on sources enumerated in Sections 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(f), Section 13 adds another requirement: that the notice be mailed to occupants, owners of adjoining lots, and all other persons who may have an interest in the property. None of the circulars mentioned in Supreme Court Administrative Circular No. 7-96 requires any clearance from the Land Registration Authority for the judicial reconstitution of title under Section 10 of RA 26. NALTDRA Circular No. 91 which is mentioned in Circular No. 7-96 deals with the subject of original land registration cases, not reconstitution of titles. *(Puzon v. Sta. Lucia Realty and Development, Inc. G.R. No. 139518, Mar. 6, 2001).*

TONDO FORESHORE LAND (RA 1597)

A special law enacted to govern all incidents of the subdivision of the Tondo Foreshore Land. *(Spouses Recaña v. CA, G.R. No. 123850, Jan. 5, 2001).*

LEGAL AND JUDICIAL ETHICS

LAWYERS

Private Practice, specifically, of the law profession does not pertain to an isolated court appearance; rather, it contemplates a succession of acts of the same nature, habitually or customarily holding one's self to the public as a lawyer. *(Office of the Court Administrator v. Atty. Ladaga, A.M. No. P-99-1287, Jan. 26, 2001).*

Conflict of Interest. Respondent violated the prohibition against representing conflicting interests and engaging in unlawful, dishonest, immoral and deceitful conduct. *(De Guzman v. Atty. De Dios, Adm. Case No. 4943, Jan. 26, 2001).*

Unlawful, Dishonest, Immoral Or Deceitful Conduct. The Court cannot give credence to respondent's negative assertion that he did not know the special power of attorney issued in his favor was falsified. As a lawyer, respondent knows or ought to know that parties to a public document must personally appear before the notary public to attest that the same is their free act and deed. In utter disregard of this requirement, respondent caused the special power of attorney to be notarized without the parties appearing before the notary public. Thereafter, respondent presented the same to complainant rural bank in order to obtain a loan therefrom. It is thus apparent that respondent had a hand in the falsification of the document, especially, considering that it was he who chiefly benefited from it. In the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger and therefore guilty of falsification. *(Rural Bank of Silay, Inc. v. Atty. Pilla, Adm. Case No. 3637, Jan. 24, 2001).*

Respondent's acts clearly fall short of the standards set by the Code of Professional Responsibility, particularly, Rule 1.01 thereof, which provides that "(a) a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." The fact that the conduct pertained to respondent's private dealings with complainant rural bank is of no moment. A lawyer may be suspended or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a good condition precedent to the practice of law, but a continuing qualification for all members of the bar. *(Rural Bank of Silay, Inc. v. Atty. Pilla, Adm. Case No. 3637, Jan. 24, 2001).*

Disbarment. Pertinent provisions of Rule 139-B of the Rules of Court on IBP's investigation of disbarment complaints, report of its investigator, and the review of the latter's findings by the Board of Governors. The requirement that the IBP investigator afford the respondent in a disbarment complaint full opportunity to present his case cannot be taken lightly, for it is meant to ensure that baseless accusations against members of the Bar do not prosper. Non-compliance with the foregoing procedure would normally call for the remand of the case. Nevertheless, in instances where the controversy has been pending resolution for quite sometime and the issues involved could be resolved on the basis of the records on appeal, the Court has opted to resolve the case in the interest of justice. *(Atty. Teodosio v. Nava, Adm. Case No. 4673, April 27, 2001).*

JUDGES

Administrative Complaint. Filing of administrative complaint is not the proper remedy for the correction of actions of a judge perceived to have gone beyond the norms of propriety, where a sufficient judicial remedy exists. The administrative case

at bar involves an acquittal of the accused by respondent judge in three (3) closely related criminal cases. In view of the pendency in the Court of the petition for review on certiorari, the Court may not, ordinarily, review the said judgment of acquittal, as the inquiry in the administrative case is limited to the issue of whether the respondent judge is liable for the charges brought against him. *(Barbers v. Laguio, G.R. No. Adm. Matter No. RTJ-00-1568, Feb. 15, 2001).*

Decision. The circumstance that the judge who wrote the decision has not heard the testimonies of the prosecution witnesses does not taint or disturb his decision. After all, he had the records of the case before him including the transcript of stenographic notes. *(People v. Zuniega, G.R. No. 126117, Feb. 21, 2001).*

Judicial Bias. Questions to clarify points and to elicit additional relevant evidence are not improper. In administrative proceedings, the complainant bears the *onus* of establishing by substantial evidence the averments of his complaint. *(Barbers v. Laguio, G.R. No. Adm. Matter No. RTJ-00-1568, Feb. 15, 2001).* Judicial bias or partiality. *(Sangguniang Bayan of Taguig v. Judge Estrella, Adm. Mat. No. 01-1608-RTJ, Jan. 16, 2001).*

Inhibition of Judge. The rules contemplate two kinds of inhibition: compulsory and voluntary. Compulsory disqualification conclusively presumes that a judge cannot actively or impartially sit on a case. In voluntary inhibition, the Rules leave to the judge's discretion whether he should desist from sitting in a case for other just and valid reasons with only his conscience to guide him. The second paragraph of Section 1, Rule 137 does not give the judge the unfettered discretion to decide whether or not he will desist from hearing a case. The inhibition must be for just and valid cause. The mere imputation of bias or partiality is not enough grounds for a judge to inhibit, especially when the same is without any basis. In this case, the suspicion that respondent judge

will acquit the accused for the same reasons cited in the grant of bail will not suffice to establish the allegation of bias and partiality. Divergence of opinion as to the applicable law and jurisprudence between counsel and the judge is not a proper ground for disqualification. *(People v. Governor Kho, G.R. No. 139381, April 20, 2001).*

Conduct Grossly Prejudicial to the Interest of the Service. (a) Respondent judge's acts of confronting complainants and threatening them with a gun during a traffic altercation constitutes conduct grossly prejudicial to the interest of the service. *(Alday v. Cruz, Jr., A.M. No. RTJ-00-1530, Mar. 14, 2001).* (b) Respondent judge is guilty not only of improper conduct but of serious misconduct or such conduct which affects a public officer's performance of his duties as such and not only that which affects his character as a private individual. That respondent judge committed the misconduct during a preliminary investigation, which is non-judicial in character, does not exempt him from disciplinary action, as the conduct of a preliminary investigation is only an addition to his judicial functions. *(Mamba v. Judge Garcia, A.M. No. MTJ-96-1110, June 25, 2001).*

POLITICAL LAW

CONSTITUTIONAL LAW

BILL OF RIGHTS

Due Process – requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. A criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute, or is so indefinite that it encourages arbitrary and erratic arrests and convictions, is void for vagueness. The constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning. *(People v. Dela Piedra, G.R. No. 121777, Jan. 24, 2001).*

Freedom from Unreasonable Searches and Seizures. The fact that there was no probable cause to support the application for the seizure of drug paraphernalia does not warrant the conclusion that the search warrant is void as regards the seizure of shabu to which evidence was presented showing probable cause as to its existence. Only one warrant is necessary to cover violations of R.A. 6425, a special law which defines and penalizes categories of offenses which are closely related or which belong to the same class or species. Once the valid portion of the search warrant has been executed, the plain view doctrine can no longer provide any basis for admitting the other items subsequently found. A search limited to a lawful arrest is limited only to the person of the one arrested and the premises within his immediate control. The marijuana sticks were wrapped in newsprint. There was no apparent illegality to justify their seizure. *(People v. Salanguit, G.R. Nos. 133254-55, April 19, 2001).*

Right to Privacy of Communications. Anti-Wire Tapping Law. Investigating judge's reliance on the tape-recorded conversation is erroneous. The recording of private conversation, without the consent of the parties, contravenes the provisions of R.A. 4200, otherwise known as the Anti-Wire Tapping Law, and renders the same inadmissible in evidence in any proceeding. The law covers even those recorded by persons privy to the conversation, as in this case. *(Mamba v. Judge Garcia, A.M. No. MTJ-96-1110, June 25, 2001).*

Equal Protection Clause. Courts are not confined to the language of the statute under challenge in determining whether that statute has any discriminating effect. A statute non-discriminatory on its face may be grossly discriminatory in its operation. The prosecution of one guilty person while others equally guilty are not prosecuted, however, is not, by itself, a denial of the equal protection of the law. Where the official action purports to be in conformity with the statutory classification, an erroneous or mistaken performance of the statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws. It must be shown that there is present in the law an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory design over another not to be inferred from the action itself. But a discriminatory purpose is not presumed; there must be a showing of "clear and intentional discrimination." It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. *(People v. Dela Piedra, G.R. No. 121777, Jan. 24, 2001).*

Right to Information. Court records are public records which may be accessed by the citizens, particularly, the litigants and parties in a given case, subject to such limitations provided by law. *(De la Victoria v. Mongaya, A.M. No. P-00-1436, Feb. 19, 2001).*

Academic Freedom. As part of its academic freedom, the University of the Philippines (UP) has the prerogative to determine who may teach its students. The Civil Service Commission has no authority to force it to dismiss a member of its faculty even in the guise of enforcing Civil Service Rules. In this case, petitioner was never actually dropped from the service by UP. The circumstances indubitably demonstrate that UP has chosen not to exercise its prerogative of dismissing petitioner from its employ. *(University of the Philippines v. Civil Service Commission, G.R. No. 132860, April 3, 2001).*

Right to Compulsory Process. The 1973 and 1987 Constitutions expanded the right to include the right to secure the production of evidence in one's behalf. *(People v. Chua, G.R. No. 128280, April 4, 2001).*

Rights of the Accused. (a) During Custodial Investi-gation. At the time of his apprehension, accused-appellant was already placed under arrest and was suspected of having something to do with the disappearance of the victim. In fact the lower court declared that accused-appellant's warrantless arrest was valid based on Sec. 5(b) of Rule 113 of the Rules of Court. However, at the time of his arrest, the apprehending officers did not inform him and in fact acted in a blatant and wanton disregard of his constitutional rights specified in Sec. 12, Art. III of the Constitution. *(People v. Lugod, G.R. No. 136253, Feb. 21, 2001).*

[i] To Have Competent and Independent Counsel of His Choice. The IBP lawyer admitted that at the taking of the extra-judicial confession, he was working on an appeal in another case, 2-3 meters away from the police investigator who was then taking the accused-appellant's statement. He stated that he was not totally concentrated on the appealed case because he could still hear the investigation being conducted then. The police officer testified that while he was taking the accused-appellant's statement, the IBP

lawyer was working on something else, using two other tables four meters apart. The mere presence of a lawyer is not sufficient compliance with the constitutional requirement of assistance of counsel. Assistance of counsel must be effective, vigilant and independent. A counsel who could just hear the investigation going on while working on another case hardly satisfies the minimum requirement of effective assistance of counsel. *(People v. Patungan, G.R. No. 138045, Mar. 14, 2001; People v. Lugod, G.R. No. 136253, Feb. 21, 2001).* The constitutional right to counsel may be invoked only by a person under custodial investigation for an offense. Accused-appellant's extra-judicial confession was properly admitted and considered by the trial court considering that when he gave his statement he was not under custodial investigation. *(People v. Salonga, G.R. No. 131131, June 21, 2001).*

(b) Re Confession. [i] Requisites to be Admissible. Bare assertions of maltreatment by the police authorities in extracting confessions from the accused are not sufficient in view of the standing rule that "where the defendant did not present evidence of compulsion, or duress, or violence on their person; where they failed to complain to the officer who administered their oaths; where they did not institute any criminal or administrative action against their alleged intimidators for maltreatment; where there appeared to be no marks of violence on their bodies; and where they did not have themselves examined by a reputable physician to buttress their claim, all these were considered as factors indicating voluntariness. *(People v. Del Rosario, G.R. No. 131036, June 20, 2001).*

[ii] Video-Taped Confession. Admission of, in this case, proper. The interview of the accused was recorded on video and showed him unburdening his guilt willingly, openly and publicly, in the presence of newsmen. Such confession does not form part of custodial investigation as it was not given to police officers but to media men in an attempt to elicit sympathy and forgiveness from

the public. However, because of the inherent danger in the use of television as medium for admitting one's guilt, and the recurrence of this phenomenon in several cases, trial courts are reminded to take extreme caution in further admitting similar confessions. It should never be presumed that all media confessions described as voluntary have been freely given. This type of confession always remains suspect and should be thoroughly examined. *(People v. Endino, G.R. No. 133026, Feb. 20, 2001).*

Right to Bail. The Court will not hesitate to exercise its supervisory powers over lower courts should the latter, after holding the accused entitled to bail, effectively deny the same by imposing a prohibitory sum or exacting unreasonable conditions. Section 9, Rule 114 of the Revised Rules on Criminal Procedure advises courts to consider several factors in the setting of bail. Under the circumstances of this case, appropriate conditions have been imposed in the bail bond to ensure against the risk of flight, particularly, the combination of a hold-departure order and the requirement that petitioner inform the court of any change of residence and of his whereabouts. Although an increase in the amount of bail while the case is on appeal may be meritorious, setting of the amount at P5,500,000 is unreasonable, excessive, and constitutes an effective denial of petitioner's right to bail. To fix bail at an amount equivalent to the civil liability of which petitioner is charged is to permit the impression that the amount paid as bail is an exaction of the civil liability that accused is charged of, which cannot be allowed because bail is not intended as a punishment, nor as a satisfaction of civil liability which should necessarily await the judgment of the appellate court. Bail Bond Guide of the Department of Justice. Courts are advised not only to be aware of, but should consider the same. Seeking bail on appeal. Section 5, Rule 114 of the Revised Rules of Criminal Procedure is clear that although the grant of bail on appeal in non-capital offenses is discretionary, when the penalty imposed on the convicted accused exceeds six (6) years and circumstances exist that point to the

probability of flight if released on bail, then the accused must be denied bail, or his bail previously granted should be cancelled. Guided by the penalty imposed by the lower court and the weight of the evidence against petitioner, P200,000 bail is more reasonable. *(Yap v. CA, G.R. No. 141529, June 6, 2001).*

Presumption of Innocence. Accused is presumed innocent until the contrary is proved. In criminal cases, the quantum of evidence required to overturn this presumption is proof beyond reasonable doubt. Where the inculpatory facts admit of several interpretations, one consistent with the accused's innocence and another with his guilt, the evidence thus adduced fails to meet the test of moral certainty. It is incumbent upon the prosecution to prove, first, that a crime has been committed and, second, that the accused is responsible therefor. *(People v. Mariano, G.R. No. 133990, June 26, 2001).*

Right to Speedy Trial. This right does not deprive the State of reasonable opportunity to fairly prosecute criminals. In determining where the accused's right to speedy trial was violated, the delay should be considered in view of the entirety of the proceedings. *(People v. Rama, G.R. No. 136304, Jan. 25, 2001).*

Right Against Double Jeopardy. The cited cases show that the exception to the double jeopardy rule attaches only when the trial court commits grave abuse of discretion due to a violation of due process. In this case, inasmuch as the prosecution was never denied any opportunity to present its case and that there is no indication or proof that the trial was a sham, a review and consequent setting aside of the trial court's decision of acquittal will put the private respondent in double jeopardy. In fine, the instant petition should be dismissed not only for lack of merit but also for lack of legal personality on the part of the petitioner to appeal the public respondent's ruling on the criminal aspect of the case. *(Metropolitan Bank and Trust Company v. Hon. Veridiano II, G.R. No. 118251, June 29, 2001).*

POWERS OF GOVERNMENT

EXPROPRIATION

Basic Principle. The rule is that where private property is needed for conversion to some public use, the first thing obviously that the government should do is to offer to buy it. If the owner is willing to sell and the parties can agree on the price and other conditions of the sale, a voluntary transaction can be concluded and the transfer effected without the necessity of a judicial action. Otherwise, the government will use its power of eminent domain, subject to the payment of just compensation, to acquire private property in order to devote it to public use. *(Eslaban v. Onorio, G.R. No. 146062, June 28, 2001).*

"Public Use" Defined. At present, whatever may be beneficial for the general welfare satisfies the requirement of public use. "Necessary taking" does not mean absolutely indispensable but requires only a reasonable necessity of the taking for the stated purpose, growth and future needs of the enterprise. *(Estate of Jimenez v. PEZA, G.R. No. 137285, Jan. 16, 2001).*

Just Compensation. The compensation which the owner of the condemned property is entitled to receive is the market value of that property. Just compensation means not only the correct amount to be paid to the owner of the land but also the payment thereof within a reasonable time from the taking. Without prompt payment, compensation cannot be considered "just" for then the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. In instances where the expropriating agency takes over the property prior to the expropriation suit, just compensation shall be determined as of the time of taking, not as

of the time of filing of the action of eminent domain. Sec. 4, Rule 67, Revised Rules on Civil Procedure provides that the value of the property must be determined either as of the date of the taking of the property or the filing of the complaint, whichever came first. *(Eslaban v. Onorio, G.R. No. 146062, June 28, 2001; Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, Jan. 16, 2001).*

Phases. Expropriation involves two (2) phases. The first ends either with an order of expropriation (when the right of plaintiff to take the land and the public purposes to which they are to be devoted are upheld) or an order of dismissal. Either order would be a final one since it finally disposes of the case. The second concerns the determination of just compensation to be ascertained by three (3) commissioners. It ends with an order fixing the amount to be paid to the defendant. Inasmuch as it leaves nothing more to be done, this order finally disposes of the second stage. To both orders, the remedy therefrom is an appeal. Once the first order becomes final and executory and no appeal is taken, the authority to expropriate and its public use cannot anymore be questioned. *(Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, Jan. 16, 2001).*

Socialized Housing. P.D. No. 1517 (Urban Land Reform Act) issued in 1978. Pursuant to this law, Proclamation No. 1893 was issued in 1979 declaring the entire Metro Manila as Urban Land Reform Zone. This was amended in 1980 by Proclamation No. 1967 and in 1983 by Proclamation No. 2284 which identified sites in Metro Manila for Priority Development and Urban Land Reform Zones. In 1992, R.A. No. 7279, the Urban Development and Housing Act of 1992, was passed. All city and municipal governments were mandated to conduct an inventory of all lands and improvements within their respective localities, and in coordination with the National Housing Authority, the Housing and Land Use Regulatory Board, the National Mapping Resource Information Authority, and

the Land Management Bureau, to identify lands for socialized housing and resettlement areas for immediate and future needs of the underprivileged and homeless in urban areas, and to acquire lands and dispose of said lands to the beneficiaries of the program. The acquisition of lands for socialized housing is governed by several provisions in the law (Sec. 9, R.A. 7279). They are to be acquired in the following order: (1) government lands; (2) alienable lands of the public domain; (3) unregistered or abandoned or idle lands; (4) lands within the declared Areas for Priority Development (APD), Zonal Improvement Program (ZIP) sites, Slum Improvement and Resettlement (SIR) sites which have not been acquired; (5) BLISS sites which have not been acquired; and (6) privately-owned lands. Section 9 must be read together with Section 10. Lands for socialized housing are to be acquired in several modes. Among them are: (1) community mortgage; (2) land swapping; (3) land assembly or consolidation; (4) land banking; (5) donation to the government; (6) joint venture agreement; (7) negotiated purchase; and (8) expropriation. The mode of expropriation is subject to two conditions: (a) It shall be resorted to only when the other modes of acquisition have been exhausted; and (b) Parcels of land owned by small property owners are exempt from such acquisition. The type of lands that may be acquired in the order of priority in Section 9 are to be acquired only in the modes authorized under Section 10. Petitioner claims that it had faithfully observed the different modes of land acquisition and adhered to the priorities under the law. It, however, did not state with particularity whether it had exhausted the other modes of acquisition in Section 9 of the law before it decided to expropriate the subject lot. R.A. 7279 expressly exempted from expropriation "small property owners" meaning: (1) those owners of real property consisting of residential lands with an area of not more than 300 square meters in highly urbanized cities and 800 square meters in other urban areas; and (2) do not own real property other than the same. The case at bar involves two (2) residential lots in Mandaluyong City, a highly urbanized city. *(City of Mandaluyong v. Francisco, G.R. No. 137152,*

Jan. 29, 2001; City of Manila v. Serrano, G.R. No. 142304, June 20, 2001).

CITIZENSHIP

Aliens. Arrest and detention of, for illegally entering the Philippines with the use of a passport issued to another person and cancelled by the Taiwanese government. *(Tung Chin Hui v. Rodriguez, G.R. No. 141938, April 2, 2001).*

THE LEGISLATIVE DEPARTMENT

Members of Congress. Suspension of. The order of suspension prescribed by R.A. 3019 is distinct from the power of Congress to discipline its own ranks under the Constitution. The doctrine of separation of powers by itself may not be deemed to have effectively excluded members of Congress from R.A. 3019 nor from its sanctions. Separation of Powers. Judicial Review. *(Santiago v. Sandiganbayan, G.R. No. 128055, April 18, 2001).*

EXECUTIVE DEPARTMENT

President of the Philippines. Resignation. There is nothing in Section 11 of Article VII of the Constitution which states that the declaration by Congress of the President's inability must always be *a priori* or before the Vice-President assumes the presidency. *(Estrada v. Desierto, G.R. No. 146710-15, Apr 3, 2001).*

JUDICIAL DEPARTMENT

Stare Decisis. *(Pesca v. Pesca, G.R. No. 136921, April 17, 2001).*

CIVIL SERVICE

Security of Tenure. (a) A person assuming a position in the civil service under a completed appointment acquires a legal, not just an equitable, right to the position. This right is protected by law and cannot be taken away by either revocation of the appointment, or by removal, unless there is a valid cause to do so - provided that there is previous notice and hearing. Rule V, Section 9 of the Omnibus Implementing Regulations of the Revised Administrative Code specifically provides that "an appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the Commission." Thus, it is the CSC that is authorized to recall an appointment initially approved, but only when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations. *(De Rama v. CA, G.R. No. 131136, Feb. 28, 2001).*

(b) The classification of a particular position as primarily confidential, policy-determining or highly technical amounts to no more than an executive or legislative declaration that is not conclusive upon the courts, the true test being the nature of the position. Whether primarily confidential, policy-determining or highly technical, the exemption provided in the Charter pertains to exemption from competitive examination in determining merit and fitness to enter the civil service. Such employees are still protected by the mantle of security of tenure. Section 16 of PD 1869, insofar as it declares all positions within PAGCOR as primarily confidential, is not absolutely binding on the courts. Examples of highly confidential employees. Casino operations manager – not a highly confidential position. *(Philippine Amusement and Gaming Corporation v. Rilloraza, G.R. No. 141141, June 25, 2001).*

Career Executive Service (Ces). *(General v. Roco, G.R. No. 143366, Jan. 29, 2001).* Two requisites must concur in order that an

employee in the CES may attain security of tenure: (a) CES eligibility; and (b) appointment to the appropriate CES rank. The position of Ministry Legal Counsel – CESO IV is embraced in the CES. In the case at bar, there is no question that private respondent does not have the required CES eligibility. Evidently, private respondent's appointment did not attain permanency. Hence, he could be transferred or reassigned to other positions without violating his right to security of tenure. *(Hon. Alma De Leon v. CA, G.R. No. 127182, Jan. 22, 2001).*

LAW ON ELECTIONS

Failure of Elections. *(Soliva v. COMELEC, G.R. No. 141723, April 20, 2001; Benito v. COMELEC, G.R. No. 134913, Jan. 19, 2001).*

LOCAL GOVERNMENT

Local Elective Officials. Midnight Appointments. Prohibition against midnight appointments applies only to presidential appointments. There is no law that prohibits local elective officials from making appointments during the last days of their tenure. *(De Rama v. CA, G.R. No. 131136, Feb. 28, 2001).* Note, however, the dissenting opinion of Justice Mendoza that Art. VII, Sec. 15 of the Constitution is simply an application of a broader principle that after the appointing authority has lost the elections, his is the duty of a prudent caretaker of the office and he should not fill positions in the government unless required by the imperatives of public service. This rule binds all, including mayors, who are vested with the power of appointment, and it flows from the principle that a public office is a public trust. (*id.*)

***Liga ng mga Barangay*.** The President's power of general supervision extends to the *Liga ng Mga Barangay*, which in Opinion

No. 41, Series of 1995 of the Department of Justice, is a government organization, being an association, federation, union or league created by law or by authority of law, whose members are either appointed or elected government officials. The *ligas* are primarily governed by the provisions of the Local Government Code. In light of the foregoing, Memorandum Circular No. 97-193 of the DILG, insofar as it authorizes filing a petition for review of the decision of the BES with the regular courts in a post proclamation electoral protest, is of doubtful constitutionality. In so doing, the Secretary of the DILG in effect amended and modified the Guidelines promulgated by the National Liga Board and adopted by the *Liga* which provides that the decision of the BES shall be subject to review by the National Liga Board. The amendment of the Guidelines is more than an exercise of the power of supervision; it is an exercise of the power of control, which the President does not have over the *Liga. (Bito-on v. Hon. Fernandez, G.R. No. 139813, Jan. 31, 2001).*

OMBUDSMAN

Investigative Powers. (a) The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. The law does not make a distinction between cases cognizable by the Sandigangbayan and those cognizable by the regular courts. *(Uy v. Sandiganbayan, G.R. Nos. 105965-70, Mar. 20, 2001).* In a dissenting opinion, Justice Pardo observed: (1) The Ombudsman has exclusive power to conduct preliminary investigation, file and prosecute criminal cases falling within the original jurisdiction of the Sandiganbayan. (2) The power of the Ombudsman to investigate cases cognizable by the regular courts is shared with public prosecutors. (3) The Ombudsman's power to prosecute is limited to all cases cognizable

by the Sandiganbayan. In cases filed with or cognizable by the regular courts, even the so-called "Ombudsman cases," only public prosecutors have the express power to prosecute such cases. (*id.*).

(b) It matters not that the complainants did not seek a reinvestigation or reconsideration of the dismissal of the charges against petitioners. Consistent with its independence as protector of the people and as prosecutor to ensure accountability of public officers, the Ombudsman is not and should not be limited in its review by the action or inaction of complainants. It is clear from Section 15 of R.A. 6770 that the Ombudsman may *motu propio* conduct reinvestigation to assure that the guilty do not go unpunished. It is not material either that no new matter or evidence was presented during the reinvestigation of the case. It should be stressed that reinvestigation, as the word itself implies, is merely a repeat investigation of the case. New matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted. *(Roxas v. Hon. Vasquez, G.R. No. 114944, June 19, 2001).*

Effectivity and Finality of Decisions. Any order, directive or decision of the Office of the Ombudsman imposing the penalty of public censure, or reprimand, or suspension of not more than one month's salary shall be final and unappeallable. The only effect of the *Fabian* ruling is the designation of the Court of Appeals as the proper forum and of Rule 43 of the Rules of Court as the proper mode of appeal; all other matters provided for in Section 27 of R.A. 6770, including the finality or non-finality of decisions, are not affected and still stand. *(Barata v. Abalos, G.R. No. 142888, June 6, 2001).*

PUBLIC OFFICERS

Anti-Graft Cases. Suspension from Office. Section 13 of R.A. 3019 does not state that the public officer concerned must be suspended only in the office where he is alleged to have committed the acts with which he has been charged. The word "office" applies to any office which the officer charged may be holding, and not only the particular office under which he stands accused. The law does not require that the guilt of the accused must be established in a pre-suspension proceeding before trial on the merits proceeds. Neither does it contemplate a proceeding to determine (1) the strength of the evidence of culpability against him (2) the gravity of the offense charged or (3) whether or not his continuance in office could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence before the court could have a basis in decreeing preventive suspension pending the trial of the case. *(Santiago v. Sandiganbayan, G.R. No. 128055, April 18, 2001).*

Sheriff. (a) Respondent sheriff's explanation regarding his reservation in re-implementing the writ of execution is shallow and inexcusable. His negligence and reluctance to follow through and implement the writ on the pretext that he might not be able to effectively gain access to the premises of the defendant spouses since they already knew him and could probably conceal their personal properties, speaks of a lack of responsibility and dedication on his part to discharge his duties as sheriff. Besides, he failed to submit to the trial court the actions he has taken or his proceedings on the writ every thirty (30) days from the date of receipt thereof, as directed explicitly in that writ of execution. *(Atty. San Juan v. Sangalang, Adm. Matter No. P-00-1437, Feb. 6, 2001).*

(b) After four (4) years, respondent sheriffs finally implemented the fourth alias writ of demolition. However, this will not exculpate him from liability. The need for a fourth alias

writ of execution eloquently evinces the unnecessary delay in its implementation. The duty of sheriffs to promptly execute a writ is mandatory and ministerial. They have no discretion on whether or not to implement a writ. There is no need for the litigants to follow up its implementation. *(Mendoza v. Tuquero, A.M. P-99-1343, June 28, 2001).*

ADMINISTRATIVE LAW

National Administrative Register. Publication of Regulations For its Effectivity. Petitioner cannot be held liable for illegal exaction under POEA Memorandum Circular No. 11, Series of 1983, which enumerated the allowable fees which may be collected from applicants, as the said circular is void for lack of publication. It was not published or filed with the National Administrative Register as required by the Administrative Code of 1987. The fact that said circular is addressed only to a specified group, namely private employment agencies or authority holders, does not take it away from the ambit of the ruling in *Tañada v. Tuvera*. Administrative rules and regulations must be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. The only exceptions are interpretative regulations, those merely internal in nature, or those so-called letters of instructions issued by administrative superiors concerning the rules and guidelines to be followed by their subordinates in the performance of their duties. *(Philsa International Placement and Service Corporation v. Hon. Secretary of Labor, G.R. No. 103144, April 4, 2001).*

Review of Administrative Decisions. The Court has ruled that the findings of fact in administrative decisions must be respected as long as they are supported by substantial evidence, even if not overwhelming or preponderant. It is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses or otherwise substitute its own judgment

for that of the administrative agency on the sufficiency of evidence; that the administrative decision in matters within the executive jurisdiction can only be set aside on proof of grave abuse of discretion, fraud or error of law. *(Energy Regulatory Board v. CA, G.R. No. 113079, Apr. 20, 2001).* A litany of cases has consistently held that substantial evidence is all that is needed to support an administrative finding of fact. It means such relevant evidence as a reasonable mind might accept to support a conclusion. *(Energy Regulatory Board v. CA, G.R. No. 113079, Apr. 20, 2001).*

Due Process in Administrative Proceedings. The essence of, is simply the opportunity to be heard or to seek a reconsideration of the action or ruling complained of. *(Vda. de De la Cruz v. Abille, G.R. No. 130196, Feb. 26, 2001).*

GOVERNMENT OWNED AND CONTROLLED CORPORATIONS

Government Service Insurance System (GSIS). To be entitled to Survivorship Benefits under R.A. 8291, the beneficiary must be dependent upon the GSIS member or pensioner for support. While M's marriage to the late E was never dissolved prior to E's death, M abandoned the family for more than 17 years unitl E died and lived with other men. It is obvious that M was not dependent on her legal husband for any support, financial or otherwise, during the entire period. *(Re: Application for Survivor's Benefits of Manlavi, A.M. No. 10019-Ret., Feb. 22, 2001).*

Public Estate Authority (PEA) - created by PD 1084 dated 4 February 1977 as a corporation wholly owned by the Government. It has been empowered to exercise the right of eminent domain in the name of the Republic of the Philippines. Title to real estate acquired by the PEA through condemnation proceedings is taken in the name of the Republic of the Philippines. Although vested with personality separate and distinct from the government, PEA

is not divorced from being an agent or instrumentality of the government exercising governmental functions. PEA has been sued in relation to its assigned function which is the construction of the Manila-Cavite Coastal Road. As such, PEA is exempt from paying docket fees under Section 19, Rule 141 of the Revised Rules of Court. *(Public Estate Authority v. Yujuico, G.R. No. 140486, Feb. 6, 2001).*

Bases Conversion Development Authority (BCDA) - created basically for the purpose of accelerating the sound and balanced conversion of the military reservations into alternative productive uses and to enhance the benefits to be derived from such property as a measure of promoting the economic and social development, particularly of Central Luzon. BCDA is an entity invested with a personality separate and distinct from the government. But its function does not make BCDA equivalent to the Government. Other corporations have been created by government to act as its agent for the realization of its programs, the SSS, GSIS, NAWASA and the NIA, and yet these entities, although performing functions aimed at promoting public interest and public welfare, are not government-function corporations invested with governmental attributes. BCDA is not a mere agency of the Government but a corporate body performing proprietary functions. *(Shipside Incorporated v. CA, G.R. No. 143377, Feb. 20, 2001).*

ADMINISTRATIVE AGENCIES

Presidential Commission on Good Government (PCGG). Petitioner Republic cannot be held liable under the "Agreement" as it did not authorize the PCGG to enter into such contract. Granting that the PCGG was so authorized, however, it exceeded its authority. Worse, the sale of the aircraft was without the approval of the Sandiganbayan. The PCGG or any of its members may be held civilly liable if they did not act in good faith and within the

scope of their authority in the performance of their official duties. *(Republic v. Sandiganbayan, G.R. No. 142476, Mar. 20, 2001).*

Commission on the Settlement of Land Problems (COSLAP). An administrative agency which discharges quasi-judicial function. Its dispositions are binding upon administrative or executive agencies. It may not assume jurisdiction over cases which are already pending in the regular courts. *(United Residents of Dominican Hills, Inc. v. Commission on the Settlement of Land Problems, G.R. No. 135945, Mar. 7, 2001).*

Philippine Economic Zone Authority. Powers and functions. Ecozones. *(Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, Jan. 16, 2001).*

Tondo Foreshore Land. R.A. 1597 is a special law enacted to govern all incidents of the subdivision of the Tondo Foreshore Land. P.D. 464 is a law of general application, governing all real property titled to individuals. The provisions of P.D. 464 have substantially been adopted by the Local Government Code of 1991, a general statute. P.D. 464 did not expressly repeal R.A. No. 1597. Neither can Section 4, R.A. No. 1597 be considered to have been repealed impliedly by P.D. 464. *(Spouses Recaña v. CA, G.R. No. 123850, Jan. 5, 2001).*

Economic Intelligence And Investigation Bureau. Deactivation of, by Executive Order No. 191 and 223.

Philippine Overseas Employment Authority (POEA). Under POEA Rules and Regulations, the POEA, on its own initiative, may conduct the necessary proceeding for the suspension or cancellation of license of any private placement agency on any of the grounds mentioned therein. As such, even without a written complaint from an aggrieved party, the POEA can initiate proceedings against an erring private placement agency and, if the

result of its investigation so warrants, impose the corresponding administrative sanction thereon. *(Philsa International Placement and Service Corporation v. Hon. Secretary of Labor, G.R. No. 103144, April 4, 2001).*

Presidential Ad-Hoc Fact Finding Committee on Loans under Administrative Order No. 13, as amended by Memorandum Order No. 61, dated Nov. 9, 1992. Behest Loans. *(PCGG v. Hon. Desierto, G.R. No. 140232, Jan. 19, 2001).*

Energy Industry Regulatory Board (EIRB). The purpose of the governing legislation is to liberalize the downstream oil industry in order to ensure a truly competitive market under a regime of fair prices, adequate and continuous supply of environmentally clean and high-quality petroleum products. Prior to R.A. 8479, the downstream oil industry was regulated by the Energy Regulatory Board (ERB) and from 1993 onwards, by the EIRB. These agencies were empowered, among others, to entertain and act on applications for the establishment of gasoline stations in the Philippines. The ERB used to be the Board of Energy. Exclusivity of any franchise has not been favored by the Court. The busswords of the third millennium are "deregulation," "globalization" and "liberalization." Article XII, Section 19 of the Constitution is anti-trust in history and spirit. It espouses competition which is fair and only which can release the creative forces of the market. The record discloses that the ERB decision approving Shell's application was based on hard economic data on development projects, residential subdivision listings, population count, public conveyances, commercial establishments, traffic count, fuel demand, growth of private cars, public utility vehicles and commercial vehicles, rather than empirical evidence to support its conclusion. *(Energy Regulatory Board v. CA, G.R. No. 113079, April 20, 2001).*

National Police Commission (NAPOLCOM). Petitioner filed its appeal to the CA only in December 1996. By then, the law in

force, R.A. 6975, had already prescribed that appeals from the decision of the NAPOLCOM be lodged first with the Department of Interior and Local Government (DILG) and then with the Civil Service Commission. It did not matter that the assailed NAPOLCOM ruling had been promulgated in 1989; petitioner did not receive it at that time and, thus, could not have filed the appeal then. An appeal is a statutory right, and one who seeks to avail oneself of it must comply with the statute or the rule in effect when that right arose. Since, the rule on appeal had already been modified at the time he received the assailed Resolution, he should have followed the modified rule. *(Miralles v. Hon. Go, G.R. No. 139943, Jan. 18, 2001).*

REMEDIAL LAW

CIVIL PROCEDURE

ORDINARY CIVIL ACTIONS

PARTIES TO CIVIL ACTION

Parties. A judgment cannot bind persons who are not parties to the action. Strangers to a case are not bound by the judgment rendered by the court and such judgment is not available as an adjudication either against or in favor of such other person. Inclusion of persons who are not parties to the case would be tantamount to a substantial amendment which cannot be allowed at this late stage of the proceedings as it will definitely work to the prejudice and disadvantage of the private respondents. *(Malayang Samahan ng Mga Manggagawa sa M. Greenfield v. NLRC, G.R. No. 113907, April 20, 2001).*

Real Party in Interest. (a) Definition. *(Lim v. Lim-Yu, G.R. No. 138343, Feb. 19, 2001).* (b) Having the capacity to sue and be sued, it should be the Bases Conversion and Development Authority (BCDA) which may file an action to cancel petitioner's title, not the Republic, the former being the real party in interest. *(Shipside Incorporated v. CA, G.R. No. 143377, Feb. 20, 2001).* (c) All the lots within the subdivision had been disposed of to private individuals, herein private respondents. As the titled owners, they should have been impleaded as party-respondents before the court *a quo.* They were not made respondents, neither were they informed of the adverse proceedings that would result in the nullification of their duly registered titles. Hence, the CA did not err in annulling the partial decision rendered by the court *a quo* for lack of jurisdiction and for denial of due process of law. *(Pinlac v. CA, G.R. No. 91486, Jan. 19, 2001).*

PROCEDURE IN THE REGIONAL TRIAL COURT (RTC)

KINDS OF PLEADINGS

Counterclaim. (a) Compulsory.- Petitioner's claim for damages, allegedly suffered as a result of the filing of respondent's complaint, are compulsory and need not be answered since it is inseparable from the claim of respondent. (Alday v. FGU Insurance Corporation, 138822, Jan. 23, 2001). (b) Permissive. - Petitioner's counterclaim for commissions, bonuses, and accumulated premium reserves is merely permissive. The evidence required to prove them differs from that needed to establish respondent's demands for the recovery of cash accountabilities from petitioner. The recovery of respondent's claim is not contingent or dependent upon establishing petitioner's counterclaim, such that conducting separate trials will not result in the substantial duplication of time and effort of the court and the parties. Insofar as the permissive counterclaim is concerned, there is obviously no need to file an answer until petitioner has paid the prescribed docket fees for only then will the court acquire jurisdiction over such claim. *(Alday v. FGU Insurance Corporation, 138822, Jan. 23, 2001).*

PARTS OF A PLEADING

Certificate of Non-Forum Shopping. (a) The requirement in Rule 7, Sec. 5 that the certification should be executed by the plaintiff or the principal means that counsel cannot sign the certificate. The reason for this is that the plaintiff or principal knows better than anyone else whether a petition has previously been filed involving the same case or substantially the same issues. *(Eslaban v. Onorio, G.R. No. 146062, June 28, 2001).*

(b) The rule requiring a certificate against forum-shopping applies to petitions for review on certiorari of the decisions of the

Court of Appeals (CA) by reason of Rule 45, Sec. 4 of the 1997 Revised Rules on Civil Procedure, in relation to Rule 42, Sec. 2 thereof. In this case, the petition for review filed on behalf of the National Irrigation Administration (NIA), had a certification on non-forum shopping signed by its Administrator. The real party-in interest is the NIA, which is a body corporate. Without being duly authorized by resolution of the board of NIA, neither its project manager nor its Administrator could sign the certificate against forum-shopping accompanying the petition for review. On this ground alone, the petition should be dismissed. *(Eslaban v. Onorio, G.R. No. 146062, June 28, 2001).*

(b) In a petition for certiorari filed by petitioners Hanil and MCEI, the accompanying certificate against forum shopping was signed only by the corporate secretary of MCEI. The issue is whether the certification signed by one but not all of the parties constitutes substantial compliance with the rule. Hanil is being sued in its capacity as the foreign principal of MCEI, a local private employment agency. Considering that MCEI may sue on behalf of its foreign principal on the basis of its contractual undertakings with the POEA, there is no reason why the same agency cannot likewise sign or execute a certification of non-forum shopping for its own purposes and/or on behalf of its foreign principal. *(MC Engineering, Inc. v. NLRC, G.R. No. 142314, June 28, 2001).*

(c) Lack of certification against forum shopping is generally not curable by the submission thereof after the filing of the petition. Non-compliance with such requirement shall be sufficient ground for the dismissal of the petition. Certification against forum shopping signed by a person on behalf of a corporation that is unaccompanied by proof that said signatory is authorized to file a petition on behalf of the corporation does not comply with the rule. However, the belated filing of the certification has been allowed in exceptional circumstances, as in this case, where compelling reasons justify the relaxation of the rule. Moreover, petitioner

subsequently submitted a secretary's certificate attesting that the signatory was authorized to file an action on behalf of petitioner corporation. *(Shipside Incorporated v. CA, G.R. No. 143377, Feb. 20, 2001).*

Verification. This requirement is formal, not jurisdictional; non-compliance with which does not necessarily render the pleading fatally defective. Verification is simply intended to assure that the allegations in the pleading are true and correct and not the product of imagination or speculation, and that the pleading is filed in good faith. The court may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served. *(Shipside Incorporated v. CA, G.R. No. 143377, Feb. 20, 2001).*

EFFECT OF FAILURE TO PLEAD

Default. *(Mediserv, Inc. v. China Banking Corporation, G.R. No. 140755, April 17, 2001).* Courts should be liberal in setting aside orders of default for judgments of default are frowned upon, unless in cases where it clearly appears that the reopening of the case is intended for delay. *(Spouses Octavio v. CA, G.R. No. 139884, Feb. 15, 2001).* When the delayed filing of an answer causes no prejudice to the plaintiff, default orders should be avoided. *(Indiana Aerospace University v. Commission on Higher Education, G..R. No. 139371, April 4, 2001).*

FILING AND SERVICE OF PLEADINGS

Service. When a party is represented by counsel, service of process must be made on counsel, not on the party. *(Fajardo v. CA,*

G.R. No. 140356, March 20, 2001). As a rule, notice or service made upon a party who is represented by counsel is a nullity. Exception: when the court orders service upon the party or when the technical defect is waived. *(Tam v. Hon. Makasiar, G.R. No. 122452, Jan. 29, 2001).*

By Mail. The date postmarked on the envelope is the date of mailing – a legal and conclusive presumption. Certification issued by the operations manager of Philpost Mail Management Corporation that said mail matter was posted on July 13 but the registry receipt was dated July 14 because the posting was made after the cut-off time, cannot prevail over the date postmarked on the envelope which is July 15. *(Baltazar v. COMELEC, G.R. No. 140158, Jan. 29, 2001).*

Priorities in Modes of Service. This rule applies to petitions for review under Rule 45. Petitioners do not give any reason why their petition before the CA was not accompanied by an explanation why they resorted to other modes of service. Instead, they argue that there has been substantial compliance with the rule, as the petition contains the required affidavit of service that shows that the petition has indeed been served on the parties concerned. Petitioners claim that their failure was a purely technical error which does not call for outright dismissal of the petition. Held: There was no substantial compliance with the requirement in Section 11, Rule 13 of the 1977 Rules of Civil Procedure. The utter disregard of the rule by petitioners cannot justly be rationalized by harking on the policy of liberal construction and substantial compliance. The fact that an affidavit of service accompanied their petition does not amount to a substantial compliance with the requirement of an explanation why other modes of service other than personal service was resorted to. An affidavit of service under Section 13, Rule 13 is required merely as proof that service has been made to the other parties in a case. It is a requirement totally different from the requirement that an explanation be made if

personal service of pleadings was not resorted to. *(MC Engineering, Inc. v. NLRC, G.R. No. 142314, June 28, 2001).*

Proof of Service. Affidavit of Service. *(MC Engineering, Inc. v. NLRC, G.R. No. 142314, June 28, 2001).*

SUMMONS

Service by Publication. The publication of the summons was invalid as it was made in a periodical which was not considered a newspaper of general circulation in the place where subject property is located, as required by P.D. 1079, Section 1. While such service of summons may have been done with the approval of the trial court, it does not cure the fatal defect that the periodical was not one of general circulation in the locality. The court order relied upon did not specify the place and the length of time that the summons was to be published. In the absence of such specifications, publication in just any periodical does not satisfy the strict requirements of the rules. The incomplete directive of the court *a quo* coupled with the defective publication of the summons rendered the service by publication ineffective. The modes of service of summons should be strictly followed in order that the court may acquire jurisdiction over the respondents, and failure to strictly comply with the rules is a fatal defect. *(Pinlac v. CA, G.R. No. 91486, Jan. 19, 2001).*

MOTIONS

Hearing. The Rules require that every written motion be set for hearing by the movant, except those motions which the court may act upon without prejudicing the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing. *(Fajardo v. CA, G.R. No. 140356, March 20, 2001).*

MOTION TO DISMISS

Grounds: (a) No Jurisdiction Over the Subject Matter. The fact that respondents are not stockholders of corporations A and B does not make them non-parties to this case. The jurisdiction of a court or tribunal over the subject matter is determined by the allegations in the complaint. In this case, it is alleged that the aforementioned corporations are mere alter egos of the directors-petitioners, and that the former acquired the properties sought to be reconveyed to F in violation of the directors- petitioners' fiduciary duty to F. *(Gochan v. Young, G.R. No. 131889, March 12, 2001).*

(b) Prescription. Trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. What is essential only is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record; either in averments of the plaintiff's complaint or otherwise established by the evidence. *(Mialhe v. CA, G.R. No. 108991, March 20, 2001).*

(c) Pleading States No Cause of Action. The remedy of a party whenever the complaint does not allege a cause of action is to set up this defense in a motion to dismiss or in the answer. A motion to dismiss on the ground of failure to state a cause of action in the complaint hypothetically admits the truth of the facts alleged therein. However, the hypothetical admission is limited to the relevant and material facts well pleaded in the complaint and

inferences fairly deductible therefrom. The admission does not extend to conclusions or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice. *(Drilon v. CA, G.R. No. 106922, April 20, 2001).*

(d) Forum Shopping *(Valencia v. CA, G.R. No. 119118, Feb. 19, 2001).* Exists when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court. From the facts of this case, it is evident that private respondents, in filing multiple petitions, have mocked the attempt of the Court to eradicate forum shopping and have thereby upset the orderly administration of justice. A party's willful and deliberate act of forum shopping is punishable by summary dismissal of the actions filed. *(United Residents of Dominican Hills, Inc. v. Commission on the Settlement of Land Problems, G.R. No. 135945, March 7, 2001).* Upon the claim of forum shopping, private respondent listed down a number of cases filed by the parties, allegedly involving the same properties, and asking the Court to declare the said parties guilty of forum shopping. Movant, however, did not show that the cases listed have identity of parties, causes of action and reliefs sought. Hence, there can be no valid determination as to whether the rules on non-forum shopping were violated. *(Laureano v. BORMAHECO, G.R. No. 137619, Feb. 6, 2001).*

(e) *Res Judicata.* The doctrine of *res judicata* comprehends two distinct concepts – (1) bar by former judgment and (2) conclusiveness of judgment. In *res judicata*, the judgment in the first action is considered conclusive as to every matter offered and received therein, as to any other admissible matter which might have been offered for that purpose, and all other matters that could have been adjudged therein. It is an absolute bar to a subsequent action for the same cause. Requisites: (a) the former judgment or

order must be final; (b) the judgment or order must be one on the merits; (c) it must have been rendered by a court having jurisdiction over the subject matter and parties; (d) there must be between the first and second actions, identity of parties, of subject matter and of causes of action. *(Manalo v. CA, G.R. No. 124204, April 20, 2001).* The Court is precluded from declaring the existence of *res judicata* in any of its two forms, since one essential requisite is absent – a judgment on the merits. Clearly, a judgment dismissing an action for want of jurisdiction cannot operate as res *judicata* on the merits. *(Sta. Lucia Realty and Development, Inc. v. Cabrigas, G.R. No. 134895, June 19, 2001; Avisado v. Rumbaua, G.R. No. 137306, March 12, 2001).*

(f) Laches, Estoppel. Case assailing the compromise agreement was filed after 13 years have elapsed. *(Avisado v. Rumbaua, G.R. No. 137306, March 12, 2001).* The findings of the trial court were based on evidence presented during the hearing on the motion to dismiss. Without conducting trial on the merits, the trial court cannot peremptorily find the existence of estoppel, laches, fraud or prescription of actions. These matters require presentation of evidence and determination of facts that can best be resolved after trial on the merits. *(Lim v. Chan, G.R. No. 127227, Feb. 28, 2001).*

PRE-TRIAL

Notice of Pre-Trial - prior to the 1997 Rules on Civil Procedure. *(De Guia v. De Guia, G.R. No. 135384, April 4, 2001).*

SUBPOENA

A process directed to a person requiring him to attend and to testify at the hearing or trial of an action, or at any investigation conducted by competent authority, or for the taking of deposition.

A process is the means whereby a court compels the appearance of the defendant before it, or a compliance with its demands. Hence, absent any proceeding, suit, or action, commenced or pending before a court, a subpoena may not issue. *(Collado v. Bravo, A.M. No. P-99-1307, April 10, 2001).*

SUMMARY JUDGMENT

When affidavits, depositions and admissions on file show that there are no genuine issues of fact to be tried, the Rules allow a party to pierce the allegations in the pleadings and to obtain immediate relief by way of summary judgment. In short, since the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. For summary judgment to be valid: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. *(Puyat v. Zabarte, G.R. No. 141536, Feb. 26, 2001).*

JUDGMENTS, FINAL ORDERS

Final and Executory. When A and V filed Civil Case No. Q-93-18138, and argued that R did not have the authority to enter into the compromise agreement, they collaterally attacked the judgment in Civil Case No. Q-26392 which approved the compromise agreement. This cannot be done. The judgment in Civil Case No. Q-26392 has become final and executory. What A and V should have done was to either timely appeal the decision to the CA under Rule 41, 1997 Rules of Civil Procedure, or to seasonably file a petition for relief from judgment under Rule 38. *(Avisado v. Rumbaua, G.R. No. 137306, March 12, 2001).*

RELIEF FROM JUDGMENTS, ORDERS AND OTHER PROCEEDINGS

Petition for Relief - under Rule 38, only available against a final and executory judgment. It cannot apply to a judgment that is the subject of a timely appeal. In this case, the trial court's jurisdiction was interrupted and lost when an appeal was filed by private respondent. *(Valencia v. CA, G.R. No. 119118, Feb. 19, 2001).*

EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

Execution Upon Judgments or Final Orders. Once a decision becomes final and executory, it is the ministerial duty of the court to order its execution. Execution can be suspended when suspension is warranted by the higher interest of justice and when certain facts and circumstances transpire after the finality of the judgment which would render the execution thereof unjust. *(Avisado v. Rumbaua, G.R. No. 137306, March 12, 2001).*

Issuance, Form and Contents of Writ of Execution. Computation of amount due under the writ is not the duty of the sheriff. Such amount should have already been specifically stated in the writ of execution issued by the court. All that the sheriff should do upon receipt of that writ is the ministerial duty of enforcing it. *(Plantilla v. Baliwag, A.M. No. P-00-1446, June 6, 2001).*

Enforcement of Writ of Execution. Characterized by undue haste, unusual vigor and unseemly arrogance, betraying lack of impartiality on the part of the sheriff. *(Philippine Bank of Communications v. Cachero, A.M. No. P-00-1399, Feb. 19, 2001).* Respondent sheriff acted beyond his authority when he levied the property of the corporation, even if in levying said property he stated in the notice of levy as well as in the certificate of sale that what was being levied upon and sold was whatever rights, shares

interest and/or participation a stockholder and president of the corporation may have on the subject property. *(Booc v. Bantuas, A.M. No. P-01-1464, March 13, 2001).*

Redemption. (a) Who May Redeem. The "successor in interest" of the judgment debtor referred to in Rule 39, Section 27 of the Revised Rules of Civil Procedure includes a person who succeeds to his property by operation of law, or a person with a joint interest in the property, or his spouse or heirs. The procedure for the exercise of redemption is provided for in Act No. 3135. The one-year period of redemption is reckoned from the date of registration of the certificate of sale. On being informed that complainant was opposing the redemption of the entire property on the ground that PM could exercise the right of redemption only with respect to his share as heir of the mortgagors, respondent should not have resolved the opposition and issued a certificate of redemption of PM. *(Castro v. Bague, A.M. No. P-99-1346, June 20, 2001).*

(b) Time and Manner of Redemption. The legal perspective within which the right to redeem can still be availed of must be viewed in the light of the dictum that the policy of the law is to aid rather than defeat the right of redemption. In several cases, the parties have been allowed the right of redemption even beyond the period prescribed therefor. In this case, there is the grossly and patently inequitous spectacle of petitioners being made to pay a money judgment amounting to P57 thousand with their two (2) parcels of prime land conservatively valued at that time at P500 thousand, on account of the lapse of the period given for exercising the right of redemption – despite their apparent willingness and ability to pay the money judgment. While there is no dispute that mere inadequacy of the price per se will not set aside a judicial sale of real property, nevertheless, where the inadequacy is purely shocking to the conscience, such that the mind revolts at it and such that a reasonable man would neither directly nor indirectly

be likely to consent to it, the same will be set aside. *(Cometa v. CA, G.R. No. 141855, Feb. 6, 2001).*

(c) Effect of Redemption. Articles 1612 and 1613 of the Civil Code. Rule 39, Section 29. *(Castro v. Bague, A.M. No. P-99-1346, June 20, 2001).*

Discretionary Execution. The trial court may only grant discretionary execution while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion. When not all of the parties have perfected their appeal and the period to appeal has yet to expire, the trial court still retains its so-called "residual jurisdiction" to order discretionary execution. Discretionary execution is thus barred when the trial court loses jurisdiction and this occurs when the period to appeal has elapsed for those who did not file their appeals and when the court is no longer in possession of the records of the case. *(Zacate v. COMELEC, G.R. No. 144678, March 1, 2001; Valencia v. CA, G.R. No. 119118, Feb. 19, 2001).*

Action for Enforcement of Foreign Judgment. Processual Presumption. (a) In the absence of proof of California law on the jurisdiction of courts, it is presumed that such law, if any, is similar to Philippine law. This conclusion is based on the presumption of identity or similarity of law, also known as *processual presumption*. *(Puyat v. Zabarte, G.R. No. 141536, Feb. 26, 2001).* (b) *Forum Non Conveniens.* Under this principle, even if the exercise of jurisdiction is authorized by law, courts may nonetheless refuse to entertain a case. In this case, none of the reasons which bar the court from exercising its jurisdiction exists. There was no more need for material witnesses, no forum shopping or harassment of petitioner, no inadequacy in the local machinery to enforce the foreign judgment, and no question raised as to the application of any foreign law. *(Puyat v. Zabarte, G.R. No. 141536, Feb. 26, 2001).*

APPEAL FROM THE RTC

Perfection in Due Time. The court loses jurisdiction over the case upon the perfection of the appeal filed in due time and the expiration of the time to appeal. In such event, prior to the transmittal of the original record or record of appeal, the court may only issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromise, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 3 of Rule 39, and allow withdrawal of the appeal. *(Marawi Marantao General Hospital, Inc. v. CA, G.R. No. 141008, Jan. 16, 2001).*

PETITION FOR REVIEW FROM THE RTC TO THE CA

Form and Contents. Petitioner urged the CA to examine the documents and pleadings submitted to the RTC but what petitioner appended to her petition before the CA merely consisted of the MTC decision, the assailed RTC order, and RTC writ of execution. None of the foregoing documents set out the factual milieu of her claims. Petitioner's discretion in choosing the documents to be attached to the petition is not unbridled. The CA has the duty to check the exercise of this discretion, to see to it that the submission of supporting documents is not merely perfunctory. The practical aspect of this duty is to enable the CA to determine at the earliest possible time the existence of *prima facie* merit in the petition. Moreover, Section 3 of Rule 42 of the Rules provides that if petitioner fails to comply with the submission of documents which should accompany the petition, it shall be sufficient ground for the dismissal thereof. *(Atillo v. Bombay, G.R. No. 136096, Feb. 7, 2001).*

APPEAL BY CERTIORARI TO THE SC

Mode of Appeal. Rule 45 is a mode of appeal where only questions of law may be raised. *(Benguet Exploration, Inc. v. CA, G.R. No. 117434, Feb. 9, 2001).* Here, petitioner is essentially raising a factual issue: whether he was illegally dismissed by private respondent. *(Suan v. NLRC, G.R. No. 141441, June 19, 2001).* A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts, and there is a question of fact when the doubt or difference arises as to the truth or falsehood of facts. *(Spouses Batingal v. CA, G.R. No. 128636, Feb. 1, 2001).* This remedy could not have been resorted to by respondents inasmuch as the order of the trial court granting a writ of possession was merely interlocutory, from which no appeal could be taken. *(City of Manila v. Serrano, G.R. No. 142304, June 20, 2001).*

The instances mentioned in Section 1 of Rule 41 of the Rules of Court whereby an appeal is not allowed are not exclusive grounds for a petition for review. *(Estate of Salud Jimenez v. Philippine Export Processing Zone, G.R. No. 137285, Jan. 16, 2001)*

ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS

(a) **Grounds.** An action for annulment of judgment is grounded on: (1) extrinsic fraud; and (2) lack of jurisdiction or denial of due process. Its purpose is to have the final and executory judgment of the trial court set aside so that there will be a renewal of litigation. In the instant case, the partial decision of the trial court is null and void insofar as private respondents are concerned since the latter were not duly served with summons or notified of the proceedings against them. *(Pinlac v. CA, G.R. No. 91486, Jan. 19, 2001).*

(b) Under Sec. 1, Rule 47 of the Rules of Court, parties can avail of the action for annulment of judgment when a petition for relief is no longer available through no fault of the petitioner. *(Valencia v. CA, G.R. No. 119118, Feb. 19, 2001).*

DISMISSAL OF APPEAL

Rule 50, Section 1 (e) of the 1997 Rules of Civil Procedure provides that an appeal may be dismissed by the CA on its own accord or on motion of the appellee for failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time prescribed by the Rules. The obvious reason for this rule is that upon appeal, the appellate court can only but place reliance on the pleadings, briefs and memoranda of parties such as may be required. The dereliction of duty by counsel affects the client. *(Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation, G.R. No. 135287, April 4, 2001).*

LEGAL FEES

Payment of: (a) Jurisdictional. - The *Manchester* ruling requiring the payment of docket and other fees as a condition for the acquisition of jurisdiction has no retroactive effect and applies only to cases filed after its finality. Generally, the jurisdiction of a court is determined by the statute in force at the commencement of the action, unless such statute provides for its retroactive application. *(Baritua v. Mercader, G.R. No. 136048, Jan. 23, 2001).*

(b) Re Permissive Counterclaim. In order for the trial court to acquire jurisdiction over the permissive counterclaim, petitioner is bound to pay the prescribed docket fees. Although the payment of the prescribed docket fee is a jurisdictional requirement, its

non-payment does not result in the automatic dismissal of the case provided the docket fees are paid within the applicable prescriptive or reglementary period. *(Alday v. FGU Inssurance Corporation, G.R. No. 138822, Jan. 23, 2001).*

(c) In Civil Actions Impliedly Instituted With Criminal Action. - Where the civil action is impliedly instituted together with the criminal action, the actual damages claimed by the offended parties, as in this case, are not included in the computation of the filing fees. Filing fees are to be paid if other items of damages such as moral, nominal, temperate, or exemplary damages are alleged in the complaint or information, or if they are not so alleged, shall constitute a first lien on the judgment. Considering that the Rules of Criminal Procedure effectively guarantees that the filing fees for the award of damages are a first lien on the judgment, the effect of the enforcement of said lien must retroact to the institution of the criminal action. *(Manantan v. CA, G.R. No. 107125, Jan. 29, 2001).*

(c) There is no need for petitioner to pay docket fees for her compulsory counterclaim. *(Alday v. FGU Insurance Corporation, 138822, Jan. 23, 2001).*

(d) Indispensable to Perfection of Appeal But Non-Payment Does not Warrant Mandatory Dismissal of Appeal. - The payment of fees is an indispensable step in the perfection of an appeal. While it is mandatory on the litigant, the court, however, is not necessarily left without any alternative but to dismiss the appeal for non-payment of docket fees. Such failure confers a discretionary authority, not mandatory charge, on the part of the court to dismiss an appeal. *(Public Estate Authority v. Yujuico, G.R. No. 140486, Feb. 6, 2001).* Such discretion must be exercised wisely and prudently, never capriciously, with a view to substantial justice. *(Fajardo v. CA, G.R. No. 140356, March 20, 2001).*

PROVISIONAL REMEDIES

Preliminary Attachment. (a) While the motion refers to transaction complained of as involving trust receipts, the violation of the terms of which is qualified by law as constituting estafa, it does not follow that a writ of attachment can and should automatically issue. Citing and quoting Section 1(b) and (d), Rule 57, of the Revised Rules of Court, without more, cannot serve as good ground for issuing a writ of attachment. An order of attachment cannot be issued on a general averment, such as one ceremoniously quoting from a pertinent rule. Petitioner cannot insist that its allegation that private respondents failed to remit the proceeds of the sale of the entrusted good nor to return the same is sufficient for attachment to issue. Fraud may be gleaned from a preconceived plan or intention not to pay. The lower court should have conducted a hearing and required private petitioner to substantiate its allegation of fraud, embezzlement and misappropriation. *(Philippine Bank of Communications v. CA, G.R. No. 115678, Feb. 23, 2001).*

(b) Motion to Quash. Petitioner's justifications to warrant the lifting of the attachment are facts or events that came to light or took place after the writ of attachment had already been implemented. The rule contemplates that the defect must be in the very issuance of the attachment writ. Supervening events which may or may not justify the discharge of the writ are not within the purview of this particular rule. The merits of an action in which a writ of preliminary attachment has been issued are not triable on a motion for dissolution of the attachment, otherwise an applicant for the lifting of the writ could force a trial on the merits of the case on a mere motion. When the writ of attachment is issued upon a ground which is at the same time the applicant's cause of action, the only other way the writ can be lifted or dissolved is by a counterbound, in accordance with Section 12 of the same rule. *(Chuidian v. Sandiganbayan, G.R. No. 139941, Jan. 19, 2001).*

Preliminary Injunction. (a) Requisites for the grant of same. *(Valencia v. CA, G.R. No. 119118, Feb. 19, 2001).* The Rules of Court requires that an initiatory pleading with an application for a writ of preliminary injunction or temporary restraining order filed before a multiple-sala court shall be raffled only after notice to and in the presence of the adverse party or the persons to be enjoined. These requirements may be dispensed with, however, where it can be satisfactorily shown that summons could not be served despite diligent efforts. *(Gonzales v. State Properties Corp., G.R. No. 140765, Jan. 25, 2001).*

(b) The notice of raffle is required to be served prior to or contemporaneously with the summons – a requirement absent from the pre-1997 Rules. This requirement shows the intention of the new Rules to ensure the implementation of the writ of preliminary injunction and preclude the defense that the trial court has no jurisdiction over the defendant. Nonetheless, the 1997 rule barring the raffle of these cases without effecting the service of summons is not absolute. The second paragraph of Section 4 (c) of Rule 58 clearly provides that the service of summons may be dispensed with "where the summons could not be served personally or by substituted service despite diligent efforts." In the present case, respondent was able to show that the whereabouts of the other defendants were unknown, and that summons could not be served personally or by substituted service. Hence, it cannot be required to serve such summons prior to or contemporaneously with the notice of raffle. The raffle, therefore, may proceed even without notice to and the presence of the said adverse party. *(Gonzales v. State Properties Corp., G.R. No. 140765, Jan. 25, 2001).*

(c) Requisites for issuance of. *(Gustilo v. Hon. Real, A.M. No. MTJ-00-1250, Feb. 25, 2001).* As a rule, will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not been clearly established by law. *(Savellano v. CA, G.R. No. 134343, Jan. 30, 2001).* Failure to

establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction or that the defendant has committed or has attempted to commit any act which has endangered or tends to endanger the existence of said right, is sufficient ground for denying the injunction. Here petitioner had no more proprietary right over the foreclosed property to entitle her to the issuance of the writ. Her right to redeem had lapsed and the mortgagees were entitled to conveyance and possession of the foreclosed property. *(Idolor v. CA, G.R. No. 141853, Feb. 7, 2001).*

(d) Temporary Restraining Order (TRO). Whenever an application for a TRO is filed, the court may act on the application only after all the parties have been notified and heard in a summary hearing. A summary hearing may not be dispensed with. *(Gustilo v. Hon. Real, A.M. No. MTJ-00-1250, Feb. 25, 2001).*

SPECIAL CIVIL ACTIONS

Declaratory Relief. Original jurisdiction to entertain such petition is vested in the Regional Trial Court. *(United Residents of Dominican Hills, Inc. v. Commission on the Settlement of Land Problems, G.R. No. 135945, March 7, 2001).*

Certiorari, Prohibition and Mandamus. The general rule is that the denial of a motion to dismiss a complaint is an interlocutory order and, hence, cannot be appealed or questioned via a special civil action of certiorari until a final judgment on the merits of the case is rendered. The remedy of the aggrieved party is to file an answer to the complaint and to interpose as defense the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, to elevate the entire case by appeal in due course. However, the rule is not ironclad. Under certain situations, recourse to certiorari or mandamus is considered appropriate, such as,

(a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or, (c) appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiff's baseless action and compelling the defendant needlessly to go through a protracted trial and clogging the court dockets by another futile case. The case at bar falls within the exceptions to the rule. The RTC committed a palpable and grievous error amounting to lack of jurisdiction in denying the motion to dismiss the complaint on the ground of improper venue. *(Emergency Loan Pawnshop Incorporated v. CA, G.R. No. 129184, Feb. 28, 2001).* There are several exceptions where the special civil action for certiorari will lie even without the filing of a motion for reconsideration, namely: where the order is a patent nullity, as where the court a quo has no jurisdiction; where the questions raised in the certiorari proceedings have been duly raised and passed upon in the lower court, or are the same as those raised and passed upon by the lower court; where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or the petitioner, or the subject matter of the action is perishable; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings are *ex parte* or in which the petitioner had no opportunity to object; and where the issue raised is one purely of law or where public interest is involved. *(Marawi Maranao General Hospital, Inc. v. CA, G.R. No. 141008, Jan. 16, 2001).*

Generally, the special civil action of certiorari will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the ordinary course of law, such as a timely filed motion for reconsideration, so as to allow the lower court to correct the

alleged error. However, there are several exceptions where the special civil action for certiorari will lie even without the filing of a motion for reconsideration, *viz.*: (1) the issues raised are purely legal in nature (2) public interest is involved (3) extreme urgency is obvious or (4) special circumstances warrant immediate or more direct action. *(Indiana Aerospace University v. Commission on Higher Education, G.R. No. 139371, April 4, 2001).* In the present case, considering that the RTC no longer had jurisdiction to issue the questioned orders, the first exception is clearly applicable. CHR is the party liable for payment of the wage increase due to respondent security guards. While petitioner, as the contractor, is held solidarily liable for payment of wages, including wage increases, as prescribed under the Labor Code, the obligation ultimately belongs to the CHR as principal. *(Security and Credit Investigation, Inc. v. NLRC, G.R. No. 114316, Jan. 26, 2001).*

Retroactive application of the reglementary period for filing petition for certiorari (Sec. 4, Rule 65) *(PCGG v. Hon. Desierto, G.R. No. 140232, Jan. 19, 2001).*

Mandamus may issue to compel a prosecutor to file an information when he refused to do so in spite of the *prima facie* evidence of guilt. *(Tam v. Hon. Makasiar, G.R. No. 122452, Jan. 29, 2001).*

Ejectment, Stay of Execution. In this case, the issue of possession is intertwined with the issue of ownership. In the unlawful detainer case, the CAR affirmed the decision of the trial court (which had become final and executory) as to possession, meaning the petitioner may be evicted. In the *accion reinvindicatoria*, the CA affirmed ownership of petitioners over subject land, declaring the petitioners as lawful owners of the land. The stay of execution is warranted by the fact that petitioners are now legal owners of the land in question and are occupants thereof. To eject them would certainly result in grave injustice. *(Spouses Bustos v. CA, G.R. No. 120784-85, Jan. 24, 2001).*

Attaining the objective of fully executing the judgment against the defendant in an ejectment case does not justify the immediate and *ex-parte* issuance of an order authorizing demolition. The Rules of Court specifically requires that motions on the matter must be duly heard first, before an order of demolition may be issued. *(Bajet v. Judge Areola, A.M. No. RTJ-01-1615, June 19, 2001).*

Contempt. Direct Contempt. The conduct of petitioner in persisting to have his documentary evidence marked to the extent of interrupting the opposing counsel and the court showed disrespect to said counsel and the court, was defiant of the court's system for an orderly proceeding, and obstructed the administration of justice. Direct contempt is committed in the presence of or so near a court or judge, as in this case, and can be punished summarily without hearing. *(Bugaring v. Hon. Español,, G.R. No. 133090, Jan. 19, 2001).*

SPECIAL PROCEEDINGS

SUMMARY SETTLEMENT OF ESTATES

Liability of Distributees and Estate. (a) Under Section 4, Rule 74 of the Rules of Court, persons unduly deprived of their lawful participation in a settlement of estate may assert their claim only within the two-year period after the settlement and distribution of the estate. The prescriptive period does not apply, however, to those who had no part in or had no notice of the settlement. *(Philippine Economic Zone Authority v. Hon. Fernandez, G.R. No. 138971, June 6, 2001).* Petitioner, as the records confirm, did not participate in the extrajudicial partition. Patently then, the 2-year prescriptive period is not applicable, but the action to annul the deed of extrajudicial settlement upon the ground of fraud may be filed within four years from the discovery of the fraud. *(Pedrosa v. CA, G.R. No. 118680, March 5, 2001).*

JUDICIAL SETTLEMENT OF ESTATES

Actions By and Against Executors and Administrators. While the Rules (Sec. 3, Rule 3; Sec. 2, Rule 87) permits an executor or administrator to represent or bring suit on behalf of the deceased, it does not prohibit the heirs from representing the deceased. These rules are easily applicable to cases in which an administrator has already been appointed. But no rule categorically addresses the situation in which special proceedings for the settlement of an estate have already been instituted, yet no administrator has been appointed. In such instances, the heirs cannot be expected to wait for the appointment of an administrator; then wait further to see if the administrator appointed would care enough to file a suit to protect the rights and the interests of the deceased; and in the meantime do nothing while the rights and the properties of the decedent are violated or dissipated. *(Gochan v. Young, G.R. No. 131889, March 12, 2001).*

Settlement of Estate. This is not an ordinary civil action, as shown by the averments and the character of the relief sought in the petition. The fact of death and residence of the decedent within the country are foundation facts upon which all the subsequent proceedings in the administration of the estate rest. The petition contains an enumeration of the names of the legal heirs and a tentative list of the property left by the decedent which are sought to be settled in the probate proceedings. In addition, the relief prayed for in the said petition leaves no room for doubt as regards the intention of the petitioners therein to seek judicial settlement of the estate of their deceased father. Petitioners may not be allowed to defeat the purpose of the essentially valid petition for the settlement of estate by raising matters that are irrelevant to said petition. The trial court sitting as a probate court has limited and special jurisdiction and cannot hear and dispose of collateral matters and issues which may be properly threshed out only in an ordinary civil action. The jurisdiction of a court, as well as the

concomitant nature of an action, is determined by the averments in the complaint and not by the defenses contained in the answer. *(Vda. de Manalo v. CA, G.R. No. 129242, Jan. 16, 2001).*

GUARDIANSHIP

The natural mother has a preferential right over the grandmother of a minor to be its guardian (Article 211 of the Family Code). Even assuming that the mother is unfit as guardian of the minor, still petitioner cannot qualify as a substitute guardian, as she is an American citizen and resident of Colorado. Courts should not appoint persons as guardians who are not within the jurisdiction of our courts for they will find it difficult to protect their wards. *(Vancil v. Belmes, G.R. No. 132223, June 19, 2001).*

HABEAS CORPUS

(a) The writ cannot be issued in cases in which the Bureau of Immigration has duly ordered the deportation of undocumented aliens, specifically those found guilty of illegally entering the Philippines with the use of tampered and previously cancelled passports. The reglementary period for filing an appeal in habeas corpus cases is now 15 days from notice of the judgment or order appealed from. *(Tung Chin Hui v. Rodriguez, G.R. No. 141938, April 2, 2001).*

(b) Proper legal remedy to enable parents to regain the custody of a minor child even if the latter be in the custody of a third person of his own free will. In these proceedings, the question of identity is relevant and material subject to the usual presumptions including those of identity of the person. *(Tijing v. CA, G.R. No. 125901, March 8, 2001).*

CRIMINAL PROCEDURE

PROSECUTION OF OFFENSES

Complaint or Information. The Revised Rules of Criminal Procedure, which took effect on December 1, 2000, now specifically requires both qualifying and aggravating circumstances to be specifically alleged in the information. *(People v. Elpedes, G.R. No. 137106-07, Jan. 31, 2001; People v. Mauricio, G.R. No. 133695, Feb. 28, 2001; People v. Gano, G.R. No. 134373, Feb. 28, 2001).*

Sufficiency of Information. (a) Rule 110, Sec. 11 does not require the information to allege the exact date and time of the commission of the crime if such is not an essential ingredient of the offense. Moreover, the vagueness of the information could not have prejudiced accused-appellant since his denial and alibi are so general that it cannot be said that his defense hinged on the date of commission of the crime charged. *(People v. Naag, G.R. No. 136394, Feb. 15, 2001).* Even if the information lacked an allegation of actual date and time of the commission of rape, the defect, if any, was deemed cured by the evidence presented during trial. Any objection based on this ground was waived as a result of appellant's failure to object to the information before arraignment. *(People v. Awing, G.R. No. 133919-20, Feb. 19, 2001).*

(b) The remedy against an indictment that fails to allege the time of commission of the offense with sufficient definiteness is a motion for a bill of particulars. The failure to move for specifications or the quashal of the information on any of the grounds provided for in the Rules deprives the accused of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms but which sufficiently charges the accused with a definite crime. *(People v. Elpedes, G.R. No. 137106-07, Jan. 31, 2001).*

Formal Amendment of Information. *(People v. Villaflor, G.R. No. 134744, Jan. 16, 2001).*

PRELIMINARY INVESTIGATION

(a) The determination of a probable cause during preliminary investigation or reinvestigation is recognized as an executive function exclusively of the prosecutor. An investigating prosecutor is under no obligation to file a criminal action where he is not convinced that he has the quantum of evidence at hand to support the averments. The determination of the persons to be prosecuted rests primarily with the prosecutor. Consequently, the fact that the investigating prosecutor exonerated some of the co-accused in the preliminary investigation does not necessarily entitle petitioners to a similar exoneration where the investigating prosecutor found probable cause to prosecute them for the crime charged. *(Dupasquier v. CA., G.R. No. 112089, Jan. 24, 2001).*

(b) The Rules of Court requires a preliminary investigation before an information for an offense punishable by at least four years, two months and one day may be filed in court. Even assuming that prior to the filing of the information, petitioner had knowledge that the proceedings and the investigation against his co-accused were pending, he cannot be expected to know of the investigator's subsequent act of charging him. If the accused does invoke the absence of preliminary investigation prior to arraignment, the right is not waived. Neither did the filing of a bail bond constitute a waiver of petitioner's right to preliminary investigation. Such right is substantive, not merely formal or technical. To deny it to petitioner would deprive him of the full measure of his right to due process. *(Yusop v. Sandiganbayan, G.R. No. 138859-60, Feb. 22, 2001).*

(c) The Rules were meant to govern court procedures and pleadings. A preliminary investigation, notwithstanding its judicial nature, is not a court proceeding. The holding of a preliminary investigation is a function of the Executive Department and not of the Judiciary. Thus, the rule on service provided for in the Rules of Court cannot be made to apply to the service of resolutions by public prosecutors, especially as the agency concerned, in this case, the Department of Justice, has its own procedural rules governing said service. A plain reading of Section 2 of DOJ Order No. 223 clearly shows that in preliminary investigation, service can be made upon the party himself or through his counsel. *(Tam v. Hon. Makasiar, G.R. No. 122452, Jan. 29, 2001).*

(d) Absence of preliminary investigation is not a ground for a motion to quash. It does not go to the jurisdiction of the court but merely the regularity of the proceedings. *(Yusop v. Sandiganbayan, G.R. No. 138859-60, Feb. 22, 2001).* It does not affect the validity of the information. Instead of dismissing the information, the court should hold the proceedings in abeyance and order the public prosecutor to conduct a preliminary investigation. *(Villaflor v. Vivar, G.R. No. 134744, Jan. 16, 2001).*

(e) After the filing of a complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for preliminary investigation. *(People v. Velasquez, G.R. No. 132635 & 143872-75, Feb. 21, 2001).*

(f) In criminal prosecutions, a reinvestigation, like an appeal, renders the entire case open for review. *(Roxas v. Hon. Vasquez, G.R. No. 114944, June 19, 2001).*

ARREST

Issuance of Warrant of Arrest. - The issuance of a warrant of arrest is not a ministerial function of the court. Even if the RTC no longer possesses the authority to conduct preliminary investigation under Section 2, of Rule 112, the court still retains the power to determine for itself whether or not a probable cause exists and, if in the affirmative, to issue the corresponding warrant for the arrest of the accused. Before issuing a warrant of arrest, the judge must not rely solely on the report or resolution of the prosecutor. He must evaluate the report and supporting documents which will assist him to make his determination of probable cause. *(Alib v. Judge Labayen, A.M. No. RTJ-00-1576, June 28, 2001).* The moment an information is filed with the RTC, it is that court which must issue the warrant for the arrest of the accused in a criminal case pending before it. *(Espino v. Salubre, A.M. MTJ-00-1255, Feb. 26, 2001).*

Execution of Warrant. - Unless specifically provided in the warrant, the same remains enforceable until it is executed, recalled or quashed. The 10-day period provided in Rule 113, Sec. 4 is only a directive to the officer executing the warrant to make a return to the court. *(People v. Givera, G.R. No. 132159, Jan. 18, 2001).*

Arrest Without Warrant. (a) The police saw the gun tucked in appellant's waist when he stood up. The gun was plainly visible. No search was conducted as none was necessary. Accused-appellant could not show any license for the firearm, whether at the time of his arrest or thereafter. Thus, he was in effect committing a crime in the presence of the police officers. No warrant of arrest was necessary in such a situation, it being one of the recognized exceptions under the Rules. As a consequence of appellant's valid warrantless arrest, he may be lawfully searched for dangerous weapons or anything which may be used as proof of the commission of an offense, without a search warrant. *(People v. Go,*

G.R. No. 116001, March 14, 2001). (b) By entering a plea of not guilty and participating actively in the trial, accused-appellant waived his right to question the validity of his arrest. *(People v. Galvez, G.R. No. 136790, March 26, 2001).* (c) Appellants did not assert their constitutional right prior to their arraignment. Illegal arrest is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error. Warrantless arrest, even if illegal, cannot render void all other proceedings, including those leading to the conviction of the appellants; nor can it deprive the State of its right to convict the guilty when all the facts on record point to their culpability. *(People v. Conde, G.R. No. 113269, April 10, 2001).*

BAIL

When Discretionary. Admission to bail as a matter of discretion presupposes the exercise thereof in accordance with law and applicable legal principles. The prosecution must first be accorded an opportunity to present evidence because it is on the basis of such evidence that judicial discretion is exercised to determine whether the guilt of the accused is strong. Respondent judge's act of accepting at face value a mere machine copy of the bail bond issued by another court hardly measures up to the degree of diligence and conscientiousness demanded of a judge who is called upon to determine the propriety of granting bail in a case, *i.e.*, murder, where the grant of the same is a matter of discretion rather than a right. *(Spouses Antonio v. Judge Penaco-Sitaca, A.M. No. RTJ-01-1633, June 19, 2001).*

Cash Bond. Rule 114. The proper procedure in the handling of cash submitted or given to the municipal court as bail bond is for the court to formally direct the clerk of court to officially receive the cash and to immediately deposit it with the municipal treasurer's office. The transaction must not only be properly

receipted for but should also appear in the records of the case. *(Agulan v. Judge Fernandez, A.M. No. MTJ-01-1354, April 4, 2001).*

ARRAIGNMENT AND PLEA

Plea of Guilty to Capital Offense. Exacting standards of constitutional due process were not observed. *(People v. Galas, G.R. No. 139413-15, March 20, 2001).* Non-compliance with requirement of a searching inquiry. *(People v. Sta. Teresa, G.R. No. 130663, March 20, 2001).* However, where the trial court receives evidence to determine precisely whether or not the accused erred in admitting his guilt, the manner in which the plea of guilty is made loses legal significance, for the simple reason that the conviction is based on the evidence proving the commission of the offense charged. *(People v. Latupan, G.R. Nos. 112453-56, June 28, 2001).*

DEMURRER TO EVIDENCE

The trial court has a specific duty under the Rules to act on petitioner's demurrer to evidence, either by granting it or denying the same. The denial of a demurrer may be the proper subject of a petition for certiorari if there was grave abuse of discretion. *(Gatdula v. People, G.R. No. 140688, Jan. 26, 2001).*

TRIAL

Number of Witnesses. The prosecution has the prerogative to present the witnesses it needs to meet the quantum of evidence necessary to merit the conviction of the accused. *(People v. De Guzman, G.R. No. 117952-53, Feb. 14, 2001).*

JUDGMENT

Acquittal in a criminal case is immediately final and executory upon its promulgation; accordingly, the State may not seek its review without placing the accused in double jeopardy. *(Barbers v. Laguio, G.R. No. Adm. Matter No. RTJ-00-1568, Feb. 15, 2001).*

APPEAL

(a) Rulings of the trial court on procedural questions and admissibility of evidence during the course of a trial are interlocutory in nature and may not be the subject of separate appeal or review on *certiorari,* but are to be assigned as errors and reviewed in the appeal properly taken from the decision rendered by the trial court on the merits of the case. *(Gatdula v. People, G.R. No. 140688, Jan. 26, 2001).*

(b) The acquittal of some of the accused based on reasonable doubt benefits movant co-accused, notwithstanding that he has withdrawn his appeal. *(People v. Escaño, G.R. No.s 129756-58, Jan. 19, 2001).*

(c) If the accused escapes from actual custody or flees from constructive custody, the Court may *motu proprio* or on appellee's motion, dismiss the appeal for abandonment. *(People v. Maderas, G.R. No. 138975, Jan. 29, 2001).*

(d) The word "party" in Rule 122, Sec. 1 of the Revised Rules on Criminal Procedure includes not only the government and the accused but other persons as well, such as the complainant who may be affected by the judgment rendered in the criminal proceedings. The complainant has an interest in the civil liability arising from the crime, unless of course he has reserved to bring a separate civil action to recover civil liability. Where the Office of

the Solicitor General takes a contrary position and recommends, as in this case, the acquittal of the accused, the complainant's right to be heard on the question of award of indemnity and damages arises. *(People v. Madali, G.R. No. 126050, Jan. 16, 2001).*

(e) The prosecution cannot avail of the remedies of special civil action on certiorari, petition for review on certiorari or appeal in criminal cases. The Solicitor General's petition for certiorari under Rule 65, praying that no mitigating circumstance be appreciated in favor of the accused-appellant and that the penalty imposed on him be correspondingly increased, constitutes a violation of his right against double jeopardy and should be dismissed. *(People v. CA, G.R. No. 103613 & 105830, Feb. 23, 2001).*

(f) The review of criminal cases necessitates a re-examination of the entire evidence on record. *(People v. Uganap, G.R. No.130605, June 19, 2001).*

SEARCH AND SEIZURE

Valid Search Without Warrant. Search incidental to a lawful arrest, which includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest which must precede the search. The process cannot be reversed. *In flagrante delicto* arrests. Requisites: (1) The person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) Such overt act is done in the presence or within the view of the arresting officer. Reliable information alone, absent any overt act indicative of a felonious enterprise in the presence of or within the view of the arresting officers, is not sufficient to constitute probable cause that would justify an *in flagrante delicto* arrest. In the case at bar, accused-appellants manifested no outward indication that would justify their arrest. In holding a bag on board a *trisikad,* accused-appellant

could not be said to be committing, attempting to commit or having committed a crime. It matters not that accused-appellant responded "Boss, if possible we will settle this" to the request of the police officer to open the bag. Such response, which allegedly reinforced the "suspicion" of the arresting officers that accused-appellants were committing a crime, is an equivocal statement which standing alone will not constitute probable cause to effect an *in flagrante delicto* arrest. Note that were it not for the other police officer who did not participate in the arrest but merely pointed accused-appellants to the arresting officers, accused-appellant could not be the subject of any suspicion, reasonable or otherwise. *(People v. Molina, G.R. No. 133917, Feb. 19, 2001).* Seizure under the plain view doctrine. Necessarily, the search conducted immediately after the arrest was valid. *(People v. DeGuzman, G.R. No. 117952-53, Feb. 14, 2001).*

EVIDENCE

WHAT NEED NOT BE PROVED

Judicial Admission. Having been included in the stipulation of facts at pre-trial, the genuineness of the signature on the promissory note is a judicial admission that requires no proof. *(SSC Chemicals Corporation v. CA, G.R. No. 128538, Feb. 28, 2001).*

TESTIMONIAL EVIDENCE

Qualifications of Witnesses. As long as a person is qualified to become a witness, he may be presented as one regardless of whether his name was included in the information or not. (a) Mere relationship of the witness to the victim does not automatically impair their credibility as to render their testimonies less worthy of credence where no improper motive may be ascribed to them

for testifying. *(People v. Pardua, G.R. No. 110813, June 28, 2001; Roca v. CA, G.R. No. 114917, Jan. 29, 2001; People v. De Leon, G.R. No. 129057, Jan. 22, 2001; People v. Tio, G.R. No. 132482-83, Feb. 20, 2001; People v. Icalla, G.R. No. 136173, March 7, 2001; People v. Toyco, G.R. No. 138609, Jan. 17, 2001).*

(b) That the witnesses were unschooled and illiterate do not diminish the trustworthiness of their testimony. Truthfulness is not a monopoly of the old, the right and the learned – truth can come from the mouth of a child and the lips of the poor, the simple and the unlettered. *(People v. Enriquez, G.R. No. 138264, April 20, 2001).*

(c) That a witness had been previously convicted of a crime did not *ipso facto* render his testimony dubious. *(Uriarte v. People, G.R. No. 137344, Jan. 30, 2001).* The trial court was correct in not admitting proof of appellant's past conviction. This has no probative value as far as the present charge against appellant is concerned. *(People v. Ubongen, G.R. No. 126024, April 20, 2001).* Neither is credibility of the witness diminished by the fact that he had previously recanted his statement before the office of the Provincial Prosecutor. After all, he was able to satisfactorily explain the reason for his recantation. *(Uriarte v. People, G.R. No. 137344, Jan. 30, 2001).*

(d) Biased Witness. To impeach a biased witness, the counsel must lay the proper foundation of the bias by asking the witness the facts constituting the bias. The witness' testimony that he would do anything for his fellow brothers was too broad and general as to constitute a motive to lie before the trial court. Counsel for the defense failed to propound questions regarding the tenets of the fraternity that espouse absolute fealty of the members to each other. The question was phrased so as to ask only for one of the witnesses' personal conviction. And even if that witness' credibility were impeached, it does not follow that the testimonies of the other prosecution witnesses should also be undermined as they were

not asked the same question on cross examination. *(People v. Peralta, G.R. No. 128116, Jan. 24, 2001).*

(e) Interest in Case. A witness' interest in the outcome of a case shall not be a ground for disqualification. Such an interest, if shown, while perhaps indicating the need for caution in considering the witness' testimony, does not of itself operate to reduce his credit; indeed, his testimony must be judged on its own merits. *(Republic v. CA, G.R. No. 116372, Jan. 18, 2001).*

(f) Lawyer. The attorney took the witness stand not as a lawyer but as an ordinary person, testifying in his capacity as accused-appellant's employer. As such, no special privilege should be accorded him by the trial court by reason only of his being a member of the bar. He did not appear in that case as an officer of the court but as a mere witness, and, hence, should be treated as one. *(People v. Nardo, G.R. No. 133888, March 1, 2001).*

(g) Child Witness *(People v. Villadores, 137649, March 8, 2001).* Rule on Examination of a Child Witness (which became effective on 15 Decembner 2000). *(People v. Rama, G.R. No. 136304, Jan. 25, 2001).* Five-year old witness could not answer some questions, such as which was her left and her right, but was straightforward identifying the accused as the culprit. *(People v. Rama, G.R. No. 136304, Jan. 25, 2001).*

(h) A non-expert witness may give his opinion as to the sanity or insanity of another, when based upon conversations or dealings which he has had with such person, or upon his appearance, or upon any fact bearing upon his mental condition, with the witness' own knowledge and observation, he having first testified to such conversations, dealings, appearance or other observed facts, as the basis of his opinion. *(People v. Duranan, G.R. Nos. 134074-75, Jan. 16, 2001).*

(i) Retardate as competent witness. *(People v. Duranan, G.R. Nos. 134074-75, Jan. 16, 2001).*

ADMISSIONS AND CONFESSIONS

Admissions. The declarations, acts, and omissions of accused-appellant after the crime, may be received in evidence against him. *(People v. Olivo, G.R. No. 130335, Jan. 18, 2001).*

Offer of Compromise. Appellant offered P30,000.00 to the victim's father as settlement of the case and so that he may be released from confinement. Such offer can only be taken to mean an admission of guilt. In criminal cases, except those involving criminal negligence or those allowed by law to be amicably settled or compromised, an offer of compromise by the accused may be received in evidence as an implied admission of guilt. *(People v. Paraiso, G.R. No. 131823, Jan. 117, 2001).*

Extra-Judicial Confession - to be admissible in evidence must be express and voluntary, executed in writing with the assistance of an independent and competent counsel and a person under custodial investigation must be continuously assisted by counsel from the very start thereof. Here, appellants were in police custody and subjected to custodial investigation for 2-1/2 hours without the assistance of counsel before he decided to confess. The police officer witness for the prosecution, himself, admitted that accused-appellant at first did not want to confess and pointed to another suspect as the perpetrator of the crime. This statement negates the police's claim of voluntary surrender and places in serious doubt the voluntariness of accused-appellant's extra-judicial confession. *(People v. Patungan, G.R. No. 138045, March 14, 2001).*

TESTIMONIAL KNOWLEDGE

Hearsay Rule. When the evidence is based on what was supposedly told the witness, the same is without any evidentiary value or weight. *(Barrera v. People, G.R. No. 134727, Feb. 19, 2001).* The testimony of the mother that her child told her that an old man offered to buy the child fruits is patently hearsay. Note that the information allegedly came from the mouth of a three-year-old whom the trial judge had declared incompetent to testify in court. *(People v. Ubongen, G.R. No. 126024, April 20, 2001).* The testimony of the medico-legal taken in the first case, involving the three other accused for the death of the same victim is inadmissible in the case at bar as the defense did not have the opportunity to cross-examine. *(People v. Givera, G.R. No. 132159, Jan. 18, 2001).* Unless an affiant himself takes the witness stand to affirm the averments in his affidavit, the affidavit must be excluded from the judicial proceeding for being inadmissible as hearsay. *(People v. Preciados, G.R. No. 122934, Jan. 5, 2001).* In view of the defense's failure to present the affiants as witnesses, no probative value can be given to their affidavits. *(People v. Castillo, G.R. No. 139339, Jan. 19, 2001).*

Exceptions to the Hearsay Rule. Not all hearsay evidence is inadmissible. Over the years, a huge body of hearsay evidence has been admitted by courts due to their relevance, trustworthiness and necessity. *(People v. Teves, G.R. No. 141767, April 2, 2001).*

(a) Part of the *Res Gestae*. The trial court based its conviction of accused-appellant on the testimony of the victim's mother, regarding what the victim told her. The victim herself, being a child of 2-1/2 years old, was not presented in court. The victim's acts and statements constitute exceptions to the hearsay rule because they were part of the *res gestae.* Under the doctrine of independent relevant statements, regardless of their truth or falsity, the fact that such statements were made is relevant. *(People v. Velasquez, G.R. No. 132635 & 143872-75, Feb. 21, 2001).*

(b) Dying Declaration. The positive declaration of the deceased as to the identity of his assailants, given with the consciousness that death is imminent, is undoubtedly entitled to great weight considering the seriousness of his wounds and his very weak physical condition as shown by the fact that death supervened thirty minutes after his disclosure. *(People v. Macandog, G.R. No. 129534 & 141169, June 6, 2001; People v. Martinez, G.R. No. 124892, Jan. 30, 2001). (People v. Seduco, G.R. No. 130643, Jan. 16, 2001).* While the witness did not see the actual stabbing, the victim's revelation to him of the name of appellant as the assailant could be considered as a dying declaration. Such *ante mortem* statement is evidence of the highest order because at the threshold of death, all thoughts of fabricating lies are stilled. The utterance of a victim made immediately after sustaining serious injuries may be considered the incident speaking through the victim. It is accorded the highest credence. Even if *arguendo* said declaration is not admissible as a dying declaration, it is still admissible as part of the *res gestae*, since it was made shortly after a startling occurrence and under the influence thereof. *(People v. Lao-as, G.R. No. 126396, June 29, 2001; People v. Macandog, G.R. No. 129534 & 141169, June 6, 2001; People v. Martinez, G.R. No. 124892, Jan. 30, 2001; People v. Seduco, G.R. No. 130643, Jan. 16, 2001).*

Inconsistencies. (a) Discrepancies and inconsistencies which refer merely to minor details and not to basic aspects of the crime do not impair the credibility of a witness. *(People v. Mustapa, G.R. No. 141244, Feb. 19, 2001; People v. Baltazar, G.R. No. 129933, Feb. 26, 2001; People v. Navarro, G.R. No. 132696-97, Feb. 12, 2001).* Minor Inconsistencies are badges of truthfulness and candor. *(People v. Albior, G.R. No. 115079, Feb. 19, 2001).* In the following cases, the inconsistencies were considered minor: [i] Variance as to the location of the stab wounds between the testimony of the prosecution witness and the autopsy report. In this case, the witness positively identified the accused-appellants as the culprits. *(People v. Galvez, G.R. No. 136790, March 26, 2001).* [ii] Variance in the

testimonies of the prosecution witnesses as to the location of the stab wounds on the victim *(People v. Ramirez, G.R. No. 138261, April 17, 2001).* [iii] In his affidavit, the witness stated that accused-appellant was unarmed at the time the victim was hacked and that said accused-appellant's participation was boxing the victim. At the trial, however, the witness testified that said accused-appellant also hacked the victim. Such discrepancy is not substantial enough to impair the credibility of the witness. *(People v. Padua, G.R. No. 110813, June 28, 2001).* [iv] Testimonial contradictions which relate to the date when the victim was raped. *(People v. Amazan, G.R. No. 136251, 138606 & 138607, Jan. 16, 2001).* [v] Inconsistency regarding the number of passengers inside the motor vehicle involved and the witness' erroneous estimate of the age of the appellant. *(People v. Mataro, G.R. No. 130378, March 8, 2001).* [vii] Inability to pinpoint the exact part of the victim's hands and arms held by the malefactors *(People v. Dulot, G.R. No. 137770, Jan. 30, 2001).* [viii] Error-free testimony cannot be expected, most especially when a witness is recounting details of a harrowing experience, one which even adults would like to bury in oblivion. It could be that these inconsistencies were the result of lapses in the memory of a then 8-year old child, confused and traumatized by the bestial act done on her by accused-appellant. *(People v. Osing, G.R. No. 138959, Jan. 16, 2001).*

(b) Material Inconsistency. In this case, the inconsistency in the witness' testimony does not refer to incidental or collateral matters. The basis of her identification of accused-appellant as the victim's assailant was precisely her purported familiarity with the accused-appellant. If said witness was not at all familiar with the accused-appellant, the prosecution's whole case collapses for such familiarity was its very foundation. *(People v. Austria, G.R. No. 134279, March 8, 2001).* The conviction of accused-appellant by the trial court was predicated primarily on the testimony of prosecution witness who "positively identified" accused-appellant as the one who hacked the victim on the left side of his neck. However, the

autopsy report revealed that the victim was hacked on the right side of his neck. This material inconsistency casts a serious doubt on the testimony of the witness. Other material inconsistencies were likewise pointed out by the Court. *(People v. Lavapie, G.R. No. 130209, March 14, 2001).*

Mere Delay in filing a complaint, or in reporting a crime or identifying the criminal does not necessarily imply that such complaint, report or identification is fabricated, especially when such delay is sufficiently explained. *(People v. Osing, G.R. No. 138959, Jan. 16, 2001; People v. Dichoson, G.R. No. 118986-89, Feb. 19, 2001; People v. Blazo, G.R. No. 12711, Feb. 19, 2001).* Fear for one's life is a valid explanation for the witness' failure to immediately identify the perpetrators to the proper authorities. *(People v. Galvez, G.R. No. 136790, March 26, 2001).* Thus: [i] The failure of the victim to immediately report the assault upon her virtue to her family or to the police *(People v. Mirafuentes, G.R. Nos. 135850-52, Jan. 16, 2001)*; [ii] The initial non-disclosure by the witness of her husband's assailant immediately after the occurrence of the crime *(People v. Absalon, G.R. No. 137750, Jan. 25, 2001)*; [iii] Not reporting the rape until one (1) month thereafter *(People v. Awing, G.R. Nos. 133919-20, Feb. 19, 2001)*; [iv] Delay of almost 16 months before the witness executed a sworn statement *(People v. Consejero, G.R. No. 118334, Feb. 20, 2001)*; [v] Three years and nine months of silence and non-disclosure of the identity of the accused *(People v. Zuniega, G.R. No. 126117, Feb. 21, 2001)*; [vi] Filing of criminal case eight (8) years after the crime *(People v. Navarro, G.R. No. 132696-97, Feb. 12, 2001)* - did not affect the credibility of the witnesses. [vii] The ruling was no different in this case where the witnesses were police officers. The accused was the municipal mayor of the place where the crime was committed. The length of delay is not as significant as the reason of the delay, which must be well-grounded or sufficient. A well-grounded fear of reprisal is a sufficient justification for the delay of the witness in revealing what he had witnessed. The degree of fear and the probability of reprisal may cause the lengthening of

delay by the witness in revealing any information about the crime. *(People v. Natividad, G.R. No. 138017, Feb. 23, 2001).* However, the failure of the witness for ten (10) years to give any statement to the police regarding the killing of his uncle, which he allegedly saw, adversely affected the credibility of said witness. The explanation of the witness that he was afraid was not given credence as there was no evidence that the accused-appellant or anyone acting for the latter ever threatened the witness. *(People v. Robles, G.R. No. 136731, Jan. 18, 2001).*

Positive Identification. (a) Established. *(People v. Absalon, G.R. No. 137750, Jan. 25, 2001).* Positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law. *(People v. Lovedorial, G.R. No. 139340, Jan. 17, 2001; People v. Leal, G.R. No. 139313, June 19, 2001).* The witness recognized accused-appellants by their voices. The sound of the voice of a person is an acceptable means of identification where it is established that the witness and the accused knew each other personally and closely for a number of years. In this case, the witness explained that she was familiar with the accused-appellants' voices because they passed by their house almost everyday. *(People v. Galo, G.R. No. 132025, Jan. 16, 2001).* The witness was positive that appellant was the assailant because he knew him having been neighbors for a year, their houses being less than 100 meters apart. *(People v. Toyco, Sr., G.R. No. 138609, Jan. 17, 2001).* Appellant insists that it was impossible for the witness to have identified him since the former only saw him inside the courtroom and never before. However, there is nothing in the law and jurisprudence which requires, as a condition *sine qua non* for the positive identification by the prosecution witness of a felon, that the witness must first know the latter personally. *(People v. Conde, G.R. No. 113269, April 10, 2001).* Identification through pictures, after the victim gave

description to the police. *(People v. Naag, G.R. No. 136394, Feb. 15, 2001).*

(b) Not established. *(People v. Cabaya, G.R. No. 127129, June 20, 2001).* The identification of the accused through his voice is acceptable, particularly, if the witness knows the accused personally. But the identification must be categorical and certain. In this case, the witness changed her version a number of times. *(People v. Preciados, G.R. No. 122934, Jan. 5, 2001).* When the barangay patrol vehicle backed off to accommodate the passenger jeep, the two (2) vehicles were 36 feet apart, at which distance the trial court made the observation that the man behind the steering wheel was not recognizable in broad daylight. *(People v. Teves, G.R. No. 141767, April 2, 2001).* Since the assailants were not facing the victim, it was not clearly established by the prosecution as to when the proper identification was made. Unless the assailant looked back and faced the direction of the witness, only then can the witness speak of a trustworthy identification. In criminal prosecution, the identification of the offender is crucial to defeat the defense of alibi. Positive identification must be established beyond reasonable doubt. Absent such clear and positive identification, the doctrine that the defense of alibi cannot prevail over positive identification of the accused must yield to the constitutional presumption of innocence. Necessarily, courts should not precipitately conclude that a person is guilty when his alibi appears weak for it is the duty of the prosecution to prove the guilt of the accused beyond reasonable. doubt. *(People v. Cabaya, G.R. No. 127129, June 20, 2001).* The pre-trial identification in which the prosecution witness was made to identify the suspect in a one-on-one confrontation, was pointedly suggestive, generated confidence where there was none, activated visual imagination and, all told, subverted the identification of appellant by the witness. This method of identification is as tainted as an uncounseled confession. *(People v. Teves, G.R. No. 141767, April 2, 2001).*

Trial Court's Assessment of Credibility of Witnesses - generally accorded great respect. *(People v. Olivo, G.R. No. 130335, Jan. 18, 2001; People v. Garcia, G.R. No. 117406, Jan. 16, 2001).* The Court will not interfere with such assessment, in the absence of any indication or showing that the trial court overlooked some material facts or gravely abused its discretion. *(People v. Valdez, G.R. No. 128105, Jan. 24, 2001).* When the trial court's findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon the Court. *(Roca v. CA, G.R. No. 114917, Jan. 29, 2001).*

PRESUMPTIONS

Official Duty Has Been Regularly Performed. Frame up and extortion as a defense require strong and convincing evidence because of the presumption that the law enforcement agents acted in the regular performance of their official duties. *(People v. Mustapa, G.R. No. 141244, (Feb. 19, 2001).*

PRESENTATION OF EVIDENCE

EXAMINATION OF WITNESSES

Impeachment of Adverse Party's Witness. Previous statements cannot serve as basis for impeaching the credibility of a witness unless her attention was first directed to the discrepancies and she was then given an opportunity to explain them. *(People v. Amazan, G.R. No. 136251, 138606 & 138607, Jan. 16, 2001).* At all events, the defense should have taken steps to impeach the credibility of the testimonies of the two witnesses. However, the defense failed to do so. It did not ask where she previously made statements contradictory or inconsistent with her testimony nor did it make her explain an inconsistency. The credibility of the

testimonies of the victim and her mother could only be questioned if they failed to explain the inconsistencies. Such procedure was not followed in this case, where the defense even decided not to cross-examine complainant's mother. *(People v. Garcia, G.R. No. 117406, Jan. 16, 2001).* Defense's claim re line of fire – not given credence. *(People v. Lovedorial, G.R. No. 139340, Jan. 17, 2001).*

WEIGHT AND SUFFICIENCY OF EVIDENCE

Proof Beyond Reasonable Doubt. In the hierarchy of evidentiary values, proof beyond reasonable doubt is at the highest level, followed by clear and convincing evidence, preponderance of evidence and substantial evidence, in that order. *(Energy Regulatory Board v. CA, G.R. No. 113079, April 20, 2001).* In any criminal prosecution, the only requisite is that the prosecution prove the guilt of the accused beyond reasonable doubt. It does not mean such a degree of proof that, excluding the possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. *(People v. Crisanto, G.R. No. 120701, June 19, 2001).*

Equipoise Rule. Where the evidence of the parties in a criminal case is evenly balanced, the constitutional presumption of innocence should tilt the scale in favor of the accused. *(People v. Mataro, G.R. No. 130378, March 8, 2001).*

Circumstantial Evidence *(People v. De Mesa, G.R. No. 137036, March 14, 2001).* (a) Considered sufficient only when the facts from which the inferences are derived are themselves duly proven. An inference cannot be drawn from another inference. From the inference that accused had thrown away his shirt, the trial court further inferred that he had done so because the shirt was spattered with blood. *(People v. Solis, G.R. No. 138936, Jan. 30, 2001).* (b) Merely established accused-appellant's whereabouts on that fateful evening

and placed him at the scene of the crime and nothing more. The prosecution's evidence did not establish that he was seen with the victim at or about the time of the incident. Neither was there any other evidence which singled out the accused-appellant to the exclusion of any other as being responsible for the crime. The fact that his slippers were found at the crime scene does not necessarily prove that he killed the victim. *(People v. Lugod, G.R. No. 136253, Feb. 21, 2001).* (c) Although the witness failed to see the actual killing, circumstantial evidence in this case established accused-appellant's involvement in the death of the victim. *(People v. Valdez, G.R. No. 128105, Jan. 24, 2001).* (d) Established: robbery with homicide. *(People v. Bayang, G.R. No. 134402, Feb. 5, 2001)*; Murder *(People v. Oliva, G.R. No. 106826, Jan. 18, 2001)*; murder and homicide. *(People v. Consejero, G.R. No. 118334, Feb. 20, 2001).* (e) Not sufficient to establish rape with homicide. *(People v. Lugod, G.R. No. 136253, Feb. 21, 2001).* (f) When material independent facts or circumstances are relied upon to identify the person who committed the crime charged, they must necessarily be so linked as to complete a chain or series of facts pointing to the guilt of the accused, with each link established as firmly as the main fact. The record shows that appellant was indeed a very convenient suspect. It appears that aside from naming him as the suspect, the police investigators did nothing more than a perfunctory investigation to substantiate their suspicions. They should realize that it is on the result of their work, the evidence they have gathered, that the conviction and the punishment of criminals largely depend. *(People v. Solis, G.R. No. 138936, Jan. 30, 2001).* (g) Considering the totality of the evidence, it appears that the principal evidence presented by the prosecution to establish the alleged conspiracy among the appellants to commit murder is the extra-judicial confession of the accused. The rest of the evidence presented is at most circumstantial to establish motive and the presence of the appellants at or near the place of the commission of the crime. *(People v. Patungan, G.R. No. 138045, March 14, 2001).*

Sole Witness. The testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court. *(People v. Rama, G.R. No. 136304, Jan. 25, 2001).*

Alibi. The defense failed to present at the witness stand the brother or sister-in-law of the accused who could have corroborated his alibi, a fatal omission if, indeed, his claim should deserve any weight. *(People v. Velasco, G.R. No. 128089, Feb. 13, 2001).*

Lie Detector Test. Based on theory that an individual will undergo physiological changes capable of being monitored by sensors attached to his body when he is not telling the truth. The Court does not put credit and faith on the result of a lie detector test inasmuch as it has not been accepted by the scientific community as an accurate means of ascertaining truth or deception. *(People v. Carpo, G.R. No. 132676, April 4, 2001).*

DNA Test. Being a novel scientific technique, the use of DNA test as evidence is open to challenge. Eventually, as the appropriate case comes, courts should not hesitate to rule on the admissibility of DNA evidence. *(Tijing v. CA, G.R. No. 125901, March 8, 2001).*

Retractions are generally unreliable and are looked upon with considerable disfavor by the courts because of the probability that recantation may later on be itself repudiated. *(People v. Preciados, G.R. No. 122934, Jan. 5, 2001).* Affidavits of recantation are easily obtained for monetary consideration or through intimidation. They are, therefore, regarded with suspicion and reservation. *(People v. Castillo, G.R. No. 139339, Jan. 19, 2001).* Recantation does not necessarily cancel an earlier declaration. Like any other testimony, it is subject to the test of credibility based on the relevant circumstances and especially the demeanor of the witness on the stand. *(People v. Seguis, G.R. No. 135034, Jan. 18, 2001).* Not sufficient to overturn finding of guilt by the trial court based on the clear

and convincing testimony of the recanting complainant, given during a full-blown trial. *(People v. Nardo, G.R. No. 133888, March 1, 2001).*

Denial - if unsubstantiated by clear and convincing evidence is negative and self-serving which merit no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters. *(People v. Serdanilla, G.R. No. 137696, Jan. 24, 2001).*

Affirmation of Affidavit. Accused-appellant cannot be convicted of the June 9 charge of rape if the sole basis is the affirmation of the complainant on cross-examination that she executed an affidavit stating that from June 1 to 9, accused-appellant entered her bedroom and repeatedly had sexual intercourse with her. What the complainant merely affirmed was the fact that she executed said affidavit; however, to prove the guilt of the accused-appellant would require more than an affirmation. Nor can it be inferentially concluded that the two other rapes narrated by the complainant refer to the June 9 rape charge, when she could not recall when these two alleged episodes of rape took place. To do so would amount to a conviction by conjecture. *(People v. Morata, G.R. No. 140011-16, March 12, 2001).*

Affidavit Submitted at the Preliminary Investigation. That the affidavit formed part of the record of the preliminary investigation does not justify its being treated as evidence because the record of the preliminary investigation does not form part of the records of the case in the RTC. To be considered part of the records of the case, the record of the preliminary investigation must be introduced as evidence during trial. The prosecution failed to present B as witness. Hence, his sworn statement given during the preliminary investigation is in-admissible and deserves no consideration at all. *(People v. Robles, G.R. No. 136731, Jan. 18, 2001).*

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