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LEGITIMES: CONCEPTS, PROBLEMS AND SOLUTIONS

*By Rubén F. Balane**

This article on legitimes covers certain specific areas namely: presumptive legitimes, donations and collations.

I
CONCEPT OF LEGITIMES

The idea of legitimes is peculiar to continental law. By that, I mean the legal system that is derived from the civil law tradition, as distinguished from the other great legal system called the common-law tradition, of which Great Britain and the United States are the foremost repositories. In its law on succession, the continental legal system recognizes certain classes of heirs as entitled to a mandatory portion of the estate left behind by a person upon death. That portion, reserved by statutory mandate and set aside for these classes of heirs is called the *legítima* in Spanish law (Art. 806, Spanish Civil Code) (*Pflichtteil* in the German Code [*Vide* Art. 2303 BGB], and the *réserve héréditaire* in French law [*Vide* Arts. 913-919, Code Napoleon]), a term which, in the absence of a precise word in the English language, is literally rendered as *legitime* in our Civil Code.

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Our Civil Code defines legitime in Article 886.

> **Art. 886.** Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

The first thing to note about this definition is that the legitime – that reserved portion – is extremely variable because, as we shall see later, it depends on who the compulsory heirs are.

The article prohibits a person (The use of the term "testator" is inaccurate because the article applies whether or not a person makes a will.) from disposing of that portion or fraction of his estate which corresponds to the legitime. The wording of the article is somewhat ambiguous, because only *gratuitous* dispositions are referred to. Onerous dispositions are not forbidden, because they do not diminish the person's patrimony, there being an exchange of values in onerous dispositions.

The following article enumerates the heirs for which the legitime is reserved. The infelicitous term *compulsory heirs* is used for want of a better term. Compulsory heirs are the following:

> **Art. 887.** The following are compulsory heirs:
>
> (1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
>
> (2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3) The widow or widower;

(4) Acknowledged natural children, and natural children by legal fiction;

(5) Other illegitimate children referred to in article 287. Compulsory heirs mentioned in Nos. 3, 4 and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

Note that paragraphs (4) and (5) have been modified by Arts. 163 and 176 of the Family Code.

Art. 163. The filiation of children may be by nature or by adoption. Natural filiation may be legitimate or illegitimate.

Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force.

We will note that the classification of illegitimate children into *natural* and *illegitimate other than natural* (spurious), so strictly observed by the Civil Code of 1950, has been eliminated by the

Family Code. So also has the 5:4 ratio of their legitimes (*Vide* Article 895, Civil Code). Now, for successional purposes, all illegitimate children stand on the same footing. Their legitimes are a simplified "one-half of the legitime of a legitimate child."

The enumeration is deceptively simple because the manner of sharing the legitime among these compulsory heirs can and does include a possible number of combinations that is, to anyone but the most avid student of the law on succession, bewildering. Commentators tell us that the rules on legitimes, insofar as the combinations of compulsory heirs are concerned, operate on two simultaneous principles: *exclusion* and *concurrence.* Thus, we have various possible combinations of heirs who can share the legitime.

For brevity, these compulsory heirs can be classified into three main groups: 1) the primary compulsory heirs (consisting of the legitimate children and descendants), 2) the secondary compulsory heirs (consisting of the legitimate parents and ascendants and the illegitimate parents), and 3) the concurring compulsory heirs (consisting of the surviving spouse and the illegitimate children and descendants).

The primary and secondary compulsory heirs cannot *both* inherit a legitime (by that I mean they cannot be compulsory heirs at the same time). But any other blend is possible. The primary can inherit together with the concurring; the secondary can inherit together with the concurring; and, of course, within each class, there can be any number of heirs. This simultaneous operation of the rules of exclusion and concurrence also makes possible the variation of portions given to compulsary heirs. The most notorious example of this is the surviving spouse, who, depending on the combination, can get 1/2, 1/3, 1/4, 1/8 of the estate or, even more variably, a share equivalent to that of one legitimate child.

For convenience, the following outline of combinations may be given:

1) Legitimate children alone: 1/2 of the estate divided equally

2) Legitimate children and surviving spouse: legitimate children – 1/2 of the estate; surviving spouse – a share equal to that of one child

3) One legitimate child and surviving spouse: legitimate child – 1/2 of the estate; surviving spouse – 1/4 of the estate

4) Legitimate children and illegitimate children: legitimate children – 1/2 of the estate; illegitimate children – each will get 1/2 of share of one legitimate child

5) Legitimate children, illegitimate children, and surviving spouse: legitimate children – 1/2 of the estate; illegitimate children – each will get 1/2 of share of one legitimate child; surviving spouse – a share equal to that of one legitimate child. The surviving spouse's share is preferred over those of the illegitimate children, which shall be reduced if necessary.

6) One legitimate child, illegitimate children, and surviving spouse: legitimate child – 1/2 of the estate; illegitimate children – each will get 1/2 of share of the legitimate child; surviving spouse – 1/4 of the estate. The surviving spouse's share is preferred over those of the illegitimate children, which shall be reduced if necessary.

7) Legitimate parents alone: 1/2 of the estate

8) Legitimate parents and illegitimate children: legitimate parents – 1/2 of the estate; illegitimate children — 1/4 of the estate

9) Legitimate parents and surviving spouse: legitimate parents – 1/2 of the estate; surviving spouse — 1/4 of the estate

10) Legitimate parents, illegitimate children, and surviving spouse: legitimate parents – ½ of the estate; illegitimate children – 1/4 of the estate; surviving spouse – 1/8 of the estate

11) Surviving spouse alone: ½ of the estate (or 1/3 if the marriage, being in *articulo mortis*, falls under Article 900, par. 2)

12) Surviving spouse and illegitimate children: surviving spouse — 1/3 of the estate; illegitimate children – 1/3 of the estate

13) Surviving spouse and illegitimate parents: surviving spouse – 1/4 of the estate; illegitimate parents – 1/4 of the estate

14) Illegitimate children alone: 1/2 of the estate

15) Illegitimate parents alone: 1/2 of the estate.

Which brings us to the first material point about legitimes. Legitimes are always fractions. We are not here referring to specific properties, but to quotas determined in relation to a proportion relative to the entire estate. As clearly pointed out by Justice J.B.L. Reyes in his *Observations on the New Civil Code:*

> The new Code follows the Spanish concept of legitime as a reserved and intangible quota in, *and of*, the property of the decedent, as opposed to the *quota in money value* of the German Civil Code. Following Art. 1056 of the Code of 1889, the new Code (Art. 1080) considers payment in cash of the legitime as an exceptional case; and further emphasizes this aspect by eliminating the privilege granted to the legitimate children by Art. 840, par. 2, of the Code of 1889, to satisfy in cash the legitimes of the non-legitimate heirs. . . .

Because of this, there is no way a compulsory heir can know just exactly how much in pesos and centavos, or exactly what property he will be receiving from the estate of his predecessor. All he knows is the fractions, which as far as the economic aspect is concerned, really means next to nothing. He will know how much his share represents only when he is able to ascertain how much the estate of his predecessor is worth. And that brings us to the second point: collation.

II
COLLATIONS AND DONATIONS

1. Collation is, arguably, the most troublesome term in the entire Code. That is because there are really three concepts lurking behind that one word. The term has caused considerable confusion not only among students and not a few lawyers but even among those who should know better. The three senses in which the word *collation* is used are distinct but interrelated. The distinction among these three concepts of collation is not always clearly observed even in court decisions, hence care must be taken when the term is encountered, in order to avoid ambiguity and confusion.

The first concept is collation as *computation*, the second is collation as *imputation* and the third is collation as *restoration* or *return.*

A. **Collation as Computation**: The first thing to do after a person dies, particularly if he has left compulsory heirs, is to find out how much he left behind. This is collation as *computation.* Governing this are Articles 908 and 1061 of the Code.

> **Art. 908.** To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.
>
> To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them.
>
> **Art. 1061 .** Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition.

The procedure is fairly simply described in Article 908. It consists of three steps:

a) The first step is to inventory all the assets of the estate. This can be either a simple or complicated

process depending on the amount of the property left behind by the decedent. The estate of a decedent who has left very modest assets can be computed by an ordinary layman using a table napkin. On the other hand, the estate of a Bill Gates will need the services of an army of accountants, appraisers, stock brokers, portfolio analysts, not to mention gemologists, art critics, auctioneers, and such other experts.

b) The second step is to deduct or set aside an amount or property representing the outstanding obligations.

c) The third step is adding to the difference between the first and second the value of all donations *inter vivos* made by the decedent. On this third step, a point of clarification: despite the apparent implication in Article 1061 that only donations made to compulsory heirs must be collated in this first sense (an implication caused by faulty wording, which has misled even the eminent Manresa), donations *inter vivos* must be collated in the sense of computed, *no matter who the donee is*. The words of Article 908 are clearer because it says *all donations* (even if the clarity is dimmed somewhat by the superfluous phrase "that are subject to collation"). Note, however, that for this computation it is the value of the thing donated at the time the donation was made that should be added. The reason for this is that any decrease or increase in value after the donation has been made will be for the account of the donee, being the owner. *(Vizconde v. Court of Appeals, 286 SCRA 217 [1998]).*

It must be emphasized that the computations in this first sense of collation are merely *paper* (or *computer*)

computations. No donations are being charged to legitimes at this stage, let alone being returned. This procedure is purely arithmetical.

The obvious purpose of collation in this first sense is to determine the value of the net hereditary estate in order to find out what the legitimes are worth since, as already pointed out, legitimes are only given in the Code in fractions. These fractions or quotas can have meaning only if we know what the whole estate is worth.

B. Collation as Imputation: The second sense of collation is *imputation*, and that term tells us how donations *inter vivos* are to be treated. The general rules may be outlined as follows:

a) Donation to a compulsory heir is considered as an advance on his legitime. This is expressed in Articles 909 to 910.

> **Art. 909.** Donations given to children shall be charged to their legitime.
>
> xxx xxx xxx

> **Art. 910.** Donations which an illegitimate child may have received during the lifetime of his father or mother, shall be charged to his legitime.
>
> Should they exceed the portion that can be freely disposed of, they shall be reduced in the manner prescribed by this Code.

b) Donations made to strangers will be imputed to the disposable portion, since they have no legitimes to speak of.

> **Art. 909.** xxx xxx xxx
>
> Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.
>
> Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code.

These two general rules have qualifications:

a) A donation made to a compulsory heir will not be charged to his legitime if the donor (the decedent) makes such a provision in the Deed of Donation. In such a case the donation will have to be imputed to the free portion.

> **Art. 1062.** Collation shall not take place among compulsory heirs if the donor should have so expressly provided, or if the donee should repudiate the inheritance, unless the donation should be reduced as inofficious.

b) Furthermore, even in cases where a donation made to a compulsory heir is charged to his legitime (the general rule), if the value of the donation exceeds the donee's legitime, the excess will be charged against the free portion.

Other articles referring to collation in the second sense are the following:

> **Art. 1063.** Property left by will is not deemed subject to collation, if the testator has not otherwise provided, but the legitime shall in any case remain unimpaired.
>
> **Art. 1064.** When grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property.
>
> They shall also bring to collation all that they may have received from the decedent during his lifetime, unless the testator has provided otherwise, in which case his wishes must be respected, if the legitime of the co-heirs is not prejudiced.
>
> **Art. 1065.** Parents are not obliged to bring to collation in the inheritance of their ascendants any property which may have been donated by the latter to their children.
>
> **Art. 1066.** Neither shall donations to the spouse of the child be brought to collation; but if they have been given by the parent to the spouses jointly, the child shall be obliged to bring to collation one-half of the thing donated.

Art. 1068. Expenses incurred by the parents in giving their children a professional, vocational or other career shall not be brought to collation unless the parents provide, or unless they impair the legitime; but when their collation is required, the sum which the child would have spent if he had lived in the house and company of his parents shall be deducted therefrom.

Art. 1069. Any sums paid by a parent in satisfaction of the debts of his children, election expenses, fines, and similar expenses shall be brought to collation.

Art. 1070. Wedding gifts by parents and ascendants consisting of jewelry, clothing, and outfit, shall not be reduced as inofficious except insofar as they may exceed one-tenth of the sum which is disposable by will.

Art. 1071. The same things donated are not to be brought to collation and partition, but only their value at the time of the donation, even though their just value may not then have been assessed.

Their subsequent increase or deterioration and even their total loss or destruction, be it accidental or culpable, shall be for the benefit or account and risk of the donee.

Art. 1072. In the collation of a donation made by both parents, one-half shall be brought to the inheritance of the father, and the other half, to that of the mother. That given by one alone

shall be brought to collation in his or her inheritance.

Art. 1073. The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co-heirs shall receive an equivalent, as much as possible, in property of the same nature, class and quality.

C. Collation as Restoration or Return: If a donation *inter vivos* impairs the legitime, then it is inofficious, and must be reduced to the extent of the impairment. That is the *collation* referred to in Articles 1075 and 1076.

Art. 1075. The fruits and interest of the property subject to collation shall not pertain to the estate except from the day on which the succession is opened.

For the purpose of ascertaining their amount, the fruits and interest of the property of the estate of the same kind and quality as that subject to collation shall be made the standard of assessment.

Art. 1076. The co-heirs are bound to reimburse to the donee the necessary expenses which he has incurred for the preservation of the property donated to him though they may not have augmented its value.

The donee who collates in kind an immovable, which has been given to him, must be reimbursed by his co-heirs for the

improvements which have increased the value of the property, and which exist at the time the partition is effected.

As to works made on the estate for the mere pleasure of the donee, no reimbursement is due him for them; he has, however, the right to remove them, if he can do so without injuring the estate.

Collation in this sense means *restitution* or *return*. It is really exactly the same as reduction of inofficious donations, already provided in various articles:

Art. 752. The provisions of article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will.

The donation shall be inofficious in all that it may exceed this limitation.

Art. 771. Donations which in accordance with the provisions of article 752, are inofficious, bearing in mind the estimated net value of the donor's property at the time of his death, shall be reduced with regard to the excess; but this reduction shall not prevent the donations from taking effect during the life of the donor, nor shall it bar the donee from appropriating the fruits.

For the reduction of donations the provisions of this Chapter and of articles 911 and 912 of this Code shall govern.

> **Art. 772.** Only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations.
>
> Those referred to in the preceding paragraph cannot renounce their right during the lifetime of the donor, either by express declaration, or by consenting to the donation.
>
> The donees, devisees and legatees, who are not entitled to the legitime and the creditors of the deceased can neither ask for the reduction nor avail themselves thereof.
>
> **Art. 773.** If, there being two or more donations, the disposable portion is not sufficient to cover all of them, those of the more recent date shall be suppressed or reduced with regard to the excess.
>
> **Art. 909. xxx xxx xxx**
>
> Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.
>
> Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code.

We must remember that, since donations given to compulsory heirs are (as a general rule) charged to their respective legitimes, such donations are not subject to collation in this third

sense, because there would in such a case be no possibility of inofficiousness since these donations convert into legitimes. What donations then can be collated in this sense? Only the following:

1) donations to strangers, 2) donations to compulsory heirs which the donor expressly exempts from imputation, and 3) donations to compulsory heirs which, falling under the general rule of being imputed to the legitime, are in excess of the donee's legitime (here the excess is treated as a donation to a stranger). These are donations that will be subject to return, *if inofficious*, *i.e., if they impair the legitime.*

It should be noted that inofficiousness can be either partial or total, depending on how much is needed to cover the legitimes.

As a final point on this topic, the question may be raised: what should be returned – the property itself or its value? There is, to my knowledge, neither article nor jurisprudence exactly in point. One could argue by analogy with the revocation or reduction of a donation which is inofficious for the happening of any of the events mentioned in Art. 760 –

> **Art. 760.** Every donation *inter vivos*, made by a person having no children or descendants, legitimate or legitimated by subsequent marriage, or illegitimate, may be revoked or reduced as provided in the next article, by the happening of any of these events:
>
> (1) If the donor, after the donation, should have legitimate or legitimated or illegitimate children, even though they be posthumous;
>
> (2) If the child of the donor, whom the latter believed to be dead when he made the donation, should turn out to be living;

(3) If the donor should subsequently adopt a minor child.

According to Article 762:

> **Art. 762.** Upon the revocation or reduction of the donation by the birth, appearance or adoption of a child, the property affected shall be returned, or its value if the donee has sold the same.
>
> If the property is mortgaged, the donor may redeem the mortgage, by paying the amount guaranteed, with a right to recover the same from the donee.
>
> When the property cannot be returned, it shall be estimated at what it was worth at the time of donation

It seems, from the words of the article, that the thing itself must be returned, no option being given to the donee. Only when the donee has previously sold the thing can he return, instead of the thing, its value.

The Code Commission, however, and the late Justice Parás seem to be of the opinion that the donee, in cases of inofficious donations, has the option of returning either the thing itself or its value. (*Vide* III Tolentino 602-603, 1979 ed. [quoting Code Commission Memorandum] and III Paras, 588-589, 1999 ed.)

A final observation: the ambiguity of the term *collation* as already pointed out, does lead a blurring of the distinctions among the three concepts, which, if we are not careful, could lead us astray. An example may be seen in a recent case cited previously:

Basic principles of collation need to be emphasized at the outset. Article 1061 of the Civil Code speaks of collation. It states:

"Art. 1061. Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition."

Collation is the act by virtue of which descendants or other forced heirs who intervene in the division of the inheritance of an ascendant bring into the common mass, the property which they received from him, so that the division may be made according to law and the will of the testator. Collation is only required of compulsory heirs succeeding with other compulsory heirs and involves property or rights received by donation or gratuitous title during the lifetime of the decedent. The purpose is to attain equality among the compulsory heirs in so far as possible for it is presumed that the intention of the testator or predecessor in interest in making a donation or gratuitous transfer to a forced heir is to give him something in advance on account of his share in the estate, and that the predecessor's will is to treat all his heirs equally, in the absence of any expression to the contrary. Collation does not impose any lien on the property or the subject matter of collationable donation. What is brought to collation is not the property donated itself, but rather the value of such property at the time it was donated, the rationale being

> that the donation is a real alienation which conveys ownership upon its acceptance, hence any increase in value or any deterioration or loss thereof is for the account of the heir or donee. *(Vizconde v. CA, 286 SCRA 217, at pp. 224-226).*

Note that the quoted paragraph speaks without distinction of collation as *computation* and collation as *imputation.*

[For other examples, *Vide Udarte v. Jurado, 59 Phil. 11 (1993)* and *Rodriguez v. CA, 91 SCRA 540 (1979)*].

III
PRESUMPTIVE LEGITIMES

The rule of presumptive legitimes — the delivery to the common children of a share of their parents' estate (equivalent to the said children's legitime during the parents' lifetime – is contained in the Family Code, but is not found either in the old or the present Civil Code. Its antecedent is to be found in the Divorce Law of 1917 (Act No. 2710). Sections 9 and 11 of that law provided –

> **Sec. 9** The decree of divorce shall dissolve the community of property as soon as such decree becomes final, but shall not dissolve the bonds of matrimony until one year thereafter.
>
> The bonds of matrimony shall not be considered as dissolved with regard to the spouse who, having legitimate children, has not delivered to each of them or to the guardian appointed by the court, within said period of one year, the equivalent of what would have been due to them as their legal portion if said spouse had died intestate immediately after the dissolution of the community of property. *(Underscoring supplied).*

> **Sec. 11.** The dissolution of the bonds of matrimony shall have the following effects:
>
> First. The spouses shall be free to marry again.
>
> Second. The minor children shall remain in the custody of the innocent spouse unless otherwise directed by the court in the interest of said minors, for whom said court may appoint a guardian.
>
> Third. The children shall, with regard to their parents, retain all rights granted to them by law as legitimate children; but upon the partition of the estate of said parents they shall bring to collation everything received by them under the provisions of the second paragraph of section nine. *(Underscoring supplied).*

In the Family Code, the rule on presumptive legitime is found in Art. 51 –

> **Art. 51.** In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by mutual agreement judicially approved, had already provided for such matters.
>
> The children or their guardian or the trustee of their property may ask for the enforcement of the judgment.
>
> The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of

> the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.

The purpose of the rule on presumptive legitimes is the protection of the common children against the possibility of prejudice in case either or both of their parents remarry. The delivery of presumptive legitimes to the common children is required in the following cases:

1. annulment of marriage — Art. 50, pars. 1 & 2;

2. declaration of nullity of a subsequent marriage contracted by a spouse of a prior void marriage before the latter is judicially declared void – Art. 50, pars. 1&2, in relation to Art. 40 *(Valdés v. RTC, 260 SCRA 221) [1996]*;

3. legal separation – Art. 63, par. 2 in relation to Art. 102 (5) and Art. 129 (8);

4. termination of a marriage due to the reappearance of the former spouse – Art. 43 (2) in relation to Art. 102 (5) and Art. 129 (8);

5. dissolution of the absolute community or of the conjugal partnership – Arts. 126 (4), 135-136, 102 (5), and 129 (8).

The objective of the law in requiring the delivery of presumptive legitimes is laudable, considering the vulnerability of the common children (particularly if they are still under-age and hardly able to look after their interests) to deprivation of their rightful share in the estates of their parents who remarry or cohabit with other parties after the termination of the marriage or the common life. Therefore, the law, vigilant for their welfare, requires that amounts or properties, equivalent to what their legitime would be if their parents had died at the moment of the final judgment,

should be set aside and removed from the possibility either of alienation or diminution by their parents.

It is clear from the third paragraph of Art. 51 above quoted that this delivery is tentative in the sense that the children could receive more at the time of the death of the parents. They will receive more if at the time of death their parents' estates are larger than they were when the presumptive legitimes were delivered.

Of course, the blade can cut the other way: If at the time of death of the parents their estates are worth less than at the time of the delivery of the presumptive legitimes then, the excess of what was delivered to the children as presumptive legitimes will be considered subject to collation (in the sense of return), should the legitimes of other compulsory heirs be impaired.

The rule on presumptive legitimes therefore is meant to be a solution to the problem of the common children's need for protection in the instances enumerated above. But, as in most cases, the solution creates problems of its own. Thus, one might raise the following questions.

1. Does ownership of the property delivered as presumptive legitime pass to the children? [Note that Art. 51 as also Arts. 102 ad 129, talks of delivery. Art. 51 also talks of these properties as *received* and as *advances* on the legitime].

2. If it does, can the children dispose of them before the death of their parents?

3. If the properties delivered are registered properties, should the titles be transferred to the children's names? Or should they remain in the parents' names merely with the annotation of the fact that they are included within the presumptive legitimes of the children?

4. If at the time of the parents' death, the net estate of the decedent has decreased in value from that which it had when presumptive legitimes were delivered, and the child becomes obliged to return part of what was delivered to him, what happens if he is unable to, either because the properties have been alienated or consumed by him and he has no other assets with which to comply with the obligation to return?

These questions have no clear or easy answers. Neither does the law have any specific provisions to provide solutions. One can only hope that as future disputes arise, these questions will be brought through the mainstream of judicial controversy to the courts and actual litigation will provide the proper occasions to have these uncertainties judicially clarified.

IN THE LIMELIGHT: THE ETHICAL LIMITS ON PUBLICITY

By Rogelio A. Vinluan[*]
Chrysilla Carissa P. Bautista[**]

"[O]ne must always ask qui bono*?*
Who benefits from speaking to the press?"

- Elisabeth Semel and Charles M. Sevilla,
Talk to the Media About Your Client?
Think Again., 21 CHAMPION 10, 15 (1997)

I. INTRODUCTION

Is a lawyer's advocacy in the court of public opinion ethical? Are the existing rules in the Code of Professional Responsibility ("CPR") adequate to address the excesses of lawyers' extrajudicial speech? These are the primary questions this Article seeks to address. In the course of resolving these questions, this Article will evaluate Rule 13.02 of the CPR and discuss related model rules of the American Bar Association.

The basic duty of a lawyer is to represent his client within the bounds of the law.[1] A lawyer owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.[2]

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1 CODE OF PROFESSIONAL RESPONSIBILITY [hereinafter, CPR], Canon 19.

2 AGPALO, RUBEN E., THE CODE OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS 227 (1991 ed.).

As an officer of the court, however, there are limits to the duty of a lawyer to represent his client zealously and vigorously. The canons of legal ethics require that a lawyer subordinate his personal and private duties to those which he owes the courts and the public. His oath requires him to be absolutely honest even though his client's interest may seem to demand a contrary course. If the lawyer's duties to his client conflict with those which he owes to the courts and the public, the former must yield to the latter.[3]

The administration of justice is a shared responsibility of the judge and the lawyer; they have their respective roles and duties to perform to attain the ends of justice. The lawyer owes candor, fairness and good faith to the court.[4] Also, it is his duty to observe and maintain the respect due to the courts and judicial officers.[5] As part of the machinery for the administration of justice, it is the lawyer's duty to assist in the speedy and efficient administration of justice.[6] He should not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.[7] In the advocacy of his client's cause, Canon 13 of the CPR provides that a lawyer should "rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing the court."

Rule 13.02 of the CPR, which is one of the implementing rules of Canon 13, proscribes a lawyer from "making public statements in the media regarding a pending case tending to arouse public opinion for or against a party." The rationale for this rule is the apprehension that the extrajudicial statements of lawyers in

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3 *Ibid*., at 8-9.

4 CPR, Canon 10.

5 CPR, Canon 10.

6 CPR, Canon 12.

7 CPR, Rule 1.02.

media about a pending case may interfere with a fair trial and prejudice the administration of justice. There is a prevailing consensus that too much publicity about a trial – whether a jury or a bench trial – can have a prejudicial effect on the fairness of the process.

II. THE ETHICAL DILEMMA

In many of the high-profile criminal cases, it would seem that the opposing lawyers are engaged not only in fighting their courtroom battles, but also in a running media war. Press conferences, television appearances, and radio talk show guestings have become *de rigueur* for the lawyers. One gets the feeling that the lawyers spend more time and effort in their media conferences and appearances than in their courtroom preparation and trial.[8]

This is particularly true and most pronounced in the on-going trial of former President Estrada for plunder before the Sandiganbayan where the parties, the lawyers and even the Sandiganbayan justices have conducted an orgy of press relations. The Ombudsman has become a ubiquitous figure in media. The same thing may be said of the private defense lawyers, at least up to the time they decided to withdraw. But even the court-appointed lawyers are not at all media-shy; they are quick to publicize any minor points which they claim to have scored in the cross-examination of the prosecution witnesses.

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8 In the United States, lawyers have become more sophisticated in obtaining media coverage. The term "litigation journalism" has been coined to refer to the "planned use of the news and information media to create a favorable environment and gain public-opinion support for the positions of plaintiffs and attorneys involved in civil suits." The term also applies "not only to the type of media coverage that results, but also the efforts of plaintiffs and their attorneys." Carole Gorney, *Model Rules and Litigation Journalism: Enough or Enough is Enough?*, 67 N. Y. St. B. J. 8, 8 (1995).

Lawyers' exposure to the media is quite problematic. A lawyer's extrajudicial speech may be made for the benefit of his client or for his own self-aggrandizement. But the impact of a lawyer's publicized comments on the outcome of an on-going litigation raises serious ethical concerns. A lawyer should always be cautious of his public statements and he should be vigilant in protecting client confidences.[9] Definitely, a lawyer's extrajudicial speech poses serious threats on a lawyer's competence and the integrity of the legal system as a whole. The media frenzy may result in a lawyer's lack of objectivity, unwarranted advertising and solicitation, and breach of the attorney-client privilege. These contribute to the erosion of public confidence in the legal system.

A. Lack of Objectivity

Involvement of lawyers in the publicity of cases may diminish "their aura as objective professionals".[10] Their public appearances and mini-speeches may be perceived as components of a personal agenda, "such as self-aggrandizement and future ambitions"[11] like "media careers or book and movie contracts."

Lawyers are ideally perceived as objective. Considering the public perception that lawyering is equated with lying, no further acts should be done to worsen the public image. For instance, although a lawyer may be interviewed on current developments of a case he is handling, he must always be conscious

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9 Marjorie P. Slaughter, *(Lawyers and the Media: The Right to Speak Versus the Duty to Remain Silent)*, 11 GEO. J. LEGAL ETHICS 89, 90 (1997).

10 Kevin Cole and Fred C. Zacharias, *People v. Simpson: Perspectives on the Implications for the Criminal Justice System: The Agony of Victory and the Ethics of Lawyer* Speech, 69 S. CAL. L. REV. 1627, 1667 (1996).

11 Judith L. Maute, Colloquim, *What Does it Mean to Practice Law "In the Interests of Justice" in the Twenty-First Century?: "In Purusit of Justice" in High Profile Criminal Matters*, 70 FORDHAM L. REV. 1745, 1758. (2000).

of his duty to tell the truth to the public and should not assent to an unsound legal theory for fame.

B. Unethical Advertising and Solicitation

A lawyer's media exposure is tantamount to free advertising. As expressed by one media consultant:

> The goal of an attorney should be to achieve the classic win-win-win situation. The media wins by getting a story. The attorney wins by getting key messages across. The public wins by getting information. Media interviews can be glorious opportunities. Successful practitioners use them well.[12]

Thus, when a lawyer is exposed to the media, he is faced with the dilemma of either talking about the legal issues or talking about his personal views. If a lawyer is more inclined to do the latter, ultimately his public appearances provide him the chance to advertise his services.

C. Eroded Confidence in the Courts

It has been repeatedly argued that publicity of trials "lower[s] the confidence in the judicial system."[13] Too much trial publicity could threaten to undermine evidentiary and procedural

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12 Tripp Frohlichstein, *Communication Consultant's Perspective*, *in* LITIGATION PUBLIC RELATIONS 31 (Susanne A. Roschwalb and Richard A. Stack, eds., 1995) cited in Cole and Zacharias, *supra* note 10, at 1661 n. 125.

13 Alberto Bernabe-Reifkohl, *Silence is Golden: The New Illinois Rules on Extrajudicial Speech*, 33 LOY. L. REV. 323, 324 (2002).

protections, lead to unfair public condemnation of a targeted party, and lower confidence in the judicial system.[14]

It cannot be gainsaid that media is contributory to the education and awareness of the public. Law is humanized and simplified by media. However, despite its pedagogical value, media, when slanted or inaccurate, trigger the erosion of the public confidence in the courts.

Despite such alarming threats to the integrity of the legal profession, no howl of protest on the ethics of the lawyers' actions has been raised by the Integrated Bar of the Philippines and the Philippine Bar Association or why the courts concerned have not taken steps to curb the lawyers' excesses.

III. THE COMPETING INTERESTS INVOLVED

Allowing a lawyer to freely speak to the media about a pending litigation gives rise to serious ethical questions. The lawyer's freedom of speech should not be exercised in any manner prejudicial to another person's right to an impartial trial. The freedom of speech and the right to an impartial trial are not conflicting rights, but in some situations, one right must yield to the other. Further, the right of the pubic to know and access information through the mass media is also an indispensable factor. Needless to state, these rights should be balanced to protect the interests of the lawyer, the accused and the public. The balance between the freedoms of press, speech and expression and the rights to due process and fair trial has always been delicate.[15]

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14 G. Gregg, *ABA Rule 3.6 and California Rule 5-120: A Flawed Approach to the Problem of Trial Publicity*, 43 UCLA L. REV. 1321, 1322 (1996).

15 Gorney, *supra* note 8.

A. Freedom of Speech

Section 3 of Article III of the Constitution safeguards every citizen's freedom of speech, including a lawyer's right to comment, criticize, and elaborate on legal matters and processes. However, the exercise of the legal profession is a privilege and every legal practitioner is bound by normative ethical rules. Thus, in representing a client, it is the lawyer's fiduciary duty to his client to yield his interests in speaking his mind freely, expressing his views publicly, and sharing his opinions to the press to his greater professional and ethical interests.[16]

B. Right to an Impartial Trial

Due process requires that the accused in a criminal case receive a trial by an impartial court free from outside influences.[17] Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the mind of the judge hearing the case, it is important to ensure that the balance is never weighted against the accused.[18] In ensuring that balance, our Supreme Court has repeatedly ruled that "pervasive publicity is not *per se* prejudicial to right of an accused to fair trial."[19]

In the language of our Supreme Court, citing American jurisprudence: "Parties have a constitutional right to have their causes tried fairly in court by an impartial tribunal, uninfluenced by publication or public clamor. Every citizen has a profound

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16 Slaughter, *supra* note 9, at 100.

17 See CONST., art. III, sec. 14 (2).

18 See *Sheppard v. Maxwell*, 384 US 333, 362, 16 Ld 2d 600, 86 S Ct 1507.

19 *People of the Philippines v. Sanchez*, et al., G.R. No. 121039-45, 25 January 1999, 302 SCRA 21, 55 citing *People of the Philippines v. Teehankee, Jr.*, G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 54.

personal interest in the enforcement of the fundamental right to have justice administered by the courts, under the protection and forms of law free from outside coercion or interference."[20]

It may be argued that attorneys' out-of-court comments cannot pose a serious and imminent threat of interference with a fair trial when the trier of fact is a judge and not a jury. Our judges, who are all lawyers, are supposed to be men of fortitude who cannot be swayed by the winds of public opinion. This precise issue was passed upon by a Federal Circuit Court which held that the rule prohibiting comment "that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial" should also apply to bench trials on the ground that "judges are human". Where improper or prejudicial material has reached a judge by way of extrajudicial comment, it is a difficult task for a judge to reach his verdict only on the basis of the admissible evidence.[21]

C. Right to Information

Indeed, the public has the right to be informed of the developments in legal proceedings, which are public in nature.[22] The public has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern.[23]

There are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. For one, lawyers' comments are necessary in raising public awareness. For

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20 *Nestlé Philippines, Inc. v. Sanchez*, G.R. No.L-75209, 30 September 1987, 154 SCRA 542, 546.

21 *Chicago Council of Lawyers v. Bauer*, 522 F2d 242 (7th Cir., 1975).

22 See CONST., art. III, sec. 7.

23 Bernabe-Riefkohl, *supra* note 13, at 324.

another, lawyers' comments also serve as authoritative and reliable sources of information to ensure that the interpretation of the media is in accord with law.[24]

For the lawyers, what is at stake is their right to express themselves, either to further their clients' interests or to express their own criticisms of the process.[25]

On the part of media, its interest is the right of access to information from the lawyers and the public's right to be informed about ongoing litigation.[26]

The problem then is how to strike a happy balance between the attorney's right to free speech, the media's freedom of the press, the right of a party to a fair trial, the right of the public to know, and the interest of the judicial system in maintaining the integrity of its evidentiary and procedural processes. Obviously, this is not an easy task.

III. THE ETHICAL IMPERATIVES

Canon 20 of the Canon of Professional Ethics, adopted by the Philippine Bar Association in 1917, provides that:

> Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is

24 Campbell, *supra* note 38, at 603-604.

25 Cole and Zacharias, *supra* note 10, at 1627.

26 *Ibid.*

> unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the record and papers on file in the court; but even in extreme cases it is better to avoid any *ex parte* statement.

It is clear that under Canon 20 it is highly unethical for a lawyer to make statements on "pending or anticipated litigation".

On June 21, 1988, the Supreme Court promulgated the CPR. The drafters of the Code were aware that some degree of lawyers' media exposure is inevitable. They recognized that "media publicity, as a normal by-product of efficient legal service, is not improper."[27] At the same time, they foresaw that media publicity can be a harmful tool in "gaining an unfair advantage over others through the use of gimmickry, press agentry or other artificial means." Hence, lawyers are expressly prohibited from paying members of media to attract clients. Rule 3.04 of the CPR prohibits a lawyer to "pay or give anything of value to representatives of the mass media in anticipation of, or in return for, publicity to attract legal business."

With respect to extrajudicial statements about pending litigation, Canon 13 of the CPR enjoins that: "A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance of influencing, the Court." As one of its implementing rules, Rule 13.02 proscribes discussion of pending litigation in this wise:

> "A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party."

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27 AGPALO, *supra* note 2, at 38.

Apparently, the underlying rationale is that media publicity about pending litigation may interfere with a fair trial, prejudice the administration of justice, or subject a respondent or accused to a trial by publicity and create a public inference of guilt against him.[28]

The proscription in Rule 13.02 is limited to public statements "regarding a pending case tending to arouse public opinion for or against a party." As thus phrased, there will be many situations that are patently unethical but beyond the ambit of the proscription.

For example, media skirmishes begin long before the filing of a case. The language of Rule 13.02 does not cover publicity regarding anticipated litigation. Also, comments of lawyers regarding a pending case may involve criticism of the process – the police investigation, the prosecution and the conduct of judges – which may not be strictly characterized as being designed "to arouse public opinion for or against a party." Thus, Rule 13.02 is inadequate to address the various problems arising from publicity about a pending or anticipated case.

To be sure, a number of diverse situations involving publicity about anticipated or pending litigation and which raise serious ethical questions defy solution under Rule 13.02 of the CPR. A few illustrations will show the magnitude and complexity of the ethical issues involved and the limitations of the existing Rule 13.02.

First, Rule 13.02 is vague whether the prohibition is limited to lawyers involved in the pending litigation. If Rule 13.02 only applies to the lawyers involved in the pending litigation, then other lawyers who purport themselves to be legal experts would feast on televised legal commentary. Such extrajudicial speech

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28 *Ibid.*, at 140.

may also influence the conduct of the proceedings, if not the outcome of the case but it is not within the purview of Rule 13.02.

Second, Rule 13.02 is limited to statements regarding a pending case. The proscription is too narrow in that it does not cover lawyers' speech before a criminal or civil action is filed. In sensational cases, it has become the practice of our public prosecutors to call in the television cameras and the press to announce the filing of criminal charges against the defendant. No ethical problem would be involved if the announcement would be limited to the substance of the charges. This is not the case, however. More often than not, the prosecutor would even discuss the evidence, refer to alleged admissions or confessions made by the accused or his co-accused, and characterize the evidence against the accused as "strong" or "overwhelming". These extrajudicial statements are, of course, designed to influence the outcome of the case and enhance the image of the public prosecutors or the police.

Such practice has been criticized by Dean Monroe H. Freedman of the Hofstra University School of Law as "reprehensible". As he sees it, only two purposes, both improper, are served when a public prosecutor calls a press conference to announce an indictment: (1) the defendant is severely defamed, and (2) the likelihood of an unprejudiced court is reduced. Imagine the impact of that televised announcement on the family and friends of the defendant, who is constitutionally presumed innocent, and who may later be found innocent. According to Dean Freedman, any legitimate end asserted to be served by such announcement is adequately achieved simply by making the indictment a matter of public record.[29]

On the part of the defendant, denying his lawyer the right to access media may result in substantial injustice to him. Even

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29 FREEDMAN, M.H., LAWYERS' ETHICS IN AN ADVERSARY SYSTEM 94 (1975).

before the filing of formal charges against the defendant, unfavorable information about the defendant is provided to the press by the police and the public prosecutors. When the formal indictment is filed, this is done in the presence of the press and television cameras. In a high-profile case, any extrajudicial statement of a public prosecutor which is designed to heighten the condemnation of the accused is likely to be widely publicized. Given this situation, it is argued that defense attorneys should be allowed access to media in order to level the playing field.[30]

Third, public statements about pending cases are absolutely prohibited by Rule 13.02. However, statements about the attendant or peripheral circumstances of the pending case are not covered by Rule 13.02. Thus, a lawyer's public statements involving criticisms of the police, the prosecution and the way the trial is being conducted are not covered by Rule 13.02. The statements may be motivated by a genuine desire to expose problems or corruption in the ranks of the police, prosecution and judiciary or to educate the public regarding flaws in the trial process. Such statements may be justified as furthering society's "right to know."[31] They may not strictly be classified as "public statements in the media regarding a pending case tending to arouse public opinion for or against a party" although the statements may indirectly generate sympathy for the lawyer's client.

Fourth, Rule 13.02 prescribes an untested standard in the determination of prejudicial speech, which is the mere tendency "to arouse public opinion for or against a party." If Rule 13.02 is actually an ethical guideline to prevent a biased judiciary, arousing public opinion per se is not unethical. In this respect, Rule 13.02 is overbroad because it extends to lawyers' extrajudicial speech which

30 Bernabe-Riefkohl, *supra* note 13, p. 327.

31 Cole and Zacharias, *supra* note 10, at 1663.

may legitimately encourage intelligent debate and academic discussion.

Lastly, Rule 13.02 punishes prejudicial speech from the point of view of the public. The lone standard is the mere "tendency to arouse public opinion". As earlier stated, arousing public opinion per se is not unethical. However, if the statements are made merely to enhance his own image, then Rule 13.02 is inadequate. The lawyer's obvious intention in making the statement should be carefully scrutinized. If such statements were made to protect his client from harmful media sensationalization, then it would be different. However, if the statements were made for media mileage, then the lawyer should be warned, if not sanctioned, for his actions. Such statements designed for self-promotion are outside the purview of Rule 13.02 of the CPR. If the lawyer does not pay the representatives of media for the publicity, no violation of Rule 3.04 can be imputed. While the statements of the lawyer motivated by self-aggrandizement may be morally wrong or reprehensible, they may not be held to transgress the ethical limits set by Rule 13.02 of the CPR.

In the United States, the American Bar Association's Model Code of Professional Responsibility of 1969 is more explicit and detailed on the limits of an attorney's conduct as to trial publicity.

Disciplinary Rule 7-107 of the ABA's Model Code of CPR states:

> (A) A lawyer participating in or associated with the investigation of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration:

(1) Information contained in a public record.

(2) That the investigation is in progress.

(3) The general scope of the investigation including a description of the offense and, if permitted by law, the identity of the victim.

(4) A request for assistance in apprehending a suspect or assistance in other matters and the information necessary thereto.

(5) A warning to the public of any dangers.

(B) A lawyer or law firm associated with the prosecution or defense of a criminal matter shall not, from the time of the filing of a complaint, information, or indictment, the issuance of an arrest warrant, or arrest until the commencement of the trial or disposition without trial, make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) The character, reputation, or prior criminal record (including arrests, indictments, or other charges of crime) of the accused.

(2) The possibility of a plea of guilty to the offense charged or to a lesser offense.

(3) The existence or contents of any confession, admission, or statement given by the accused or his refusal or failure to make a statement.

(4) The performance or results of any examinations or tests or the refusal or failure of the accused to submit to examinations or tests.

(5) The identity, testimony, or credibility of a prospective witness.

(6) Any opinion as to the guilt or innocence of the accused, the evidence, or the merits of the case.

(C) DR 7-107 (B) does not preclude a lawyer during such period from announcing:

(1) The name, age, residence, occupation, and family status of the accused.

(2) If the accused has not been apprehended, any information necessary to aid in his apprehension or to warn the public of any dangers he may present.

(3) A request for assistance in obtaining evidence.

(4) The identity of the victim of the crime.

(5) This fact, time, and place of arrest, resistance, pursuit, and use of weapons.

(6) The identity of investigating and arresting officers or agencies and the length of the investigation.

(7) At the time of seizure, a description of the physical evidence seized, other than a confession, admission, or statement.

(8) The nature, substance, or text of the charge.

(9) Quotations from or references to the public records of the court in the case.

(10) The scheduling or result of any step in the judicial proceedings.

(11) That the accused denies the charges made against him.

(D) During the selection of a jury or the trial of a criminal matter, a lawyer or law firm associated with the prosecution or defense of a criminal matter shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication and that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial, except that he may quote from or refer without comment to public records of the court in the case.

(E) After the completion of a trial or disposition without trial of a criminal matter and prior to the imposition of sentence, a lawyer or law firm

associated with the prosecution or defense shall not make or participate in making an extrajudicial statement that a reasonable person would expect to be disseminated by public communication and that is reasonably likely to affect the imposition of sentence.

(F) The foregoing provisions of DR 7-107 also apply to professional disciplinary proceedings and juvenile disciplinary proceedings when pertinent and consistent with other law applicable to such proceedings.

(G) A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication and that relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal records of a party, witness, or prospective witness.

(3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

(H) During the pendency of an administrative proceeding, a lawyer or law firm associated therewith shall not make or participate in making a statement, other than a quotation from or reference to public records, that a reasonable person would expect to be disseminated by means of public communication if it is made outside the official course of the proceedings and relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party witness, or prospective witness.

(3) Physical evidence or the performance or results of any examinations or tests or the refusal of failure of a party to submit to such.

(4) His opinion as to the merits of the claims, defenses, or positions of an interested person.

(5) Any other matter reasonably likely to interfere with a fair hearing.

(I) The foregoing provisions of DR 7-107 do not preclude a lawyer from replying to charges of misconduct publicly made against him or from participating in the proceedings of legislative, administrative, or other investigative bodies.

(J) A lawyer shall exercise reasonable care to prevent his employees and associates from making an extrajudicial statement that he would be prohibited from making under DR 7-107.

In essence, the ABA's Model CPR strictly limits the permissible scope of a lawyer's extrajudicial statements regarding anticipated and pending litigation. During the trial of a criminal case, a lawyer is categorically prohibited from making any extrajudicial statement "that relates to the trial, parties, or issues in the trial or other matters that are reasonably likely to interfere with a fair trial." In a civil action, a lawyer's extrajudicial speech is limited to quotations from or references to public records; his opinion "as to the merits of the claims or defenses of a party" is explicitly proscribed.

Considering the very frugal language of Rule 13.02 of our CPR, we have to look to the ABA standards and American jurisprudence for guidance in the disposition of cases falling outside the ambit of the rule.

IV. DETERMINING THE LIMITS OF PERMISSIBLE PUBLICITY

The narrow language of Rule 13.02 will be dispositive of only a few cases where it is clear that the extrajudicial statements of a lawyer "regarding a pending case" tend to "arouse public opinion for or against a party." Publicity involving anticipated litigation would definitely be outside the application of the rule; on the other hand, publicity regarding a pending case where the extrajudicial statements are arguably not intended or do not tend "to arouse public opinion for or against a party" but may reasonably be likely to interfere with a fair trial is problematic if only Rule 13.02 will be the guiding precept.

The wording of Rule 13.02 is vague and it fails to specify the particular standard by which extrajudicial statements of a lawyer should be evaluated. In determining what is prohibited extrajudicial speech, revisiting the landmark cases of *Gentile v. State Bar of Nevada* decided by the U.S. Supreme Court and *In Re: Sotto* is enlightening.

A. Jurisprudential Guidelines

1. *Gentile v. State Bar of Nevada*

In the United States, the commonly used standard is the "substantial likelihood to cause a material prejudice".

This was the standard adopted by Model Rule 3.6 and later validated in the case of *Gentile v. State Bar of Nevada.*[32] *Gentile* involved a lawyer who held a press conference to respond to local press reports he deemed prejudicial to his client. The lawyer represented a suspect in connection with a theft of cocaine and traveler's checks from one of the company's vaults. To counter publicity that the lawyer perceived as adverse to his client, the lawyer called a press conference. At the press conference, which was held after the client was indicted on charges of theft, the lawyer gave a brief opening statement in which he alleged that (1) the evidence demonstrated his client's innocence, (2) the likely perpetrator was a police detective who had access to the vault, and (3) certain witnesses were not credible, as most of them were drug dealers or convicted money launderers. The lawyer also strongly implied that the police detective could be observed, in a videotape, suffering from symptoms of cocaine use. Following the opening statement, the lawyer took questions from reporters but declined, on numerous occasions, to answer questions that sought more detailed comments. Articles appearing in local

32 501 US 1030, 115 L Ed 2d 888, 111 S Ct 2720.

newspapers described the press conference and the lawyer's statements. Six months after the press conference, the client was tried for theft. The trial court succeeded in empanelling a jury that had not been affected by the media coverage, and the client was acquitted.

Subsequently, the State Bar of Nevada filed a complaint against the lawyer alleging that the latter violated Nevada Supreme Court Rule 177 (1) prohibiting a lawyer from making an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that the statement will have a substantial likelihood of materially prejudicing an adjudicative proceeding, and (2) specifying that the statements relating to the character, credibility, reputation, or criminal record of a witness are ordinarily likely to have such a materially prejudicial effect. Rule 177, however, contains a "safe harbor" provision which declares that notwithstanding the prohibition, a lawyer is permitted to state without elaboration the general nature of the defense.

Following a hearing, the Southern Nevada Disciplinary Board of the State Bar concluded that the lawyer had violated the rule, in that his comments had gone beyond the scope of the statements permitted by the rule's "safe harbor" provision, and recommended that the lawyer be privately reprimanded. The Nevada Supreme Court affirmed the board's decision on appeal.

On certiorari, the U.S. Supreme Court reversed, although it was split on two different issues. Justice Kennedy wrote an opinion – concurred in by four justices – reversing the sanction and holding Nevada Rule 177 void for vagueness as interpreted and applied by the Nevada Supreme Court. Its safe harbor provision misled the lawyer into thinking that he could give his press conference without fear of discipline. By necessary operation of the word "notwithstanding", the Rule contemplates that a lawyer describing

the "general" nature of the defense without "elaboration" need fear no discipline even if he knows or reasonably should know that his statement will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

Chief Justice Rehnquist wrote the opinion – concurred in by four justices – on the second issue of whether the "substantial likelihood of material prejudice" test applied by Nevada and most other states satisfies the First Amendment (freedom of speech). The opinion was in the affirmative based on the following reasoning:

(a) The speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than the "clear and present danger" of actual prejudice or imminent threat standard established for regulation of the press during pending proceedings. A lawyer's right to free speech is extremely circumscribed in the courtroom and, in a pending case, is limited outside the courtroom as well.

(b) The "substantial likelihood of material prejudice" standard is a constitutionally permissible balance between the First Amendment rights of attorneys in pending cases and the State's interest in fair trials. Lawyers in such cases are key participants in the criminal justice system, and the State may demand some adherence to the system's precepts in regulating their speech and conduct. Their extrajudicial statements pose a threat to a pending proceeding's fairness, since they have special access to information through discovery and client communication, and since their

> statements are likely to be received as especially authoritative. The standard is designed to protect the integrity and fairness of a State's judicial system and imposes only narrow and necessary limitations on lawyers' speech.

2. *In Re: Sotto*

While Gentile expressly used the "substantial likelihood of material prejudice" standard, our Supreme Court seemingly used a similar standard in the case of *In Re: Sotto*,[33] which although involved a contempt proceeding, is instructive on the permissible limits of lawyers' extrajudicial speech. In this case, Atty. Vicente Sotto criticized the Supreme Court for its decision, which was then pending reconsideration, in sentencing a reporter to thirty (30) days imprisonment for his refusal to divulge the source of his news published in his paper, saying that the decision was evidence of "the incompetency or narrow-mindedness of the majority of its members", that "the only remedy to put an end to so much evil is to change the members of the court", and that "the Supreme Court of today is a far cry from the impregnable bulwark of justice of those memorable times of Cayetano Arellano, Victorino Mapa, Manuel Araullo and other learned jurists who were the honor and glory of the Philippine Judiciary". The Supreme Court held him in contempt. In justifying its ruling, the Supreme Court asserted that it has the inherent power to punish for contempt persons whose conduct tends to obstruct the administration of justice. The Court further explained, quoting from its decision in *In Re: Kelly*[34] that:

> Parties have a constitutional right to have their causes tried fairly in court, by an impartial tribunal,

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33 82 Phil. 595 (1949).

34 35 Phil. 944 (1916).

> uninfluenced by publications or public clamor. Every citizen has a profound interest in the enforcement of the fundamental right to have justice administered by the court, under the protection and forms of law, free from outside coercion or interference. Any publication, pending a suit, reflecting upon the court, the parties, the officers of the court, the counsel, etc., with reference to the suit, or **tending to influence the decision of the controversy**, is contempt of court and is punishable"….[35]

The Supreme Court likewise explained that as a member of the bar and an officer of the court, Atty. Sotto was duty bound to uphold the dignity and authority of the Court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice. Respect to the courts, it stressed, guarantees the stability of other institutions.

The Supreme Court made it clear that Atty. Sotto was not being punished for the mere release of a statement in the press, criticizing or commenting on the decision of the Parazo case, but for attacking the honesty and integrity of the Supreme Court for the apparent purpose of bringing the Justices into disrepute and degrading the administration of justice.

> Had the respondent in the present case limited himself to a statement that our decision is wrong or that our construction of the intention of the law is not correct… his criticism might in that case be tolerated, for it could not in any way influence the final disposition of the Parazo case by the court….

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35 *In Re:* Sotto, 82 Phil. 595, 600 (1949).

> But in the above-quoted written statement which he caused to be published in the press, the respondent does not merely criticize or comment on the decision of the Parazo case… He not only intends to intimidate the members of this Court… who according to his statement, are incompetent and narrow minded… [but] also attacks the honesty and integrity of this Court for the apparent purpose of bringing the Justices of this Court into disrepute and degrading the administration of justice….[36]

Addressing Atty. Sotto's invocation of his freedom of speech, the Supreme Court stated that while the constitutional guaranty of freedom of speech and the press must be protected to its fullest extent, license or abuse of liberty of the press and of the citizen should not be confused with liberty in its truest sense. Striking a fragile balance between two apparently conflicting values, it emphasized that "[a]s important as the maintenance of an unmuzzled press and the free exercise of the rights of the citizen, is the maintenance of the independence of the judiciary." In closing, it stated:

> The right of legitimate publicity must be scrupulously recognized and care taken at all times to avoid impinging upon it. In a clear case where it is necessary, in order to dispose of judicial business unhampered by publication which **reasonably tends to impair the impartiality of verdicts, or otherwise obstruct the administration of justice**, this Court will not hesitate to exercise its undoubted power to punish for contempt. This Court must be permitted to proceed with the disposition of its business in an orderly manner free from outside interference obstructive of

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36 *Ibid.*, at 600-601.

> its constitutional functions. This right will be insisted upon as vital to an impartial court, and, as a last resort, as an individual exercises the right of self-defense, it will act to preserve its existence as an unprejudiced tribunal.[37]

After a determination that Atty. Sotto's statements reasonably tended to influence the verdict of the case, the Supreme Court ruled that such statements were outrightly contemptuous. This "reasonable tendency to influence the verdict" standard is similar to the "substantial likelihood of material prejudice standard". In both standards, proof, much less any allegation that the parties, particularly the accused, actually suffered prejudice or became the victim of bias, is not necessary. A showing of a "reasonable tendency" or "substantial likelihood" that the parties would be prejudiced or that the outcome of the case would be extrajudicially swayed is sufficient.

B. Analyzing Proposed Judicial Standards

1. Substantial likelihood of material prejudice test

Although the "substantial likelihood of material prejudice" test was applied in Gentile, its "imprecise nature" has been criticized because it makes the standard susceptible to an excessive amount of judicial discretion.[38] It is argued that a lawyer's freedom of speech is ultimately "too important to be subordinated to such discretionary interests".[39] It also "inappropriately treats all

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37 *Id.*, at 603.

38 L. Cooper Campbell, Note, *Gentile v. State Bar and Model Rule 3.6: Overly Broad Restrictions on Attorney Speech and Pretrial Publicity*, 6 GEO. J. LEGAL ETHICS 583, 589 (1993).

39 *Ibid.*, at 589-590.

attorneys' speech as equally threatening to a fair trial" without distinguishing between statements uttered by a prosecutor or a defense lawyer.[40] While prosecutors have different avenues to disseminate information adverse to an accused, a defense lawyer is constrained to make counter-statements to protect his client. Thus, the "substantial likelihood of material prejudice" standard is flawed because it does not require the court to analyze the lawyer's intentions for speaking publicly.[41] In lieu of the "substantial likelihood of material prejudice" standard, one author recommends a balancing test to give greater protection to a defense attorney's right to speak to protect an accused's right to an impartial trial.[42]

2. Clear and present danger test

"Clear and present danger" is a settled standard in allowing government interference in the exercise of the freedom of speech.[43] The factors considered in employing the clear and present danger test should also be looked into in analyzing lawyers' extrajudicial speech.[44] This test focuses on the timing of the statement, gravity of the potential harm and speaker's motivations in making comments.[45]

In protecting a lawyer's extrajudicial speech, this test guarantees that harmful speech is prevented without sacrificing the public's interest in free and open debate.[46] However, employing this test alone is insufficient in defining what is prohibited.

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40 *Id.*, at 590.

41 *Id.*

42 *Id.*

43 See *Gonzales v. Commission on Elections*, G.R. No. L-27833, 18 April 1969, 27 SCRA 835; *Iglesia ni Cristo v. Court of Appeals*, G.R. No. 119673, 26 July 1996, 259 SCRA 529; and *Viva Productions v. Court of Appeals and Huber Webb*, 13 March 1997, G.R. No. 123881, 269 SCRA 664.

44 Campbell, *supra* note 38, at 597. The clear and present danger test is also known as the Bradenburg formulation. This test was used in *Bradenburg v. Ohio*, 395 U.S. 444 (1969).

45 *Ibid*.

46 Kelly Ann Hardy, *Order in the Courtroom, Silence on the Courthouse Steps: Attorneys Muzzled by Ethical Disciplinary Rules*, 22 SETON HALL L. REV., 1401, 1453 (1992).

As to which test, *i.e.* "substantial likelihood of material prejudice" test or "clear and present danger" is more suitable may be addressed by formulating a more specific guideline amending Rule 13.02. But then again, this may not be the solution to the growing problem of lawyers' excessive prejudicial publicity stunts.

V. CONCLUSION

The courtroom, not the newspaper or television screen, is the appropriate forum for the trial of a man accused of a crime or for the trial of a civil lawsuit.

However, pervasive trial publicity of high-profile cases is a fact of life. Considering the orgy of media publicity abetted by the parties and lawyers involved attendant to the prosecution, among the notable examples, of Mayor Antonio Sanchez, Hubert Webb, and former President Estrada, it would seem that Rule 13.02 proscribing lawyers' public statements regarding a pending case tending to arouse public opinion for or against a party is honored more in breach than in observance.

There is certainly a need to re-examine and re-think our existing rule on lawyers' extrajudicial statements about anticipated or pending litigation.

The problem in the main is how to strike a balance between a lawyer's right to express himself and the right of a party to have his cause tried fairly by an impartial tribunal, uninfluenced by publication or public clamor. Since we do not have the jury system, if we believe that our judges are men of fortitude who cannot be swayed by the winds of public opinion, we may want to tilt the balance in favor of the attorney's right to speak.

If, on the other hand, we acknowledge that our judges are human and it is plain wishful thinking to believe that we can insulate them from outside influences or pressure arising from publicity, there is a clear need to revisit Rule 13.02 and think of ways to improve it in order to accomplish its underlying objectives.

We can look for guidance to the Model Rules of Professional Conduct of the American Bar Association, a new code which was adopted in 1983 but revised in 1994 in the wake of the U.S. Supreme Court ruling in *Gentile v. State Bar of Nevada*.[47] Model Rule 3.6 on Trial Publicity of the said model rules provides that "(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." [48] Notwithstanding this prohibition, however, "a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client." Any such statement shall be limited to such information as is necessary to mitigate the recent adverse publicity. This is commonly referred to as the "fair reply" provision.[49] Such a provision recognizes that the adversarial system of law practice extends outside of the courtroom.

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47 501 US 1030, 115 Led 2d 888, 111 S Ct. 2720.

48 The ABA decided to adopt this test or standard of "reasonable or substantial likelihood of prejudice" as against the "clear and present danger test" which would require that the challenged statement pose "a serious and imminent" threat to the fairness of the proceeding.

49 John C. Watson, *Litigation Public Relations: The Lawyer's Duty to Balance News Coverage of their Clients*, 7 Comm. L. & Pol'y. 77, 97 (2002). See also Ronald D. Rotunda, *Dealing with the Media: Ethical, Constitutional, and Practical Parameters*, 84 ILL. B. J. 614, 618 (1996).

The ABA, in Rule 3.6 of the Model Rules of Professional Conduct, also deemed it wise to delineate the special responsibilities of a prosecutor. With respect to publicity, the said rule enjoins the prosecutor, "except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose" to "refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule."[50]

It is not possible to formulate a bright-line rule for determining when an extrajudicial statement is proper or improper.[51] Model Rule 3.6 of the ABA's Model Rules of Professional Conduct is an attempt to achieve a reasonable balance between protecting the right to a fair trial and safeguarding the right to free expression.[52]

The existing Rule 13.02 of our Code of Professional Responsibility has not proved to be practical, meaningful or workable. In light of the present excesses of our lawyers in their extrajudicial comments, what we have is practically unrestrained extrajudicial advocacy. Aggravated by the proliferation of more pervasive tools of media, from print, television, and the internet, Rule 13.02 is outdated and inadequate.[53]

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50 See also Ryan Brett Scott and Paula Odysseos, *Sex, Drugs, and Court TV? How America's Increasing Interest in Trial Publicity Impacts our Lawyers and the Legal System*, 15 GEO. J. LEGAL ETHICS 653 (2002).

51 Bernabe-Riefkohl, *supra* note 13, at 366.

52 *Id*., at 377.

53 Gorney, *supra* note 8, at 40.

A change is definitely in order. It is a choice between amending Rule 13.02 of the CPR along the lines of Rule 3.6 of the ABA's Model Rules of Professional Conduct or adopting one of the following extremes: (1) completely unmuzzling the lawyers and giving them the unrestrained right to speak, or (2) imposing severe limits on what lawyers can say like what Disciplinary Rule 7-107 of the ABA's Model Code of Professional Responsibility has done, or (3) completely prohibiting any kind of extrajudicial comment.

Our choice will be dictated by our balancing of the constitutional values involved: the right to a fair trial vs. a lawyer's freedom of expression. In the process of balancing, we must not lose sight of the fact that the role of attorneys in the criminal justice system subjects them to fiduciary obligations to the court and the parties.[54] As part of his sworn duty to promote respect for the law and legal processes,[55] he must fulfill his duty to society by promoting the truth even when he is not in the courtroom. As aptly stated by one writer:

> But it is true that the lawyer's duty to the community is arguably stronger when she begins to advocate in the court of public opinion. Her legal arguments may be heard by many citizens who will consider them to be statements of the law. Since there is no judge or courtroom setting to control the debate, there is also a need for self-control to preserve the reputation of the judicial system in the public eye. Lawyers advocating in the court of public opinion therefore have a duty not to mislead the public about the law, however difficult this may be to enforce.[56]

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54 *Gentile v. State Bar of Nevada*, 501 US 1030, 115 L Ed 2d 888, 111 S Ct 2720.

55 CPR, Canon 1.

56 Jonathan M. Moses, Note, *Legal Spin Control: Ethics and Advocacy in the Court of Public Opinion*, 95 COL. L. REV. 1811, 1856 (1995).

In the end, despite our best efforts, the most carefully-drafted rule may prove only aspirational and hortatory — directed to the conscience of the individual lawyer.[57]

57 Cole and Zacharias, *supra* note 10, at p. 1678

THE GENERAL BANKING LAW OF 2000 REVISITED

*By Rafael A. Morales**

One of the more important pieces of legislation in the year 2000 is Republic Act No. 8791, otherwise known as the General Banking Law of 2000.[1] This new law repealed the old General Banking Act (Republic Act No. 337, as amended), which was passed in 1949.[2]

The avowed purpose, in "overhauling the General Banking Act" and passing a new law altogether, was "to fashion a legal framework so that our banking system can adequately meet currently emerging issues associated with deregulation and

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1 This was a consolidation of Senate Bill No. 1519 and House Bill No. 6814 of the Eleventh Congress. It was passed by the Senate and the House of Representatives on 12 April 2000, and subsequently approved by then President Joseph Estrada. It became effective on 13 June 2000.

2 Prior to its repeal on June 13, 2000, the General Banking Act had been amended several times by different statutes, namely: Republic Act No. 4879 (1967), Republic Act No. 4910 (1967), Presidential Decree No. 71 (1972), Presidential Decree No. 515 (1974), Presidential Decree No. 865-B (1975), Presidential Decree No. 1317 (1978), Batas Pambansa Blg. 61 (1980), Presidential Decree No. 1795 (1981), Presidential Decree No. 1828 (1981), and Republic Act No. 7906 (1995). Many of the amendments were introduced by Presidential Decree No. 71, which was issued by then President Ferdinand E. Marcos barely two months after he declared martial law. That decree implemented the revisions proposed by the International Monetary Fund and the Central Bank of the Philippines in the *Recommendations of the Joint IMF-CBP Banking Survey Commission on the Philippine Financial System* (September 1972).

increasing financial globalization and the challenges that lie ahead of us in the 21st century." The intention was to "maintain a strong, safe and sound banking system" that can effectively perform its five basic functions: "To mobilize savings, to allocate resources, to facilitate risk amelioration, to facilitate the exchange of goods and services between sellers and buyers, and to monitor corporate governance of the banking or financial institutions."[3]

Universal Banking

To begin with, one will note that the term "universal bank" is now officially used in lieu of "expanded commercial bank." Under the new law, therefore, the term "commercial bank" should be understood to mean a regular or ordinary commercial bank, as distinguished from a universal bank. To make this distinction is to recognize that universal banking has been part of the Philippine financial system for quite a while.

It was *Batas Pambansa Blg. 61* (1980) that introduced the concept of universal banking in the Philippines, antedating by roughly 19 years the U.S. Gramm-Leach-Bliley Act of 1999, which dismantled the wall that the Glass-Steagall Act erected between banking (on the one hand) and securities business (on the other) in reaction to the 1929 Wall Street Crash that led to the collapse of one-third of the total number of banks in the United States. The banks that went under were found to have speculated heavily in the stockmarket, or otherwise engaged in the perceived to be "riskier" business of underwriting and distributing securities. (The proponents for the abandonment of the Glass-Steagall prohibition later argued that bank lending activities had proved to be as risky as securities operations, and, if at all, the risks were not as great as depicted by the Glass-Steagall supporters.)

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3 *See* the sponsorship speech on Senate Bill No. 1519 of then Senator Raul S. Roco, Chairman of the Senate Committee on Banks, Financial Institutions and Currencies (March 17, 1999).

Unibanking in the Philippines is based on the German concept of universality in banking, which essentially means that "what one bank can do any other bank can do." Its adoption in the Philippines was recommended by a joint IMF-World Bank commission in 1979. The main objective was the removal of the legislated specialization of financial institutions, which constraint prevented them from responding to the totality of their clientele's banking needs. The secondary objective was to increase the flow of funds into the economy to finance the long-term projects of the government and the private sector. Initially, the official term used for universal banking was "expanded commercial banking." To reiterate, under the General Banking Law of 2000, banks engaged in expanded commercial banking are now officially known as universal banks.

Based on *Bangko Sentral* Circular No. 257 (August 15, 2002), the minimum level of capitalization prescribed by the Monetary Board for a universal bank is ₱4,950,000,000.00 while that for a commercial bank is ₱2,400,000,000.00. Setting aside this difference in capital requirement, a universal bank is actually a commercial bank with two additional powers. Aside from the powers of a commercial bank, a universal bank can (i) exercise the powers of an investment house, and (ii) invest in non-allied enterprises.

A universal bank may perform the functions of an investment house either directly (through a separate and distinct department or unit within the bank) or indirectly (through a separate subsidiary investment house). It cannot perform those functions both directly and indirectly. In either case, the underwriting of equity securities and securities dealing will be subject to pertinent laws, as well as applicable regulations of the Securities and Exchange Commission.

Now, what are these non-allied enterprises? The short answer to this question is this: All enterprises not otherwise classified as allied (whether financial or non-financial) would be deemed non-

allied ones. This response is not very enlightening, so we have to know what allied enterprises are.

Section X377 of the Manual of Regulations for Banks (as amended by BSP Circular No. 263 dated October 20, 2000) lists the following as possible *financial* allied enterprises of a *universal* bank: (a) leasing companies,[4] (b) banks, (c) investment houses, (d) financing companies, (e) credit card companies, (f) financial institutions catering to small and medium scale industries, including venture capital corporations, (g) companies engaged in stock brokerage or securities dealership, (h) companies engaged in foreign exchange dealership or brokerage, (i) insurance companies, and (j) holding companies investing in allied or non-allied enterprises. The Monetary Board has the same list of allied enterprises for both universal and commercial banks, except that a commercial bank cannot invest in insurance companies and holding companies.[5]

On the other hand, Section X380 of the Manual classifies the following enterprises as "non-financial allied:" (a) warehousing companies, (b) storage companies, (c) safe deposit box companies, (d) companies primarily engaged in the management of mutual funds but not in mutual funds themselves, (e) management corporations engaged in an activity similar to the management of mutual funds, (f) companies engaged in providing computer services, (g) insurance agencies or brokerages, (h) companies engaged in house building and home development, (i) companies providing drying or milling facilities for agricultural crops, (j) bank service corporations, (k) Philippine Clearing House Corporation, and (l) Philippine Central Depository, Inc.

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4 As clarified by BSP Circular No. 263, item (a) above includes enterprises engaged in the "leasing of stalls and spaces in a commercial establishment." However, the bank's entry into these leasing enterprises should be through "conversion of outstanding loan obligations into equity."

5 See *Section X377, Manual of Regulations for Banks.*

All enterprises not otherwise specified as allied (whether financial or non-financial) would be classifiable as non-allied ones. Having said that, Subsection 1381.1 of the Manual identifies the following as non-allied enterprises: (i) enterprises engaged in physically productive activities in agriculture, mining and quarrying, manufacturing, public utilities, construction, wholesale trade, and community and social services following the industrial groupings in the Philippine Standard Industrial Classification as enumerated in Appendix 22 of the Manual, (ii) industrial park projects or industrial estate developments, and (iii) financial and commercial complex projects (including land development and buildings constructed thereon) arising from or in connection with the government's privatization program.

All of the foregoing equity investments of a universal bank must have the prior approval of the Monetary Board, and must be within the following prescribed limits under Section 24 of the General Banking Law of 2000, namely: the total investments in equities of allied and non-allied enterprises must not exceed 50% of the net worth of the universal bank, while the equity investment in any one enterprise (allied or non-allied) must not be more than 25% of net worth of such bank. The equity investment of a commercial bank in any allied enterprise must also have Monetary Board approval and not exceed 25% of the net worth of such bank. In any event, the aggregate investment of a commercial bank in equities of allied enterprises is not to exceed 35% of the bank's net worth.[6]

Quasi Banking

Another significant change is in the area of quasi-banking. Under Section 6 of the new law, neither a universal bank nor a commercial bank needs to be separately licensed or authorized to

6 Section 30, General Banking Law of 2000

be able to engage in quasi-banking activities. In other words, a universal or commercial banking license already carries with it the authority to engage in quasi-banking. Before, a separate quasi-banking authorization was required regardless of the entity concerned. At present, all those intending to engage in quasi-banking must be licensed by the Bangko Sentral, except for universal and commercial banks.

Quasi-banks are entities engaged in obtaining from the "public" (*i.e.*, 20 or more lenders at any one time) funds other than deposits (*i.e.*, other than savings, demand or current, time or fixed deposits); hence, the word "deposit substitutes" (*i.e.*, substitutes for deposits). A quasi-bank obtains deposit substitutes through the issuance, endorsement, or acceptance, with recourse to it, of debt instruments (including but not limited to acceptances, promissory notes, participations, certificates of assignment, and similar instruments with recourse, and repurchase agreements), for the purpose of (i) relending, or (ii) purchasing of receivables and other obligations. Banks are presumed to relend these funds.[7]

The regulation of quasi-banking was recommended by the Joint IMF-CBP Banking Survey Commission in 1972. The Commission found out that certain "institutions that [were] regularly engaged in the lending of funds obtained from the public through the issuance of their own debt instruments (other than deposit instruments)" were beyond the pale of Central Bank regulatory authority, and this fact weakened "to a large extent the effectiveness of Central Bank action in the field of credit regulations."[8] This unregulated segment of the financial system was the "money market" that had been developed since the 1960s

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7 See *Section 95, New Central Bank Act; Subsection X234.2.d, Manual of Regulations for Banks.*

8 See *Recommendations 47 and 94, Joint IMF-CBP Banking Survey Commission.*

by what later became known as "investment houses" (at the forefront of which was Bancom Development Corporation). The said money market involved short-term instruments, and emerged in response to the interest rate ceilings imposed pursuant to the Usury Law (Act No. 2655, as amended). These ceilings then applied to deposits in banks but not to placements coursed through the "investment houses." Naturally, investors flocked to these houses for higher yields. Before long, the deposit-generating ability of the banks was seriously undermined by the competition. The implementation of Recommendations 47 and 49 of the Commission by Presidential Decree No. 71 (1972) saved the day for the banks. The hitherto unfettered money market activity was subjected to Central Bank regulation and called "quasi-banking," and the funds placed with quasi-banks were labelled as "deposit substitutes." What is more, even banks have been permitted to engage in such activity. As stated earlier, before the passage of the General Banking Law of 2000, all banks engaging in such activity were required to obtain a separate authorization from the Central Bank or the Bangko Sentral. The new law now exempts universal and commercial banks from this requirement.

Turning to the usage of the term "quasi-banking" in relation to banks, one would not have reason to quibble over the term "deposit substitutes" for these funds are essentially substitutes for the ordinary savings, current, and time deposits. "Quasi-banking" is also a fitting term for non-banks that are engaged in such activity. However, to apply the same term even to banks engaged in deposit-substitute operations is simply inappropriate. "Quasi-banking" should be used only in reference to the deposit-substitute operations of non-banks. For banks, that activity should simply be called "deposit-substitute operation." There is nothing "quasi" about it, when it is performed by banks themselves.

Prudential Measures

The next two changes introduced by the General Banking Law of 2000 relate to the (i) risk-based capital of banks and the (ii) single borrower's limit. These are part and parcel of the so-called prudential measures designed to avoid systemic risk in banking.

The notion of a systemic risk looms large in the regulatory horizon. It is conventional wisdom that a failing or defaulting bank can demolish the aura of confidence for all banks and undermine the stability of the banking system. Systemic risk arises in part due to interbank linkages. For instance, if banks have huge interbank deposits with a failed bank, they may in turn experience liquidity problems. The payment system also links banks to one another. Under a net settlement system, for example, it is possible for a bank not to be able to settle its payment obligations to other banks at the end of the day, and thereby make these other banks in danger of defaulting on their own payment obligations to their respective counterparties. In fact, this danger is the driving force in the shift to real time gross settlement, where each payment obligation is settled immediately, rather than aggregated and netted at the end of the day. Finally, systemic risk is there on account of the public perception that other banks are in the same situation as the failing or failed bank. In the light of this possible risk, a whole range of regulatory or prudential measures are put in place. The risk-based capital requirement and the single borrower's limit are part of these measures.

a) Risk-Based Capital

The philosophy underlying the "net worth-to-total risk assets" ratio is that a bank must not be allowed to expand the volume of its loans and investments in a manner that is disproportionate to its net worth. This necessarily goes into the area of capital adequacy, where one finds a seeming convergence of regulation, at the international level. Section 34 of the General Banking Law of 2000 reinforces this convergence, by enjoining the

Monetary Board to conform the "minimum ratio which the net worth of a bank must bear to its total risk assets" to "internationally accepted standards, including those of the Bank of International Settlements (BIS) relating to risk-based capital requirements."

The international standards on capital adequacy grew out of the work of the Basel Committee on Banking Supervision, which has a permanent Secretariat at the BIS in Basel, Switzerland. What drove the Committee to set standards was the deteriorating levels of capital in banks worldwide, particularly those with huge exposures to developing countries (including the Philippines) in the 1980s. Eventually adopted was the so-called 1988 Basel Capital Accord that provided for an 8% solvency (or risk asset) ratio for banks, as indicative of minimum acceptable capital adequacy - capital as the numerator, and assets (risk weighted) as the denominator. In a nutshell, for every 100 units of risk-weighted assets, a bank must carry at least eight units in Tier 1 and/or Tier 2 capital. Tier 1 is core capital (*e.g.*, permanent shareholder equity and disclosed reserves), while Tier 2 is supplementary capital (*e.g.*, subordinated debt, undisclosed and revaluation reserves). Tier 2 must not exceed 100% of Tier 1 capital. On the other land, assets are given 0, 10, 20, 50 or 100 % risk weighting, depending on the type of asset and the counterparty's categorization. For instance, cash and bullion are accorded a 0% risk weighting, and so are claims on the central governments comprising the Organization for Economic Cooperation and Development. The Basel Committee on Banking Supervision is in the process of introducing a new capital adequacy framework to replace the 1998 Accord.

According to the Basel Committee on Banking Supervision, the equity capital contemplated by Basel Core Principle 6 serves many purposes:

> . . . it provides a permanent source of revenue for the shareholders and funding for the bank; it is available

> to bear risk and absorb losses; it provides a base for further growth; and it gives the shareholders reason to ensure that the bank is managed in a safe and sound manner. Minimum capital adequacy ratios are necessary to reduce the risk of loss to depositors, creditors and other stakeholders of the bank and to help supervisors pursue the overall stability of the banking industry . . . .

Basically, the guidelines issued by the Bangko Sentral to implement Section 34 follow the Basel Capital Accord and, in fact, exceed its minimum requirements conformably with Basel Core Principle 6, which enjoins banking supervisors to prescribe capital adequacy requirements that "must not be less than those established in the Basel Capital Accord and its amendments." Under Section X116 of the Manual of Regulations for Banks, as amended by Bangko Sentral Circular No. 280 dated March 29, 2001, the daily risk-based capital ratio of a bank, expressed as a percentage of qualifying capital to risk-weighted assets, must not be less than 10% for both solo basis (*i.e.*, head office plus branches) and consolidated basis (*i.e.*, parent bank plus subsidiary financial allied enterprises, excluding an insurance company). The "qualifying capital" referred to above is the sum of Tier 1 (core) capital and Tier 2 (supplementary) capital, less required deductions. In turn, Tier 2 capital is the sum of upper Tier 2 capital and lower Tier 2 capital.

Tier 1 capital includes paid-up common stock, paid-up perpetual and non-cumulative preferred stock, surplus, and undivided profits of a domestic bank. On the other hand, upper Tier 2 capital consists, inter alia, of paid-up perpetual and cumulative preferred stock, paid-up limited life redeemable preferred stock, and Bangko Sentral-approved unsecured subordinated debt with a minimum original maturity of ten years. Lower Tier 2 capital consists of Bangko Sentral-approved unsecured

debt with a minimum original maturity of five years, deposit for perpetual and cumulative preferred stock subscription, and deposit for limited life redeemable preferred stock subscription.

Risk-weighted assets are determined by assigning risk weights to amounts of on-balance sheet assets and to credit equivalent amounts of off-balance sheet items (inclusive of derivative contracts) less prescribed deductions. For instance, cash on hand and claims guaranteed by or collateralized by securities issued by the Philippine national government or the Bangko Sentral are given 0% risk weight. At the other extreme, claims on Philippine local government units are 100% risk weighted.

b) Single Borrower's Limit

At this point, we turn to Section 35 of the General Banking Law of 2000, which embodies what is known in banking as the single borrower's limit (SBL for short). Although it serves to allocate bank resources to different sectors of the economy, the SBL's main purpose is to prevent the bank from making excessive loans and other credit accommodations to a single borrower or corporate group, including guarantees for the account of such borrower or group. The bank is prohibited from, as it were, placing many eggs in the basket of one client, thereby safeguarding the bank from too large a risk exposure to a single client. As a prudential measure, the SBL is a damage-control mechanism of sorts. It is a device for "risk amelioration." This is consistent with Basel Core Principle 9 for effective banking supervision, which requires "prudential limits to restrict bank exposures to single borrowers or groups of related borrowers."

Under Subsection 35.1 of the General Banking Law of 2000, the total amount of loans, credit accommodations, and guarantees that may be extended by a bank to any borrower must not exceed 20% of the net worth of such bank. In fact, it is the bank's total credit commitment (whether drawn or undrawn) that must be

considered in the computation of the SBL. "Net worth" is defined in Section 24 of the General Banking Law of 2000 as the "total of the unimpaired paid-in capital including paid-in surplus, retained earnings and undivided profit, net of valuation reserves and other adjustments as may be required by the Bangko Sentral."

The 20% SBL may be modified by the Monetary Board "for reasons of national interest." Before the new law, the SBL was 25% of the unimpaired capital and surplus of the bank.[9]

Moreover, the 20% SBL may be increased by an additional 10% of the net worth of the bank, provided that (i) the additional liabilities of the borrower are adequately secured by what are known in civil law as "documents of title to goods" (such as trust receipts, shipping documents, or warehouse receipts), and (ii) the goods covered are readily marketable, non-perishable, and fully insured. Under the old law, the incremental SBL was 15% of the bank's unimpaired capital and surplus.

Guarantees

Section 35 of the General Banking Law of 2000 is meaningful not only because of the SBL but also because it contains language that allows banks to issue guarantees.

Although the power of a commercial bank to issue guarantees is not explicitly mentioned in Section 29 of the General Banking Law of 2000, it is quite clear in Section 35 of that law that such power has been granted to such bank. This conclusion is based on the fact that "guarantees" are now included in the computation of the single borrower's limit under Section 35 of the General Banking Law of 2000, coupled with the fact that the new law does not restate the prohibitory language of Section 74 of the old law.

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9 See *Central Bank Circular No. 1332.*

It will be recalled that, under Section 74 of the old General Banking Act, banks were generally prohibited from issuing guarantees except in certain instances. Thus:

> SEC. 74. No bank or banking institution shall enter, directly or indirectly, into any contract of guaranty or suretyship, or shall guarantee the interest or principal of any obligation of any person, co-partnership, association, corporation or other entity. The provisions of this section shall, however, not apply to the following: (a) borrowing of money by banking institution through the rediscounting of receivables; (b) acceptance of drafts or bills of exchange; (c) certification of checks; (d) transactions involving the release of documents attached to items received for collection; (e) letters of credit transaction, including stand-by arrangements; (f) repurchase agreements; (g) shipside bonds; (h) ordinary guarantees or indorsements in favor of foreign creditors where the principal obligation involves loans and credits extended directly by foreign firms or persons to domestic borrowers for capital investment purposes; and (i) other transactions which the Monetary Board may, by regulation, define or specify as not covered by the prohibition.

One will observe that item (e) of Section 74 allowed "letters of credit transaction, including stand-by arrangements;" hence, bank guarantees, prior to the passage of the General Banking Law of 2000, were usually in the form of standby letters of credit. However, the provisions of Section 74 are not restated in the General Banking Law of 2000. Accordingly, banks are now allowed to issue guarantees in any form and not limited to the exceptional cases envisaged by Section 74. Equally important is the fact that, under Subsection 35.6 of the new law, the validity of a bank guarantee in favor of another bank is clearly recognized.

Right of Redemption

The General Banking Law of 2000 also introduced an important change in the right of redemption.

To begin with, a real estate mortgage may be foreclosed judicially pursuant to Rule 68 of the Rules of Civil Procedure, or extrajudicially pursuant to Act No. 3135, as amended. If the mortgagee is a bank, however, the said rule or law is supplemented and qualified by Section 47 of the General Banking Law of 2000.

As a rule, in a judicial foreclosure, there is no right of redemption but only an equity of redemption. The right of redemption is granted only in case of extrajudicial foreclosure. Having said that, if the mortgagee is a bank, there exists always a right of redemption, whether foreclosure is judicial or extrajudicial. Perhaps there is a need for some elaboration here.

As stated earlier, the procedure for judicial foreclosure of a real estate mortgage is set out in Rule 68 of the Rules of Civil Procedure. However, in lieu of the "equity of redemption" contemplated by Rule 68 (*i.e.*, the right of the mortgagor to extinguish the mortgage and retain ownership of the property by paying the mortgage debt ascertained by the court in a judgment as payable to the mortgagee) within a period of not less than 90 days nor more than 120 days from entry of final and executory judgment), Section 3 of Rule 68 recognizes "such rights of redemption as may be allowed by law." The General Banking Law of 2000 is one that allows a "right of redemption" in lieu of the said "equity of redemption." That right is set out in Section 47 of the law. Under Section 47, the mortgagor has the right to redeem the real property within one year after its sale on foreclosure, by paying the amount due under the mortgage deed, together with the stipulated interest and all costs and expenses incurred by the bank from the sale and custody of the property, less any income derived by the bank therefrom. The said one-year period is actually

to be counted from the date of registration of the certificate of sale in the Registry of Property.

The foregoing is in line with the ruling of the *Supreme Court in Huerta Alba Resort, Inc. v. Court of Appeals, et al.*,[10] interpreting Rule 68 of the Rules of Civil Procedure in relation to Section 78 of the old General Banking Act, the counterpart of Section 47 of the General Banking Law of 2000. Said the Supreme Court:

> In sum, for judicial foreclosures in favor of banks, banking or credit institutions, it is the procedure laid out in Rule 68 which shall be followed, with the exception of the redemption period, in which case it is Section 78 of R.A. 337 which applies (*Ponce de Leon v. Rehabilitation Finance Corporation*, 36 SCRA 289 (1970)). Under Section 78, the mortgagor may redeem the property sold on foreclosure "even after confirmation by the court of the foreclosure sale" which right may be exercised within a period of one (1) year, counted from the date of registration of the certificate of sale in the Registry of Property (*Government Service Insurance System v. Court of First Instance of Iloilo, Branch III*, 175 SCRA 19 (1989); *Limpin v. Intermediate Appellate Court*, 166 SCRA 87 (1988); *Quimson v. Philippine National Bank*, 36 SCRA 26 (1970)). *[Cases enclosed in parentheses appear as footnotes in the original text.]*

The one-year redemption period also applies to an extrajudicial foreclosure of real estate mortgage, pursuant to Act No. 3135 as amended. The General Banking Law of 2000, however, shortens this period in case the mortgagor is a *juridical* person. In such a case, under the second paragraph of Section 47 of the new law, the mortgagor's right to redeem terminates upon the

10 G.R. No. 128567, June 20, 2001.

registration of the certificate of foreclosure sale with the pertinent Register of Deeds. Since that registration is required to be made not later than three months after foreclosure, the redemption period is effectively limited to not more than three months from extrajudicial foreclosure. It is understood that the redemption period is still one year if the mortgagor is not a juridical entity, such as an individual or a natural person.

Board of Directors: Membership and Meetings

Finally, we consider Section 15 of the new law. Section 15 requires a bank to have a board of directors with 5 to 15 members but this is simply reflective of Section 14 of the Corporation Code. In addition, however, Section 15 of the new law reserves at least two board seats for independent directors. This is a new requirement and a departure from what the Corporation Code presently provides.

As defined in Section 15, an "independent director" must not be an officer or employee of the bank or its subsidiaries, affiliates, or related interests. Not being a stockholder is not a defining badge of independence. Thus, one will still be deemed an "independent director," even if his equity in a bank (or its subsidiary or affiliate) exceeds the director's single qualifying share required under Section 23 of the Corporation Code. At any rate, an independent director is supposed to take care of the interests of the depositors and other creditors of the bank.

The second paragraph of Section 15 is a restatement of Section 7 of the Foreign Banks Liberalization Act.[11] It used to be that at least 2/3 of the directors in a bank had to be Philippine citizens.[12] At present, foreigners can be elected directors of a bank but their number can only be proportionate to their equity in such

11 Republic Act No. 7721.

12 See *Section 13*, *General Banking Act.*

bank.[13] However, pursuant to Section 23 of the Corporation Code, a majority of the directors must be residents of the Philippines.

New ground was broken by the third paragraph of Section 15 of the General Banking Law of 2000. Under Section 25 of the Corporation Code, "every decision of at least a majority of the directors or trustees present at a meeting at which there is a *quorum* shall be valid as a corporate act." Prior to the passage of the General Banking Law of 2000, Section 25 of the Corporation Code had been interpreted as requiring actual presence of directors in board meetings. Thus, the Securities and Exchange Commission opined: "Constructive electronic presence is not a substitute for actual presence. Accordingly, other than actual presence is unacceptable."[14]

However, under Section 15 of the General Banking Law of 2000, teleconferencing and video-conferencing are expressly allowed; hence, the directors of a bank need not be all physically present in one room in order to hold a valid meeting. In the light of this development, it was not difficult for the SEC to reconsider its earlier position on the matter. Indeed, it does not make sense to treat a board of directors of a bank differently from that of another corporation in terms of board attendance and quorum requirement.

Thus, in an opinion issued to Victor P. Lazatin on 9 August 2001, the SEC allowed the "participation of directors in meetings through teleconferencing and videoconferencing" provided that such meetings are "properly recorded and the appropriate tapes and discs properly stored for safekeeping." The SEC invoked the Electronic Commerce Act[15] as the basis of its opinion but

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13 See *also Section 7*, *Foreign Banks Liberalization Act.*

14 SEC Opinion addressed to Wilma M. Valdemoro-Cua, dated September 10, 1993.

15 Republic Act No. 8792.

interestingly failed to cite Section 15 of the General Banking Law of 2000. Eventually, the SEC issued Memorandum Circular No. 15 dated 20 November 2001, setting forth the guidelines for the conduct of teleconferencing and videoconferencing by a board of directors.

LAW AND PROCEDURE ON SUSPENSION OF PAYMENTS, REHABILITATION AND INSOLVENCY PROCEEDINGS

*By Arturo M. De Castro**

The Philippines has no comprehensive legislation on bankruptcy and re-organization proceedings to rescue and rehabilitate financially distressed entities. The law and procedure on insolvency, suspension of payments and rehabilitation proceedings are fragmentary and scattered in various pieces of unrelated legislation, which fortunately have been modernized by the Supreme Court in its decisions and the promulgation of the Interim Rules on Corporate Rehabilitation "to meet the felt necessities of the time"[1] in the exercise of judicial activism by the High Court. It is, therefore, both timely and useful to examine the present state of the law and procedure on corporate suspension of payments, rehabilitation and insolvency proceedings in the Philippines.

SUBSTANTIVE AND PROCEDURAL LAW

The substantive and procedural law on bankruptcy and re-organization proceedings in the Philippines are The Insolvency Law, Section 5(d) of P. D. No. 902-A (The Charter of the Securities and Exchange Commission), as Amended by P. D. 1758 and Section

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1 Justice Oliver Wendell Holmes, *The Path of the Law.*

5.2 of RA 8799 (The Securities Regulation Code of 2000), and Sections 6(c) & (d) of P. D. No. 902-A, as Amended by P. D. 1799, the Supreme Court Interim Rules of Procedure on Corporate Rehabilitation, with the Rules of Court having suppletory application.

The Insolvency Law

The Philippine bankruptcy law was enacted in the Philippines by the Philippine Legislature under the authority of the United States on May 20, 1909 as Act No. 1956, known as the "The Insolvency Law." The Philippine Insolvency Law deals with four principal subjects: suspension of payments, voluntary insolvency, involuntary insolvency, and composition. The subject of suspension of payments was taken from the Spanish Code of Commerce, as amended by the law of June 10, 1897. The rest were adopted from the Insolvency Act of California, enacted in 1985, and the American Bankruptcy Law of 1898.[2] The substantive provisions of the Philippine Insolvency Law have not been significantly modified until the present time.[3] Although styled as an insolvency law, the Philippine Insolvency Law is essentially a bankruptcy law because, like the American Bankruptcy Law, it provides for a discharge of the honest debtor.

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2 *Mitsui Bussan Kaishu v. Hongkong and Shanghai Bank*, 36 Phil. 27, 38 (1917).

3 The only substantive modification in the Insolvency Law was brought by the provisions of the Civil Code of 1950 on priority (concurrence and preference of credits). Before the Civil Code of 1950, priority in insolvency proceedings was governed exclusively by Sec. 48 of the Insolvency Act. The priority established under the Spanish Civil Code was held inapplicable in insolvency proceedings *(Phil. Trust Co. v. Mitchell, 59 Phil. 30 (1934)*. The Code Commission harmonized the Insolvency Law with the Civil Code by making Arts. 2241 and 2242 of the Civil Code dealing on classification, concurrence and preference of credits applicable to insolvency cases. (Report of the Code Commission, 1948).

In general, the US Bankruptcy Reform Act and the Philippine Insolvency Act are similar in that they both provide for liquidation of the non-corporate debtor's estate and his discharge under voluntary or involuntary proceedings.[4] They differ in that the US bankruptcy Reform Act has well-developed and sophisticated provisions for rehabilitation of a debtor in financial distress. The only comparable features in the Philippine Insolvency Act are its provisions on composition, giving the debtor subject to either voluntary or involuntary proceedings the opportunity to negotiate for the composition of his debts with his creditors, and its provisions on suspension of payment which enable a debtor who is bankrupt only in the equity sense *i.e.*, with more assets than liabilities but foresees the inability to pay his obligations as they fall due, to file a petition for an extension of his debts. Composition and suspension of payment do not provide adequate relief to the debtor from financial distress and business reverses as much as the reorganization chapter of the American Bankruptcy Reform Act.

Substantive Amendments

P.D. No. 902-a, promulgated on March 11, 1976, which reorganized the Securities and Exchange Commission (SEC) by expanding its adjudicatory powers, provides for the appointment of a rehabilitation receiver or a management committee to preserve the assets, evaluate the feasibility of continuing business operations and recommend the rehabilitation of corporations, partnerships or associations under the control and supervision of the SEC.[5] The SEC may entertain a petition for suspension of payments if the petitioner is insolvent only in the equity sense, meaning it has

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4 Both in the United States and the Philippines, a corporate debtor is not entitled to a discharge. 11 U.S.C.A., Section 727 (a); Phil. Insolvency Act, Section 52.

5 Sec. 6 (a), as amended by P.D. No. 1799.

more assets than liabilities but foresees the impossibility of meeting its obligations as they fall due, or if the petitioner with more liabilities than assets seeks rehabilitation under a rehabilitation receiver or management committee.[6]

In July, 2000, the Philippine Congress transferred to the Regional Trial Court the jurisdiction of the SEC over corporate suspension of payments and rehabilitation proceedings pursuant to Section 5.2 of the Securities Regulation Code (RA 8799).

RULES OF PROCEDURE

On December 21, 1999, after public hearings and debates, the SEC, sitting *en banc*, approved the "Rules of Procedure on Corporate Recovery" which went into effect on January 15, 2000.

With the transfer from the SEC to the regular courts of jurisdiction over corporate suspension of payments and rehabilitation proceedings, the Supreme Court promulgated on November 21, 2000 "The Interim Rules of Procedure on Corporate Rehabilitation" which took effect on 15 December 2000.

Main Features of the Supreme Court Interim Rules of Procedure on Corporate Rehabilitation

The Interim Rules of Procedure on Corporate Rehabilitation, as promulgated by the Supreme Court, to a large extent, adopted the main features of the SEC Rules of Procedure on Corporate Recovery. The Interim Rules are divided into four (4) parts. Rule 1 states the scope of coverage of the rules. Rule 2 contains the

6 Sec. 5 (d), as amended by P.D. No. 1758.

Definition of Terms and Construction. Rule 3 spells out the General Provisions. Rule 4 deals with Rehabilitation.

Unlike the SEC Rules on Corporate Recovery, the Interim Rules do not contain provisions on dissolution and liquidation when it appears that the continuance in business of the debtor is no longer feasible or profitable or no longer works to the best interest of the stockholders, party-litigants, creditors or the general public, in which case the Court is empowered to proceed with dissolution and liquidation under its residual jurisdiction in suspension of payments and rehabilitation proceedings under Section 5(d) of P. D. 902-A as held by the Supreme Court in *Ching v. Land Bank of the Philippines*.[7]

The omission of provisions on dissolution and liquidation in the Interim Rules might give the impressions (a) that dissolution and liquidation may not be done in the same suspension of payments and rehabilitation proceedings, and (b) that a separate petition for dissolution and liquidation must be filed when the rehabilitation proceedings are terminated by the Court "for failure of the debtor to submit the rehabilitation plan, or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired target or goals as set forth therein, or the failure of the said debtor to perform its obligation under the said plan or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions" pursuant to Section 27 of the Supreme Court Interim Rules.

The SEC Rules of Corporate Recovery providing for dissolution and liquidation upon the termination of the rehabilitation proceedings are in keeping with the concept of residual jurisdiction of the Court handling the rehabilitation

7 201 SCRA 190 (1991).

proceedings to proceed with dissolution and liquidation upon termination of the rehabilitation proceedings, as held by the Supreme Court in the *Ching* case.[8]

The residual jurisdiction of the court handling the rehabilitation proceeding to proceed with dissolution and liquidation is explicitly recognized by the Interim Rules under its Section 14 (y) which grants the Rehabilitation Receiver the specific power and function "to recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders parties-litigants, creditors, or the general public."

Being specifically supported by the express provision of Section 5(d) of P.D. No. 902-A and the ruling of the Supreme Court in the Ching case,[9] it is submitted that a Regional Trial Court handling a terminated rehabilitation proceeding may apply the provisions on dissolution and liquidation in the SEC Rules on Corporate Recovery in proceeding with the dissolution and liquidation of the petitioning corporation whose efforts at rehabilitation have failed.

Construction - The Interim Rules provide for liberal construction to carry out the objectives of sections 5(d), 6(c) and 6(d) of Presidential Decree No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases.

The Interim Rules further provide that the Rules of Court shall have suppletory application to the proceedings under the Interim Rules.

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8 *Supra.*

9 *Supra.*

Rule 3. General Provisions

Nature of Proceedings - The proceedings are *in rem* and jurisdiction over all those affected by the proceedings is acquired upon publication of the notice in a newspaper of general circulation in the Philippines.

The proceedings are summary and non-adversarial in nature, and very similar to the Rules of Summary Procedure applicable in forcible entry and unlawful detainer in Municipal Trial Court.[10]

Venue - Venue is in the Regional Trial Court having jurisdiction over the territory where the debtor's principal office is located.[11]

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10 Section 1.xxx The following pleadings are prohibited:

a. Motion to dismiss;
b. Motion for a bill of particulars;
c. Motion for new trial or for reconsideration;
d. Petition for relief;
e. Motion for extension;
f. Memorandum;
g. Motion for postponement;
h. Reply or Rejoinder;
i. Third party complaint; and
j. Intervention.

Any pleading, motion, opposition, defense, or claim filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his personal knowledge or based on authentic records and shall contain as annexes such documents as may be deemed by the party submitting the same as supportive of the allegations in the affidavits. The court may decide matters on the basis of affidavits and other documentary evidence. Where necessary, the court shall conduct clarificatory hearings before resolving any matter submitted to it for resolution.

11 Section 2, Rule 3.

Service of Pleadings and Documents - The Interim Rules provide that when so authorized by the court, any pleading and/or document required by these Rules may be filed with the court and/or served upon the parties by facsimile transaction (fax) or electronic mail (e-mail), in which cases, the date of transmission shall be deemed to be the date service. The Interim Rules also provide in case of a voluminous pleading or document, the court may, motu proprio or upon motion, waive the requirement of service, provided, a copy thereof together with all its attachments is duly filed with the court and is made available for examination and reproduction by any party, and provided, further, that a notice of such filing and availability is duly served on the parties.[12]

Trade Secrets and Other Confidential Information - In order to protect trade secrets and confidential information, the Interim Rules provide that: "On motion or on its own initiative, the court may issue an order to protect trade secrets or other confidential research, development, or commercial information belonging to the debtor."[13]

Immediately Executory Nature of Orders. - In order to expedite proceedings for rehabilitation, the Interim Rules provide that: Any order issued by the court under the Rules is immediately executory. A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court; Provided, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner.[14]

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12 Section 3, Rule 3.

13 Section 4, Rule 3.

14 Section 5, Rule 3

Rule 4. Rehabilitation

Who may Petition - The petition for rehabilitation may be filed by any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or by a creditor holding at least twenty five percent (25%) of the debtors total liabilities.[15]

Contents of the Petition - The petition, which must be verified, "must set forth with sufficient particularity the following material facts: (a) The name and business of the debtor; (b) the nature of the business of the debtor; (c) the history of the debtor; (d) the cause of its inability to pay its debts; (e) all the pending actions or proceedings known to the debtor and the courts or tribunals where they are pending; (f) threats or demands to enforce claims or liens against the debtor; and (g) the manner by which the debtor may be rehabilitated and how such rehabilitation may benefit the general body of creditors, employees, and stockholders."[16]

The petition, which must be filed with the Court in five (5) copies, must be accompanied by (1) Audited Financial Statements, (2) Financial Statements (3) Schedule of Debts and Liabilities, (4) Inventory of Assets, (5) Rehabilitation Plan, (6) Schedule of Payments and Disposition of Assets in the last 3 months, (7) Schedule of Cash Flow for the last 3 months and Cash Flow Projection for the next 3 months, (8) Statement of Possible Claims, (9) Affidavit of General Financial Condition, (10) At least 3 nominees for Rehabilitation Receiver and (11) Certification under

15 Section 1, Rule 4.

16 Section 2, Rule 4.

oath attesting to the authority of the directors and the stockholders to file the Petition for rehabilitation.[17]

17 Section 2, Rule 4 xxx

The petition shall be accompanied by the following documents;

a. An audited financial statement of the debtor at the end of its last fiscal year.

b. Interim financial statements as of the end of the month prior to the filing of the petition;

c. Schedule of Debts and Liabilities which lists all the creditors of the debtor indicating the name and address of each creditor, the amount of each claim as to principal, interest, or penalties due as of the date of filing, the nature of the claim, and any pledge, lien, mortgage judgment, or other security given for the payment thereof.

d. An Inventory of Assets which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants. The Inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due, the date of maturity, and the degree of collectibility categorizing them as highly collectible to remotely collectible.

e. A rehabilitation plan which conforms to the minimal requirements set out in section 5, Rule 4 of these Rules;

f. A Schedule of Payments and disposition of assets which the debtor may have effected within three (3) months immediately preceding the filing of the petition;

g. A Schedule of the Cash Flow of the debtor for three (3) months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three (3) months;

h. A Statement of Possible Claims by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;

i. An Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" hereof;

j. At least three (3) nominees or the position of Rehabilitation Receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax number and e-mail address; and

k. A Certificate attesting, under oath, that the (a) filing of the petition has been duly authorized; and (b) the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all 0 actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness; alienation, transfer, or encumbrances of assets of the debtor; and modification of shareholders' rights.

Verification by Debtor and Non-Forum Certification - The Interim Rules provide for a special form and substance of the verification by means of an affidavit of a responsible officer of the debtor.[18]

Creditor-Initiated Petition - The Interim Rules provide that in case of a petition filed by a creditor or creditors, "it is sufficient that the petition is accompanied by a rehabilitation plan and a list of nominees to the position of Rehabilitation Receiver and verified by a sworn statement that the affiant has read the petition and that its contents are true and correct of his personal knowledge or based on authentic records obtained from the debtor." [19]

Rehabilitation Plan - The Interim Rules require that: "The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the

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18 "I, _____ (position) of (name of petitioner), do solemnly swear that the petitioner has been duly authorized to file the petition and that the stockholders and board of directors (or governing body) have approved and/or consented to, in accordance with law, all actions or matters necessary or desirable to rehabilitate the debtor. There is no petition for insolvency filed with any other body, Court, or tribunal affecting the petitioner. The Inventory of Assets and the Schedule of Debts and Liabilities contains a full, correct, and true description of all debts and liabilities and of all goods, effects, estate, and property of whatever kind or class belonging to petitioner. The Inventory also contains a full, correct, and true statement of all debts owing or due to petitioner, or to any person or persons in trust for petitioner and of all securities and contracts whereby any money may hereafter become due or payable to petitioner or by or through which any benefit or advantage may accrue to petitioner. The petition contains a concise statement of the facts giving rise, or which might give rise, to any cause of action in favor of petitioner. Petitioner has no land, money, stock, expectancy, or property of any kind, except those set forth in the Inventory Assets. Petitioner has, in no instance, created or acknowledged a debt for a greater sum than the true and correct amount. Petitioner, its officers, directors, and stockholders have not, directly or indirectly, concealed, fraudulently sold, or otherwise fraudulently disposed of, any part of petitioner's real or personal property, estate, effects, or rights of action, and petitioner, its officers, directors, and stockholders have not in any way compounded with any of its creditors in order to give preference to such creditors, or to receive or to accept any profit or advantage therefrom, or to defraud or deceive in any manner any creditor to whom petitioner is indebted. Petitioner, its officers, directors, and stockholders have been acting in good faith and with due diligence."

19 Section 4, Rule 4.

terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, dacion en pago, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan."[20]

Stay Order - The Interim Rules provide that: "If the Court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or service from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payment for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish

20 Section 5, Rule 4.

the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition."[21]

Period of the Stay Order - The Interim Rules provide that the stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings. The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.[22]

Relief from, Modification, or Termination of Stay Order - The Interim Rules provide that the court may, on motion, or motu propio, terminate, modify, or set conditions for the continuance of the stay order, or relieve a claim from the coverage thereof upon showing that (a) any of the allegations in the petition, or any of the contents of any attachment, or the verification thereof has ceased to be true; (b) a creditor does not have adequate protection over

21 Section 6, Rule 4.

22 Section 11, Rule 4.

property securing its claim; or (c) the debtor's secured obligation is more than the fair market value of the property subject of the stay and such property is not necessary for the rehabilitation of the debtor.

The Interim Rules further provide that "the creditor shall lack adequate protection if it can be shown that:

a. The debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured;

b. The debtor fails or refuses to take commercially reasonable steps to maintain the property; or

c. The property has depreciated to an extent that the creditor is undersecured."

"Upon showing of a lack of adequate protection, the court shall order the rehabilitation receiver to (a) make arrangements to provide for the insurance or maintenance of the property, or (b) to make payments or otherwise provide additional or replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court shall modify the stay order to allow the secured creditor lacking adequate protection to enforce its claim against the debtor; Provided, however, that the court may deny the creditor the remedies in this paragraph if such remedies would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan."[23]

Voidability of Illegal Transfers and Preferences - Although the Interim Rules provide that: "Upon motion or *motu proprio*, the

23 Section 12, Rule 4.

court may declare void any transfer of property of any other conveyance, sale, payment, or agreement made in violation of its stay order or in violation of these Rules,"[24] the Court is not precluded from avoiding or setting aside voidable preferential transfers, fraudulent transfers and obligations and unregistered and unperfected security transactions.

Approval of the Rehabilitation Plan over the objection of the creditors holding majority of the total claims (Cramdown) - The Interim Rules provide that the Court may approve a rehabilitation plan even over the opposition of the creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The objecting class of creditors must receive compensation under the Plan greater than what they would have received if the assets were sold under liquidation within a period of three months. As a result of the Plan, the shareholders or owners of the debtor must lose their controlling interest, and the Plan must be recommended for approval by the Rehabilitation Receiver.[25]

This provision is known in American Law as "cramdown," or the power of the Court to ram the rehabilitation plan down the throat of the objecting class of creditors, as long as their rights are adequately protected and they would receive under the plan a better deal than what they would receive in a straight bankruptcy liquidation.

Termination of Proceedings - The Interim Rules provide that: "In case of the failure of the debtor to submit the rehabilitation plan, or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired

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24 Section 8, Rule 4.

25 See Note 26, *infra*.

targets or goals as set forth therein, or the failure of the said debtor to perform its obligations under the said plan, or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions, the court shall upon motion, *motu proprio* or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings. The proceedings shall also terminate upon the successful implementation of the rehabilitation plan.[26]

ACTIVISM OF THE PHILIPPINE SUPREME COURT

In what is perceived as a laudable exercise of judicial activism, the Supreme Court included substantive requirements in the Rules of Procedure that are totally not dealt with in the substantive law that the rules seek to implement. Most notable is the following provision on "cramdown," which is provided for in the US Federal Bankruptcy Reform Act of 1978,[27] but is not provided for at all by any legislative enactment in the Philippines:

SEC. 23. Approval of the Rehabilitation Plan - The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

a. That the plan would likely provide the objecting class of creditors with compensation greater than that which

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26 Section 27, Rule 4.

27 *See* De Castro, Arturo M. *(Security Interests In Bankruptcy and Reorganization Proceedings in the United States and the Philippines: A Comparative Study,) 1982 ed., Philjuris Legal Research Services, pp. 168.*

they would have received if the assets of the debtor were sold by a liquidator within a three-month period;

b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and

c. The Rehabilitation Receiver has recommended approval of the plan.

In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interest of the creditors should the plan fail.

Such inclusion of the cramdown provision in the Interim Rules as a tool for successful rehabilitation of a financially distressed corporation may legally be justified as a necessary implementation of the spirit and purpose of the law "to determine the best way to salvage and protect the interest of investors and creditors"[28] in order to effectuate a successful rehabilitation under the equitable standards of feasibility and adequate protection.

In the absence of legislation, Philippine courts, in the exercise of equity jurisdiction, may apply fair and equitable doctrines developed in the more advanced and sophisticated legal system in the United States.

It is submitted that other tools for rehabilitation, such as (1) the use, sale or lease of collaterals, (2) issuance of certificate of indebtedness with priority over existing security interests, and

28 Sections 5 & 6, P. D. No. 902-A as Amended by P. D. No. 1758 & 1759.

(3) curing default and reversing acceleration, in addition to cramdown, may likewise be permitted by Philippine Courts in a rehabilitation plan for as long as the adequate protection and the fair and equitable and best interest of creditors standards as developed in the United States are met.[29]

Adequate Protection of Secured Creditors

The right of a secured creditor is constitutionally protected. He should not be deprived of the benefit of his bargain. His right, however, is not absolute and must be balanced with the policy of the bankruptcy laws to preserve the debtor's estate, and salvage and rehabilitate his business. The Supreme Court of the United States held that the secured creditor is entitled to constitutional protection to the extent of the value of the collateral, but his procedural remedies for the enforcement of security interest must yield to the need to rehabilitate the debtor as long as safeguards are provided for the adequate protection of his interest.[30] Thus, the

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29 *See Note 27*, supra, *pp. 161-179*

30 In *Wright v. Union Central Life Insurance Co*., 311 U.S. 273 (1940), the Supreme Court of the United States, in upholding the constitutionality of the Fraiezer-Lemke Act (Act of Aug. 8, 1935, ch. 792, 49 Stat. 942) which was enacted to provide relief to the farmers, held:

> "… This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. *Wright v. Union Central Life Ins. Co.*, *supra*; *John Hancock Mutual Life Ins. Co. v. Bartels*, *supra*; *Kalb v. Feuerstein*, 308 U.S. 433, 60 S.CT. 343, 84 l. Ed. 370. Safeguards were provided to protect the right of creditors, throughout the proceedings, to the extent of the value of the property. *John Hancock Mutual Life Ins. Co. v. Bartels*, *supra*, 308 U.S. at pages 186, 187, 60 S. CT. at page 224, 84 L. Ed. 1222. There is no constitutional claim of the creditor to more than that and so long as the right is protected, the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by congress (*John Hancock Mutual Life Ins. Co. v. Bartels*, supra; *Kalb v. Feuerstein*, supra) lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." 311 U.S. 278-279.

US Bankruptcy Reform Act of 1978 provides for alternative means of adequate protection to the secured creditor's interest in situations where automatic stay against enforcement of security interests is maintained or the trustee uses, sells or leases the collateral or obtains credit with lien enjoying priority over existing security interests in the property of the debtor.

The first mode of adequate protection consists in making cash payments to compensate for the decrease in value of the secured party's interest in the property resulting from the stay against the enforcement of the security interest, or from the use, sale or lease of the property or from the grant of a superior lien.[31] This provision was derived from case law. In *In re* Bermec Corporation,[32] the debtor was engaged in leasing trucks and trailers. The trustee proposed to pay "the value of the economic depreciation" of the equipment, which the referee found to be 12% per annum for the trucks and 10% per annum for the trailers. The referee sitting as a special master approved the proposal and enjoined the secured creditors from claiming the vehicles or from collecting the rents on them, because either action would frustrate a successful reorganization.

The second mode of adequate protection consists in providing an additional or replacement lien on other property of the debtor to the extent of the decrease in value of his interest in the collateral resulting from the stay, use, sale lease or grant of superior lien.[33] This alternative means of protection follows the suggestion of the US Supreme Court in *Wright v. Union Central Life Ins. Co.,*[34] that it is the value of the secured creditor's collateral, and

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31 11 U.S. C.A., Section 361 (1).

32 445 F. 2d 367 (2d Cir. 1971).

33 11 U.S. C.A., Section 361 (2).

34 311 U.S. 273 (1940); Note No. 8, *supra*.

not necessarily his rights in specific collateral, that is entitled to protection.

In general, such other relief as will result in the realization by the secured creditor of the indubitable equivalent of his interest in the property may be granted, except entitling him to compensation allowable as an administrative expense. One such relief may consists in requiring the debtor to make rental payments for the use of the collaterals during the period of reorganization, as suggested by the majority opinion in *In re* Yale Express System, Inc.[35]

Fair and Equitable Standard (Absolute Priority Rule)

The requirement that the reorganization plan under the old Chapter X must be "fair and equitable" was held to be synonymous with the absolute priority rule pursuant to which the interests of a superior class must first be satisfied in full before any subordinate class could have a participation in the plan. A creditor's interest is superior to a shareholder's interest. A secured creditor's interest is superior to an unsecured creditor's interest. The claims of the secured creditors must first be fully satisfied before the unsecured creditors could be paid. Similarly, the claims of the unsecured creditors must be fully satisfied first before the shareholders could be entitled to anything.[36]

Chapter 11 of the US Federal Bankruptcy Reform Act of 1978 has relaxed the rigid requirement of the absolute priority rule. The interests of a senior class may be impaired under the plan if such class has accepted the plan[37] or if the plan does not

35 370 F. 2D 433 (2d Cir. 1966).

36 *Case v. Los Angeles Lumber Prods. Co.*, 308 U.S. 106 (1939); *Consolidated Rock Prods. V. Dubois*, 312 U.S. 510 (1941).

37 Section 1129 (a) (8).

discriminate unfairly and is fair and equitable to the class whose interests are impaired under, and has not accepted, the Plan.[38] With respect to a class of secured claims, the fair and equitable standard is met where the plan provides (1) for retention of the secured creditor lien to the extent of the allowed amount of his claims, whether the property is retained by the debtor or transferred to another entry and for deferred cash payments totaling at least the allowed amount of his claim; (2) for the sale of the collateral free and clear of lien, with the lien to attach to the proceeds; or (3) for the realization of the secured creditors of the indubitable equivalent of their secured claims.[39]

Best Interests of Creditors

Chapter 11 of the U.S. Federal Bankruptcy Reform Act of 1978 adopts the best interests of creditors standard as interpreted by the courts[40] under the former Chapter XL. The plan may be confirmed if each holder of a claim or interest receives or retains consideration valued, as of the effective date of the plan, at not less than what he would have received if the debtor's estate were liquidated in straight bankruptcy.[41] This requirement need not be met if there is unanimous consent or acceptance of the plan by the members of the affected class.[42]

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38 Section 1129 (b) (1).

39 Section 1129 (b) (2) (A).

40 *Technical Color & Chemical Works v. Two Guys From Massapaqua*, 327 F. 2d 736 (1964), and cases cited at 741.

41 Section 1129 (a) (7 2d Cir.) (A) (ii).

42 Section 1129 (a) (7) (A) (i).

CONCLUDING STATEMENT

The adoption of tools for rehabilitation as developed in the United States by Philippine Courts which are both Courts of law and equity, is justified both as an implementation of the spirit and intent of the law "to salvage and protect the interest of investors and creditors"[43] and the exercise by the Philippine Courts of equity powers and jurisdiction.

43 See Note 28, *supra*.

BOOK REVIEW

THE LOCKERBIE TRIAL

(Documents Related to the IPO Observer Mission Including the Reports of UN Independent Observer, Dr. Hans Koechler)

*Compiled and Edited by Hans Koechler and Jason Subler**
IPO, Vienna, 2002 165 pages

*A Book Review by Fatemah Remedios C. Balbin***

This book, fairly slim with its 165 pages, and innocent-looking, puts together documents which literally detonated a bomb so powerful that it reverberated throughout the globe. It exposed the flawed decision-making of the Scottish criminal court at Camp Zeist in The Netherlands, creating serious doubt in the capability of the United Nations to contain power politics from contaminating the international criminal justice system. It puts on focus the supreme capacity of the United States in tandem with the U.K., in effectively imposing its will upon international institutions and governments, whenever convenient.

Briefly, on December 21, 1988, Pan Am Flight 103 exploded in midair over Lockerbie, Scotland, resulting in the death of 259 people on board, and eleven on ground. The conflicting charges of accountability for the explosion by a time bomb, drew the

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* Dr. Hans Koechler was the Fourteenth Centenary Lecturer, Supreme Court of the Philippines, 12 March 2002.

** Ph.D., Asian Center, University of the Philippines; MCL, Southern Methodist University, Dallas Texas; LL.B, University of the Philippines; President-Chairperson, Foundation for Social Justice; Senior Commissioner, National Amnesty Commission, Office of the President.

International Progress Organization, an NGO headed by Prof. Dr. Hans Koechler of the University of Innsbruck, Austria, to create a Special Committee of Legal Experts in 1992, in an attempt to insure by its presence, that the dispute between Libya, U.S., and the U.K., remain within the framework of international law rules and not according to power politics.

In 1998, Security Council Resolution 1192 was adopted setting up a Special Scottish Court in the Netherlands, and providing for the nomination of five international observers to attend the trial which will ultimately determine criminal responsibility for the explosion. Because of the IPO's long-standing concern with the Lockerbie issue, UN Secretary General Kofi Annan chose the IPO as the only NGO to have its representatives serve as independent international observer, namely, Dr. Hans Koechler, its President, and Mr. Robert Habit, Esq., Permanent Representative of IPO to the UN Headquarters in New York.

This book under review entitled "The Lockerbie Trial" contains the original texts of Dr. Koechler's two reports dated February 3, 2001, and March 26, 2002, respectively, on the initial trial of the two Libyan accused and on the appeal by the convicted accused Abdelbasset Ali Mohamed Al Megrahi. Unfortunately, the decisions of the Scottish courts are not included in the book which could have facilitated reference although one can easily access this on the official website of the Scottish Court Service at *www.scotcourts.gov.uk*. Highly valuable and useful insights may be found in the book's Chapter II on the international media coverage and public debate resulting from Dr. Koechler's Lockerbie Report; Chapter III, on the IPO Committee of Legal Experts on UN Sanctions against Libya; and Chapter IV, comprised of valuable historical documents antedating the trial, and material documentation relative to the Lockerbie dispute.

At the outset, Dr. Koechler noted the absence of any specific definition of the tasks of international observers in the Security Council resolution appointing them. Accordingly, he, in agreement with Mr. Habit, his colleague from the IPO, agreed on the following guideline in evaluating the proceedings but without any authority to participate or to be involved other than as plain observer i.e., the preservation of the constitutional independence of the Scottish court hearing the case, and conformity with the universally - accepted notions of due process and fairness of the trial.

Dr. Hans Koechler's reports are the only formal written reports submitted to the UN coming from the independent international observers at the Lockerbie trial. The Final Report, immediately after its release, came under strong criticism from some quarters such as in the U.K. who alleged that Dr. Koechler was not qualified to act as observer of court proceedings, since he was a professor of legal philosophy, not a lawyer. In the U.S., "there was almost total blackout of Dr. Koechler's report in the mainstream media," compelling Dr. Noam Chomsky, preeminent American intellectual to articulate that the plausible explanation for this is that the Koechler Report "was a sharp condemnation of the [Camp Zeist] proceedings."

This book review opines that Dr. Koechler, a highly respected legal philosopher was in fact, the best qualified to carry out the task as "independent international observer," being unfettered by restrictive preconceived legal norms and procedures which otherwise could have subjected him to various rationalizations. There is no doubt that from his cold analyses of the entire proceedings and of evidence submitted (or notably withheld), he performed his task well, going by basic notions of what is true, just, and reasonable.

Dr. Koechler apparently stands on firm ground. Families of many victims are not satisfied with the Scottish Court's findings on

the events that led to the explosion of Pan Am Flight 103, even if such judicial finding brings them closer to monetary damages amounting to millions of dollars per victim. In other words, for them, money is no substitute for the truth, thus opening the possibility of a yet higher appeal by the accused Al Megrahi under the European Convention for the Protection of Human Rights and Fundamental Freedoms at Strasbourg, France.

DR. KOECHLER'S REPORTS

First Report, February 2001

The special proceedings were not preceded by what, in Philippines procedure, is commonly called a "preliminary investigation." The indictment stated that the two accused conspiring and working together, on December 21, 1988, introduced the time bomb in a samsonite suitcase at the Maltese airport in Luqa on board Air Malta Flight KM 180 to Frankfurt where it was transferred to Pan Am Flight 103A, a feeder flight to PA 103 at Heathrow, bound for the U.S.. PA Flight 103 took off from Heathrow before 1830HR on 21 December 1988, and after 30 minutes, the aircraft exploded in midair over Lockerbie Scotland.

After the trial had started, the indictment was amended and the conspiracy theory was taken out. However, the evidence which was anchored on the joint action of the two accused acting in conspiracy remained.

Dr. Koechler noted that there was not one single piece of material evidence linking the two accused to the crime, the opinion of the Scottish court being "based exclusively on circumstantial evidence and on a series of highly problematic inferences."

Moreover, the opinion of the court itself recognized and admitted the fact that the key prosecution witnesses were proven to lack credibility to a very high extent, and on some material parts, "openly lied to the court." He adds that it appeared highly arbitrary and irrational for the court to choose only parts of their testimony, while rejecting the rest, for the formulation of a verdict that requires certainty beyond reasonable doubt.

He also reports that the court allowed the presence of representatives of foreign governments without accreditation, with some U.S. state prosecutors actually collaborating with the Prosecution, by passing documents and discussing with the court's prosecutors while the proceedings was in process.

The decision at the end of the trial declared that one of the accused was found "guilty", while the second accused was found "not guilty", instead of "not proven [guilty]." This appeared to Dr. Koechler to be irrational considering that the indictment and the evidence "was based on the joint action of the two accused in Malta".

The Second Report, 26 March 2002

The Scottish Court found accused Abdelbaset Ali Mohamed Al Megrahi "guilty" of causing the explosion of Pan Am Flight 103. It declared his co-accused and alleged accomplice "not guilty". Al Megrahi appealed the judgment to the five-man High Court of Judiciary at Camp Van Zeist. At the appeal court, Dr. Koechler reiterated his observer mission "on the sense of an evaluation in regard to the requirements of due process and of the fairness of the trial." In so doing, Dr. Koechler used European and well-recognized international legal standards as contemplated in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Dr. Koechler reports that the U.S. Department of Justice representatives at the initial hearing were again present at the appeal proceedings. The same holds for the Libyan defense team whose presence or services was not requested by the Appellant himself but were personally selected by the Libyan government. The High Advocate's Office explained that the presence of these government representatives was due to an informal arrangement between the U.S. and Libya. Besides, it was up to the High Court to regulate who should be present. Dr. Koechler however recognized "a political element" by their continued presence. Koechler's fears was reinforced by news of meetings of Libya, U.K. and U.S. intelligence *cum* political officials held in the U.K. during the proceedings. This was inconsistent with the objective of the appeal which was filed by Megrahi to exonerate himself from personal criminal responsibility and therefore should not be the concern of governments, whether his, or of the U.S. and U.K..

One interesting observation made by Dr. Koechler is the way the defense team assigned to him, chose not to make use of many of the means available to defend the Appellant Al Megrahi. This, according to Koechler, made impossible any "equality of arms" which is a basic element in an adversarial system of criminal law where the fairness of the trial depends on the quality of arms of both prosecution and defense. This imbalance was aggravated by the appeal court's failure to perform a duty and a right provided in Article 6(N) of the European Human Rights Convention, against unfairness caused at the trial by the absence of any scrutiny of the withheld information by the trial judge.

In fine, Dr. Koechler's findings based on the conduct of the trial is that the proceedings were burdened by power politics and the absence of an elaborate division of powers created a disservice to the important cause of international criminal justice.

He observed that apparently, "what is true on the national level applies to the transnational level as well."

One rule which observer Koechler found to have detracted from the quality of justice dispensed at Camp Zeist was the position of the Appeal Court to apply the rule that "once evidence has been accepted by the trial court, it is for that court to determine what inference(s) should be drawn from the evidence." To this, Dr. Koechler posits the question: how meaningful then is the role of an appeal court in light thereof; where the appeal court refuses to re-evaluate the plausibility of the inferences drawn allegedly from the evidence.

Koechler's observation ties up with the official refusal of the court to make available to the UN observers, copies of the grounds for appeal which at the end, were all rejected by the court, based on the evidence elevated to it but which it refused to test for its plausibility.

CONCLUSION

This book review presents "The Lockerbie Trial" as a prototype of transnational judicial proceedings constricted by power politics. This is not an uncommon occurrence in our national courts either. In both cases, legal rules become muddled by rationalizations which defy analysis unless considered in light of pertinent extrajudicial factors.

In "The Lockerbie Trial," Dr. Koechler expressed dismay over certain issues which persist unanswered to this day:

a. Why did the Libyan government insist on its own choice of defense lawyers for Al Megrahi, instead of the latter's choice of counsel?

b. Why did this Libyan defense team allow certain procedural flaws which were clearly inconsistent with

Al Megrahi's interest, and which allowed the non-disclosure of evidence tending to show the culpability of other groups which were non-Libyan? In short, was the Libyan government a "captive" of the U.S. and the U.K.?

c. In a unipolar world, is there any chance for the attainment of "equality and balance of arms" in an adversarial justice system which Dr. Koechler speaks of?

In conclusion, it appears that the quest for truth and justice in the Lockerbie trial did not end in Camp Zeist.

SUBJECT GUIDE AND DIGESTS SUPREME COURT DECISIONS

(July to December 2001)

*Prepared By Tarcisio A. Diño**

Agrarian Reform

Civil Law

Commercial Law

Criminal Law

Labor Law

Legal Ethics

Political Law

Remedial Law

Taxation

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* Partner, Villareal Rosacia Diño & Patag; B.A., LL.B., University of the Philippines.

AGRARIAN REFORM

Agricultural Tenancy. (a) Essential requisites: [i] the parties are the landowner and the tenant; [ii] the subject is agricultural land; [iii] there is consent of the landowner ; [iv] the purpose is agricultural production; [v] there is personal cultivation; and [vi] there is sharing of harvest or payment of rental. Sec. 7 of R.A. No. 3844 provides that once the leasehold relation is established, the agricultural lessee cannot be ejected from the land unless authorized by the court for cause provided by law. *(Pascual v. CA, G.R. No. 138781, 3 December 2001).* Once established, agricultural tenancy confers upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. R.A. No. 3844 and the CARL provide for security of tenure of tenants. Moreover, the CARL grants them the rights of pre-emption and redemption. *(Tuazon v. Garilao, G.R. No. 143673, 10 August 2001).*

(b) Choice of Tenant Successor. A tenancy relationship may be established either verbally or in writing, expressly or impliedly, in accordance with Sec. 7 of R.A. No. 1199. Upon the death or incapacity of the original tenant, the lessor/landowner has the right to choose the tenant successor pursuant to Sec. 9 of R.A. 3844. *(Felizardo v. Fernandez, G.R. No. 137509, 15 August 2001).*

Qualified Beneficiaries. Actual Cultivator. Personal Cultivation. At the time private respondent applied to purchase Lot No. 707 in 1962, the law in effect was the Agricultural Tenancy Act of the Philippines (R.A. No. 1199) which required that the applicant for the purchase of agricultural land should personally cultivate and/or occupy the land subject of the purchase. The Agricultural Land Reform Code (R.A. No. 3844), which was enacted on 8 August 1963, allowed the landholder to eject tenants on the

ground that the landholder will personally cultivate the land. The Comprehensive Agrarian Reform Law (R.A. 6839, enacted on 10 September 1971 and hereafter referred to as the CARL), abolished personal cultivation by the landowner as a ground for ejecting and agricultural lessee. Moreover, it allowed "personal cultivation" by the agricultural lessee to be done with the assistance of his immediate farm household or members of his family. *(Palele v. CA, G.R. No. 138289, 31 July 2001).*

SCOPE OF CARL

(a) **Land Covered.** All agricultural lands, including homesteads. *(Paris v. Alfeche, G.R. No. 139083, 30 August 2001).*

(b) **Land Excluded.** Lands classified as non-agricultural prior to CARL. *(Sta. Rosa Realty Development Corporation v. CA, G.R. No. 112526, 12 October 2001).*

(c) **Land Exempted.** [i] Prawn farms. Fishponds. - By virtue of R.A. No. 7881. *(Spouses Tirona v. Hon. Alejo, G.R. No. 129313, 10 October 2001).* [ii] Watershed - defined in Art. 67 of the Water Code of the Philippines *(P. D. No. 1067). (Sta. Rosa Realty Development Corporation v. CA, G.R. No. 112526, 12 October 2001).*

Right of Retention. Under P.D. No. 27, the landowner's right to retain seven hectares of land is subject to the condition that said landowner is actually cultivating that area or will cultivate it upon the effectivity of the said law. Under the CARL, landowners who do not personally cultivate their lands are no longer required to do so in order to qualify for the retention of an area not exceeding five (5) hectares. However, they are required to maintain the actual tiller of the area retained, should the latter choose to remain therein. *(Paris v. Alfeche, G.R. No. 139083, 30 August 2001).*

Just Compensation. Although, under the law, tenant farmers are already deemed owners of the land they till, they are still required to pay the cost of the land, including interest, within fifteen (15) years before the title is transferred to them. (*id.*). Expropriation of landholding did not take place on the effectivity of PD 27. The seizure would take effect on the payment of just compensation, judicially determined. *(Office of the President v. CA, G.R. No. 131216, 19 July 2001).*

Acquisition of Private Agricultural Land. For a valid implementation of the CARL Program, two notices are required: (1) notice of coverage and letter of invitation to a preliminary conference sent to the landowner, the representative of the BARC, LBP, farmer-beneficiaries and other interested parties; and (2) the notice of acquisition sent to the landowner under Sec. 16 of the CARL. *(Sta. Rosa Realty Development Corporation v. CA, G.R. No. 112526, 12 October 2001).*

Reclassification of Agricultural Land to Residential. *(Spouses Calvo v. Spouses Vergara, G.R. No. 134741, 19 December 2001).*

Department of Agrarian Reform Adjudication Board (DARAB) Created pursuant to Sec. 13 of EO 129-A. (a) Primary, original and appellate jurisdiction over agrarian disputes or cases involving tenancy relationships. *(Monsato v. Zerna, G.R. No. 142501, 7 December 2001).*

CIVIL LAW

HUMAN RELATIONS

Abuse of Right. (a) Art. 19 of the New Civil Code. Where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to civil liability. The elements of abuse of one's rights are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. In this case, the declaration of petitioner as excess teacher was not an abuse of right. *(Andrade v. CA, G.R. No. 127932, 7 December 2001).* There was also no abuse of right in this case of foreclosure of mortgage *(DBP v. CA, G.R. No. 126200, 16 August 2001).* However, there was abuse of right in the implementation of an order of demolition before it became final and executory, thus depriving respondents of the right to appeal from an adverse ruling of the Office of the Building Official. That the order of demolition was later affirmed by the DPWH was of no moment. *(Rellosa v. Pellosix, G.R. No. 138964, 9 August 2001).*

(b) Art. 20 of the New Civil Code does not require that the act be directed at a specific person. It suffices that a person suffers damage as a consequence of a wrongful act of another in order that indemnity could be demanded from the wrongdoer. In terminating the hauling contract, petitioner might not have deliberately intended to injure the respondent-drivers. But as a consequence of the willful act of petitioner directed against Dr. Cruz, respondent-drivers lost their jobs and consequently suffered loss of income. *(Petrophil Corporation v. CA, G.R. No. 122796, 10 December 2001).*

Civil Action for Damages Entirely Separate from the Criminal Action. Art. 33 of the New Civil Code. Defamation, Fraud, Physical Injuries. Contemplates an action against the employee in his primary civil liability – not against the employer to enforce its subsidiary civil liability. Any action brought against the employer based on its subsidiary liability before the conviction of its employee (the accused) is premature *(International Flavors and Fragrances (Phil.), Inc. v. Argo, G.R. No. 130326, 10 September 2001).*

Foreign Laws. Philippine courts cannot take judicial notice of foreign laws which, like any other fact, must be alleged and proved either by: [i] an official publication thereof; or [ii] a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certification from the secretary of the Philippine embassy or legation in such country or by the Philippine consul general, consul, vice-consul, or consular agent stationed in such country, or by any other authorized officer in the Philippine foreign service assigned to said country that such officer has custody. *(Garcia v. Recio, G.R. No. 138322, 2 October 2001; Benedicto v. CA, G.R. No. 125359, 4 September 2001).*

PERSONS

CIVIL PERSONALITY

Legal Capacity. Advanced Age. A person is not incompetent to contract merely because of advanced years or by reason of physical infirmities. However, when such age or infirmities have impaired the mental faculties so as to prevent the person from properly, intelligently, and firmly protecting her property rights then she is undeniably incapacitated. *(Domingo v. CA, G.R. No. 127540, 17 October 2001).*

MARRIAGE

Divorce obtained abroad cannot dissolve a marriage between Filipinos *(Garcia v. Recio, G.R. No. 138322, 2 October 2001).*

Marriage License. Certificate of Legal Capacity (Art. 21, Family Code). Legal capacity to contract marriage is determined by the national law of the party concerned. (*id.*).

Property Relations Between Husband and Wife Conjugal Property. *(Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).*

PATERNITY AND FILIATION

Legitimacy. Action to Impugn *(De Jesus v. Estate of Dizon, G.R. No. 142877, 2 October 2001).* Art. 263 of the Civil Code, Art. 171 of the Family Code and related articles on paternity and filiation. Contemplate situations where a doubt exists that a child is indeed a man's child by his wife, and the husband (or, in proper cases, his heirs) denies the child's filiation. - not where a child is alleged not to be the child at all of a particular couple. *(Labagala v. Santiago, G.R. No. 132305, 4 December 2001; Lee v. CA, G.R. No. 118387, 11 October 2001; Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).*

Filiation. (a) Of illegitimate children, like legitimate children, is established by (1) the record of birth appearing in the civil register or a final judgment; or (2) an admission of filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence of the foregoing, filiation shall be proved by (1) the open and continuous possession of the status of a legitimate child; or (2) any other means allowed by the Rules of Court and special laws. The due recognition of an illegitimate child in a record of birth, a will, a statement before a court of

record, or in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. However, a claim for recognition predicated on evidence other than the foregoing will require judicial action within the applicable statute of limitations. *(De Jesus v. Estate of Dizon, G.R. No. 142877, 2 October 2001; Go Kim Huy v. Go Kim Huy, G.R. No. 137674, 20 September 2001).* (b) Baptismal Certificate - is a private document and is not conclusive proof of filiation. *(Labagala v. Santiago, G.R. No. 132305, 4 December 2001)*. (c) Respondent's photograph with his mother near the coffin of the decedent cannot and will not constitute proof of filiation. *(Locsin v. Locsin, G.R. No. 146737, 10 December 2001).*

Parental Authority. Custody of minor child. *(Bondagjiy v. Bondagjiy, G.R. No. 140817, 7 December 2001).*

CIVIL REGISTER

Cancellation or Correction of Entries. All entries in the civil register (referred to in Arts. 407 and 408 of the New Civil Code) may be changed or corrected under Art. 412 of the New Civil Code. This puts an end to the confusion sown by earlier pronouncements that are premised on the interpretation that Art. 412 pertains only to clerical errors of a harmless or innocuous nature. *(Lee v. CA, G.R. No. 118387, 11 October 2001).*

Act No. 3753 (An Act to Establish a Civil Register). Certificate of Live Birth. *(Locsin v. Locsin, G.R. No. 146737, 10 December 2001).*

PROPERTY, OWNERSHIP AND ITS MODIFICATIONS

CLASSIFICATION OF PROPERTY

Real or Personal. Machineries and Equipment. Intention of Parties Material. Assuming *arguendo* that the properties in question

are immovable by nature, nothing detracts the parties from treating it as chattels to secure an obligation under the principle of estoppel. *(Tsai v. CA, G.R. No. 120098, 2 October 2001).*

OWNERSHIP

Action for Recovery of Ownership. To maintain such action, the person who claims that he has a better right to the property must prove not only his ownership of the property claimed but also the identity thereof, by location, area and boundaries. *(Fabela v. CA, G.R. No. 142546, 9 August 2001).*

CO-OWNERSHIP

Generosa sold not only her ¾ undivided share in the building but also the ¼ share of the respondents. Such a sale without the consent of the respondents is not null and void as it conveys the rights of the seller co-owner thereby making the buyer a co-owner to that extent together with the respondents who owned the ¼ share therein. *(Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).*

LEGAL EASEMENTS

Right of Way. Must be at the point least prejudicial to the servient estate. *(Sabio v. International Corporate Bank, G.R. No. 132709, 4 September 2001).*

MODES OF ACQUIRING OWNERSHIP

Donation. (a) Rules on onerous donations are applicable to donations with a resolutory condition. *(Vda. de Delgado v. CA, G.R. No. 125728, 28 August 2001).* (b) Property donated *inter vivos* is subject to collation after the donor's death, whether the donation

was made to a compulsory heir or a stranger, unless there is an express prohibition if that had been the donor's intention. *(Quilala v. Alcantara, G.R. No. 132681, 3 December 2001).* (c) Formalities. Below the terms and stipulations of the donation, the donor, donee and their witnesses affixed their signatures. However, the Acknowledgment appearing on the second page mentioned only the donor. Thus, the trial court ruled that for the donee's failure to acknowledge her acceptance before the notary public, the same was set forth merely on a private instrument, *i.e.*, the first page of the instrument and was not valid. **Held**: The lack of an acknowledgment by the donee before the notary public does not render the donation null and void. The instrument should be treated in its entirety. The fact that it was acknowledged by the donor before a notary public converts the deed of donation in its entirety to a public instrument. That the donee was not mentioned by the notary public in the acknowledgment is of no moment. (*id*.).

PRESCRIPTION

Prescription of Action. (a) The following actions must be brought within ten (10) years from the time the right of action accrues : [i] Action based on written contract. *(Vda. de Delgado v. CA, G.R. No. 125728, 28 August 2001; Aron v. CA, G.R. No. 126926, 16 August 2001).* [ii] Action upon a final and executory judgment. *(Barrera v. CA, G.R. No. 123935, 14 December 2001).*

(b) An action to enforce an oral contract prescribes in six (6) years. The right to demand an accounting for a partner's interest as against the person continuing the business accrues at the date of dissolution, in the absence of any contrary agreement. *(Sunga-Chan v. Chua, G.R. No. 143340, 15 August 2001).*

(c) Forcible entry cases must be filed within one year from the date of actual entry on the land. After the lapse of the one year

period, the remedies of the party dispossessed of a parcel of land is to file either an *accion publiciana* which is a plenary action to recover the right of possession or an *accion reinvindicatoria* which is an action to recover ownership as well as for the recovery of possession. *(Gener v. De Leon, G.R. No. 130730, 19 October 2001).*

(d) As no law or rule specifically prescribes a fixed time for filing the special proceeding for cancellation or correction of entries in the civil registry (Rule 108 of the 1997 Rules of Civil Procedure in relation to Art. 412 of the New Civil Code), such action must be brought within five years from the time the right of action accrues. (Art. 1149, Civil Code). The five-year prescriptive period should not be reckoned from the date of the registration of the last birth among the petitioners-siblings in 1960 but, rather, from the date private respondents discovered the false entries in petitioners' birth records in 1989. *(Lee v. CA, G.R. No. 118387, 11 October 2001).*

(e) Complaint for the reconveyance of the subject property to the estate of Rosalia since the deeds of sale were simulated and fictitious amounts to a declaration of nullity of a void contract, which is imprescriptible. *(Santos v. Santos, G.R. No. 133895, 2 October 2001).* In actions for reconveyance of property; predicated on the fact that the conveyance complained of was null and void *ab initio*, a claim of prescription of action would be unavailing. Neither could laches be invoked in the case at bar. Laches is a doctrine in equity and our courts are basically courts of law and not courts of equity. Equity, which has been aptly described as "justice outside legality," should be applied only in the absence of, and never against, statutory law. Certainly, laches cannot be set up to resist the enforcement of an imprescriptible legal right, and petitioners can validly vindicate their inheritance despite the lapse of time. *(Ingjugtiro v. Casals, G.R. No. 134718, 20 August 2001).*

Laches. The failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due

diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it has either abandoned it or declined to assert it. In the instant suit, notwithstanding the invalidity of the sale with respect to the shares of appellants, they allowed the vendee to enter, occupy and possess the property in the concept of an owner without demurrer and molestation for a long period of time, never claiming the land as their own until 1985 when the property has greatly appreciated in value. *(Biona v. CA, G.R. No. 105647, 31 July 2001).* The concept of laches is not concerned with the lapse of time but only with the effect of unreasonable lapse. In this case, the alleged 16 years of respondents' inaction has no adverse effect on the petitioner to make respondents guilty of laches. *(Santos v. Santos, G.R. No. 133895, 2 October 2001).* The doctrine of stale demands would apply only where by reason of the lapse of time, it would be inequitable to allow a party to enforce his legal rights. Moreover, except for very strong reasons, the Court is not disposed to apply the doctrine of laches to prejudice or defeat the rights of an owner. *(Tsai v. CA, G.R. No. 120098, 2 October 2001).*

OBLIGATIONS

Nature and Effect of Obligations. Failure to return the owner's duplicate certificate of title after the mortgage was released upon payment of the loan secured by it is breach of contract (Art. 1170, New Civil Code) and not quasi-delict (Art. 2176, New Civil Code). *(GSIS v. Spouses Gonzalo, G.R. No. 135644, 17 September 2001).*

DIFFERENT KINDS OF OBLIGATONS

Solidary Obligation. (a) Although the contract of a surety is in essence secondary only to a valid principal obligation, the

surety's liability to the creditor is direct, primary and absolute; and becomes liable for the debt and duty of another although he possesses no direct or personal interest over the obligations and does not receive any benefit therefrom. *(Molino v. Security Diners International Corp., G.R. No. 136780, 16 August 2001).* A suretyship agreement can secure future loans even if the amount is not yet known. *(South City Homes, Inc. v. Ba Finance Corporation, G.R. No. 135462, 7 December 2001).* However, the obligation of a surety cannot be extended by implication beyond its specified limits. When a surety executes a bond, it does not guarantee that the plaintiff's cause of action is meritorious, and that it will be responsible for all the costs that may be adjudicated against its principal in case the action fails. The extent of a surety's liability is determined only by the contract of suretyship. *(Visayan Surety & Insurance Corporation v. CA, G.R. No. 127261, 7 September 2001).*

(b) Surety's Liability re: [i] Credit Card. While the Court commiserates in the financial predicament petitioner now faces, the liability she incurred is only the legitimate consequence of an undertaking that she freely and intelligently obliged to. Prospective sureties to credit card applicants would be well-advised to study carefully the terms of the agreements prepared by the credit card companies before giving their consent, and pay heed to stipulations that could lead to onerous effects, like in the present case where the credit applied for was limitless. *(Molino v. Security Diners International Corp., G.R. No. 136780, 16 August 2001).* In another case, the liability for extension or supplemental credit card was not established. *(BPI Express Card Corporation v. Olalia, G.R. No. 131086, 14 December 2001).* [ii] Letters of credit. *(Blade International Marketing Corporation v. CA, G.R. No. 131013, 14 December 2001).*

EXTINGUISHMENT OF OBLIGATIONS

Payment. (a) Tender of Payment. Though a check is not legal tender, and a creditor may validly refuse to accept it if

tendered as payment, one who in fact accepted a fully funded check after the debtor's manifestation that it had been given to settle an obligation is estopped from later on denouncing the efficacy of such tender of payment. *(Far East Bank & Trust Company v. Diaz Realty Inc., G.R. No. 138588, 23 August 2001).*

(b) Consignation. Act of depositing the thing due with the court or judicial authorities whenever the creditor cannot accept or refuses to accept payment and it generally requires a prior tender of payment. Where no debt is due and owing, consignation is not proper. *(Bacus v. CA, G.R. No. 127695, 3 December 2001).* Requisites. *(Segovia Development Corp. v. J.L. Dumatol Realty and Development Corp., G.R. No. 141283, 30 August 2001) .*

Compensation. Conventional - takes place when the parties agree to compensate their mutual obligations even in the absence of some of the requisites for legal compensation. *(PNB Madecor v. Uy, G.R. No. 129598, 15 August 2001).*

Novation. (a) Subrogation - the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. It may either be legal or conventional. Conventional subrogation requires an agreement among the three parties concerned — the original creditor, the debtor, and the new creditor. In this case, the Memorandum of Agreement expressly requires the consent of Anglo-Asean to the subrogation. The absence of such conformity prevents the agreement from becoming effective and a source of any cause of action for the signatories thereto. *(Licaros v. Gatmaitan, G.R. No. 142838, 9 August 2001).* (b) Assignment of Credit - the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor. The assignment may be done gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale. A creditor may validly assign his credit and its accessories without the debtor's consent. What the law requires is merely notice to the debtor as

the assignment takes effect only from the time he has knowledge thereof. (*id.*).

CONTRACTS

General Provisions. (a) Freedom of Contract. Contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, however, such stipulations should not be contrary to law. *(Hanil Development Co. v. CA, G.R. No. 113176, 30 July 2001).* Infrastructure Contract. *(J.C. Lopez & Associates v. COA, G.R. No. 128145, 5 September 2001).* (b) Relativity of Contract. *(Marubeni Corporation v. Lirag, G.R. No. 130998, 10 August 2001; Davao Light & Power Co. Inc. v. CA, G.R. No. 111685, 20 August 2001).* (c) Obligatory Force of Contracts. The very terms and conditions of the same contracts become the law between the parties, unless they are contrary to law, morals, good customs, public order or public policy. When the CA ruled that only P3,060,406.25 should be awarded to petitioner RCBC, it disregarded the parties' stipulations in their contracts of loan. *(Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation, G.R. No. 133877, 14 November 2001).* (d) Consideration. The presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration. Under Art. 1354 of the Civil Code, consideration is presumed unless the contrary is proven. *(Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).* (e) Perfection of Contract. The counter offer was denied twice by GSIS and therefore there was clearly no meeting of the minds and no perfected contract. *(Urbano v. GSIS, G.R. No. 137904, 19 October 2001).*

Void Contracts. (a) Those whose cause, object or purpose is contrary to public policy, such as a contract entered into because of the actual or supposed influence which a party has and engaging him to influence executive officials in the discharge of their duties.

(Marubeni Corp. v. Lirag, G.R. No. 130998, 10 August 2001). (b) Those which are absolutely simulated, *i.e.*, as to the consideration stated in the contract of sale and the payment thereof to the seller *(Domingo v. CA, G.R. No. 127540, 17 October 2001; Guan v. Ong, G.R. No. 144735, 18 October 2001)*; as where the Deed of Sale was executed merely to facilitate the transfer of the property to petitioner pursuant to an agreement between the parties to enable them to construct a commercial building and to sell the property to their children. Being merely a subterfuge, that agreement cannot be taken as the consideration for the sale. (*id.*). Where the Extrajudicial Settlement and Confirmation of Sale was allegedly executed in 1967 by one party who died in 1963 and by another party who was not an heir of the decedent. *(Ingjugtiro v. Casals, G.R. No. 134718, 20 August 2001).* The basic characteristic of an absolutely simulated or fictitious contract is that the apparent contract is not really desired or intended to produce legal effects or alter the juridical situation of the parties. However, in this case, the parties already undertook certain acts which were directed towards fulfillment of their respective covenants under the second deed, indicating that they intended to give effect to their agreement. *(Peñalosa v. Santos, G.R. No. 133749, 23 August 2001; Labagala v. Santiago, G.R. No. 132305, 4 December 2001).* (c) *Pari delicto.* When the parties are equally at fault, the law leaves them as they are and denies recovery by either one of them. This principle does not apply to inexistent and void contracts. *(Guan v. Ong, G.R. No. 144735, 18 October 2001).*

Form. Contracts are obligatory in whatever form they may have been entered into, provided all essential requisites are present. Non-appearance of the parties before the notary public who notarized the deed does not necessarily nullify nor render the parties' transaction void *ab initio*. The provision of Art. 1358 of the New Civil Code on the necessity of a public document is only for convenience, not for validity or enforceability. Where a contract is not in the form prescribed by law, each party can compel the other to observe the form required by law. *(Peñalosa v. Santos, G.R. No. 133749, 23 August 2001).*

RESCISSIBLE CONTRACTS

Alienation in Fraud of Creditors. (Art. 1387, Civil Code). *(China Banking Corp. v. CA, G.R. No. 129644, 7 September 2001).*

Rescission Distinguished from Resolution. The remedy of rescission in the case of rescissible contracts under Art. 1381 is not to be confused with the remedy of rescission, or more properly termed "resolution," of reciprocal obligations under Art. 1191 of the Civil Code. While both remedies presuppose the existence of a juridical relation that, once rescinded, would require mutual restitution, it is basically, however, in this aspect alone when the two concepts coincide. Resolution under Art. 1191 would totally release each of the obligors from compliance with their respective covenants. The Court has referred to rescission as being likened to contracts which are deemed "void at inception." The obvious reason is that when parties are reciprocally bound, the refusal or failure of one of them to comply with his part of the bargain should allow the other party to resolve their juridical relationship rather than to leave the matter in a state of continuing uncertainty. The result of the resolution, when decreed, renders the reciprocal obligations inoperative at inception. Upon the other hand, the rescission of a rescissible contract under Art. 1381, taken in conjunction with Art. 1385, is a relief which the law grants for the protection of a contracting party or a third person from injury and damage that the contract may cause, or to protect some incompatible and preferent right created by the contract. Rescissible contracts are not void *ab initio*. Until set aside in an appropriate action, rescissible contracts are respected as being legally valid, binding and in force. The agreement between petitioner and Carmelo being efficacious until rescinded, validly transferred ownership over the property to petitioner from the time the deed of sale was executed in a public instrument in July 1978 up to the time that the decision in G.R. No. 106063 became final in March 1997. It was only from the latter date that the contract had ceased to

be efficacious. *(Vitug, J., dissenting in Equatorial Realty Development, Inc.v. Mayfair Theater, Inc., G.R. No. 133879, 21 November 2001).* In Arts. 1191 and 1592, rescission is a principal action which seeks the resolution or cancellation of a contract; while in Art. 1381, the action is a subsidiary one limited to cases of rescission for lesion as enumerated in said Article. *(Iringan v. CA, G.R. No. 129107, 26 September 2001).*

Rescission and Restitution. *(Conculada v. CA, G.R. No. 130562. 11 October 2001; Peñalosa v. Santos, G.R. No. 133749, 23 August 2001; Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).*

Interpretation of Contracts. It is only when a party puts in issue in the pleadings the failure of the written agreement to express the true intent of the parties thereto that said party may present evidence to modify, explain or add to the terms of the written agreement. The fact that the terms of the MOA are explicit and leave no doubt as to the intention of the parties, coupled with petitioners' failure to contest the contract for failing to express the true intention of the parties, behooves the courts not to read into the MOA any other intention that would contradict its apparent import, such that the literal meaning of its stipulations must control. There is no factual nor legal basis for petitioners' claim that the respondents are obligated to rid the subject property of squatters and unauthorized structures. The existence of squatters and unauthorized structures in the subject property is not covered by the phrase "liens and encumbrances." *(Sabio v. International Corporate Bank, G.R. No. 132709, 4 September 2001).*

SALES

Delivery Necessary to Transfer Ownership of Thing Sold. Nowhere in the Civil Code does it provide that execution of a

deed of sale is a conclusive presumption of delivery of possession. The Code merely said that the execution shall be equivalent to delivery. Presumptive delivery can be negated by the failure of the vendee to take actual possession of the land sold. If, notwithstanding the execution of the instrument, the purchaser cannot have the enjoyment and material tenancy nor make use of it himself or through another in his name, then delivery has not been effected. The critical factor in the different modes of effecting delivery, which gives legal effect to the act is the actual intention of the vendor to deliver, and its acceptance by the vendee. Without that intention, there is no tradition. *(Santos v. Santos, G.R. No. 133895, 2 October 2001).* Notwithstanding the presence of illegal occupants on the subject property, transfer of ownership by symbolic delivery under Art. 1498 can still be effected through the execution of the deed of conveyance. The key word is control, not possession, of the subject property. *(Sabio v. International Corporate Bank, G.R. No. 132709, 4 September 2001).* Ownership of the thing sold is not acquired by mere agreement, but by tradition or delivery. In this case, delivery was not had because it was effectively prevented by a legal impediment. The sale to Equatorial may have been valid from inception, but it was judicially rescinded before it could be consummated. Petitioner never acquired ownership, not because the sale was void, as erroneously claimed by the trial court, but because the sale was not consummated by a legally effective delivery of the property sold. Not having been the owner, petitioner cannot be entitled to the civil fruits like rentals of the property sold. Furthermore, petitioner's bad faith bars the grant of such benefits. *(Equatorial Realty Development, Inc.v. Mayfair Theater, Inc., G.R. No. 133879, 21 November 2001). (Melo, J., concurring, id.)* In his dissenting opinion, Justice Sandoval made a different observation: Ownership is transferred to the vendee by means of delivery, actual or constructive. Under Art. 1498 of the Civil Code, when the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot

clearly be inferred. Contrary to the majority opinion, the facts and circumstances of the instant case clearly indicate that there was indeed actual and constructive delivery of the disputed property from Carmelo to Equatorial. Granting arguendo that there was indeed no actual delivery, Mayfair's alleged "timely objection to the sale and continued actual possession of the property" did not constitute an "impediment" that may prevent the passing of the property from Carmelo to Equatorial. The fact that Mayfair has remained in "actual possession of the property," after the perfection of the contract of sale between Carmelo and Equatorial up to the finality of the Court's Decision in G.R. No. 106063 (and even up to the present), could not prevent the consummation of such contract. Mayfair's possession is not under a claim of ownership but only possession as a lessee with the prior right to purchase the property. It cannot in any way clash with the ownership accruing to Equatorial by virtue of the sale. The principle has always been that the one who possesses as a mere holder acknowledges in another a superior right or right of ownership. In G.R. No. 106063, Mayfair's main concern in its action for specific performance was the recognition of its right of first refusal. Hence, the most that Mayfair could secure from the institution of its suit was to be allowed to exercise its right to buy the property upon rescission of the contract of sale. Not until Mayfair actually exercised what it was allowed to do by this Court in G.R. No. 106063, specifically to buy the disputed property for P11,300,000.00, would it have any right of ownership. How then, at that early stage, could Mayfair's action be an impediment in the consummation of the contract between Carmelo and Equatorial? *(Sandoval, J., dissenting, id.).*

Buyer in Good Faith. *(Aron v. CA, G.R. No. 126926, 16 August 2001).* **In Bad Faith.** The contract of sale between Equatorial and Carmelo is characterized by bad faith, since it was knowingly entered into in violation of the rights and to the prejudice of Mayfair. Because of bad faith, neither may Carmelo nor Equatorial avail themselves of considerations based on equity

which might warrant the grant of interests and, in this case, unconscionably increased rentals. Considering the judgments in the three (3) earlier decisions of the Court, Mayfair is under no obligation to pay any interests, whether based on law or equity, to Carmelo or Equatorial. Mayfair is the wronged entity, the one which has suffered injury since 1978 or for the 23 years it was deprived of the property. During said period, Equatorial received rentals and other benefits which would otherwise have accrued to Mayfair had the latter's rights not been violated. There is no obligation on the part of respondent Mayfair to pay any increased, additional, back or future rentals or interests of any kind to petitioner Equatorial under the circumstances of this case. *(Melo, J., concurring in Equatorial Realty Development, Inc.v. Mayfair Theater, Inc., G.R. No. 133879, 21 November 2001).* Despite knowledge of respondent's claim, petitioner proceeded to buy the contested units of machinery. The RTC did not err in finding that she was not a purchaser in good faith. *(Tsai v. CA, G.R. No. 120098, 2 October 2001).*

Sale of Real Estate for a Lump Sum. (Art. 1542, Civil Code). *(Roble v. Arbasa, G.R. No. 130707, 31 July 2001).*

Contract of Sale. Essential elements: (1) consent or meeting of the minds, that is consent to transfer ownership in exchange for the price; (2) determinate subject matter; and (3) price certain in money or its equivalent. *(Roble v. Arbasa, G.R. No. 130707, 31 July 2001; Biona v. CA, G.R. No. 105647, 31 July 2001)*. Non-payment of the purchase price is not among the instances where the law declares a contract to be null and void. At most, the non-payment of the contract price merely results in a breach of contract for non-performance and warrants an action either for rescission or specific performance under Art. 1191 of the Civil Code. *(Peñalosa v. Santos, G.R. No. 133749, 23 August 2001)*. The preponderance of evidence shows that NDC sold to PUP the whole NDC compound, including the leased premises, without the knowledge much less consent of private respondent lessee which had a valid and existing right of

first refusal. The defendants-appellants' interpretation that there was a mere transfer, and not a sale, apart from being specious sophistry and a mere play of words, is too strained and hairsplitting. *(Polytechnic University of the Philippines v. CA, G.R. No. 143513, 14 November 2001).*

Conditional Sale. Here, the intention of the parties is to reserve the ownership of the land in the seller until the buyer has paid the total purchase price. *(Leaño v. CA, G.R. No. 129018, 15 November 2001).* In a contract to sell real property on installments, the full payment of the purchase price is a positive suspensive condition, the failure of which is not considered a breach, casual or serious, but simply an event that prevents the obligation of the vendor to convey title from acquiring any obligatory force. *(Tuazon v. Garilao, G.R. No. 143673, 10 August 2001).* Art. 1592 of the Civil Code is inapplicable to the case at bar. However, any attempt to cancel the contract to sell would have to comply with the provisions of R.A. No. 6652 (Realty Installment Buyer Protection Act), which recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of installments by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. The law also provides for the rights of the buyer in case of cancellation. *(Leaño v. CA, G.R. No. 129018, 15 November 2001).*

Right to Repurchase. Not a matter of right in this case. *(Urbano v. GSIS, G.R. No. 137904, 19 October 2001).*

Option to Buy. Obligations under an option to buy are reciprocal obligations. The payment of the purchase price by the creditor is contingent upon the execution and delivery of a deed of sale by the debtor. When private respondents opted to buy the property, their obligation was to advise petitioners of their decision and their readiness to pay the price. They were not yet obliged to

make actual payment. Only upon petitioners' actual execution and delivery of the deed of sale were they required to pay. *(Bacus v. CA, G.R. No. 127695, 3 December 2001).*

Right of First Refusal. P.D. No. 1517 (Urban Land Reform Act) pertains to areas proclaimed as Urban Land Reform Zones (ULRZ). *(Alcantara v. Reta, G.R. No. 136996, 14 December 2001).* A party to a contract cannot unilaterally withdraw a right of first refusal that stands upon valuable consideration. In the instant case, the right of first refusal is an integral and indivisible part of the contract of lease. The consideration for the right is built into the reciprocal obligations of the parties. When a lease contract contains a right of first refusal, the lessor is under a legal duty to the lessee not to sell to anybody at any price until after he has made an offer to sell to the latter at a certain price and the lessee has failed to accept it. The option in this case was incorporated in the contracts of lease for the benefit of the lessee which, in view of the total amount of its investments in the property, wanted to be assured that it would be given the first opportunity to buy the property at a price for which it would be offered for sale. *(Polytechnic University of the Philippines v. CA, G.R. No. 143513, 14 November 2001).*

Due Execution of Deed of Sale. Not established. Notwithstanding the execution and registration of the alleged deed of sale, the alleged vendor continued in possession of the property which were included in a will subsequently executed by the vendor; and the price allegedly paid by private respondents for nine (9) parcels, including the three parcels in dispute, a house and a warehouse, was only P850. *(Domingo v. CA, G.R. No. 127540. 17 October 2001).*

Rescission of Sale. A judicial or notarial act is necessary before a valid rescission can take place, whether or not automatic rescission has been stipulated. Even if Art. 1191 were applicable, petitioner would still not be entitled to automatic rescission. That right must be invoked judicially. *(Iringan v. CA, G.R. No. 129107,*

26 September 2001). Equatorial relies on the Civil Code provision on rescissible contracts to bolster its claim. Its argument is that a rescissible contract remains valid and binding upon the parties thereto until the same is rescinded in an appropriate judicial proceeding. Equatorial conveniently fails to state that the 31 July 1978 Deed of Absolute Sale was between Equatorial and Carmelo only. Respondent Mayfair was not a party to the contract. The deed of sale was surreptitiously entered into between Carmelo and Equatorial behind the back and in violation of the rights of Mayfair. Insofar as Equatorial and Carmelo are concerned, their 1978 contract may have validly transferred ownership from one to the other. But not as far as Mayfair is concerned. In rescission under Art. 1381, the legal effects are not restricted to the contracting parties only. On the contrary, the rescission is for the benefit of a third party, a stranger to the contract. Mayfair correctly stated that as far as the injured third party was concerned, the fraudulent contract, once rescinded, was non-existent or void from its inception. Hence, from Mayfair's standpoint, the deed of absolute sale which should not have been executed in the first place by reason of Mayfair's superior right to purchase the property and which deed was cancelled for that reason by the Court, was legally non-existent. There must be a restoration of things to the condition prior to the celebration of the contract. As a consequence of the rescission of the Deed of Absolute Sale, it was as if Equatorial never bought and became the lessor of the subject properties. Thus, the court a quo did not err in ruling that Equatorial was not the owner and did not have any right to demand back rentals from the subject property. *(Melo, J., concurring in Equatorial Realty Development, Inc.v. Mayfair Theater, Inc., G.R. No. 133879, 21 November 2001).*

LEASE

Expiration of lease justifies ejectment of tenant pursuant to Art. 1673 (1) of the New Civil Code. *(R & M General Merchandise v. CA, G.R. No. 144189, 5 October 2001).*

Sublease. *(Golden Horizon Realty Corporation v. Sy Chuan, G.R. No. 145416, 21 September 2001).*

Rental. Claim that rental demanded for the sublease is unconscionable or exorbitant, not established. The trial court has the authority to fix the reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract, and it is not bound by the stipulated rental in the contract of lease since upon termination or expiration of the contract of lease, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result or by reason of the change or rise in values. Moreover, the trial court can take judicial notice of the general increase in rentals of real estate specially of business establishments. *(Golden Horizon Realty Corporation v. Sy Chuan, G.R. No. 145416, 21 September 2001).*

Oral Contract for the lease of real property for a period longer than one year – unenforceable. *(R & M General Merchandise v. CA, G.R. No. 144189, 5 October 2001).*

PARTNERSHIP

Essential requisites: (1) mutual contribution to a common stock and (2) a joint interest in the profits. The registration of partnerships with a capital of P3,000 or more under Art. 1772 of the Civil Code is not mandatory. *(Sunga-Chan v. Chua, G.R. No. 143340, 15 August 2001).* Not Established. *(Tan v. CA, G.R. No. 142401, 20 August 2001).* With no participation in the profits, petitioner cannot be deemed a partner. *(Tocao v. CA, G.R. No. 127405, 20 September 2001).*

LOAN

Usurious Transaction. Void under Art. 1957 of the New Civil Code. In usurious loans, the entire obligation does not become void; the unpaid principal debt still stands and remains valid but the stipulation as to the usurious interest is void, consequently, the debt is to be considered without stipulation as to interest. *(First Metro Investment Corporation v. Este del Sol Mountain Reserve, Inc., G.R. No. 141811, 15 November 2001).*

Usury Law. Central Bank Circular No. 905 neither repealed nor amended, but merely suspended the effectivity of, the Usury Law. The illegality of usury is wholly the creature of legislation. A Central Bank Circular cannot repeal a law. Only a law can repeal another law. Thus, retroactive application of a Central Bank Circular cannot, and should not, be presumed. (*id.*).

ESCROW

A written instrument which by its terms imports a legal obligation and which is deposited by the grantor, promisor, or obligor, or his agent with a stranger or third party, to be kept by the depositary until the performance of a condition or the happening of a certain event, and then to be delivered over to the grantee, promisee, or obligee. *(The Province of Bataan v. Hon. Villafuerte, G.R. No. 129995, 19 October 2001).*

COMPROMISE

Compromise Agreement - once approved by final order of the court, has the force of res judicata between the parties and should not be disturbed except for vices of consent or forgery. It was error for the trial court to grant the writ of execution in favor

of private respondents because it effectively compelled petitioners to accept delivery of the three titles in exchange for the release of the land covered by TCT No. RT-6652 even after the lapse of the period agreed upon by the parties. *(San Antonio v. CA, G.R. No. 121810, 7 December 2001).*

MORTGAGE

Unpaid Goods Included in the Mortgage. The mortgagee bank is not liable to pay for goods and merchandise included in the mortgaged property subject of foreclosure, which had remained unpaid, as they were supplied to the mortgagor by way of sale on credit. The unpaid supplier of the goods and merchandise has no cause of action against the mortgagee bank. The obligation to pay remains with the mortgagor. *(PNB v. CA, G. .R. No. 122710, 12 October 2001).*

Validity. The right to attack the validity of a mortgage may be lost by a waiver of defects and objections, such as alleged fraud or misrepresentation. *(San Juan v. CA, G.R. No. 110055, 20 August 2001).*

Right of Redemption. *(China Banking Corp. v. CA, G.R. No. 129644, 7 September 2001).* Esperanza validly redeemed the property from the Bank. Consequently, the bank had no right to be issued a final deed of sale by the Provincial Sheriff, much less to sell the property to the Tandos. *(Tando v. CA, G.R. No. 127984, 14 December 2001).* (a) Period of Redemption. The 1997 Rules of Civil Procedure has changed the period of redemption from "twelve (12) months" to "one (1) year." The right of redemption should be exercised within the period prescribed by law. Moreover, the tender of payment must be for the full amount of the purchase price. *(Estanislao v. Court of Appeals, G.R. No. 143687, 31 July 31, 2001).*

(b) Redemption Price. [i] Interest on the auction price should be computed not from the date of the sale but from the registration thereof. Since the period of redemption begins only from the date of the registration of the certificate of sale in the Registry of Deeds, the computation of the interest on the purchase price should also be made to commence from that date. (*id.*). [ii] Taxes. The redemptioner must also pay the assessment or taxes paid by the purchaser. However, the latter must give notice to the officer who conducted the sale of the assessments or taxes paid by him and file the same with the Registry of Deeds. (*id.*).

CHATTEL MORTGAGE

Machineries and Equipment. Chattel Mortgage Law. Sec. 7 provides: "a chattel mortgage shall be deemed to cover only the property described therein and not like or substituted property thereafter acquired by the mortgagor and placed in the same depository as the property originally mortgaged, anything in the mortgage to the contrary notwithstanding." Since the disputed machineries were acquired in 1981 and could not have been involved in the 1975 or 1979 chattel mortgages, it was error on the part of the Sheriff to include subject machineries in the properties enumerated in said chattel mortgages. As the auction sale of the subject properties to PBCom is void, no valid title passed in its favor. Consequently, the sale thereof to Tsai is also a nullity under the elementary principle of nemo dat quod non habet, one cannot give what one does not have. *(Tsai v. CA, G.R. No. 120098, 2 October 2001).*

DAMAGES

Actual Damages. (a) Arising from contracts. *(Sabio v. International Corporate Bank, G.R. No. 132709, 4 September 2001).* A

party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proven. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. *(Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).* Under Arts. 2199 and 2200 of the New Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. There are two kinds of these damages: [i] loss of what a person already possesses; and [ii] failure to receive as a benefit that which would have pertained to him. In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred as *"ganacias frustradas"* or *"lucrum cessans,"* are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard, such as market value, or established, experienced, or direct inference from known circumstances. In the case at bar, actual damages in the form of unrealized profits were awarded on the basis of the sole testimony of private respondent that he lost an average income of P18,000.00 per month. Private respondents could have presented such evidence as reports on the average actual profits earned by their gasoline business, their financial statements, and other evidence of profitability which could aid the court in arriving with reasonable certainty at the amount of profits which private respondents failed to earn. *(Producers Bank of the Philippines v. CA, G.R. No. 111584, 17 September 2001).*

(b) **Interest.** Computation of. *(Far East Bank & Trust Company v. Diaz Realty Inc., G.R. No. 138588, 28 August 2001).* The rate of interest, as well as the accrual thereof, is imposed, as follows:

(1) When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have

been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the New Civil Code.

(2) When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court, at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, New Civil Code); but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

(3) When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph (1) or (2), above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. *(Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation, G.R. No. 133877, 14 November 2001).*

(c) **Penalty. Interest On Penalty.** [i] In the case at bar, the promissory note expressly provides for the imposition of both interest and penalties in case of default on the part of the petitioner in the payment of the restructured loan. The stipulated fourteen percent (14%) per annum interest charge until full payment of the loan constitutes the monetary interest on the note and is allowed under Art. 1956 of the New Civil Code. On the other hand, the stipulated two percent (2%) per month penalty is in the form of a penalty charge which is separate and distinct from, and in addition to, the monetary interest on the principal of the loan. The penalty charge is also called penalty or compensatory interest. Art. 2212 of the New Civil Code provides that "Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point." In the instant case, interest likewise began to run on the penalty interest upon the filing of the complaint in court by respondent CCP on 29 August 1984. Hence, the courts a *quo* did not err in ruling that the petitioner is bound to pay the interest on the total amount of the principal, the monetary interest and the penalty interest. Equity cannot be considered inasmuch as there is a contractual stipulation in the promissory note whereby the petitioner expressly agreed to the compounding of interest in case of failure on his part to pay the loan at maturity. [ii] Reduction of penalty charges pursuant to Art. 1229 of the New Civil Code, when there has been partial performance *(Tan v. CA, G.R. No. 116285, 19 October 2001)*; and, even if there has been no performance, if the penalty is iniquitous or unconscionable. *(First Metro Investment Corporation v. Este del Sol Mountain Reserve, Inc., G.R. No. 141811, 15 November 2001)*. [ii] 3% Penalty per month on unpaid installment on the purchase price of condominium units - is patently iniquitous and unconscionable as to warrant the Court, in the exercise of its judicial discretion, to reduce the penalty interest to 12% per annum. *(Segovia Development Corp. v. J.L. Dumatol Realty and Development Corp.,G.R. No. 141283, 30 August 2001)* .

(d) **Attorneys Fees.** As an item of damages. May be awarded to a party when he is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party, as in this case, where the bank's act of not crediting private respondents' deposit of P960,000.00 and the premature filing of extrajudicial foreclosure by the bank compelled private respondents to institute an action for injunction and damages in order to protect their rights and interests. *(Producers Bank of the Philippines v. CA, G.R. No. 111584, 17 September 2001).* May be recovered when exemplary damages are awarded. Are, generally, not recoverable. They are not to be awarded every time a party wins a suit. An award of attorney's fees demands factual, legal and equitable justification. *(GSIS v. Spouses Gonzalo, G.R. No. 135644, 17 September 2001).* Award of attorney's fees increased from P50,000.00 to P150,000.00, as the initial complaint had generated several incidents during almost 20 years that the case was under litigation. *(Hanil Development Co. v. CA, G.R. No. 113176, 30 July 2001).* Same, reduced from 25% to 5% of total amount due. *(Tan v. CA, G.R. No. 116285, 19 October 2001).* No premium should be placed on the right to litigate. No penalty should be imposed on those who exercise such right in good faith, even though erroneously. The fact that private respondents incurred expenses to protect their rights does not necessarily imply that the action which they were opposing was instituted in bad faith. The award of attorney's fees must be deleted where the award of moral and exemplary damages are eliminated. *(Estanislao v. CA, G.R. No. 143687, 31 July 2001).*

(e) **Costs.** Expenses for taking depositions allowed. *(Hanil Development Co. v. CA, G.R. No. 113176, 30 July 2001).*

Moral Damages. [i] Awarded in breach of contract, if the defendant is shown to have acted fraudulently or with malice or bad faith. *(BPI Investment Corp. v. D.G. Carreon Commercial Corp., G.R. No. 126524, 29 November 2001; GSIS v. Spouses Gonzalo, G.R. No. 135644, 17 September 2001).* That complainant suffered economic

hardship or worries and mental anxiety is not enough. *(Padillo v. CA, G.R. No. 119707, 29 November 2001).* [ii] As a rule, can not be granted in favor of a corporation. *(National Power Corporation v. Philipp Brothers Oceanic, Inc., G.R. No. 126204, 20 November 2001).* [iii] May be awarded without proof of pecuniary loss. *(Producers Bank of the Philippines v. CA, G.R. No. 111584, 17 September 2001).* [iii] In awarding such damages, the court shall take into account the circumstances obtaining in the case and assess damages according to its discretion. In this case, private respondents are engaged in several businesses, such as rice and corn trading, cement dealership, and gasoline proprietorship. The dishonor of private respondents' checks and the foreclosure initiated by petitioner adversely affected the credit standing as well as the business dealings of private respondents as their suppliers discontinued credit lines resulting in the collapse of their businesses. The bank's wrongful act caused serious anxiety, embarrassment, and humiliation to private respondents for which they are entitled to recover moral damages in the amount of P300,000.00 which the Court deemed to be reasonable. *(Producers Bank of the Philippines v. CA, G.R. No. 111584, 17 September 2001).* [iv] No basis to award same. The law presumes good faith, and any person who seeks an award of damages due to acts of another has the burden of proving that the latter acted in bad faith or with ill motive. It is not enough that one says he suffered mental anguish, serious anxiety, social humiliation, wounded feelings, and the like as a result of the actuations of the other party. Proof of moral suffering must be introduced; otherwise, the award for moral damages is not proper. *(Estanislao v. CA, G.R. No. 143687, 31 July 2001).*

Temperate Damages. Awarded when the court is convinced that there has been pecuniary loss but definite proof thereof cannot be offered. *(GSIS v. Spouses Gonzalo, G.R. No. 135644, 17 September 2001).*

Exemplary Damages. May be awarded in contracts and quasi-contracts, if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. (Art. 2232, New Civil Code). Tsai's act of purchasing the controverted properties despite her knowledge of EVERTEX's claim was oppressive and subjected the already insolvent respondent to gross disadvantage. PBCom's act of taking all the properties found in the factory of the financially handicapped respondent, including those not covered by or included in the mortgages, is equally oppressive and tainted with bad faith. *(Tsai v. CA, G.R. No. 120098, 2 October 2001)*. Awarded in view of the malicious and unwarranted application for extrajudicial foreclosure by petitioner that was obviously done to harass, embarrass, annoy, or ridicule private respondents. Moreover, in its application for extrajudicial foreclosure, petitioner included the other loans of private respondents which were not covered by the mortgage. Petitioner unjustifiably refused to give private respondents copies of their account ledgers which would show the deposits made by them. Also, petitioner bank's failure to credit the deposit in the account of private respondents constituted gross negligence in the performance of its contractual obligation which amounts to evident bad faith. *(Producers Bank of the Philippines v. CA, G.R. No. 111584, 17 September 2001).*

CONCURRENCE AND PREFERENCE OF CREDITS

A preferred creditor's third-party claim to the proceeds of a foreclosure sale is not the proceeding contemplated by law for the enforcement of preferences under Art. 2242 of the New Civil Code, unless the claimant were enforcing a credit for taxes that enjoy absolute priority. If none of the claims is for taxes, a dispute between two creditors will not enable the Court to ascertain the pro rata dividend corresponding to each, because the rights of the other creditors likewise enjoying preference under Art. 2242 can not be ascertained. *(DBP v. CA, G.R. No. 126200, 16 August 2001).*

COMMERCIAL LAW

CORPORATION LAW

Corporations. (a) Corporate Name. Guidelines in choosing. *(Ang Mga Kaanib Sa Iglesia Ng Dios Kay Kristo Hesus v. Iglesia Ng Dios Kay Cristo Jesus, G.R. No. 137592, 12 December 2001).*

(b) Primary Purpose. *(Heirs of Pael v. CA, G.R. No. G.R. No. 133547, 7 December 2001).*

(c) Principal Office. *(Davao Light & Power Co., Inc. v. CA, G.R. No. 111685, 20 August 2001).*

(d) Separate Juridical Personality . [i] A corporation, upon coming into existence, is invested by law with a personality separate and distinct from the persons comprising it as well as from any other legal entity to which it may be related. By this attribute, a stockholder may not, generally, be made to answer for acts or liabilities of said corporation, and vice versa. *(Land Bank of the Philippines v. CA, G.R. No. 127181, 4 September 2001).* [ii] Piercing the Veil of Corporate Fiction. When the legal fiction of the separate corporate personality is abused, such as when the same is used for fraudulent or wrongful ends, the courts have not hesitated to pierce the corporate veil. *(Francisco v. Mejia, G.R. No. 141617, 14 August 2001; DBP v. CA, G.R. No. 126200, 16 August 2001).* In order to disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established. In the absence of any malice or bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities. The mere fact that a stockholder owns majority of the stock of a corporation is not a ground to conclude that said stockholder and corporation are one and the same. *(Land Bank of*

the Philippines v. CA, G.R. No. 127181, 4 September 2001). Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself a sufficient ground for disregarding the separate corporate personality. *(Francisco and Merryland Development Corporation v. Mejia, G.R. No. 141617, 14 August 2001; PNB v. Ritratto Group Inc, G.R. No. 142616, 31 July 2001).* Not because two foreign companies came from the same country and closely worked together on certain projects would the conclusion arise that one was the conduit of the other. *(Marubeni Corporation v. Lirag, G.R. No. 130998, 10 August 2001).* A suit against the stockholders of OWNI is not as suit against OWNI. Failure to implead the corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing. *(PCGG v. Sandiganbayan, G.R. Nos.119609-10, 21 September 2001).*

(e) Corporate Officers. [i] The general rule is that a corporate officer cannot be held personally liable with the corporation, whether civilly or otherwise, for the consequences of his acts done for and in behalf of the corporation, within the scope of his authority and in good faith. In such cases, the officer's acts are properly attributed to the corporation. However, if the officer has used the corporate fiction to defraud a third party, or has acted negligently, maliciously or in bad faith, then the corporate veil shall be lifted and he shall be held personally liable for the particular corporate obligation involved. *(Francisco v. Mejia, G.R. No. 141617, 14 August 2001).* [ii] Director as creditor of a corporation. *(DBP v. CA, G.R. No. 126200, 16 August 2001).*

(f) Stock Transfer. Not valid unless recorded in the books of the corporation. Until challenged in a proper proceeding, a stockholder of record has a right to participate and vote in any meeting of stockholders. A person who has purchased stock and

who desires to be recognized as a stockholder for the purpose of voting must secure such a standing by having the transfer recorded on the corporate books. Until the transfer is registered, the transferee is not a stockholder but an outsider. *(Batangas Laguna Tayabas Bus Company v. Bitanga, G.R. No. 137934, 10 August 2001)*. The requirement in Sec. 63 of the Corporation Code for registration of stock transfers is intended to protect the interest of the corporation and third persons who may be prejudiced by the transfer of the shares of stocks. Hence, as between the parties to the sale, the transfer shall be valid even if not recorded in the books of the corporation. *(Puno, J., dissenting, id.).*

(g) Creation of Subsidiaries. DBP is not authorized by its charter to engage in the mining business. The creation of the three corporations was necessary to manage and operate the assets acquired in the foreclosure sale lest they deteriorate from non-use and lose their value. *(DBP v. CA, G.R. No. 126200, 16 August 2001).*

(h) Voluntary Dissolution of Corporation Where No Creditors are Affected. Sec. 118, Corporation Code of the Philippines. *(Vesagas v. CA, G.R. No. 142924, 5 December 2001).*

Securities and Exchange Commission (SEC). The enactment of R.A. No. 8799 mooted the issue as SEC hearing officers have been stripped of their power to issue subpoenas and contempt orders incidental to the exercise of their quasi-judicial powers. Jurisdiction over leisure club. (*id.*).

INTELLECTUAL PROPERTY CODE

Copyright. *(Ong v. CA, G.R. No. 130360, 15 August 2001).*

Patent Law (R.A. No. 165). Compulsory License for medicinal product under Section 34 (1) (e). Relevant provisions of

the Paris Convention. *(Smith Kline & French Laboratories, Ltd. v. CA, G.R. No. 121267, 23 October 2001).*

Royalty. Rates relating to Compulsory License for medicinal product. (*id.*).

BANKS

Diligence Required. More than that of a good father of a family is required of banks when they act in their fiduciary capacity or as depositary. That degree of diligence is not expected of banks in commercial transactions that do not involve their fiduciary relationship with their depositors, such as the sale and issuance of foreign exchange demand draft. *(Reyes v. CA, G.R. No. 118492, 15 August 2001).*

Liquidation of Banks (Sec. 29, Central Bank Act). The exclusive jurisdiction of the liquidation court pertains only to the adjudication of claims against the bank. It does not cover the reverse situation where it is the bank which files a claim against another person or legal entity. A bank which had been ordered closed by the monetary board retains its juridical personality and can sue and be sued through its liquidator. The only limitation being that the prosecution or defense of the action must be done through the liquidator. *(Manalo v. CA, G.R. No. 141297, 8 October 2001).*

Philippine Foreign Currency Deposit System. Foreign Exchange Account. The Foreign Currency Deposit Act is inapplicable to the foreign currency accounts in question. Sec. 2, R.A. No. 6426 speaks of" deposit with such Philippine banks in good standing, as may . . . be designated by the Central Bank for the purpose." The criminal cases filed against petitioners for violation of Circular No. 960 involve foreign currency accounts maintained in foreign banks. *(Benedicto v. CA, G.R. No. 125359, 4 September 2001).*

INSURANCE

Fire Insurance. Identity of property insured. The greatest liberality is shown by the courts in giving effect to the insurance. *(American Home Assurance Company v. Tantuco Enterprises, Inc. G.R. No. 138941, 8 October 2001).*

Warranties. Strictly construed against the insurer and should be reasonably interpreted in light of the factual conditions prevailing in each case. (*id.*).

Subrogation. The payment made by the insurer to the assured operates as an equitable assignment to the former of all the remedies which the latter may have against the petitioner. The fact of payment grants the private respondent subrogatory right which enables it to exercise legal remedies that would otherwise be available to the insured as owner of the lost cargo against the petitioner common carrier. *(Delsan Transport Lines, Inc. v. CA, G.R. No. 127897, 15 November 2001).*

TRUST RECEIPTS

Trust Receipts. *(South City Homes, Inc. v. BA Finance Corporation, G.R. No. 135462, 7 December 2001).* In trust receipts agreement, the contracting parties may establish terms and conditions they may deem advisable, provided they are not contrary to law, morals or public order, such as provision for interest, service charges and penalties. *(Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation, G.R. No. 133877, 14 November 2001).*

COMMON CARRIERS

Seaworthiness. Extraordinary Diligence *(Delsan Transport Lines, Inc. v. CA, G.R. No. 127897, 15 November 2001).*

CRIMINAL LAW

REVISED PENAL CODE (RPC)

FELONIES

CRIMINAL LAW IN GENERAL

Deceit Distinguished From Fault. Accident connotes the absence of criminal intent, the existence of which is shown by a person's overt acts. In the case at bar, appellant's son intervened in the quarrel between appellant and his wife. Appellant got his shotgun and returned to the kitchen where he cocked the shotgun, aimed and fired it at his son. A deliberate intent to do an unlawful act is inconsistent with reckless imprudence. Citation of cases illustrative of reckless imprudence resulting in homicide; also, cases negating reckless imprudence, as criminal intent was established. *(People v. Agliday, G.R. No. 140794, 16 October 2001).*

Criminal Liability. While chatting with a friend, the victim was slain by a bullet fired from accused-appellant's gun that was intended for another target. Under Art. 4 of the RPC, criminal liability is incurred by any person committing a felony although the wrongful act be different from that which is intended. *(People v. Herrera, G.R. Nos. 140557-58, 5 December 2001)*

Stages of Commission of Crime. Attempted. Frustrated. *(People v. Recto, G.R. No. 129069, 17 October 2001).*

Conspiracy as a Mode Of Commiting a Felony. (a) Conspiracy can be deduced from the circumstances surrounding the crime. Action in concert to achieve a common design is the hallmark of conspiracy. Illustrative cases: [i] Accused-appellants

and their cohort simultaneously pulled out their guns and announced a hold-up. After divesting their victims of personal belongings, they fled on foot at the same time and toward the same direction. *(People v. Cabilto, G.R. Nos. 128816 & 139979-80, 8 August 2001).* [ii] The accused waiting in ambush, one at each side of the road, suddenly attacked one victim and then the other, upon the signal, "Here are the two persons we are waiting for." *(People v. Medios, G.R. Nos. 132066-67, 29 November 2001).* [iii] Appellants and their co-accused waylaid and surrounded the lone and unarmed victim, ganged up on him, and through blows delivered with a wooden club and a lead pipe, inflicted fatal injuries on him. After the victim fell prostrate, appellants and their confederates fled the scene together. The acts of appellants before, during and after the incident indubitably point to a joint purpose, intent, and design to effect a common unlawful objective. *(People v. Drew, G.R. No. 127368, 3 December 2001).* [iv] By guarding the victims and preventing their escape, accused-appellants exhibited not only their knowledge of the criminal design of their co-conspirators but also their participation in its execution. *(People v. Licayan, G.R. Nos. 140900 & 140911, 15 August 2001).* [v] Conspiracy was also established in the following cases: *(People v. Quinicio, G.R. No. 142430, 13 September 2001; People v. Hermosa, G.R. No. 131805, 7 September 2001; People v. Templa, G.R. No. 121897, 16 August 2001; People v. De Guzman, G.R. No. 124037, 2 October 2001; People v. Villaver, G.R. No. 133381, 27 November 2001).*

(c) Conspiracy must be shown as clearly and convincingly as the commission of the crime itself. A finding of conspiracy cannot be based on mere conjecture and insufficient proof of a preconceived plan to commit the crime or commonality of purpose among the perpetrators of the crime. *(People v. Reapor, G.R. No. 130962, 5 October 2001; People v. Vicente, G.R. No. 142447, 21 December 2001; People v. Saul, G.R. No. 124809, 19 December 2001).*

(d) Once conspiracy is established, the act of one is the act of all. It is not anymore necessary to pinpoint which of the two (2) appellants inflicted the fatal wound on the victim. *(People v. Figuracion, G.R. No. 129162, 10 August 2001; People v. Cantonjos, G.R. No. 136748, 21 November 2001).*

PERSONS CRIMINALLY LIABLE

Accomplice. *(People v. Saul, G.R. No. 124809, 19 December 2001).*

CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

JUSTIFYING CIRCUMSTANCES

Self-defense. By invoking it, appellant admits that he killed the victims and shifts the burden of evidence to himself. Essential requisites: (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person resorting to self-defense. *(People v. Zate, G.R. No. 129926, 8 October 2001; People v. Recto, G.R. No. 129069, 17 October 2001; People v. Mazo, G.R. No. 136869, 17 October 2001; People v. Almendras, G.R. No. 137277, 20 December 2001; People v. Domingo, G.R. No. 131817, 8 August 2001; People v. Figuracion, G.R. No. 129162, 10 August 2001; People v. Damitan, G.R. No. 140544, 7 December 2001).* Must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it, and it cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but, in itself, is extremely doubtful. *(People v. Templa, G.R. No. 121897, 16 August 2001; People v. Almazan, G.R. Nos. 138943-44, 17 September 2001; People v. Condino, G.R. No. 130945, 19 November 2001).* The discrepancy on accused-appellant's testimony as to whether he

stabbed the victim on the left or the right side of his chest is of such a material character that it renders his entire testimony dubious at best. The mere fact that accused-appellant was injured does not prove his claim of self-defense. *(People v. Gadia, G.R. No. 132384, 21 September 2001).*

(a) Unlawful Aggression. According to the accused, the victim tried to grab his gun which was still tucked in his waist but the accused beat the victim to it by pulling the revolver out. With the firearm already in accused's hand, there was no chance for the victim to use it against him. Furthermore, with accused-appellant's background and training as a policeman, bigger built than the victim and the fact that the latter was seated when the altercation started, it was the victim and not accused-appellant who was, in fact, in a disadvantageous position. *(People v. Herrera, G.R. Nos. 140557-58, 5 December 2001).*

(b) Reasonable Necessity of the Means Employed. Negated by the location and severity of the victim's wounds. Mortal wounds at vital parts of the victim's body indicate appellant's determination to kill the deceased and not merely to defend himself. *(People v. Zate, G.R. No. 129926, 8 October 2001; People v. Bantiling, G.R. No. 136017, 15 November 2001; People v. Herrera, G.R. Nos. 140557-58, 5 December 2001).*

Defense of Relative or Stranger. For defense of a relative to prosper, appellant must prove the concurrence of the first and the second requisites of self-defense and the further requisite, in case the provocation was given by the person attacked, that the one making the defense had no part therein. *(Tobes v. CA, G.R. No. 127441, 5 October 2001).*

EXEMPTING CIRCUMSTANCES

Accident. Art. 12 (4) of the RPC is based on the lack of criminal intent. Elements: (1) a person is performing a lawful act (2) with due care, and (3) he causes an injury to another by mere accident and (4) without any fault or intention of causing it. Firing a shotgun at another is not a lawful act. *(People v. Agliday, G.R. No. 140794, 16 October 2001).* Accidental shooting – rejected. *(People v. Almazan, G.R. Nos. 138943-44, 17 September 2001).* Not consistent with failed plea of self-defense. *(People v. Bantiling, G.R. No. 136017, 15 November 2001).*

Insanity. To be an exempting circumstance, there must be complete deprivation of intelligence at that time of the commission of the crime which the defense must establish. The inquiry into the mental state of the accused-appellant should relate to the period immediately before or at the very moment the act was committed. *(People v. Condino, G.R. No. 130945, 19 November 2001).*

Irresistible Force or Uncontrollable Fear. A person invoking this must show that the force exerted was such that it reduced him to a mere instrument who acted not only without will but against his will. *(People v. Domingo, G.R. No. 131817, 8 August 2001).*

MITIGATING CIRCUMSTANCES

Incomplete Self-defense. Privileged Mitigating Circumstance. Unlawful aggression on the part of the victim is an indispensable requisite for this circumstance to be appreciated. *(People v. Mazo, G.R. No. 136869, 17 October 2001; People v. Guzman, G.R. No. 132750, 14 December 2001).*

Minority. Privileged Mitigating Circumstance. Offender is under 18 years of age at the time of the commission of the offense.

(People v. Gonzaga, G.R. Nos. 135402-03, 7 September 2001). Although the accused did not offer any evidence to support his claim of minority, this fact will remain as such, until disproved by the prosecution. *(People v. Morial, G.R. No. 129295, 15 August 2001).*

Voluntary Surrender. Requisites: (1) The offender has not been arrested; (2) He surrendered himself to a person in authority or to an agent of a person in authority; and (3) His surrender was voluntary. Appreciated in the following cases. *(People v. Gadia, G.R. No. 132384, 21 September 2001; People v. Mazo, G.R. No. 136869, 17 October 2001; People v. Guzman, G.R. No. 132750, 14 December 2001; People v. Damitan, G.R. No. 140544, 7 December 2001; People v. Condino, G.R. No. 130945, 19 November 2001; People v. Saul, G.R. No. 124809, 19 December 2001; People v. Ancheta, G.R. Nos. 138306-07, 21 December 2001; People v. Feliciano, G.R. Nos. 127759-60, 25 September 2001; People v. Zate, G.R. No. 129926, 8 October 2001).* But cannot offset the qualifying aggravating circumstance of treachery. *(People v. Quinicio, G.R. No. 142430, 13 September 2001).* Not appreciated. *(People v. Nanas, G.R. No. 137299, 21 August 2001).*

Voluntary Confession of Guilt. Not appreciated where accused-appellant merely proposed to the prosecution that he plead guilty to the crime of homicide during the pre-trial for murder which proposal was rejected by the prosecution. *(People v. Quinicio, G.R. No. 142430, 13 September 2001).* The confession of guilt must be prior to the presentation of the evidence for the prosecution. *(Pagayao v. Imbing, A.M. No. 89-403, 15 August 2001).* A plea of guilty made after arraignment and after trial had begun is not mitigating. *(People v. Almendras, G.R. No. 137277, 20 December 2001).*

Passion and Obfuscation *(People v. Feliciano, G.R. Nos. 127759-60, 25 September 2001; People v. Domingo, G.R. No. 131817, 8 August 2001).*

AGGRAVATING CIRCUMSTAVES

General Principles. When more than one of the qualifying circumstances are proven, the others must be considered as generic aggravating. However, when the other circumstances are absorbed or included in one qualifying circumstance, they cannot be considered as generic aggravating. Once a circumstance is used to qualify a crime, the same could no longer be considered as generic aggravating. *(People v. Reynes, G.R. No. 134607, 12 December 2001).*

Under the 2000 Rules of Criminal Procedure (Effective 1 December 2000). Without an appropriate allegation in the complaint or information, courts are precluded from considering the attendance of "qualifying or aggravating circumstances" in their judgment. *(People v. Bragat, G.R. No. 134490, 4 September 2001). Sect. 8, Rule 110 - applied retroactively. (People v. Sagarino, G.R. Nos. 135356-58, 4 September 2001; People v. De Guzman, G.R. No. 124037, 2 October 2001; People v. Reapor, G.R. No. 130962, 5 October 2001; People v. Padilla, G.R. No. 122736, 14 November 2001; People v. Perreras, G.R. No. 139622, 31 July 2001).*

Taking Advantage of Public Position. It was not shown that accused-appellant took advantage of his position as a policeman to shoot the victim. *(People v. Herrera, G.R. Nos. 140557-58, 5 December 2001).*

Dwelling. Aggravating, when the crime is committed in the dwelling of the offended party and the latter has not given provocation. It is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant might have devised means to perpetrate the assault from the outside. *(People v. Perreras, G.R. No. 139622, 31 July 2001; People v. Morial, G.R. No. 129295, 15 August 2001).* Aggravating in robbery with homicide. *(People v. Bragat, G.R. No.*

134490, 4 September 2001). Not aggravating, as crime was committed outside the house of the victim. *(People v. Figuracion, G.R. No. 129162, 10 August 2001).*

Nighttime. *Per se*, not aggravating. It becomes so only when: [i] it is specially sought by the offender; or [ii] it was taken advantage of by him; or [iii] it facilitates the commission of the crime. *(People v. Almendras, G.R. No. 137277, 20 December 2001; People v. Mosquerra, G.R. No. 129209, 9 August 2001; People v. Hermosa, G.R. No. 131805, 7 September 2001; People v. Clariño, G.R. No. 134634, 31 July 2001).*

Evident Premeditation. (a) Not to be appreciated where there is neither evidence of planning or preparation to kill nor the time when the plot was conceived. The premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. *(People v. Almendras, G.R. No. 137277, 20 December 2001; People v. Kinok, G.R. No. 104629, 13 November 2001; People v. Cabote, G.R. No. 136143, 15 November 2001; People v. Feliciano, G.R. Nos. 127759-60, 25 September 2001; People v. Acojedo, G.R. No. 138661, 19 November 2001; People v. Cantonjos, G.R. No. 136748, 21 November 2001; People v. Sia, G.R. No. 137457, 21 November 2001; People v. Mosende, G.R. No. 137001, 5 December 2001; People v. Clariño, G.R. No. 134634, 31 July 2001; People v. Abriol, G.R. No. 123137, 17 October 2001; People v. Parba, G.R. No. 133886, 5 September 2001; People v. Iglesia, G.R. No. 132354, 13 September 2001; People v. Hermosa, G.R. No. 131805, 7 September 2001).* (b) Inherent in robbery. *(People v. Pajotal, G.R. No. 142870, 14 November 2001; People v. Morial, G.R. No. 129295, 15 August 2001).*

Abuse of Superior Strength. (a) Use of excessive force out of proportion to the means available to the person attacked to defend himself. To be appreciated, it must be clearly shown that

there was deliberate intent on the part of the malefactor to take advantage thereof. *(People v. Almendras, G.R. No. 137277, 20 December 2001).* Appreciated: [i] where appellants, armed with wooden clubs and lead pipe, and 11 confederates inflicted fatal injuries upon the victim, rendering him defenseless and preventing his escape *(People v. Drew, G.R. No. 127368, 3 December 2001)*; [ii] when the victim was suddenly attacked by three (3) armed persons (including the accused-appellant), while another acted as a lookout to guarantee the smooth execution of the crime. *(People v. Mosquerra, G.R. No. 129209, 9 August 2001)*. (b) That the victim is a woman does not, by itself, establish abuse of superior strength. *(People v. Whisenhunt, G.R. No. 123819, 14 November 2001).* (c) What should be considered is not that there were three, four or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. In the present case, accused-appellants were priorly unarmed, and it was only when they were about to commit the crime, while waiting for the victim to pass by the bamboo groove that they thought of getting some implement, a crude bamboo pole which they cut right there and then. The three accused-appellants did not purposely take advantage of their superior strength. *(People v. Cabangcala, G.R. No. 135065, 8 August 2001)*. (d) Abuse of superior strength and aid of armed men, when present with treachery, are absorbed in the latter and can no longer be appreciated. *(People v. Pascua, G.R. No. 130963, 27 November 2001)*. (e) Not established. *(People v. Cantonjos, G.R. No. 136748, 21 November 2001; People v. Sia, G.R. No. 137457, 21 November 2001; People v. Figuracion, G.R. No. 129162, 10 August 2001).*

Outraging and Scoffing at the Corpse of the Victim. (a) Mere decapitation of the victim's head constitutes outraging or scoffing at the corpse of the victim - qualifies the killing to murder. Accused-appellant further cut up the victim's body and strewed the dismembered parts in a deserted road in the countryside. *(People v. Whisenhunt, G.R. No. 123819, 14 November 2001).* (b) Not

established. *(People v. Cantonjos, G.R. No. 136748, 21 November 2001).*

Treachery. (a) Exists when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. Essential elements: (1) the employment of means of execution that give the person attacked no opportunity to defend himself or retaliate; and (2) the means of execution were deliberately or consciously adopted. *(People v. Perreras, G.R. No. 139622, 31 July 2001).* Can be appreciated only in crimes against persons. *(People v. Morial, G.R. No. 129295, 15 August 2001).* Not aggravating in robbery with homicide *(People v. Feliciano, G.R. No. 136258, 10 October 2001)*; or in a case of the slain who was not the intended victim. *(People v. Herrera, G.R. Nos. 140557-58, 5 December 2001).*

(b) A finding of treachery must be grounded on something more than supposition or sheer speculation. Prosecution must establish it by proof beyond reasonable doubt. *(People v. Mendoza, G.R. No. 142654, 16 November 2001).* There must be a description of how the attack was commenced and the method of execution of the crime, showing that it was consciously or deliberately adopted by the malefactors. *(People v. Sia, G.R. No. 137457, 21 November 2001; People v. Cantonjos, G.R. No. 136748, 21 November 2001).* Paucity of proof on the manner in which the aggression started or how the act which resulted in the death of the victim began or developed negates treachery. *(People v. Mosquerra, G.R. No. 129209, 9 August 2001; People v. Doctolero, G.R. No. 131866, 20 August 2001; People v. Reapor, G.R. No. 130962, 5 October 2001; People v. Hermosa, G.R. No. 131805, 7 September 2001; People v. Ancheta, G.R. Nos. 138306-07, 21 December 2001; People v. Parba, G.R. No. 133886, 5 September 2001).*

(c) Treachery - essentially a swift and an unexpected attack on an unarmed and unsuspecting victim. *(People v. De Guzman, G.R. No. 124037, 2 October 2001)*. It can be present in a frontal attack and appreciated even if the victim is forewarned of the danger to his person, if the assault was carried out in a way which made it impossible for the victim to defend himself or to retaliate. *(People v. Mirador, G.R. No. 135936, 19 September 2001; People v. Ojerio, G.R. No. 132320, 7 September 2001)*. Treachery was appreciated: [i] Where: the victim was in the comforts of his own home, enjoying a televised basketball game, when he was shot in the head from the back *(People v. Perreras, G.R. No. 139622, 31 July 2001)*; While in the comforts of his home, eating fishballs, cuddling his youngest daughter and engaging in conversation with some visitors, the victim was shot in the head from behind. *(People v. Herrera, G.R. Nos. 140557-58, 5 December 2001)*; While seated and about to make a move in a game of "dama," the victim was approached by accused-appellant who, without warning, stabbed the victim *(People v. Gadia, G.R. No. 132384, 21 September 2001)*; The victim was seated on the bench and singing with his friends when appellant suddenly appeared and lunged at him with a knife, repeatedly stabbing him on the chest. *(People v. Caboquin, G.R. No. 137613, 14 November 2001)*. [ii] While urinating with his back towards his assailants, the victim was suddenly and unexpectedly stabbed by the latter *(People v. Acosta, G.R. No. 140386, 29 November 2001; People v. Mosende, G.R. No. 137001, 5 December 2001)*; or shot by the assailant. The warning that appellant allegedly gave the victim a month before the actual shooting does not count. It was established that at the time of the shooting, the victim was totally unprepared for the attack. *(People v. Reynes, G.R. No. 134607, 12 December 2001)*. [iii] The victim was asleep when assaulted and slain. *(People v. Kinok, G.R. No. 104629, 13 November 2001; People v. Clariño, G.R. No. 134634, 31 July 2001).* [iv] The accused suddenly positioned himself at the back of the unsuspecting victim, pointed his gun at him and, without any warning, delivered the fatal shots. *(People v. Padilla, G.R. Nos. 138472-73, 9 August 2001).* [v] Accused-appellant and his victim were

conversing with each other while walking side by side, when accused-appellant suddenly pulled out his gun and fired at the victim four times. *(People v. Domingo, G.R. No. 131817, 8 August 2001).* [vi] While the victim was riding a bicycle, accused-appellant called his attention by making a "pssst" sound. When the victim stopped to see who was calling him and while he was still holding on to his bike, accused-appellant immediately stabbed the victim at the back and the right side of the body without any warning and without any provocation on the part of the victim. *(People v. Bituon, G.R. No. 142043, 13 September 2001)*. [vii] The accused all of a sudden pulled out the scythe he hid under his shirt and hacked the victim. Even if the victim may have been forewarned of a possible danger to his person ten days before his death, the attack was nevertheless treacherous as the attack was executed in such a manner as to make it impossible for the victim to defend himself or to retaliate. *(People v. Cabote, G.R. No. 136143, 15 November 2001).* [viii] Accused-appellant's attack, coming from behind, on the unarmed victim, was sudden, unprovoked, unexpected and deliberate. To ensure or afford impunity, three (3) other persons were holding the victim while he was being stabbed by accused-appellant. *(People v. Concorcio, G.R. No. 121201-02, 19 October 2001).* [ix] The victim was then fixing the rope of the horse of his grandson and facing the horse, when appellant stabbed him from behind. Thereafter, while the victim was already lying down, appellant stabbed him for the second time. While the stab wounds were frontal, the evidence clearly established that appellant stabbed the victim from behind. *(People v. Damitan, G.R. No. 140544, 7 December 2001).* [x] The victim's hands were held when he was stabbed. *(People v. Del Valle, G.R. No. 119616, 14 December 2001).* [xi] Case where killings of police officers by fellow police man were attended by treachery. *(People v. Feliciano, G.R. Nos. 127759-60, 25 September 2001).*

(d) However, the mere suddenness of the attack does not make it treacherous, absent proof hat the mode of attack was consciously adopted. Where there is reasonable doubt that appellant deliberately and consciously adopted a mode of attack to kill the victim without risk to himself, treachery will not be appreciated. *(People v. Guzman, G.R. No. 132750, 14 December 2001).* More so, where the victim was already aware of the danger as he saw accused-appellant carrying a gun and heard two (2) gunshots prompting him to run and hide behind a wall. There could be no treachery since prior to the attack the victim was forewarned of the danger to his life and even managed to flee, albeit unsuccessfully. *(People v. Ancheta, G.R. Nos. 138306-07, 21 December 2001).* Although the attack was sudden, the evidence shows that the victim was not caught completely off guard. The victim and accused-appellant engaged in combat that lasted for several minutes before the former was finally overpowered and then killed. *(People v. Iglesia, G.R. No. 132354, 13 September 2001; People v. Pajotal, G.R. No. 142870, 14 November 2001).* A killing done at the spur of the moment is not treacherous. That appellant continued to stab the victim when the latter fell and was crawling on his back does not prove treachery as there is no showing that appellant had consciously adopted, prepared or planned to use the victim's sudden, hapless position to his advantage. *(People v. Mazo, G.R. No. 136869, 17 October 2001).*

(e) By itself, the fact that the victim was unarmed at the time he was attacked with bolos by appellants, alone, does not establish treachery. *(People v. Mantes, G.R. No. 138914, 14 November 2001).* Nor the fact that the victim sustained wounds at his back. These wounds might have been the last ones inflicted in order to finish the victim, or might have been inflicted by accident, or inflicted in a frontal encounter. *(People v. Bantiling, G.R. No. 136017, 15 November 2001).*

(f) Not appreciated *(People v. Almendras, G.R. No. 137277, 20 December 2001).* What actually took place in the case at bar was a brawl. *(People v. Figuracion, G.R. No. 129162, 10 August 2001).*

Cruelty. Not aggravating in the absence of any showing that appellant, for his pleasure and satisfaction, caused the victim to suffer slowly and painfully and inflicted on him unnecessary physical and moral pain. That wounds in excess of what was indispensably necessary to cause death were found in the body of the victim does not necessarily imply that such wounds were inflicted with the intention of deliberately and inhumanly intensifying or aggravating the sufferings of the victim. *(People v. Almendras, G.R. No. 137277, 20 December 2001).*

ALTERNATIVE CIRCUMSTANCES

Intoxication. Mitigating, when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony. In the instant case, accused-appellant failed to prove the approximate quantity of his intake as to sufficiently affect his mental faculties and consequently entitle him to a mitigation of his offense. *(People v. Domingo, G.R. No. 131817, 8 August 2001; People v. Nanas, G.R. No. 137299, 21 August 2001).*

Relationship. Considered when the offended party is the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender. *(People v. Cariño, G.R. No. 131203, 2 August 2001).* Treated as a generic aggravating circumstance in these crimes of rape and acts of lasciviousness. *(People v. Toralba, G.R. No. 139411, 9 August 2001).*

PENALTIES

IN GENERAL

Retroactive Effect of Penal Laws. (a) R.A. No. 7659, amending Art. 248 of the RPC and imposing a heavier penalty for murder, was not applied to murder committed before the effectivity of the amendatory law. *(People v. Gadia, G.R. No. 132384, 21 September 2001)*; (b) Under R.A. No. 8294 (effective June 6, 1997), the use of an unlicensed firearm in murder or homicide is not a separate crime, but merely a special aggravating circumstance. *(People v. Abriol, G.R. No. 123137, 17 October 2001).* Although the crime in this case was committed in 1990, the amendatory law was applied since it is favorable to accused-appellant. Therefore, the accused can no longer be separately charged with illegal possession of an unlicensed firearm. *(People v. Pablo, G.R. Nos. 113822-23, 15 August 2001).*

DURATION AND EFFECT OF PENALTIES

Death Penalty. Even if the crime at bar is attended by an aggravating circumstance, the death penalty cannot be imposed on appellants since the 1987 Constitution proscribes the imposition thereof to crimes committed prior to its reimposition under R.A. No. 7659 on December 31, 1993. *(People v. Templa, G.R. No. 121897, 16 August 2001).*

Reclusion Perpetua. Life imprisonment and *reclusion perpetua* are two distinct penalties and are not interchangeable. *(People v. Mosquerra, G.R. No. 129209, 9 August 2001).*

Complex Crimes. *(People v. Herrera, G.R. Nos. 140557-58, 5 December 2001; People v. Recto, G.R. No. 129069, 17 October 2001).*

Successive Service of Sentence. (Art. 70, RPC). When the culprit has to serve two or more penalties, he should serve them

simultaneously if the nature of the penalties will so permit; otherwise, said penalties shall be executed successively, following the order of their respective severity. *(Evangelista v. Sistoza, G.R. No. 143881, 9 August 2001).* The penalties consisting in deprivation of liberty cannot be served simultaneously. *(In Re: Pete Lagran, G.R. No. 147270, 15 August 2001).*

Allowance for Good Conduct. The Director of the Bureau of Corrections is the official authorized to issue a certifications as to the good conduct time allowance of all prisoners, regardless of their places of detention. *(City Warden of the Manila City Jail v. Estrella, G.R. No. 141211, 31 August 2001).*

CIVIL LIABILITY

Actual Damages. (a) Actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the victim. *(People v. Perreras, G.R. No. 139622, 31 July 2001).* Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the court. *(People v. Domingo, G.R. No. 131817, 8 August 2001).* Expenses relating to the 9th day, 40th day and 1st death anniversary cannot be considered in the award of actual damages as these were incurred after a considerable lapse of time from the burial of the victim. *(People v. Doctolero, G.R. No. 131866, 20 August 2001).*

(b) Loss of Earning Capacity. In homicide. *(People v. Bantiling, G.R. No. 136017, 15 November 2001).* In Murder. *(People v. Bituon, G.R. No. 142043, 13 September 2001).* In Carnapping *(People v. Sia, G.R. No. 137457, 21 November 2001).* Disallowed in the absence of evidence sufficiently showing the income of the deceased. *(People v. Pajotal, G.R. No. 142870, 14 November 2001; People v. Yrat, G.R. No.*

130415, 11 October 2001). Testimonial evidence is sufficient to establish a basis for the court to make a fair and reasonable estimate of damages for loss of earning capacity. *(People v. Sia, G.R. No. 137457, 21 November 2001; People v. Perreras, G.R. No. 139622, 31 July 2001 People v. Manzano, G.R. No. 138303, 26 November 2001).* To be compensated for loss of earning capacity, it is not necessary that the victim, at the time of injury or death, be gainfully employed. Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. *(People v. Sanchez, G.R. No. 121039-45, 18 October 2001).*

Civil Indemnity. Current jurisprudence has fixed:

(a) P100,000.00 - In rape with homicide. *(People v. Abulencia, G.R. No. 138403, 22 August 2001).*

(b) P75,000.00 - In each count of rape effectively qualified by circumstances under which the death penalty may be imposed *(People v. Gomez, G.R. No. 132673-75, 17 October 2000; People v. Navarette, G.R. Nos. 136840-42, 13 September 2001; People v. Torres, G.R. Nos. 135522-23, 2 October 2001).*

(c) P50,000.00 – [i] In murder *(People v. Gadia, G.R. No. 132384, September 21, 2001; People v. Kinok, G.R. No. 104629, 13 November 2001; People v. Whisenhunt, G.R. No. 123819, 14 November 2001; People v. Caboquin, G.R. No. 137613, 14 November 2001; People v. Manzano, G.R. No. 138303, 26 November 2001; People v. Pascua, G.R. No. 130963, 27 November 2001; People v. Perreras, G.R. No. 139622, 31 July 2001; People v. Mosquerra, G.R. No. 129209, 9 August 2001).*

[ii] In robbery with homicide *(People v. Bragat, G.R. No. 134490, 4 September 2001; People v. Pajotal, G.R. No. 142870, 14 November 2001; People v. Castillon III, G.R. No. 132718, 5 October 2001).*

[iii] In homicide *(People v. Guzman, G.R. No. 132750, 14 December 2001).*

[iv] In carnapping. *(People v. Sia, G.R. No. 137457, 21 November 2001).*

[v] In rape with use of deadly weapon. *(People v. Añonuevo, G.R. No. 137843, 12 October 2001).* In simple statutory rape *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001).* In simple rape *(People v. Padilla, G.R. No. 122736, 14 November 2001; People v. Rivera, G.R. No. 139180, 31 July 2001; People v. Baldoz, G.R. No. 140032, 20 November 2001; People v. Dumlao, G.R. Nos. 130409-10, 27 November 2001; People v. Toralba, G.R. No. 139411, 9 August 2001; People v. Salalima, G.R. No. 137969-71, 15 August 2001; People v. Ferrer, G.R. No. 142662, 14 August 2001; People v. Barbosa, G.R. No. 126899, 2 August 2001; People v. Hamto, G.R.No. 128137, 2 August 2001; People v. Cariño, G.R. No. 131203, 2 August 2001).*

[vi] For each count of acts of lasciviousness. *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001).*

(d) P30,000.00 - For each count of attempted rape *(People v. Mariano, G.R. No. 135511-13, 14 November 2001).*

Moral Damages - Awarded, in addition to civil indemnity, as follows:

(a) P50,000.00 – [i] For each count of qualified rape *(People v. Gomez, G.R. No. 132673-75, 17 October 2001; People v. Navarette, G.R. Nos. 136840-42, 13 September 2001; People v. Torres, G.R. Nos. 135522-23, 2 October 2001)*. [ii] For each count of simple rape *(People v. Bation, G.R. No. 134769-71, 12 October 2001; People v. Padilla, G.R. No. 122736, 14 November 2001; People v.Mercado, G.R. No. 139904, 12 October 2001; People v. Rivera, G.R. No. 139180, 31 July 2001; People v. Toralba, G.R. No. 139411, 9 August 2001; People v. Ferrer,*

G.R. No. 142662, 14 August 2001; People v. Barbosa, G.R. No. 126899, 2 August 2001).

(b) P50,000 – (1) In crimes involving the taking of human life. In some cases, the Court ruled that the award is mandatory and does not require proof other than the death of the victim. *(People v. Domingo, G.R. No. 131817, 8 August 2001; People v. Abulencia, G.R. No. 138403, 22 August 2001).* In other cases, the Court ruled that moral damages cannot be awarded in the absence of any factual basis – the heirs must allege and prove mental suffering. *(People v. Olita, G.R. No. 140347, 9 August 2001; People v. Nanas, G.R. No. 137299, 21 August 2001; People v. Cabilto, G.R. Nos. 128816 & 139979-80, 8 August 2001).* **Note:** The Court has changed the above policy: As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. It is inherently human to suffer sorrow, torment, pain and anger when a loved one becomes the victim of a violent or brutal killing. Such violent death or brutal killing not only steals from the family of the deceased his precious life, deprives them forever of his love, affection and support, but often leaves them with the gnawing feeling that an injustice has been done to them. For this reason, moral damages must be awarded even in the absence of any allegation and proof of the heirs' emotional suffering. *(People v. Cabote, G.R. No. 136143, 15 November 2001; People v. Caboquin, G.R. No. 137613, 14 November 2001; People v. Manzano, G.R. No. 138303, 26 November 2001).* That they suffered the trauma of mental or physical and psychological sufferings which constitute the basis for moral damages is too obvious to still require recital thereof at the trial. *(People v. Plana, G.R. No. 128285, 27 November 2001).* The award is now mandatory and does not require proof other than the death of the victim. *(People v. Acojedo, G.R. No. 138661, 19 November 2001; People v. Pascua, G.R. No. 130963, 27 November 2001; People v. Guzman, G.R. No. 132750, 14 December 2001).* (2) Though not awarded by the trial court, the Court awarded P50,000.00 to the heirs of carnapping victim. *(People*

v. Sia, G.R. No. 137457, 21 November 21, 2001). (3) In robbery with homicide. *(People v. Pajotal, G.R. No. 142870, 14 November 2001; People v. Castillon III, G.R. No. 132718, 5 October 2001).*

(b-1) P1,000,000 awarded in murder, considering the unusual grief and outrage suffered by the bereaved family as a result of the brutal and indecent mutilation and disposal of victim's body *(People v. Whisenhunt, G.R. No. 123819, 14 November 2001).* In another case, the Court reduced the award of moral damages to P1,000,000 to the heirs of each victim. *(People v. Sanchez, G.R. No. 121039-45, 18 October 2001).*

(c) P50,000.00 - In robbery with rape. *(People v. Mamalayan, G.R. No. 137255, 15 November 2001).*

(d) P50,000.00 - For each count of acts of lasciviousness under Sec. 5 (b), R.A. 7610 *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001).*

(e) P25,000.00 - For each count of attempted rape. *(People v. Mariano, G.R. No. 135511-13, November 14, 2001).*

Exemplary Damages. Also known as "punitive" or "vindictive" damages, or corrective damages - are intended to serve as a deterrent to serious wrongdoings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. The term "aggravating circumstances" used in the Civil Code is to be understood in its broad or generic sense. In fine, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages under Art. 2230 of the New Civil Code. *(People v. Catubig, G.R. No. 137842, 23 August 2001; People v. Kinok, G.R. No. 104629, 13 November 2001).* The 2000 Rules on Criminal Procedure require aggravating circumstances,

whether ordinary or qualifying, to be stated in the complaint or information (Sections 8 and 9 of Rule 110). The retroactive application of procedural rules, nevertheless, cannot adversely affect the rights of the private offended party that have become vested prior to the effectivity of said rules. Thus, in the case at bar, although relationship has not been alleged in the information, the offense having been committed, however, prior to the effectivity of the new rules, the civil liability already incurred by appellant remains unaffected thereby. *(People v. Catubig, G.R. No. 137842, 23 August 2001).*

(a) P25,000 – [i] In rape with homicide in view of the cruelty inflicted upon the victim, as shown by the multiple burns and contusions on her body. *(People v. Abulencia, G.R. No. 138403, 22 August 2001).* [ii] In simple rape, in view of the generic aggravating circumstance of minority, or relationship. *(People v. Agustin, G.R. Nos. 135524-25, 24 September 2001; People v. Toralba, G.R. No. 139411, 9 August 2001; People v. Rivera, G.R. No. 139180, 31 July 2001; People v. Galvez, G.R. Nos. 136867-68, 25 September 2001; People v. Catubig, G.R. No. 137842, 23 August 2001; People v. Glabo, G.R. No. 129248, 7 December 2001; People v. Dumlao, G.R. Nos. 130409-10, 27 November 2001).*

(c) P20,000 - In robbery with homicide as the same was aggravated by abuse of superior strength *(People v. Pajotal, G.R. No. 142870, 14 November 2001).*

(d) P10,000 – [i] In murder *(People v. Ubaldo, G.R. No. 129389, 17 October 2001).* [ii] In each count of attempted rape. *(People v. Mariano, G.R. No. 135511-13, 14 November 2001).*

(e) Not awarded, as the crime was not attended by any aggravating circumstance. *(People v. Nanas, G.R. No. 137299, 21 August 2001).*

Temperate Damages. Awarded in lieu of actual damages, considering that some pecuniary loss was incurred but its amount was not proved with certainty. *(People v. Francisco, G.R. No. 138022, 23 August 2001; People v. Gallo, G.R. No. 133002, 19 October 2001; People v. Yrat, G.R. No. 130415, 11 October 2001).*

Nominal Damages. *(People v. Sanchez, G.R. No. 121039-45, 18 October 2001).*

Civil Liability in Rape. (Art. 345, RPC): [i] indemnification [ii] acknowledgment of the offspring, unless the law should prevent the accused from so doing and [iii] in every case, support of the offspring. With the passage of the Family Code (Art. 176), parental authority over illegitimate children is vested upon the mother. Considering that an offender sentenced to *reclusion perpetua* automatically loses the power to exercise parental authority over his children, accused-appellant should only be ordered to indemnify and support the victim's child. *(People v. Glabo, G.R. No. 129248, 7 December 2001).*

Restitution. In robbery with homicide. *(People v. Cabilto, G.R. Nos. 128816 & 139979-80, 8 August 2001).*

SPECIFIC CRIMES

CRIMES AGAINST NATIONAL SECURITY

Qualified Piracy. *(People v. Tulin, G.R. No. 111709, 30 August 2001).*

CRIMES AGAINST PUBLIC ORDER

Direct Assault may be committed by any person or persons who, without a public uprising, shall attack, employ force, or

seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance. *(People v. Recto, G.R. No. 129069, 17 October 17, 2001).* Barangay chief tanod (an agent of a person in authority), when shot in this case, was not engaged in the performance of his official duties nor was he attacked on the occasion of such performance. (*id*.).

Qualified Direct Assault with Attempted Homicide. Attack on a barangay captain (a person in authority) while he was attempting to pacify appellant and to keep the peace between the two groups (on the occasion of the performance of his duty). (*id*.).

CRIMES AGAINST PERSONS

Homicide. *(id.; People v. Hermosa, G.R. No. 131805, 7 September 2001; People v. Nanas, G.R. No. 137299, 21 August 2001).*

Murder. Killing qualified by abuse of superior strength. *(People v. Templa, G.R. No. 121897, 16 August 2001).* Attempted not frustrated. *(People v. Padilla, G.R. Nos. 138472-73, 9 August 2001).* Frustrated. *(People v. Medios, G.R. Nos. 132066-67, 29 November 2001).*

Anti-rape Law of 1997 (Republic Act No. 8353)

Rape - now a crime against persons. Any public prosecutor, not necessarily the victim or her parents, can prosecute the case. *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001).* As the alleged rape was committed in December 1997, the law applicable to the case is R.A. No. 8353, otherwise known as "The Anti-Rape Law of 1997," which took effect on 22 October 1997. *(People v. Asuncion, G.R. No. 136779, 7 September 2001).* Considering that the rape was allegedly committed on 23 April 1998, the applicable law is R.A. No. 8353, and not R.A. No. 7659. *(People v. Bohol, G.R. Nos. 141712-13, 22 August 2001).*

Qualified Rape (Art. 266-B, Anti-Rape Law of 1997; Sec. 11, R.A. 7659) - for which the single indivisible penalty of death is imposed. The seven new attendant circumstances partake the nature of special qualifying circumstances that must be properly pleaded. Rape with use of deadly weapon and rape of a minor by a relative, as introduced by R.A. No. 7659 on 31 December 1993, were both recognized as qualified rape in *People v. Tabugoca. (People v. De la Peña, G.R. Nos. 138358-59, 19 November 2001).*

(a) Offended party is a child below seven (7) years old. *(People v. Ombreso, G.R. No. 14286, 19 December 2001).* Although the only evidence presented by the prosecution to establish that the victim was below seven (7) years old at the time of the commission of the rape was her own testimony, there is no reason to doubt the sufficiency of the said evidence. Her testimony as to her age was never questioned by the accused-appellant in the lower court and remained unrebutted at the trial. Such testimony regarding her age, although hearsay, is admissible under Sec. 40 (Family reputation or tradition regarding pedigree) of Rule 130 of the Revised Rules on Evidence. *(People v. Llanita, G.R. No. 134101, 5 September 2001).*

(b) The circumstances under Sec. 11 of R.A. No. 7659 that: [i] the victim is under eighteen (18) years of age ("Minority"); and [ii] the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim ("Relationship") - must be taken together and constitute only one special qualifying circumstance. Both must be alleged in the complaint or information and duly proved by the quantum of proof in criminal cases to justify the imposition of the mandatory death penalty. *(People v. Salalima, G.R. No. 137969-71, 15 August 2001).*

[i] Relationship. Best evidence to establish relationship between the victim and the appellant – the marriage contract of the

appellant and the victim's mother. *(People v. Alcoreza, G.R. No. 135452-53, 5 October 2001; People v. Evangelista, G.R. No. 132044, 5 October 2001).* Not established. *(People v. Marcelo, G.R. Nos. 126538-39, 20 November 2001).* The accused himself in his testimony in court admitted that the victim is his daughter, and that she is 8 years old. However, in light of the more stringent requirement pronounced in the Tabanggay case, the Court ruled that it could not simply rely on the admission of the accused nor on the victim's testimony. The testimony of the mother or victim's Certificate of Live Birth (as in this case the mother wished to have the case dismissed and did not testify), would have met the stringent requirement of proof beyond reasonable doubt. *(People v. Asuncion, G.R. No. 136779, 7 September 2001).*

[ii] Minority. The victim's testimony as to her date of birth (that she was 14 years of age) coupled with appellant's admission as to said fact sufficiently established her minority. Hence, a birth certificate or any other official document is no longer necessary to establish the minority of the victim, since the same is admitted and undisputed by the accused himself. *(People v. Agustin, G.R. Nos. 135524-25, 24 September 2001).* However, in other cases, the Court held: There must be independent evidence proving the age of the victim, other than the testimonies of the prosecution witnesses and the absence of denial by the accused. *(People v. Bation, G.R. No. 134769-71, 12 October 2001; People v. Lalingjaman, G.R. No. 132714, 6 September 2001; People v. Galvez, G.R. Nos. 136867-68, 25 September 2001; People v. Agravante, G.R. Nos. 137297 & 138547-48, 11 December 2001; People v. Baniqued, G.R. Nos. 130653 & 139384, 11 December 2001).* Required evidence of minority - birth certificate of the victim or, in lieu thereof, any other documentary evidence, like a baptismal certificate, school records and documents of similar nature, or credible testimonial evidence, that can help establish the age of the victim. *(People v. Llandelar, G.R. Nos. 123138-39, 8 November 2001; People v. Virrey, G.R. No. 133910, 14 November 2001; People v. Rivera, G.R. No. 139180, 31 July 2001).* The prosecution

failed to prove the victim's age when it presented only the baptismal certificate of the victim and not her birth certificate. It is elementary that a baptismal certificate only proves the fact of baptism but not the circumstances of birth. *(People v. Bernabe, G.R. No. 141881, 21 November 2001).* The trial court can only take judicial notice of the victim's minority when the latter is, for example, 10 years old or below. *(People v. Rivera, G.R. No. 139180, 31 July 2001).* In this case, the minority of complainant was the subject of the parties' stipulation of facts. However, such stipulation was not signed by accused-appellant - a mandatory requirement in Rule 118, §2 of the Revised Rules of Criminal Procedure. *(People v. Agravante, G.R. Nos. 137297 & 138547-48, 11 December 2001).*

(1) Qualified Rape – Not Established Due to Defect in the Complaint or Information. Failure to allege Minority. *(People v, Acosta, G.R. No. 142726, 17 October 2001).* Failure to allege Relationship. *(People v. Lalingjaman, G.R. No. 132714, 6 September 2001; People v. Supnad, G.R. Nos. 133791-94, 8 August 2001; People v. Dumlao, G.R. Nos. 130409-10, 27 November 2001; People v. Ramirez, G.R. No. 136848, 29 November 2001).* Failure to allege Relationship and Minority. *(People v. Catubig, G.R. No. 137842, 23 August 2001; People v. Ariola, G.R. No. 142602-05, 3 October 2001).*

(2) Qualified Rape. Established. *(People v. Navarette, G.R. Nos. 136840-42, 13 September 2001; People v. Torres, G.R. Nos. 135522-23, 2 October 2001; People v. Gomez, G.R. No. 132673-75, 17 October 2001; People v. Alpe, G.R. No. 132133, 29 November 2001).*

Rape with Use of Deadly Weapon. Introduced in Art. 335 of the RPC by R.A. No. 4111 on June 20, 1964. *(People v. De la Peña, G.R. Nos. 138358-59, 19 November 2001).* When rape is committed with the use of a deadly weapon, such as a knife, the penalty is reclusion perpetua to death. *(People v. Barbosa, G.R. No. 126899, 2 August 2001; People v. Añonuevo, G.R. No. 137843, 12 October 2001; People v. Calimlim, G.R. No. 123980, 30 August 2001).*

Statutory Rape. Sec. 11 of R.A. 7659, amending Art. 335 (3), RPC. Carnal knowledge of a child below twelve years old, even if she is engaged in prostitution. The application of force and intimidation or the deprivation of reason of the victim becomes irrelevant. The absence of struggle or outcry of the victim or even her passive submission to the sexual act will not mitigate nor absolve the accused from liability. *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001; People v. Barbosa, G.R. No. 126899, 2 August 2001; People v. Hamto, G.R.No. 128137, 2 August 2001).* Even assuming the absence of a valid birth certificate, the victim's age may be sufficiently established by her baptismal certificate. And, even assuming that her baptismal certificate is likewise inadmissible to prove her age, the Master List of Live Births and the Cord Dressing Book of the hospital where the victim was born are sufficient evidence to prove her date of birth. *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001)*

Rape with Homicide. Special complex crime. Both the rape and the homicide must be established beyond reasonable doubt. In these cases, the element of rape was not established. *(People v. Nanas, G.R. No. 137299, 21 August 2001; People v. Plana, G.R. No. 128285, 27 November 2001).*

Attempted Rape Not Consummated. *(People v. Alcoreza, G.R. No. 135452-53, 5 October 2001; Dissenting opinion in People v. Ombreso, G.R. No. 14286, 19 December 2001).* **Consumated, Not Attempted Rape.** *(People v. Ombreso, G.R. No. 14286, 19 December 2001).*

Rape of Mental Retardate. *(People v. Glabo, G.R. No. 129248, 7 December 2001).*

MISCELLANEOUS PRINCIPLES

(a) Rape. Not established. Incest, no matter how despicable, hateful and revolting both to the victim and society, is not a crime. *(People v. Chua, G.R. No. 137841, 1 October 2001).* Accused-appellant was charged and tried on an Information alleging rape of a woman who was "asleep and unconscious." He cannot be convicted of rape done by intimidation as it would violate his constitutional right "to be informed of the nature and cause of the accusation against him." *(People v. Abino, G.R. No. 137288, 11 December 2001).*

(b) Force or Intimidation. Need not necessarily be shown to be objectively irresistible. Rather, it must be viewed from the victim's perception that, unless she yielded to the ravisher's demand, some injury or evil would befall on her during the commission of the offense or even thereafter. The absence of any external sign of injury does not necessarily negate the occurrence of rape, proof of injury not being an essential element of the crime. What is important is that because of force and intimidation, the victim was made to submit to the will of appellant. *(People v. Flores, G.R. No. 141782, 14 December 2001; People v. Dizon, G.R. No. 129236, 17 October 2001; People v. Barbosa, G.R. No. 126899, 2 August 2001).* The test is whether the threat or intimidation produces a reasonable fear in the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Thus, if at the very first instance, the threat has already created a reasonable fear in the victim, then such threat need not continue to exist until the rape has been consummated. In this case, the mere fact that accused-appellant had a knife and pointed the same towards complainant's neck, coupled with the warning that she would be killed if she makes noise, were enough to intimidate and threaten complainant to submit to accused-appellant's bestial desires. *(People v. Aguero, G.R. No. 139410, 20 September 2001).*

(c) Place of Rape. That it was physically impossible for accused-appellant to have committed rape because of the condition, configuration or area of the place where it was alleged to have been committed – not given credence. *(People v. Dizon, G.R. No. 129236, 17 October 2001; People v. Bernabe, G.R. No. 141881, 21 November 2001).* Neither availing to appellant is his contention that it would have been improbable for the rape to take place considering that her 12-year brother was sleeping at her right side while her 5-year old sister Mary Jane was on her left. The crime of rape is not always done in seclusion. *(People v. Galisim, G.R. No. 144401, 20 November 2001).*

Forcible Abduction With Rape. Complex crime. *(People v. Sanahon, G.R. No. 132724, 19 November 2001).*

CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

Kidnapping for Ransom. Art. 267 of the RPC, as amended by R.A. 7659, imposes the penalty of death if the person kidnapped is a female or if the crime was committed for the purpose of extorting ransom from the victim or any other person. *(People v. Licayan, G.R. Nos. 140900 & 140911, 15 August 2001).*

Grave Coercion. *(Sarabia v. People, G.R. No. 142024, 20 July 2001).*

CRIMES AGAINST PROPERTY

Robbery With Homicide. Special Complex Crime. (a) Essential elements: (1) the taking of personal property perpetrated by means of violence or intimidation against a person; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain; and (4) on the occasion of the robbery or by reason thereof, the crime of homicide was committed. *(People v.*

Morial, G.R. No. 129295, 15 August 2001; People v. Francisco, G.R. No. 138022, 23 August 2001; People v. Mendoza, G.R. No. 143702, 13 September 2001; People v. Bragat, G.R. No. 134490, 4 September 2001; People v. Olita, G.R. No. 140347, 9 August 2001). (b) When a homicide takes place by reason or on occasion of robbery, all those who took part in the robbery shall be guilty of the special complex crime of robbery with homicide, whether or not they actually participated in the killing, unless there is proof that they endeavored to prevent the killing. (c) The acquittal of accused-appellants for attempted homicide is in order. The attempt to take the life of SPO1 Santos is absorbed in the crime of robbery with homicide which is a special complex crime that remains fundamentally the same, regardless of the number of homicides or injuries committed in connection with the robbery. *(People v. Cabilto, G.R. Nos. 128816 & 139979-80, 8 August 8, 2001).* (d) In order to determine the existence of the crime of robbery with homicide, it is enough that death results by reason or on the occasion of the robbery. What is essential is that there is a direct relation or intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time. *(People v. Pajotal, G.R. No. 142870, 14 November 2001).* (d) Not Established. *(People v. Canlas, G.R. No. 141633, 14 December 2001).*

Attempted Robbery With Homicide. Special Complex Crime. The particular item accused-appellant intended to pull or grab from the victim and whether he was able to completely take it were not ascertained. It was evident, however, that accused-appellant had every intention of robbing the victim and, were it not for the resistance put up by the latter, the robbery would have been consummated. *(People v. Amba, G.R. No. 140898, 20 September 2001).*

Frustrated Robbery With Homicide. Special Complex Crime. *(People v. Marquez, G.R. No. 138972-73, 13 September 2001).*

Robbery With Rape. Special Complex Crime. *(People v. Bracero, G.R. No. 139529, 31 July 2001; People v. Mamalayan, G.R. No. 137255, 15 November 2001).*

Special Complex Crimes. Where a complex crime is charged and the evidence fails to support the charge as to one of the component offense, the accused can be convicted of the other. *(People v. Nanas, G.R. No. 137299, August 21, 2001).*

Highway Robbery. While the information charged Highway Robbery under P.D. No. 532, the trial court correctly convicted the accused-appellants of robbery with homicide. A conviction for highway robbery requires proof that several accused were organized for the purpose of committing highway robbery indiscriminately. *(People v. Cabilto, G.R. Nos. 128816 & 139979-80, 8 August 2001).*

THEFT

Qualified Theft. Cattle Rustling. Anti-Cattle Rustling Act of 1974. *(People v. Escarda, G.R. No. 120548, 26 October 2001).*

ESTAFA

With Abuse of Confidence, Misappropriation or Conversion Of Goods. *(Tin v. People, G.R. No. 126480, 10 August 2001).* Misappropriation for one's own use includes not only conversion to one's personal advantage but also every attempt to dispose of the property of another without right, as when petitioner sold the jeep without authority from its owner. *(Mangio v. CA, G.R. No. 139849, 7 December 2001).*

Through False Pretenses or Fraudulent Acts. (par. 2 (a), Art. 315, RPC). Elements. Business losses, which include borrowed money used to pay for the goods, constitute damage. The defense of "caveat emptor" is not a defense in this case, because the doctrine is premised on the fact that there is no false representation by the seller. Petitioners' scheme in this case involves a well-planned scenario to entice the buyer to pay for the bogus marine preservative. *(Erquiaga v. CA, G.R. No. 124513, 17 October 2001).* The act of the petitioner of deliberately and fraudulently misrepresenting to the private complainants that Legarda Pine Home of which he is the general manager, is the owner of the subject lot in Baguio City on which townhouse units would be built and that he has the right and authority to offer for sale the proposed townhouse units, when in fact he has none, so that he could collect, as in fact he collected downpayment for the townhouse units from the private complainants; and his failure to return the amounts that he had collected from them, despite several demands; plus the fact that the townhouse units were never constructed - constitute the crime of estafa under Article 315, par. 2(a) of the RPC. *(Montano v. People, G.R. No. 141980, 7 December 2001).*

Postdating or Issuing Check. Art. 315, (2) (d), of the RPC, as amended by R.A. No. 4885. Elements: (1) a check has been drawn or postdated in payment of an obligation contracted at the time the check is issued; (2) there are no funds sufficient to cover the check; and (3) the payee sustains damage thereby. To constitute estafa, the act of postdating or of issuing a check in payment of an obligation must be the efficient cause of the defraudation. Accordingly, it should be either prior to or simultaneous with the act of fraud. In fine, the offender must be able to obtain money or property from the offended party by reason of the issuance, whether postdated or not, of the check. It must be shown that the person to whom the check is delivered would not have parted with his money or property were it not for the issuance of the check by the other party. *(Timbal v. CA, G.R. No. 136487, 14 December 2001).*

CRIMES AGAINST CHASTITY

Acts Of Lasciviousness. Not attempted rape. *(People v. Sagarino, G.R. Nos. 135356-58, 4 September 2001; People v. Alcoreza, G.R. No. 135452-53, 5 October 2001).*

Forcible Abduction *(People v. Benoza, G.R. No. 139470, 29 November 2001).*

OTHER PENAL LAWS

General Principles. (a) Repeal of Penal Statutes. The repeal of a penal law or provision, under which a person is charged with violation thereof and its simultaneous reenactment penalizing the same act done by him under the old law, will neither preclude the accused's prosecution nor deprive the court of its jurisdiction to hear and try his case. The act penalized before the reenactment continues to remain an offense and pending cases are unaffected. Therefore, the repeal of R.A. No. 265 by R.A. No. 7653 did not extinguish the criminal liability of petitioners for transgressions of Circular No. 960 and cannot, under the circumstances of this case, be made a basis for quashing the indictments against petitioners. *(Benedicto v. CA, G.R. No. 125359, 4 September 2001).*

(9) Prescription of Offenses. R.A. No. 3236 governs offenses penalized under special laws, like the Anti-Graft and Corrupt Practices Act *(Presidential Ad Hoc Fact Finding Committee On Behest Loans v. Ombudsman, G.R. No. 135482, 14 August 2001)*; and The Central Bank Act *(Benedicto v. CA, G.R. No. 125359, 4 September 2001).* Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. In cases involving violations of R.A. No. 3019 committed prior to the February 1986 EDSA Revolution, the Court has ruled that the

government could not have known of such violations at the time the questioned transactions were made. Moreover, no person would have dared to question the legality of those transactions. Thus, in said case, the counting of the prescriptive period commenced from the date of discovery of the offense in 1992 after an exhaustive investigation by the Presidential Ad Hoc Committee on Behest Loans. (*id.*).

ILLEGAL POSSESSION OF FIREARM

Elements: (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed the firearm does not have the corresponding license or permit to possess it. *(People v. Abriol, G.R. No. 123137, 17 October 2001).* The authority to possess the government firearm issued to the accused by virtue of a memorandum receipt (MR) ceased when he was earlier charged and detained for murder. Being a detained prisoner when apprehended with the firearm, he was no longer authorized to possess much less carry the same. (*id.*).

R.A. NO. 8294. Amending certain provisions of PD No. 1866. (a) Under said act, if an unlicensed firearm is used in the perpetration of any crime, there can be no separate offense of illegal possession of firearms. *(People v. Cabilto, G.R. Nos. 128816 & 139979-80, 8 August 2001; Margerejo v. Hon. Escoses, G.R. No. 137250-51, 13 September 2001).* The accused can be convicted of simple illegal possession of firearm, provided that no other crime was committed by the person arrested. *(Evangelista v. Sistoza, G.R. No. 143881, August 9, 2001).* (b) The imposable penalty for violation of P.D. No. 1866, as amended by R.A. No. 8294, is only prision correccional in its maximum period or from four (4) years, two (2) months, and one (1) day to six (6) years and a fine of P15,000.00. Under Section 32 (2) of B.P. Blg. 129, as amended by R.A. No. 7691, it is the Municipal Trial Court which exercises "exclusive original jurisdiction over

all offenses punishable with imprisonment not exceeding six (6) years, irrespective of the amount of the fine and regardless of other imposable accessory or other penalties. *(Spouses Herminio v. Hon. Calimag, A.M. No. RTJ-99-1472, 20 September 2001).*

ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA NO. 3019)

Section 3 (b). Mere receipt of a gift or any other benefit, even without any express demand for it – constitutes an offense. Elements: (1) the offender is a public officer (2) who requested or received a gift, present, share, percentage, or benefit (3) on behalf of the offender or any other person (4) in connection with a contract or transaction with the government (5) in which the public officer, in an official capacity under the law, has the right to intervene. Three distinct modes of committing the offense: [i] demanding or requesting; [ii] receiving; or [iii] emanding, requesting and receiving. Proof of the existence of any of them suffices to warrant conviction. The duration of the possession is not the controlling element in determining receipt or acceptance. In the case at bar, petitioner opened the envelope containing the boodle money, looked inside, closed it and placed the envelope beside him on the table. Such reaction did not signify refusal or resistance to bribery, especially considering that he was not supposed to accept any cash from the taxpayer. *(Peligrino v. People, G.R. No. 136266, 13 August 2001).*

Section 3 (e). (a) Two ways of violating this provision: [i] causing any undue injury to any party, including the Government; and [ii] giving any private party unwarranted benefit, advantage or preference. The act of the accused that caused undue injury must have been done with evident bad faith or with gross inexcusable negligence. Bad faith must be evident and bad faith per se is not enough for one to be held liable under the law. *(Baylon v. Ombudsman, G.R. No. 142738, 14 December 2001).* Elements

of Offense: (1) the respondent is a public officer or a private person charged in conspiracy with the former; (2) the said public officer committed the prohibited acts in the performance of his official duties or in relation to his public positions; (3) he caused undue injury to any party, whether the government or a private party; and (4) the public officer acted with manifest partiality, evident bad faith, or gross inexcusable negligence. *(The Presidential Ad-Hoc Fact Finding Committee v. Hon. Ombudsman Desierto, G.R. No. 137777, 2 October 2001; Arroyo v. Alcantara, A.M. No. P-01-1518, 14 November 2001).*

(b) In the absence of evidence showing that the act of respondent assistant city prosecutor in dismissing the charge was done in evident bad faith or gross inexcusable negligence, causing undue injury to petitioner, the charge of violation of R.A. No. 3019, Sec. 3[e], would not prosper. *(Garcia-Rueda v. Amores, G.R. No. 116938, 20 September 2001).*

(c) As Executive Labor Arbiter, petitioner issued an order awarding to the complainant the amount of P35,832.50, as separation pay in an illegal dismissal case filed by the latter. When the order became final and executory, the complainant filed a motion to execute judgment. During the pre-execution conference, petitioner informed the complainant that the order could not be implemented because it was wrong and that the private respondent below was offering P2,000.00 to the complainant. Under Sec. 6, Rule V of the NLRC New Rules of Procedure, conciliation efforts may be conducted "at any stage of the proceedings" even if the judgment has become final and executory. Moreover, in this case, there is no allegation in the Information that petitioner acted in bad faith, or with malice or gross inexcusable negligence in exerting efforts to settle the labor dispute. The information does not specify the specific amount of the damage or injury suffered by the complainant. Actually, complainant did not suffer any injury because he did not accept the offer, and he could execute the

monetary award in his favor as a matter of right. In the absence of allegation of bad faith, and more importantly, of "injury" there can be no prosecution for violation of R.A. No. 3019, Sec. 3 (e). *(Olairez v. Ombudsman Desierto, G.R. No. 142889, 21 September 2001).*

DANGEROUS DRUGS ACT OF 1972 (R.A. No. 6425)

Delivery, Distribution, Sale or Transport of Regulated Drugs. *(People v. Chua, G.R. No. 133789, 23 August 2001; People v. Del Mundo, G.R. No. 138929, 2 October 2001; People v. Julian-Ferdandez, G.R. Nos. 143850-53, 18 December 2001; People v. Gonzales, G.R. No. 121877, 12 September 2001).*

Identification of Prohibited Drugs. *(People v. Concepcion, G.R. No. 133225, 26 July 2001).*

Penalty (*id.*).

ILLEGAL RECRUITMENT

Illegal Recruitment. Elements: (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Art. 13 (b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code; and (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers. *(People v. Pascua, G.R. No. 125081, 3 October 2001).*

Large-Scale Illegal Recruitment and Estafa. The accused-appellant having recruited at least three persons, giving them the impression of her ability to send workers abroad, assuring them of their employment in Malaysia, and collecting various amounts for alleged processing and placement fees without license nor

authority to so recruit or offer job placements abroad - committed large scale illegal recruitment. *(id.; People v. Arabia, G.R. Nos. 138431-36, 12 September 2001).*

BOUNCING CHECKS LAW (BP BLG. 22)

Violation. (a) Elements: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment." *(Meriz v. People, G.R. No. 134498, 13 November 2001; Caras v. CA, G.R. No. 129900, 2 October 2001).* Petitioner issued three (3) BPI Family Checks in payment of her obligation to pay the rice which private complainant sold to her. When presented for payment, all of said checks were dishonored for reason of accounts closed as shown in the validations at the back of said checks. Despite demands from the petitioner by private complainant for the former to replenish said dishonored checks, petitioner simply promised to pay her said amounts covered by those bum checks but she did not pay after all. *(Aguirre v. People, G.R. No. 144142, 23 August 2001).*

(b) Accused-petitioner's contention that the checks were merely issued to guarantee payment and to replace several bounced checks she had previously issued to private complainant and that the latter was sufficiently warned that the checks were not to be deposited or encashed – not a valid defense. *(Lagman v. People, G.R. No. 146238, 7 December 2001).* The cause or reason for the issuance of the check is inconsequential in determining criminal culpability under BP 22, as the gravamen of the offense is the act

of making or issuing a worthless check or a check that is dishonored upon presentment for payment. *(Meriz v. People, G.R. No. 134498, 13 November 2001).*

(c) B.P. No. 22 creates a presumption juris tantum that element (a) (2) above prima facie exists when elements (1) and (3) are present. Knowledge of insufficiency of funds in or credit with the bank is presumed from the act of making, drawing, and issuing a check, payment of which is refused by the drawee bank for insufficiency of funds when presented within 90 days from the date of issue. However, this presumption may be rebutted by the accused-petitioner when he pays or makes arrangement for the payment of the check within five (5) banking days after receiving notice that such check had been dishonored. There is no prescribed form for the notice of dishonor except that it should be in writing. (id.) The said notice may be sent by the offended party or the drawee bank. Absent, however, proof that petitioner actually received said notice prevents the application of the disputable presumption and her conviction for violation of B.P. Blg. 22 cannot be sustained. *(Caras v. CA, G.R. No. 129900, 2 October 2001).*

Penalty. Fine or Imprisonment. Computation of. *(Montano v. People, G.R. No. 141980, 7 December 2001).* The judge may, in the exercise of sound discretion, determine whether to impose imprisonment or fine. Absent showing that petitioner acted in bad faith, the deletion of the penalty of imprisonment and the imposition of a fine equivalent to the value of the subject checks is an appropriate penalty in this case. *(Aguirre v. People, G.R. No. 144142, 23 August 2001; Meriz v. People, G.R. No. 134498, 13 November 2001).* In deleting the penalty of imprisonment and imposing instead a fine, the Court considered the fact that the accused: [i] had not been previously charged or convicted of violation of B.P. Blg. 22. [ii] had made substantial payments on her obligations and returned several pieces of jewelry to private complainant; and [iii] made good some of the checks issued by her – which circumstances,

taken together, show her honest efforts to fulfill her financial obligations. *(Lagman v. People, G.R. No. 146238, 7 December 2001).*

CHILD ABUSE LAW

R.A. 7610. Child Prostitution and Other Sexual Abuse. "Child exploited in prostitution." "Lascivious Conduct" *(People v. Jalosjos, G.R. Nos. 132875-76, 16 November 2001).*

LABOR LAW

Employer-Employee Relationship. Elements: (1) the selection and engagement of the worker or the power to hire; (2) the power to dismiss; (3) the payment of wages by whatever means; and (4) the power to control the worker's conduct. Most determinative among these factors is "control". No particular form of proof is required to prove the existence of an employer-employee relationship. Any competent and relevant evidence may show the relationship. *(De los Santos v. NLRC, G.R. No. 121327, 20 December 2001; Perpetual Help Credit Cooperative, Inc.v. Faburada, G.R. No. 121948, 8 October 2001).*

Kinds Of Employees. Under Art. 280 of the Labor Code: (1) regular employees; (2) project employees; and (3) casual employees. (*id.*).

(a) Regular Employees. [i] those who have been engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer; or [ii] casual employees who have rendered at least one (1) year of service, whether such service is continuous or broken, with respect to the activity in which they are employed. (*id.*). The manner of computing and paying the employee's wages or compensation does not determine whether said employee is regular or casual. The primary standard in determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business.

(Columbus Philippines Bus Corporation v. NLRC, G.R. No. 114858-59, 7 September 2001). That private respondent worked only on a part-time basis, does not mean that he is not a regular employee. One's regularity of employment is not determined by the number of hours one works but by the nature and by the length of time one has been in that particular job. *(Perpetual Help Credit Cooperative, Inc.v. Faburada, G.R. No. 121948, 8 October 2001).* Regular, Not Probationary. *(ATCI Overseas Corporation v. CA, G.R. No. 143949, 9 August 2001).*

Labor-Only Contracting. (a) Prohibited. Defined as an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and the following elements are present: [i] The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account; [ii] The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal. *(De los Santos v. NLRC, G.R. No. 121327, 20 December 2001).*

(b) Permitted. Only under the following conditions: (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility, according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work, except as to the results thereof; and (2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of the business. (*id.*).

TERMINATION OF EMPLOYMENT

Management Prerogative. An employer enjoys a wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. The only criterion to guide the exercise of its prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and the degree of the infraction. *(St. Michael's Institute v. Santos, G.R. No. 145280, 4 December 2001).*

Just Causes (Art. 282 of the Labor Code)

(a) **Misconduct. Disobedience.** In the instant case, evidence is wanting on the depravity of conduct, and willfulness of the disobedience on the part of the respondents school teachers. Absence of one day of work to join a public rally cannot be of such great dimension as to equate it with an offense punishable with the penalty of dismissal. (*id.*).

(b) **Loss of Trust and Confidence.** To be a valid cause: It [i] should not be simulated; [ii] should not be used as a subterfuge for causes which are improper, illegal or unjustified; [iii] should not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and [iv] must be genuine, not a mere afterthought to justify earlier action taken in bad faith. It applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. *(De los Santos v. NLRC, G.R. No. 121327, 20 December 2001; Concorde Hotel v. CA, G.R. No. 144089, 9 August 2001).* Private respondent's position as assistant cook charged with the care of food preparation in the hotel's coffee shop – is a position of trust and confidence. (*id.*).

(c) **Abandonment.** Requisites: [i] Failure of the employee to report for work or absence without valid or justifiable reason; and [ii] A clear intention of the employee to sever employer-employee relationship. *(Columbus Philippines Bus Corporation v. NLRC, G.R. No. 114858-59, 7 September 2001).*

Authorized Causes (Arts. 283 and 284, Labor Code)

(a) **Retrenchment, Redundancy Program, Installation of Labor Saving Devices.** Persistent and irreversible financial instability in petitioner companies amply justify their resort to drastic cuts in personnel. *(NDC-Guthrie Plantations v. NLRC, G.R. No. 110740, 9 August 2001).* Reorganization as a cost-saving device is acknowledged by jurisprudence. An employer is not precluded from adopting a new policy conducive to a more economical and effective management, and the law does not require that the employer should be suffering financial losses before he can terminate the services of the employee on the ground of redundancy. *(Dole Philippines v. NLRC, G.R. No. 120009, 13 September 2001; Agustilo v. CA, G.R. No. 142875, 7 September 2001).* Notwithstanding the propriety of the retrenchment program, the employer must comply with the required written notice to the affected employees and the Department of Labor and Employment (DOLE) at least one month before the intended date of termination. *(NDC-Guthrie Plantations v. NLRC, G.R. No. 110740, 9 August 2001).* However, the lack of notice to the DOLE does not render the redundancy program void, especially if the employee consented to his retrenchment or voluntarily applied for retrenchment with the employer. *(Dole Philippines v. NLRC, G.R. No. 120009, 13 September 2001).*

(b) **Disease.** Dismissal for this cause may not be summarily carried out. Before an employer can dismiss an employee for health reasons, the employer must comply with certain prerequisites, *i.e.*, prior certification from a competent public authority that the disease

afflicting the employee is of such nature or at such stage that it cannot be cured within six (6) months even with proper medical treatment. *(ATCI Overseas Corporation v. CA, G.R. No. 143949, 9 August 2001; Cathay Pacific Airways v. NLRC, G.R. Nos. 141702-03, 2 August 2001).*

Voluntary Resignation. Illegal dismissal and voluntary resignation are adversely opposed modes of terminating employment relations that the presence of one precludes that of the other. *(Alfaro v. CA, G.R. No. 140812, 28 August 2001).*

Retirement. R.A. No. 7641 intends to give the minimum retirement benefits to employees not entitled thereto under collective bargaining and other agreements. Its coverage applies to establishments with existing collective bargaining or other agreements or voluntary retirement plans whose benefits are less than those prescribed under the proviso in question. This Act may be given retroactive effect. *(Manuel L. Quezon University v. NLRC, G.R. No. 141673, 17 October 2001).*

Separation Pay. Generally, separation pay need not be paid to an employee who voluntarily resigns. However, an employer who agrees to give such benefit as an incident of resignation should not be allowed to renege in the performance of such commitment. *(Alfaro v. CA, G.R. No. 140812, 28 August 2001).*

Dismissal. (a) Illegal. Private respondents were dismissed not for any of the above causes but because petitioner cooperative organization considered them to be mere voluntary workers and members of the cooperative. *(Perpetual Help Credit Cooperative, Inc.v. Faburada, G.R. No. 121948, 8 October 2001).*

(b) Due Process. Procedural due process requires that the employer serve the employees to be dismissed two (2) written notices before the termination of their employment is effected:

[i] to apprise them of the particular acts or omissions for which their dismissal is sought and [ii] to inform them of the decision of the employer that they are being dismissed. In this case, only one notice was served upon private respondents by petitioner in the form of a Memorandum signed by the Manager of the Cooperative terminating their services. (*id.*). An employee must be apprised of the charge against him, given reasonable time to answer the same, allowed ample opportunity to be heard and defend himself, and assisted by a representative, if the employee so desires. In this case, there is no evidence on record that prior to his termination, private respondent was duly served a notice apprising him of the specific acts imputed to him. The charge against him (allegedly based on evidence furnished by his co-employees regarding his participation in the pilferage of company stocks) was not reduced in writing nor sent to private respondent. He was not given any opportunity to confront these employees in order to rebut their accusations or to present his version of the incident. Private respondent only found out that he was being accused of theft when the hotel management confronted him about it on 23 January 1997. On the same day, he was required by petitioner to submit his written explanation on the matter and when he failed to do so, he was served a notice of termination. The termination notice served to private respondent by the agency was dated 22 January 1997, a day prior to his actual confrontation by the hotel management. *(Concorde Hotel v. CA, G.R. No. 144089, 9 August 2001).*

Reinstatement and Backwages. (a) In order to give substance to the constitutional right of labor to security of tenure, Art. 279 of the Labor Code provides that the illegally dismissed employee shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. *(ATCI Overseas Corporation v. CA, G.R. No. 143949, 9 August 2001).* (b) That the NLRC did not

award backwages to the respondents or that the respondents themselves did not appeal the NLRC decision does not bar the CA from awarding backwages. While, as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, the CA is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice. The reliefs provided for in Art. 279 cannot be defeated by mere procedural lapses. *(St. Michael's Institute v. Santos, G.R. No. 145280, 4 December 2001).*

Moral and Exemplary Damages in Illegal Dismissal Cases. *(Cathay Pacific Airways v. NLRC, G.R. Nos. 141702-03, 2 August 2001).*

EMPLOYEES COMPENSATION

Non-Occupational Disease. To establish compensability, reasonable proof and not direct proof of a causal connection between the work and the ailment is required. *(GSIS v. CA, G.R. No. 126352, 7 September 2001).*

LABOR RELATIONS LAW

Labor Arbiters. The holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right. *(Columbus Philippines Bus Corporation v. NLRC, G.R. No. 114858-59, 7 September 2001).* The authority of labor arbiters to issue preliminary injunction or restraining order as an incident to cases pending before them is limited to labor disputes only, except those involving strike or

lock-out. In the present case, petitioners' supposed attempt to seize the motorcycles from the private respondents is not a labor dispute but one which relates to the enforcement of a loan agreement between petitioners and private respondents and does not in any way concern employer-employee relations. It should be enforced through a separate civil action in the regular courts and not before the Labor Arbiter. *(NDC-Guthrie Plantations v. NLRC, G.R. No. 110740, 9 August 2001).*

Labor Cases. The rules of evidence prevailing in courts of law or equity are not controlling. (a) The New Rules of Procedure of the NLRC allow parties to submit position papers accompanied by all supporting documents, including affidavits of their respective witnesses which take the place of their testimonies. The fact that the doctor was not presented as witness to identify and testify on the contents of her affidavit was not a fatal procedural flaw that affected the admissibility of her affidavit as evidence. The non-presentation of the doctor during the trial was duly explained. Moreover, the submission of additional evidence before the NLRC is not prohibited, such submissions not being prejudicial to the party for the latter could submit counter-evidence. *(Cathay Pacific Airways v. NLRC, G.R. Nos. 141702-03, 2 August 2001).* (b) In labor cases pending before the NLRC or labor arbiters, the reliance on the parol evidence rule is misplaced. The Labor Arbiter is not precluded from accepting and evaluating evidence other than, and even contrary to, what is stated in the CBA. *(Interphil Laboratories Employees Union-FFW v. Interphil Laboratories, Inc., G.R. No. 142824, 19 December 2001).*

Prescription of Money Claim. (Art. 291 of the Labor Code). The three (3) year prescriptive period should be counted from 1993 and not 1978. Petitioner's cause of action accrued in November 1993, upon respondent's definite denial of his money claims. Petitioner repeatedly demanded payment from respondent Maersk

which warded off these demands by saying that it would look into the matter until years passed by. In October 1993, petitioner finally demanded in writing payment of the unsent money orders. Then and only then was the claim categorically denied by respondent A.P. Moller in its letter dated 22 November 1993. Petitioner's cause of action accrued only upon respondent A.P. Moller's definite denial of his claim in November 1993. *(Serrano v. CA, G.R. No. 139420, 15 August 2001).*

Retirement Differential. Claim disallowed. *(Ignacio v. Coca-Cola Bottlers Phils., G.R. No. 144400, 19 September 2001).*

Cooperatives. Petitioner contends that the labor arbiter has no jurisdiction to take cognizance of the complaint of private respondents considering that they failed to submit their dispute to the grievance machinery required under P.D. 175 (strengthening the Cooperative Movement) and its implementing rules and regulations, the Cooperative Development Authority Law (R.A. 6939) and the Cooperative Code of the Philippines (R.A. No. 6938). Said requirement for addressing grievance applies to members, officers and directors of the cooperative involved in disputes within a cooperative or between cooperatives. There is no evidence that private respondents are members of petitioner PHCCI and, even if they are, the dispute is about payment of wages, overtime pay, rest day and termination of employment. Under Art. 217 of the Labor Code, these disputes are within the original and exclusive jurisdiction of the Labor Arbiter. *(Perpetual Help Credit Cooperative, Inc.v. Faburada, G.R. No. 121948, 8 October 2001).*

Jurisdiction of the Secretary of Labor on Strikes. Necessarily, this authority to assume jurisdiction over the said labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the labor arbiter has exclusive jurisd iction. *(Interphil Laboratories*

Employees Union-FFW v. Interphil Laboratories, Inc., G.R. No. 142824, 19 December 2001).

Appeals from the NLRC. All appeals from the NLRC to the Supreme Court via a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure should henceforth be initially filed in the CA as the appropriate forum for relief in strict observance of the doctrine on the hierarchy of courts. *(St. Michael's Institute v. Santos, G.R. No. 145280, 4 December 2001).*

LEGAL ETHICS

LAWYERS

DUTY TO CLIENTS

Professional Engagement. If a person, in respect to his business affairs or troubles of any kind, consults an attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional engagement must be regarded as established. It is not essential that the client should have employed the attorney professionally on any previous occasion or that any retainer should have been paid, promised, or charged; neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had. *(Junio v. Atty. Grupo, Adm. Case No. 5020, 18 December 2001).*

Practice of Law. Acts constituting practice of law. *(J.K. Mercado and Sons Agricultural Enterprises, Inc v. Atty. De Vera, Adm. Case No. 3066, 3 December 2001).*

Malpractice and Gross Misconduct. A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. *(Junio v. Atty. Grupo, Adm. Case No. 5020, 18 December 2001).*

Misconduct. The lawyer actively solicited the letter of reconsideration from complainant and later on used said letter against the interest of complainant to support the lawyer's motion to dismiss the civil case – revealing lack of candor and fairness in said lawyer's dealings. *(Osop v. Atty. Fontanilla, A. C. No. 5043, 19 September 2001).*

Neglect Of Duty. Failure to submit the required brief within the reglementary period. *(In Re: Atty. Briones, A.C. No. 5486, 15 August 2001).* Failure to file criminal complaint. *(Cariño v. De los Reyes, Adm. Case No. 4982, 9 August 2001).*

Extortion. Lawyer who arrogated unto himself the mantle of a Justice of the Supreme Court for the purpose of extorting money from a party-litigant commits ultimate betrayal of his duty which cannot and should never be countenanced. *(Igoy v. Soriano, A.M. No. 2001-9-SC, 11 October 2001).*

DUTY TO COURT

Respectful Attitude. Lawyers may not be held to too strict an account for words said in the heat of the moment, because of chagrin at losing cases, and that the big way is for the court to condone even contemptuous language. While judges must exercise patience, lawyers must also observe temperate language as well. A lawyer is an officer of the Court, bound by the law. It is a lawyer's sworn and moral duty to help build and not destroy unnecessarily the high esteem and regard towards the courts so essential to the proper administration of justice. It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. It is peculiarly incumbent for lawyers to support the courts against "unjust criticism and clamor." *(Soriano v. CA, G.R. No. 100633, 28 August 2001).*

DISCIPLINARY ACTIONS

Disbarment Proceedings. *(De los Santos v. Robiso, Adm. Case No. 5165. 14 December 2001).*

Sanctions. Neither disbarment nor suspension should be imposed unless the case against a lawyer is free from doubt not only as to the acts charged but as to his motive. *(Osop v. Atty. Fontanilla, A. C. No. 5043, 19 September 2001).*

JUDGES

Prompt Disposition of Cases. Sec. 15, Art. XVIII, of the Constitution provides that lower courts shall decide cases or matters pending before them within three (3) months from the date of submission of such cases or matters for decision or resolution. *(Sibayan-Joaquin v. Javellana, A.M. No. RTJ-00-1601, November 13, 2001).* Loss of court records. Inefficiency in the manage of court and its personnel. *(Meris v. Judge Alumbres, A.M. No. RTJ-00-1599, 15 November 2001).*

Professional Competence. The members of the bench must keep abreast with the developments in law and jurisprudence. Under Circular No. 39-97, Municipal Trial Courts have no jurisdiction to issue hold-departure orders. *(Re: Hold-Departure Order Issued by Judge Sardido, A.M. No. 01-9-245-MTC, 5 December 2001).* Application of the Child and Youth Welfare Code (PD No. 603). *(Ligad v. Dipolog, A.M. No. MTJ-01-1386, 5 December 5, 2001).*

Inefficiency. Gross Ignorance of the Law. *(Cabañero v. Judge Cañon, A.M. No. MTJ-01-1369, 20 September 2001; Re: Release by Judge Muro of an Accused in a Non-bailable Offense, A.M. No. P-00-7-323-RTJ, 17 October 17, 2001).*

Partiality. In the present case, respondent judge opened himself to suspicion of partiality when he exhibited extraordinary leniency and indulgent attitude towards the accused. (*id.*).

Interceding in Behalf of Suspected Drug Queen. Respondent, then an Associate Justice of the CA, was found guilty of interceding in behalf of a suspected drug queen. *(In Re: Derogatory News Items Charging CA Associate Justice Demetria, A.M. No. 00-7-09-CA, 19 December 19, 2001).*

Immoral Conduct. Respondent's intimate relationship with a woman other than his wife shows his moral indifference to the opinion of the good and respectable members of the community. *(Fr. Sinnott v. Judge Barte, A.M. No. RTJ-99-1453, 14 December 2001).*

Improper Conduct. It was improper for respondent judge to allow his wife to have access to court records in his sala. Records of cases are necessarily confidential, and to preserve their integrity and confidentiality, access thereto ought to be limited only to the judge, the parties or their counsel and the appropriate court personnel in charge of the custody thereof. *(Gordon v. Lilagan, A.M. RTJ-00-1564, 26 July 2001).* Respondent, in removing the bamboo poles and fishing nets installed by complainant, acted in his private capacity. Nevertheless, without in any way prejudging respondent's liability, respondent should be admonished to be careful even in his private conduct because he is a model of the law-abiding citizen and, for this reason, his private life cannot be completely separated from his public persona. *(Bernardo v. Judge Tiamson, A.M. No. RTJ-00-1565, 16 August 2001).*

Raffle of Cases. The supervision over the raffling of cases is the personal duty and responsibility of the Executive Judge. *(Santos v. Judge Buenaventura, A.M. No. RTJ-99-1485, 11 October 2001).*

Knowingly Rendering an Unjust Judgment. For a judge to be held administratively liable for knowingly rendering an unjust judgment, the complainant must prove that the judgment is patently contrary to law or is not supported by the evidence and made with deliberate intent to perpetrate an injustice. *(Frani v. Pagayatan, A.M. No. RTJ-01-1626, 28 August 2001).*

Inhibition of Judge. Rule 137, Sec. 1, Revised Rules of Court provides the grounds for the disqualification of judges. *(Sevilleja v. Laggui, A.M. No. RTJ-01-1612, 14 August 2001).* For any other reason, a litigant may not demand that a judge inhibit himself. The test for determining the propriety of the denial of a motion to inhibit is whether the movant was deprived of a fair and impartial trial. Bias and prejudice to be considered valid reasons for the voluntary inhibition of judges, must be proved with clear and convincing evidence. *(Soriano v. CA, G.R. No. 100633, 28 August 2001).* It is oftentimes necessary for the presiding judge to re-examine a witness so that his judgment may rest upon a full and clear understanding of the facts. It is a judge's prerogative to ask questions to ferret out the truth. It cannot be taken against him if the questions he propounds reveals certain truths which, in turn, tend to destroy the theory of one party. *(People v. Rivera, G.R. No. 139180, 31 July 2001).* Judge's bias – not established. *(Fr. Sinnott v. Judge Barte, A.M. No. RTJ-99-1453, 14 December 2001).*

Judicial Remedy Not Administrative. An administrative complaint against a judge cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by an erroneous judgment. The administrative or criminal remedies are neither alternative nor cumulative to judicial review where such review is available, and must wait on the result thereof. *(Frani v. Pagayatan, A.M. No. RTJ-01-1626, 28 August 2001; Fr. Sinnott v. Judge Barte, A.M. No. RTJ-99-1453, 14 December 2001).*

Forfeiture of Retirement Benefits. Forfeiture of retirement benefits and leave credits is sanctioned by Rule XIV [Discipline] of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) and Other Pertinent Civil Service Laws. In a number of cases involving judges and court personnel, the Court has shown compassion in imposing the penalty of forfeiture of leave credits and retirement benefits and disqualification for reemployment in government-owned or

controlled corporations. These cases paved the way for the amendment of Rule 140 of the Rules of Court. Before its amendment, Rule 140 only provided for the procedure in case a complaint was filed against a regional trial court judge. There was no mention of specific sanctions that may be imposed. As amended, Rule 140 now provides for specific sanctions serving as basis for the Court to order the forfeiture of retirement benefits in whole or in part, depending on the circumstances of each case. *(Atty. Meris v. Judge Ofilada, A.M. No. RTJ-97-1390, 17 October 2001).*

Death or Retirement and Administrative Liability. The cessation from office of respondent judge due to death does not per se warrant the dismissal of the administrative complaint filed against him while he was still in the service. *(Cabañero v. Judge Cañon, A.M. No. MTJ-01-1369, 20 September 2001).* Neither is the retirement of a judge from the service a bar to the finding of any administrative liability to which he shall still be answerable. *(Pagayao v. Imbing, A.M. No. 89-403, 15 August 2001; Lilia v. Judge Fanuñal, A.M. No. RTJ-99-1503, 13 December 2001).*

POLITICAL LAW

CONSTITUTIONAL LAW

Right To Travel. Guidelines On Hold-departure Orders (HDO):

(1) HDO shall be issued only in criminal cases within the exclusive jurisdiction of the Regional Trial Courts (RTC);

(2) The RTC issuing the HDO shall furnish the Department of Foreign Affairs (DFA) and the Bureau of Immigration (BI) with a copy each of the HDO within twenty-four (24) hours from the time of issuance and through the fastest available means of transmittal;

(3) The HDO shall contain the following information:

(a) The complete name (including the middle name), the date and place of birth and the place of last residence of the person against whom HDO has been issued or whose departure from the country has been enjoined;

(b) The complete title and the docket number of the case in which the HDO was issued;

(c) The specific nature of the case; and

(d) The date of the HDO.

If available, a recent photograph of the person against whom a HDO has been issued or whose departure from the country has been enjoined should also be included.

(4) Whenever the accused has been acquitted or the case against him dismissed, the judgment of acquittal or the order of dismissal shall include therein the cancellation of the HDO issued. The courts concerned shall furnish the DFA and the BI with a copy each of the judgment of acquittal promulgated or the order of dismissal twenty-four (24) hours from the time of promulgation/ issuance and through the fastest available means of transmittal. *(Re: Hold-Departure Order Issued by Judge Sardido, A.M. No. 01-9-245-MTC, 5 December 2001).*

Right to Information. Limited to "matters of public concern," to "transactions involving public interest." The negotiation and subsequent sale of the property by the GSIS to private respondent was not imbued with public interest as it was a purely private transaction. Petitioners cannot therefore demand that they be informed of such negotiation and sale, more so since they no longer had any interest in the property upon their failure to comply with GSIS terms for repurchase and its denial of petitioners' offer to repurchase. *(Urbano v. GSIS, G.R. No. 137904, 19 October 2001).*

Right to be Presumed Innocent. The law presumes the accused innocent unless shown otherwise by proof beyond reasonable doubt. The burden of proving that an accused is guilty of the offense charged lies upon the prosecution. If the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence is not sufficient to support a conviction. *(People v. Laxa, G.R. No. 138501, 20 July 2001).*

Double Jeopardy. *(Sarabia v. People, G.R. No. 142024, 20 July 20, 2001).*

Rights During Custodial Investigation. A person under custodial investigation is guaranteed certain rights, which attach

upon the commencement thereof, *viz.*: (1) To remain silent, (2) To have competent and independent counsel, preferably of his own choice; and (3) to be informed of the two other rights above. *(People v. Morial, G.R. No. 129295, 15 August 2001).* Custodial investigation means any questioning initiated by law enforcement authorities after a person is taken into custody or otherwise deprived of his freedom of action in any significant manner. It begins when the inquiry as to one's involvement in a crime is no longer general but starts to focus on a particular person as a suspect. (*id.*).

(a) Right to Counsel (Art. III, Sec. 12 (1) of the Constitution). [i] The accused must continuously have a counsel assisting him from the very start of custodial investigation until its termination. This right was negated by the precipitate departure of the lawyer of the accused before the termination of the investigation. (*id.*) Confessions of the accused in the absence of counsel are invalid. *(People v. Tulin, G.R. No. 111709, 30 August 2001).* Even if a confession is subsequently signed in the presence of counsel, it is not cured of constitutional defects. *(People v. Morial, G.R. No. 129295, 15 August 2001).*

[ii] Right refers to "effective counsel." In essence, it refers to the right to be assisted by counsel for the purpose of ensuring that an accused is not denied the collateral right to due process. *(People v. Liwanag, G.R. No. 120468, 15 August 2001).* It is more than just the presence of a lawyer in the court room or the mere propounding of standard questions and objections. It means that the accused is amply accorded legal assistance by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly, at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. *(People v. Aranzado, G.R. Nos. 132442-44, 24 September 2001).* A counsel assisting an accused is guided by

the provisions of Sec. 20, Rule 138 of the Rules of Court; Canons 2, 12, 17, 18 and 19 of the Code of Professional Responsibility and Canons 4, 5 and 15 of the Canons of Professional Ethics. The proper measure of a counsel's performance is reasonableness under prevailing professional norms. In this case, the issue raised regarding a lawyer's acts or omissions in the conduct of his duties as counsel for an accused was deemed not proper as it may breed more unwanted consequences than merely upholding an accused's constitutional right or raising the standard of the legal profession. *(People v. Liwanag, G.R. No. 120468, 15 August 2001).* A counsel who failed to inform the accused of the latter's right to remain silent, who kept "coming and going" during the custodial investigation, and abruptly departed before the termination of the proceedings, can hardly be the competent, vigilant and effective counsel contemplated in the Constitution. *(People v. Morial, G.R. No. 129295, 15 August 2001). See also People v. Arranzado* cited above.

(c) Not Applicable in Administrative Investigation. The right to counsel applies only to admissions made in a criminal investigation. *(Remolona v. Civil Service Commission, G.R. No. 137473, 2 August 2001).*

(d) Waiver. Granting that appellant consented to his counsel's departure during the investigation and to answer questions during the lawyer's absence, such consent was not a valid waiver of his right to counsel and his right to remain silent. A waiver of the right to counsel, to be valid, must be made in writing and in the presence of counsel. *(People v. Morial, G.R. No. 129295, 15 August 2001).* However, the manifestation of accused-appellants that they were adopting the evidence adduced when they were represented by a non-lawyer was deemed a valid waiver of the right, considering that it was unequivocally, knowingly, and intelligently made and with the full assistance of a bona fide lawyer. *(People v. Tulin, G.R. No. 111709, 30 August 2001).*

Equal Protection of the Law. Not applicable in this case. *(Peligrino v. People, G.R. No. 136266, 13 August 2001).*

Right to Speedy Disposition of Cases (Art. III, Section 16 of the Constitution). Not limited to the accused in a criminal proceeding but extends to all parties in all cases and proceedings before judicial, quasi-judicial or administrative bodies. The failure of the Ombudsman to resolve the complaints that have been pending for almost four years is clearly violative of this mandate and the rights of petitioner as a public official. In such event, petitioner is entitled to the dismissal of the cases filed against him. Indeed, the Court directly dismissed the informations already filed before the Sandiganbayan against petitioner. *(Lopez v. Office of the Ombudsman, G.R. No. 140529, 6 September 2001).*

Ex Post Facto Law. *(Benedicto v. CA, G.R. No. 125359, 4 September 2001).*

CIVIL SERVICE

Security of Tenure. Failure to make a courtesy call to the superior or to submit appointment papers is not a ground for dismissal. Failure to report to work in this case is not tantamount to abandonment. For failure to accord due process to respondent, the termination of her employment is illegal. Consequently, she is entitled to reinstatement, plus payment of back salaries. *(Adiong v. CA, G.R. No. 136480, 4 December 2001).*

Administrative Offenses and Penalties. (a) Immorality. *(Castro v. Gloria, G.R. No. 132174, 20 August 20, 2001; Re: Initial Reports On The Grenade Incident That Occurred At About 6:40 A.M. On December 6, 1999, A.M. No. 99-12-03-Sc., 10 October 2001).*

(b) Dishonesty - a grave offense punishable by dismissal for the first offense. Need not be committed in the course of the performance of duty. [i] Although no pecuniary damage was incurred by the government, there was still falsification of official document that constitutes gross dishonesty. *(Remolona v. Civil Service Commission, G.R. No. 137473, 2 August 2001).* The entry in the record of birth that respondent is married is certainly spurious. Why she has not taken any legal step to have it corrected clearly indicates her predilection to dishonesty. *(Floria v. Sunga, A.M. No. CA-01-10-P1, 14 November 2001).* [ii] Demanding and receiving "grease money" for the implementation of a writ of demolition. *(Office of the Court Administrator v. Magno, A.M. No. P-00-1419, 17 October 2001).*

(c) Simple Neglect of Duty. Mere delay in the performance of one's function has been consistently considered as a less grave offense of simple neglect of duty, punishable by suspension without pay for one (1) month and one (1) day to six (6) months. *(PRA v. Rupa, G.R. No. 140519, 21 August 2001).*

(d) Administrative Offenses do not prescribe. *(Floria v. Sunga, A.M. No. CA-01-10-P1, 14 November 2001).*

Administrative Investigations. A party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of the respondent's capacity to represent himself. Admissions by respondent during such investigation may be used as evidence to justify his dismissal. *(Remolona v. Civil Service Commission, G.R. No. 137473, August 2, 2001).*

Appeals from Administrative Decisions. (a) Philippine Civil Service Law does not allow the complainant to appeal a decision exonerating or absolving a civil service employee. The above doctrine may have been modified to allow the Civil Service Commission (CSC) to appeal decisions exonerating an employee.

Nonetheless, excepting the privilege of appeal granted to the CSC, the law does not contemplate a review of decisions exonerating officers and employees from administrative charges. *(Justice Melo, dissenting in Floria v. Sunga, A.M. No. CA-01-10-P1, 14 November 2001).* (b) Administrative charges comprising grave or less grave offenses filed against judiciary employees are to be immediately referred to the Court En Banc, from whose decision there is no appeal. (*id*.).

Career Executive Service (CES). Security of Tenure. *(Hon. De Leon v. CA, G.R. No. 127182, 5 December 2001).*

Back Salaries. Payment of salaries corresponding to the period when an employee is not allowed to work may be decreed if he is found innocent of the charges. However, if the employee is not completely exonerated of the charges, such as when the penalty of dismissal is reduced to mere suspension, he would not be entitled to the payment of back salaries. *(Castro v. Gloria, G.R. No. 132174, 20 August 2001).*

Terminal Leave. The money value of the terminal leave of a retiring government official shall be computed at the retiree's highest monthly salary. In this case, petitioner's highest monthly salary is that corresponding to position of Secretary of Finance which petitioner received while he was Acting Secretary, during the travel abroad of the Secretary. *(Belicena v. Secretary of Finance, G.R. No. 143190, 17 October 2001).*

Desistance. Subsequent desistance by the complainant in an administrative case does not necessarily warrant its dismissal. *(Rizon v. Judge Zerna, A.M. No. RTJ-00-1575, 17 September 2001).*

ADMINISTRATIVE LAW

Publication. Mandatory requirement for the effectivity of BOI Manual of Operations that is meant to enforce or implement B.P. Blg. 391 (Incentives for Registration of New or Expanding Export Producers), a law of general application. *(Pilipinas Kao v. CA, G.R. No. 105014, 18 December 2001).*

GOVERNMENT AGENCIES AND INSTRUMENTALITIES
GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS

Urban Land Development and Housing Act of 1992 (Republic Act No. 7279). Eviction and Demolition. *(Nagkakaisang Kapisanan Kapitbahayan Sa Commonwealth Ave. v. CA, G.R. No. 135865, 20 July 2001).*

Commission on the Settlement of Land Problems (COSLAP). *(Sy v. COSLAP, G.R. No. 140903, 12 September 2001).* Executive Order No. 561 creating the COSLAP. Jurisdiction over land disputes involving occupants of the land in question and pasture lease agreement holders. *(Alcantara v. COSLAP, G.R. No. 145838, 20 July 2001).*

Philippine Amusement and Gaming Corporation (PAGCOR). Has a valid franchise by itself but not in association with any other person or entity to operate, maintain and/or manage the game of jai-alai. *(Del Mar v. PAGCOR, G.R. No. 138298, 24 August 2001).*

Philippine Retirement Authority (PRA). *(PRA v. Rupa, G.R. No. 140519, 21 August 2001).*

Board of Investments (BOI). Form and contents of BOI Decisions. Lacking the essential attribute of a decision, the acts in

question were at best interlocutory orders that did not attain finality nor acquire the effects of a final judgment despite the lapse of the statutory period of appeal. *(Pilipinas Kao v. Court Of Appeals, G.R. No. 105014, 18 December 2001).*

Bureau of Immigration has authority to correct its own records. *(Go Kim Huy v. Go Kim Huy, G.R. No. 137674, 20 September 2001).*

Government Service Insurance System (GSIS). Liable for damages resulting from the negligence of its employees. *(GSIS v. Spouses Gonzalo, G.R. No. 135644, September 17, 2001).* Housing assistance to the less-privileged GSIS members and their dependents. 5-year restriction on the assignment of the awardees' rights or the resale of the lot awarded to them. *(San Agustin v. CA, G.R. No. 121940, 4 December 2001).*

Sugar Regulatory Administration. Social Amelioration Benefits. *(Cruz v. COA, G.R. No. 134740, 23 October 2001).*

Public Estates Authority (PEA). The government agency tasked by the Bases Conversion Development Authority to develop the first-class memorial park known as the Heritage Park, located in Fort Bonifacio, Taguig, Metro Manila. *(PEA v. Uy, G.R. Nos. 147933-34, 12 December 2001).*

Construction Industry Arbitration Commission (CIAC). Executive Order No. 1008 vests upon the CIAC original and exclusive jurisdiction over disputes arising from or connected with contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. Under the 1997 Rules of Civil Procedure, the CA can review questions of fact, of law, or mixed questions of fact and law in

appeals from judgments or final orders of the CIAC. *(Metro Construction v. Chatham Properties, G.R. No. 141897, 24 September 2001).*

Office of the Solicitor General. The legal representative of the Government of the Republic of the Philippines and its agencies and instrumentalities, and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of a lawyer, excepting only as may otherwise be provided by law. That the City Warden appears to have acquiesced in the release order of the trial court by his compliance therewith does not preclude the Solicitor General from taking a contrary position and appealing therefrom. *(City Warden of the Manila City Jail v. Estrella, G.R. No. 141211, 31 August 2001).*

National Telecommunications Commission (NTC). Public Telecommunications Policy Act of the Philippines (RA 7925). *(PLDT v. City of Davao, G.R. No. 143867, 22 August 2001).*

Public Bidding - Not required under the circumstances of these cases: involving GSIS disposition of acquired assets. *(Urbano v. GSIS, G.R. No. 137904, October 19, 2001)*; purchase of Terumo blood bags by the National Kidney and Transplant Institute. *(Baylon v. Ombudsman, G.R. No. 142738, 14 December 2001).*

Government Infrastructure Contracts. Petitioner's contract with NAPOCOR is subject to the provisions of Presidential Decree No. 1594 (Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts) and its implementing rules and regulations. *(J.C. Lopez & Associates v. COA, G.R. No. 128145, 5 September 2001).*

COMMISSION ON AUDIT (COA)0000

(J.C. Lopez & Associates v. Commission on Audit, G.R. No. 128145, 5 September 2001; Cruz v. COA, G.R. No. 134740, 23 October 2001).

OMBUDSMAN

Investigative Powers. (a) Under R.A. No. 6770, the Ombudsman has the power to investigate and prosecute any act or omission of a public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient. The prosecution of offenses committed by public officers is vested in the Office of the Ombudsman. To insulate the Office from outside pressure and improper influence, the Constitution as well as R.A. 6770 has endowed it with a wide latitude of investigative and prosecutorial powers virtually free from legislative, executive or judicial intervention. The Ombudsman has the power to dismiss a complaint without going through a preliminary investigation as provided in Administrative Order No. 07 of the Office of the Ombudsman, otherwise known as the "Rules of Procedure of the Office of the Ombudsman." *(Presidential Ad Hoc Fact Finding Committee On Behest Loans v. Ombudsman, G.R. No. 135482, 14 August 2001; The Presidential Ad-Hoc Fact Finding Committee v. Hon. Ombudsman Desierto, G.R. No. 137777, 2 October 2001)* (b) The Ombudsman's resolution of criminal cases under preliminary investigation cannot be the subject of review under Rule 45 of the Rules of Court which covers only judgments or final orders or resolutions of the CA, Sandiganbayan, RTCs and other courts, whenever authorized by law. In other words, a party may appeal only from orders or decisions of the Ombudsman in administrative cases. *(Nava v. COA, G.R. No. 136470, October 16, 2001).* (c) However, judicial review of the actions of the Ombudsman via an original action for certiorari under Rule 65 is available. *(id.; Baylon v. Ombudsman, G.R. No. 142738, 14 December 2001).*

(b) Limitations. The Ombudsman [i] may not pass upon errors of the prosecutor's office in the exercise of powers intrinsic to the resolution itself of the case as that function pertains to the power of review of the Secretary of Justice. *(Garcia-Rueda v. Amores, G.R. No. 116938, 20 September 2001).* [ii] May not initiate or investigate

a criminal or administrative complaint before his office against a judge. The Ombudsman must indorse the case to the Supreme Court for appropriate action. *(Judge Fuentes v. Office of the Ombudsman-Mindanao, G.R. No. 124295, 23 October 2001).*

PUBLIC OFFICERS

Clerks Of Court. (a) Safekeeping of court records. Loss of exhibits. *(Bongalos v. Monungolh, A.M. No. P-01-1502, 4 September 2001)*. (b) Custody of Funds. *(Mallare v. Ferry, A.M. No. P-00-1381 and A.M. No. P-00-1382, 31 July 2001)*. (c) No authority to mediate among constituents. *(Arroyo v. Alcantara, A.M. No. P-01-1518, 14 November 2001).*

Sheriffs. Ministerial duty to promptly enforce writs of execution. *(Aquino v. Lavadia, A.M. No. P-01-1483, 20 September 2001; Visitacion v. Ediza, Adm. Matter No. P-01-1495, 9 August 2001; Malbas v. Blanco, A.M. No. P-99-1350, 12 December 2001).* Rule 141, Sec. 9, final paragraph, governs the payment of expenses for the enforcement of writs of execution. *(Tiongco v. Molina, A.M. No. P-00-1373, 4 September 2001).*

Code of Conduct. Sec. 5 of R.A. No. 6713 requires public officials and employees to respond to letters, telegrams or other communications from the public, within fifteen (15) working days from their receipt thereof, stating the action taken thereon. *(Arroyo v. Alcantara, A.M. No. P-01-1518, 14 November 2001).*

Recovery of Ill-gotten Wealth. Prescription of Action. Sec. 15, Art. XI of the Constitution applies only to civil actions for recovery of ill-gotten wealth, and not to criminal cases such as the complaint against the respondents. *(Republic v. Desierto, G.R. No. 136506, 23 August 2001).*

JUDICIAL DEPARTMENT

SUPREME COURT (a) Jurisprudence. The Court's interpretation of laws are as much a part of the law of the land as the letters of the laws themselves. *(Evangelista v. Sistoza, G.R. No. 143881, 9 August 2001).* (b) Judicial Power. The inherent power of the Court to amend and control its processes and orders so as to make them conformable to law and justice includes the right to reverse itself. *(Tocao v. CA, G.R. No. 127405, 20 September 2001).* (c) Supervision over lower courts and their personnel. Art. VIII, Sec. 6 of the Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the CA to the lowest municipal trial court clerk. *(Judge Fuentes v. Office of the Ombudsman-Mindanao, G.R. No. 124295, 23 October 2001).*

LOCAL GOVERNMENT

Power to Legislate. Limitation. The game of lotto is a game of chance duly authorized under R.A. No. 1169, as amended by Batas Pambansa Blg. 42, the law which grants a franchise to the Philippine Charity Sweepstakes Office and allows it to operate the lotteries. This statute remains valid today. Hence, a provincial board may not prohibit the lotto by ordinance or resolution. The power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. This basic relationship between the local government unit and Congress has not been enfeebled by the new provisions of the Constitution strengthening local autonomy or the State policy requiring all national agencies and offices to conduct periodic consultations with appropriate local government units (Sec. 2 [c] and 27 of R.A. No. 7160, otherwise known as the Local Government Code of 1991. *(Lina v. Paño, G.R. No. 129093, 30 August 2001).*

Local Franchise Tax. Exemption claimed by the Philippine Long Distance Telephone Company (PLDT) - Not established. *(PLDT v. City of Davao, G.R. No. 143867, 22 August 2001).*

Boundary Dispute. *(Province of Camarines Norte v. Province of Quezon, G.R. No. 80796, 11 October 2001).*

Sorsogon City. *(Cawaling v. COMELEC, G.R. No. 146319, 26 October 2001).*

ELECTION LAWS

Commission on Elections (COMELEC). Exhaustion of administrative remedies in the COMELEC. *(Bernardo v. Abalos, G.R. No. 137266, 5 December 2001).*

Election Cases. Period for disposition of election protests must be observed faithfully. *(Rizon v. Judge Zerna, A.M. No. RTJ-00-1575, 17 September 17, 2001).*

Disqualifications of Candidates for Public Office. Violation of B.P. Blg. 22 involves moral turpitude. The deletion in recent jurisprudence of the penalty of imprisonment and the imposition, in lieu thereof, of a fine – does not mean that the offense no longer involves moral torpitude. *(Villaber v. COMELEC, G.R. No. 148326, 15 November 2001).*

EDUCATIONAL INSTITUTIONS

Incremental Tuition Fee Increases. The mandatory share of an educational institution in the SSS, Medicare and Pag-Ibig premiums of its employees may be charged against the seventy percent (70%) incremental tuition fee increase authorized under Sec. 5, par. (2), of RA 6728. *(Cebu Institute of Medicine v. Cebu Institute of Medicine Employees' Union, G.R. No. 141285, 5 July 2001).*

SEQUESTRATION

Presidential Commission on Good Government (PCGG). Legal and historical background. *(Republic v. COCOFED, G.R. Nos. 147062-64, 14 December 2001).*

Sequestration. The writ of sequestration issued against OWNI is not or has ceased to be valid because the suit in Civil Case No. 0009 against some defendants therein, as stockholders of OWNI, is not a suit against OWNI. Failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing. *(PCGG v. Hon. Sandiganbayan, G.R. Nos. 119609-10, 21 September 2001).*

Coco Levy Funds. *Prima facie* public funds. *(Republic v. COCOFED, G.R. Nos. 147062-64, 14 December 2001).*

Right to Vote Sequestered Shares. *(PCGG v. Hon. Sandiganbayan, G.R. Nos. 119609-10, 21 September 2001).*

United Coconut Planters Bank (UCPB). Sequestered Shares of Stock. Legal and Historical Background. The right to vote sequestered shares of stock registered in the names of private individuals or entities and alleged to have been acquired with ill-gotten wealth shall, as a rule, be exercised by the registered owner. The PCGG may, however, be granted such voting right provided it can (1) show prima facie evidence that the wealth and/or the shares are indeed ill-gotten; and (2) demonstrate imminent danger of dissipation of the assets, thus necessitating their continued sequestration and voting by the government until a decision, ruling with finality on their ownership, is promulgated by the proper court. The foregoing "two-tiered" test does not apply when the sequestered stocks are acquired with funds that are *prima facie*

public in character or, at least, are affected with public interest. Inasmuch as the subject UCPB shares in the present case were indisputably acquired with coco levy funds, which are public in character, then the right to vote them shall be exercised by the PCGG. In sum, the "public character" test, not the "two-tiered" one, applies in the instant controversy. *(Republic v. COCOFED, G.R. Nos. 147062-64, 14 December 2001).*

Note: Justices Vitug and Melo dissented:

In the exercise of its power to determine who should vote the sequestered shares, the Sandiganbayan must be guided by the principles first enunciated in *BASECO vs. PCGG (150 SCRA 181 [1987])*, further elucidated in *Cojuangco, Jr. v. Roxas (195 SCRA 797 [1991])* and subsequently refined in *Eduardo Cojuangco, Jr. v. Calpo (G.R. No. 115352, June 10, 1997)* and *PCGG v. Eduardo Cojuangco, Jr. (G.R. No. 133197, January 27, 1999)*. Nothing is more settled than the ruling that the PCGG cannot exercise acts of dominion over property sequestered. It may not vote sequestered shares of stock or elect the members of the board of directors of the corporation concerned. PCGG has only powers of administration. It cannot perform acts of strict ownership of sequestered property. The only conceivable exception is in a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO. The foregoing principle has been reiterated in many subsequent cases, most recently in *Antiporda v. Sandiganbayan (G.R. No. 116941, May 31, 2001).*

The two-tiered test, first enunciated in *Cojuangco v. Calpo* and subsequently in *PCGG v. Cojuangco Jr.*, provides the guidelines or requisites to be fulfilled in determining whether or not PCGG can vote shares in a sequestered corporation. Since PCGG can vote the shares in a sequestered corporation only in case of a takeover of a business belonging to the government or whose capitalization

comes from public funds, but which landed in private hands, plainly the two-tiered test is applicable in this instance. In other words, the two-tiered test is designed precisely to verify whether or not the sequestered corporation is a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands! Thus, the Sandiganbayan did not err when it applied the two-tiered test in disallowing the PCGG to vote the sequestered shares.

The BASECO case does not support petitioner's position. It was proven in the BASECO case that 95.82% of the outstanding stock of BASECO, endorsed in blank by the owners thereof, were inexplicably in the possession of then President Marcos. More, deeds of assignment of practically all the stock of the corporations owning the aforementioned 95.82% were also inexplicably in the possession of President Marcos. Thus, in the case of BASECO, the directors thereof were merely Marcos nominees or dummies, it having been proven that President Marcos not only exercised control over BASECO but also that he actually owned almost 100% of BASECO's outstanding stock. Then too, it was proven that BASECO had been able to take-over and acquire the business and assets of the National Shipyard and Steel Corporation and other government-owned or controlled entities through the undue exercise by then President Marcos of his powers, authority, and influence. Upon these premises, the Court held that the government could properly exercise control and management over what appeared to be properties and assets owned and belonging to the government itself.

In contrast, respondents in the instant case are the registered stockholders of UCPB. No evidence was presented before the Sandiganbayan showing that respondents are mere "tools of President Marcos and were no longer owners of any stock in the firm if they ever were at all." Nor has it been shown that the sequestered UCPB shares of stock were inexplicably acquired by

respondents. Respondent Cojuangco Jr. obtained his shares by virtue of an agreement with the Philippine Coconut Authority (PCA). The UCPB shares of stock in the name of the 1,405,366 coconut-farmers, on the other hand, were distributed to them by virtue of P.D. No. 755, which authorized the distribution of UCPB's shares of stock, free, to coconut farmers. Other UCPB shares were acquired by the CIIF companies. It is precisely the validity of these acquisitions which is under litigation in the main case pending with the Sandiganbayan.

The view expressed by the majority that the UCPB shares, having been acquired with the use of coconut levy funds, and, therefore, belong to the government, may very well turn out to be correct. However, since these issues are still pending litigation at the Sandiganbayan, it would be premature to rule on this point at this time. Verily, the validity of the acquisition by Cojuangco Jr., et al. of their UCPB shares is the very *lis mota* of the action for reconveyance, accounting, reversion, and restitution filed by the PCGG with the Sandiganbayan. To rule on this matter would be to preempt said court. Too, the argument that the coconut levy funds used to purchase the sequestered UCPB shares of stock are public funds does not appear to have been raised before the Sandiganbayan; consequently, the Sandiganbayan did not rule on the nature of the fund. It would be absurd to hold that the Sandiganbayan gravely abused its discretion in not holding that the sequestered shares belong prima facie to the government, the issue of whether or not coconut levy funds are public funds not having been raised before it.

Moreover, the nature of the funds used is a matter which should be decided first-hand by the Sandiganbayan when it resolves the merits of Civil Case No. 0033-A. Note should also be taken of the fact that the determination of whether the coconut levy funds are public funds involves the ascertainment of the constitutionality

of Sec. 5, Art. III of P. D. No. 961 and Sec. 5, Art. III of P. D. No. 1468, both of which contain the following identical provisions:

"Section 5. Exemptions. — The Coconut Consumers Stabilization Fund and the Coconut Industry Development Fund as well as all disbursements of said Funds for the benefit of the coconut farmers as herein authorized shall not be construed or interpreted, under any law or regulation, as special or fiduciary funds, or as part of the general funds of the national government within the contemplation of P.D. 771; nor as a subsidy, donation, levy, government funded investment or government share within the contemplation of P.D. 898, the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their own private capacities."

P.D. Nos. 961 and 1468 have not been repealed, revoked, or declared unconstitutional; hence, they are presumed valid and binding. Without a previous declaration of unconstitutionality, the coconut levy funds may not thus be characterized as prima facie belonging to the government. That issue must first be resolved by the Sandiganbayan. In fact, when the Solicitor General, in G.R. No. 96073, filed a motion to declare the coconut levies collected pursuant to the various issuances as public funds and to declare Section 5, Article III of Presidential Decree No. 1468 as unconstitutional, the Court denied the same in a Resolution dated 26 March 1996.

Parenthetically, in *Philippine Coconut Producers Federation, Inc. v. PCGG*, the Court ruled that the fund is "affected with public interest," implying that the fund is private in character. If the coconut levy funds were public funds, then the Court would have so held and there would be no reason to describe the same as funds "affected with public interest." It may not, thus, be immediately said that the coconut levy funds are public funds, the resolution of the issue being left, at the first instance, with the Sandiganbayan.

And if it is to be recalled, the issue involved herein is whether or not the Sandiganbayan committed grave abuse of discretion when it issued the disputed order allowing respondents to vote the UCPB shares of stock registered in their names. The question of whether the coconut levy funds are public funds is not in issue here. In fact, the constitutionality of P.D. No. 961 and 1468 have not been raised by the PCGG during the proceedings before the Sandiganbayan.

Moreover, it should be pointed out that the avowed purpose of sequestration is to preserve the assets sequestered to assure that if, and when, judgment is rendered in favor of the petitioner, the judgment may be implemented. "Preservation", not "deprivation" before judgment, is its essence. In the instant case, however, the actuations of PCGG with regard to the sequestered shares partake more of deprivation rather than preservation. As pointed out by respondents, since 1986, only one (1) stockholders' meeting of UCPB has been held. At this meeting, PCGG voted all of the shares, as a result of which all members of the Board of UCPB, since 1986 to the present, have been PCGG nominees. When vacancies in the Board occur because of resignation, replacements are installed by the remaining members of the Board on nomination of the PCGG. The stockholders' meeting scheduled on March 6, 2001 would have been the first stockholders' meeting since 1986 at which registered stockholders would exercise their right to vote and by their vote elect the members of the Board of Directors.

Also, the shares of stock in UCPB were sequestered in 1986. The civil action *"Republic of the Philippines v. Eduardo M. Cojuangco, Jr., Civil Case No. 033,"* was instituted before the Sandiganbayan on 30 July 1987. This action included, among other things, the UCPB shares of stock and was filed to maintain the effectivity of the writs of sequestration pursuant to Section 26, Article XVIII of the Constitution. Notwithstanding the lapse of more than 14 years, the proceedings have barely gone beyond the pre-trial stage. PCGG's

exercise of the right to vote the sequestered shares of stock for a period of 14 years constitutes effectively a deprivation of a property right belonging to the registered stockholders, a state of affairs not within the contemplation of "sequestration" as a means of preservation of assets. *(Dissenting Opinions of Justices Vitug and Bellosillo in Republic v. COCOFED, G.R. Nos. 147062-64, 14 December 2001).*

REMEDIAL LAW

I. ORDINARY CIVIL ACTIONS

GENERAL PROVISIONS

Action Distinguished from Special Proceedings. *(Natcher v. CA, G.R. No. 133000, 2 October 2000).*

CAUSE OF ACTION

Nature of Action. Jurisdiction of Court Over It. Determined from the allegations of the complaint and the character of the relief sought therein. *(Sunny Motors Sales, Inc. v. CA, G.R. No. 119900, 16 August 2001).*

No Cause of Action. Respondents have no cause of action to compel PNB to re-compute the interest rates in the loan contracts between respondents and PNB-IFL. PNB is not privy to such loan contracts and was merely constituted as the agent of PNB-IFL to foreclose the mortgage securing the loan obligations of respondents with PNB-IFL. *(PNB v. Ritratto Group Inc, G.R. No. 142616, 31 July 2001).*

VENUE OF ACTIONS

Venue Distinguished from jurisdiction. Action for damages. *(Davao Light & Power Co. Inc. v. CA, G.R. No. 111685, 20 August 2001).*

PARTIES

Parties in Interest. A suit against an agent cannot without compelling reasons be considered a suit against the principal. *(PNB v. Ritratto Group Inc, G.R. No. 142616, 31 July 2001).*

Indispensable Parties. Owners of property over which reconveyance is asserted are indispensable parties without whom no relief is available and no valid judgment can be rendered by the court. *(Valenzuela v. CA, G.R. No. 131175, 28 August 2001)*. In a suit to nullify an existing Torrens Certificate of Title on which a mortgage is annotated, the mortgagee is an indispensable party. Absence of an indispensable party renders all subsequent actuations of the court null and void because of the court's want of authority to act, not only as to the absent party but even as to those present. *(Metropolitan Bank, & Trust Company v. Hon. Alejo, G.R. No. 141970, 10 September 2001).*

PROCEDURE IN REGIONAL TRIAL COURTS (RTC)

PLEADINGS

Allegations in Pleading. Justice requires that a man be apprised of the nature of the action against him so that he may prepare his defense. A pleading must be construed strictly against the pleader. A pleader is presumed to have stated all the facts involved, and to have done so as favorably to himself as his conscience will permit. So, if material allegations are omitted, it will be presumed, in the absence of an application to amend, that those matters do not exist. *(International Flavors and Fragrances (Phil.), Inc. v. Argos, G.R. No. 130362, 10 September 2001).*

PARTS OF PLEADINGS

Certificate Against Forum-shopping. (a) Considering that the complaint in Civil Case No. 97-0523 was dismissed without prejudice by virtue of the plaintiff's (herein petitioner's) Notice of Dismissal, there is no need to state in the certificate of non-forum shopping in Civil Case No. 97-0608 about the prior filing and dismissal of Civil Case No. 97-0523. An omission in the certificate of non-forum shopping about any event which would not constitute *res judicata* and *litis pendentia* is not fatal. *(Roxas v. CA, G.R. No. 139337, 15 August 2001).* (b) Absent a resolution of the Board of Directors of petitioner corporation authorizing its Officer-in-Charge to represent it in the petition, the verification and certification of non-forum shopping executed by said officer fails to satisfy the requirement of the Rules. *(PEA v. Uy, G.R. Nos. 147933-34, 12 December 2001).*

EFFECT OF FAILURE TO PLEAD

Default. The judgment of default against defendants who have not appeared or filed their answers does not imply a waiver of all their rights, except their right to be heard and to present evidence to support their allegations. Otherwise, it would be meaningless to require presentation of evidence if every time the other party is declared in default, a decision would automatically be rendered in favor of the non-defaulting party and exactly according to the tenor of his prayer. From a default judgment, respondents took the appropriate remedy which is an ordinary appeal. *(Fabela v. CA, G.R. No. 142546, 9 August 2001).*

Amendment of Pleadings. (a) Sec. 3, Rule 10 of the 1997 Rules of Civil Procedure amended the former rule by deleting the phrase "or that the cause of action or defense is substantially

altered." Hence, the amendment may now substantially alter the cause of action or defense. This should only be true, however, when the amendments sought to be made serve the higher interests of substantial justice and prevent delay. *(Valenzuela v. CA, G.R. No. 131175, August 28, 2001)*. (b) Amendment of the complaint may be allowed even if an order for its dismissal has been issued so long as the motion to amend is filed before the order of dismissal acquired finality. However, an amendment is not allowed where the court of origin had no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction upon the court. *(Spouses Tirona v. Hon. Alejo, G.R. No. 129313, 10 October 2001).*

Supplemental Pleading. A pleading subsequently filed after an original one which states a totally different cause of action is not a "supplemental pleading" and is not permitted. *(Soriano v. CA, G.R. No. 100633, 28 August 28, 2001).*

FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS

Service of Orders. (a) Registered Mail. Return card with the signature of the addressee unequivocally shows receipt of the assailed decision. *(Gold Line Transit v. Ramos, G.R. No. 144813, 15 August 2001)*. The general rule is that service by registered mail is complete upon actual receipt thereof by the addressee. The exception is where the addressee does not claim his mail within five (5) days from the date of the first notice of the postmaster, in which case, the service takes effect upon the expiration of such period. For constructive service to be valid, there must be conclusive proof that a first notice was duly sent by the postmaster to the addressee. A certification from the postmaster would be the best evidence to prove that the notice has been validly sent. The mailman may also testify that the notice was actually delivered.

The postmaster should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery thereof was made. *(Columbus Philippines Bus Corporation v. NLRC, G.R. No. 114858-59, 7 September 2001).* (b) If a party has appeared by counsel, service upon him shall be made upon his counsel or one of them. Notice to any one of the several counsel on record is equivalent to notice to all and such notice starts the time running for appeal, notwithstanding that the other counsel on record has not received a copy of the decision. *(Albano v. CA, G.R. No. 144708, 10 August 2001).*

MOTIONS

Motion for Reconsideration. A second motion for reconsideration shall not be allowed. *(Obando v. CA, G.R. No. 139760, 5 October 2001).*

Motion for Extension of Time to File Motion for Reconsideration or New Trial. No such motion may be filed with the Metropolitan Trial Court, RTC and CA. It may be filed only with the Supreme Court. *(Secretary v. Tropical Homes, Inc., G.R. No. 136827, 31 July 2001).*

MOTION TO DISMISS

No Cause of Action. Non-exhaustion of Administrative Remedies. The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. Non-observance of the doctrine results in lack of a cause of action. Instances when it may be dispensed with and judicial action validly resorted to immediately: (1) When the question raised is purely legal; (2) When the administrative body is in estoppel; (3) When

the act complained of is patently illegal; (4) When there is urgent need for judicial intervention; (5) When the claim involved is small; (6) When irreparable damage will be suffered; (7) When there is no other plain, speedy and adequate remedy; (8) When strong public interest is involved; and *(9)* In *quo warranto* proceedings. *(Castro v. Gloria, G.R. No. 132174, 20 August 20, 2001).*

Litis Pendentia. As a ground for the dismissal of the second action. Requisites: (1) Identity of parties or representation in both cases; (2) Identity of rights asserted and relief prayed for; (3) The relief must be founded on the same facts and the same basis; and (4) Identity of the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration. *(Spouses Tirona v. Hon. Alejo, G.R. No. 129313, 10 October 2001; R & M General Merchandise v. CA, G.R. No. 144189, 5 October 2001).*

Prescription. The summary or outright dismissal of an action based on prescription or laches is not proper where there are factual matters in dispute which need presentation and appreciation of evidence. *(Ingjug-tiro v. Casals, G.R. No. 134718, 20 August 2001)*

Forum Shopping is present when in the two or more cases pending, there is identity of parties, rights or causes of action and relief sought. The test is whether the elements of *litis pendentia* are present or whether a final judgment in one case will amount to *res judicata* in another. *(Spouses Tirona v. Hon. Alejo, G.R. No. 129313, 10 October 2001; R & M General Merchandise v. CA, G.R. No. 144189, 5 October 2001; Lee v. CA, G.R. No. 118387, 11 October 2001; Benedicto v. CA, G.R. No. 125359, 4 September 2001; Manalo v. CA, G.R. No. 141297, 8 October 2001; Gochan v. Gochan, G.R. No. 146089, 13 December 2001).* (a) For a party to be adjudged guilty of forum shopping in the trial courts, a motion to dismiss on the ground of either *litis pendencia* or *res judicata* must be filed before the proper trial court

and a hearing conducted thereon in accordance with Sec. 5, Rule 7 of the 1997 Rules of Civil Procedure. The same ground cannot be raised in a petition for certiorari before the appellate court while the main action in the trial court is still pending for the reason that such ground for a motion to dismiss can be raised before the trial court any time during the proceedings and is not barred by the filing of the answer to the complaint. *(Roxas v. CA, G.R. No. 139337, 15 August 2001).* (b) A case pending before the Ombudsman cannot be considered for purposes of determining forum shopping as the power of the Ombudsman is only investigative in character and its resolution cannot constitute a valid and final judgment because its duty is to file the appropriate case before the Sandiganbayan. *(Sevilleja v. Laggui, A.M. No. RTJ-01-1612, 14 August 2001).* (c) In certifying under oath that they have no knowledge of any case pending before any tribunal or agency involving the same issues raised in the instant cases when, at the time of their certification, there was pending before the DARAB a case between the same parties with the same subject matter and where the issue of possession as raised in the instant cases is necessarily included in the larger issue of agricultural tenancy - the plaintiffs violated the rule, which is a ground for dismissal of the complaint. *(Spouses Tirona v. Hon. Alejo, G.R. No. 129313, 10 October 2001).*

Res Judicata. Under this doctrine, a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. *Res judicata* is based on the ground that the party to be affected, or some other with whom he is in privity, has litigated the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again. It frees the parties from undergoing all over again the rigors of unnecessary suits and repetitive trials. At the same time, it prevents the clogging of court dockets. Equally important, it stabilizes rights and promotes the rule of law. *(Equatorial Realty Development, Inc.v. Mayfair Theater, Inc., G.R. No. 133879, 21 November 2001).*

Non-joinder of Parties. The remedy is to implead the non-party claimed to be necessary or indispensable – not a motion to dismiss. *(Vesagas v. CA, G.R. No. 142924, 5 December 2001).*

INTERVENTION

Intervention. (a) A remedy by which a third party, not originally impleaded in the proceeding, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding. Intervention is not a matter of right but may be permitted by the courts only when the statutory conditions for the right to intervene is shown. In determining the propriety of letting a party intervene in a case, the tribunal should not limit itself to inquiring whether "a person has a legal interest in the matter in litigation; or in the success of either of the parties; or an interest against both; or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof." Just as important, is whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding. The period within which a person may intervene is also restricted. *(Manalo v. CA, G.R. No. 141297, 8 October 2001; Heirs of Pael v. CA, G.R. No. 133547, 7 December 2001).*

(b) With the termination of the main case due to the compromise agreement of the parties, there is no more case in which petitioners may intervene. Intervention cannot exist as an independent action; it is merely ancillary and supplemental to an existing litigation. *(International Pipes, v. F. F. Cruz & Co. , G.R. No. 127543, 16 August 2001).*

(c) The availability of this remedy hinges on petitioner's knowledge of the pendency of the case that would have alerted to

the need to intervene therein. Though presumed by private respondent, such knowledge was emphatically denied by petitioner. *(Metropolitan Bank, & Trust Company v. Hon. Alejo, G.R. No. 141970, 10 September 2001).*

COMPUTATION OF TIME

Where the last day for doing any act required or permitted by law falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day. *(Labad v. University Of Southeastern Phil., G.R. No. 139665, 9 August 2001).*

EXECUTION

Final Judgment. Is the law of the case and is immutable and unalterable regardless of any claim of error or incorrectness. *(Argel v. Pascua, A.M. No. RTJ-94-1131, 20 August 2001)*. It cannot be altered or modified, except for clerical errors, misprisions or omissions. An order of execution which varies the tenor of the judgment or exceeds the terms thereof is a nullity. *(Torres v. Sison, G.R. No. 119811, 30 August 2001).*

Writ of Execution. Should conform strictly with the very essential particulars of the promulgated judgment, particularly, its dispositive portion. *(Flores v. Conanan, A.M. No. P-00-1438, 14 August 2001)*. The trial court cannot issue a writ of execution without a final and executory judgment. That the writ of execution had already been satisfied does not perforce clothe it with validity. A writ of execution may only be issued after final judgment, without which, such writ issued is manifestly void and of no legal effect. *(David v. Judge Velasco, G.R. No. 126592, 2 October 2001)*. The court issuing a writ of execution is supposed to enforce its authority only over properties of the debtor. *(Ruiz, Sr., v. CA, G.R. No. 121298, 31 July 2001).*

Action For Revival of Judgment. Sec. 6 Rule 39 of the Rules of Court only requires proof of a final judgment which has not prescribed and has remained unexecuted after the lapse of five (5) years but not more than ten (10) years from its finality. Nowhere does the rule require proof that the judgment is still enforceable by and against the original parties who have died. While the action is still subject to defenses and counterclaims which arose after the judgment became effective, proof of the death of some of the parties is not required because the judgment can still be enforced by the executor, administrator or successor-in-interest of the judgment creditor against the judgment debtor. Petitioners further alleged that respondents are not the owners of the subject premises; hence, the action must fail. An action to revive judgment is not meant to retry the case all over again. Its cause of action is the judgment itself and not the merits of the original action. The non-ownership by private respondents refer to the merits of the first civil case which has long been decided with finality and thus become conclusive between the parties. *(Enriquez v. CA, G.R. No. 137391, 14 December 2001).*

Right of Redemption. Please see CIVIL LAW, Mortgage, same topic.

Execution of Judgment. There is no need for the institution of a separate action under Rule 39, Sec. 43 which contemplates a situation where the person allegedly holding property of (or indebted to) the judgment debtor claims an adverse interest in the property (or denies the debt). In this case, petitioner expressly admits its obligation to PNEI. *(PNB Madecor v. Uy, G.R. No. 129598, 15 August 2001).*

Effect Of Judgment Or Final Orders. Judgments which had already attained finality cannot again be subject of review; otherwise, there will be no end to litigation. *(Go Kim Huy v. Go Kim Huy, G.R. No. 137674, 20 September 2001).*

(a) *Res Judicata.* Requisites: (1) There must be a final judgment or order; (2) The court rendering it must have jurisdiction over the subject matter and the parties; (3) It must be a judgment or order on the merits; and (4) There must be, between the two cases, identity of parties, subject matter and causes of action. The lower court did not err in concluding that the land presently being claimed by petitioners is the same land adjudicated in favor of respondents' predecessor in an earlier case. *(Sendon v. Ruiz, G.R. No. 136834, 15 August 2001).* Concepts of "bar by former judgment" and "conclusiveness of judgment" – Explained and differentiated. Without a judgment on the merits, the instant case is removed from the operation of the principle of *res judicata.* A judgment dismissing an action for want of jurisdiction, or because of the pendency of another action between the same parties and for the same cause, or a judgment absolving a defendant because he was not served with summons, or a dismissal on the ground of misjoinder cannot operate as *res adjudicata* on the merits. *(Valenzuela v. CA, G.R. No. 131175, 28 August 2001).* Yet, the Court is not precluded from re-examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality. *(Hon. De Leon v. CA, G.R. No. 127182, 5 December 2001).*

(b) Conclusiveness of Judgment or "Preclusion of Issues" or "Colaterral Estoppel." Issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action. In this case, the question on the validity of the Affidavit has been settled. The same question cannot be raised again even in a different proceeding involving the same parties. Although the action instituted in this case (collection of a sum of money) is technically different from that action instituted before the Regional Trial Court of Dagupan (for annulment of document), "the concept of conclusiveness of judgment still applies because under this principle, the identity of causes of action is not required but merely identity of issues. Simply

put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. *(Tan v. CA, G.R. No. 142401, 20 August 2001; J.C. Lopez & Associates v. COA, G.R. No. 128145, 5 September 2001).*

RELIEF FROM JUDGMENT

Petition for Relief from Judgment. (a) Applies when the one deprived of his right is a party to the case. Since petitioner was never a party to the case or even summoned to appear therein, the remedy of relief from judgment was not proper. *(Metropolitan Bank, & Trust Company v. Hon. Alejo, G.R. No. 141970, 10 September 2001)*. (b) The party filing a petition for relief from judgment must strictly comply with the two (2) reglementary periods, *i.e.*, the petition must be filed [i] within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and [ii] within a fixed period of six (6) months from entry of such judgment, order or other proceeding. *(Gold Line Transit v. Ramos, G.R. No. 144813, 15 August 2001).*

APPEAL FROM RTC

Subject of Appeal. Judgment or Final Order. A court order is final if it puts an end to the particular matter there resolved or settles definitely the subject therein disposed of such that no further questions can come before the court except with respect to its execution. Such an order may refer to the entire controversy or to some defined and separate branch thereof. On the other hand, a court order is merely interlocutory in character if it leaves substantial proceedings yet to be had in connection with the controversy. It is basically provisional in its application. In this particular instance, the triial court order of 6 January 1995 has merely resolved the

motion for reconsideration of the order, dated 25 October 1994, involving the denial of plaintiffs' application for the issuance of a writ of preliminary injunction. These orders did not as yet adjudicate the principal action raising as the basic issue the validity or nullity of the assailed appointments of defendants and the incidental question of damages. It would be inaccurate to say that the rights of respondent and petitioner to the disputed position have already been resolved and that, therefore, nothing else is to be done by the trial court. The inquiry in the proceedings for the issuance or denial of a writ of preliminary injunction is premised solely on initial evidence, and the findings thereon by the trial court should be considered to be merely provisional until after the trial on the merits of the case would have been concluded. *(Tambaoan v. CA, G.R. No. 138219, 17 September 2001).*

Final Judgment. Distinguished from judgment that has become final and executory. *(Lilia v. Judge Fanuñal, A.M. No. RTJ-99-1503, 13 December 2001)*. A decision becomes final upon the lapse of the period to appeal therefrom, without an appeal or motion for reconsideration or new trial having been filed. The filing of a motion for reconsideration or new trial suspends the running of the period to appeal. *(Santos v. CA, G.R. No. 135481, 23 October 2001).* Sec. 1 of Rule 41 enumerates the RTC orders that may not be appealed. An order of execution is not appealable. The remedy for non appealable orders is certiorari under Rule 65. *(Hufana v. Genato, G.R. No. 141209, 17 September 2001)*

APPEALS FROM QUASI-JUDICIAL AGENCIES TO THE CA

Transmittal Of Record. In resolving appeals from quasi-judicial agencies, it is within the discretion of the CA to have the original records of the proceedings under review transmitted to it. *(Remolona v. Civil Service Commission, G.R. No. 137473, 2 August 2001).*

PROCEDURE IN THE CA

ORDINARY APPEALED CASES

APPEAL BY CERTIORARI TO THE SUPREME COURT

Petition For Review. (a) Subject Matter. Only judgments or final orders or resolutions of the CA, Sandiganbayan, the RTC and other courts, whenever authorized by law, may be the subject of an appeal by certiorari to the Court. It does not include resolutions of the Ombudsman on preliminary investigations in criminal cases. *(Nava v. COA, G.R. No. 136470, 16 October 2001).*

(b) Scope. The Court may not review the findings of fact of the CA, which are conclusive and binding on the parties when supported by substantial evidence *(Magsino v. Republic, G.R. No. 136291, 17 October 2001);* and carry even more weight when the CA affirms the factual findings of the trial court. *(Nagkakaisang Kapisanan Kapitbahayan Sa Commonwealth Ave. v. CA, G.R. No. 135865, 20 July 2001; Tsai v. CA, G.R. No. 120098, October 2, 2001).* The scope of the Supreme Court's judicial review of decisions of the CA is generally confined only to errors of law. *(Alfaro v. CA, G.R. No. 140812, 28 August 2001; Fabela v. CA, G.R. No. 142546, 9 August 2001).* [i] Issues of fact, i.e. : (1) whether the foreclosure sale is null and void because the consideration is shocking and unconscionably inadequate, and (2) whether petitioners are entitled to the reconveyance of the property covered under TCT No. 56256 and payment of attorneys' fees. *(Spouses Tansipek v. Philippine Bank of Communications, G.R. No. 146096, 14 December 2001).* [ii] Question of law – where the petition explicitly questions "the legal significance and consequences of the established facts" and not the findings of fact themselves *(Peñalosa v. Santos, G.R. No. 133749, 23 August 2001);* where petitioner no longer disputes the administrative finding of his guilt for the offense of disgraceful and immoral conduct but merely impugns the correctness of the penalty of "dismissal from the service." *(Castro v. Gloria, G.R. No. 132174, 20 August 2001).*

(c) Exceptional circumstances that would compel the Court to review the findings of fact of the CA: When (1) the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) the inference made is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both the appellant and appellee; (7) the findings are contrary to those of the trial court; (8) the findings are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. *(Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation, G.R. No. 133877, November 14, 2001; Roble v. Arbasa, G.R. No. 130707, 31 July 2001; Producers Bank of the Philippines v. CA, G.R. No. 111584, 17 September 2001; Domingo v. CA, G.R. No. 127540, 17 October 2001; Gener v. De Leon, G.R. No. 130730, 19 October 2001; Locsin v. Locsin, G.R. No. 146737, 10 December 2001).*

(d) Period for Filing. [i] Appellants not having perfected their appeal in the manner and within the period fixed by law, the decision of the CA had become final and executory and no court can exercise appellate jurisdiction to review the case. However, the Court has recognized certain exceptions to this rule. *(Secretary v. Tropical Homes, G.R. No. 136827, 31 July 2001)*. In this case, the last day for filing the notice of appeal fell on a Friday, October 13. Petitioners entrusted the filing of the notice of appeal to Samala on October 11. However, he suffered from stomach pains which lasted until the following days. Samala filed the notice immediately on the next business day, Monday, October 16. He believed in good faith that he could still file it on Monday. Delay in filing the notice of appeal was actually for one (1) day. Saturday and Sunday are

excluded. Under the circumstances, this was excusable negligence. *(Samala v. CA, G.R. No. 128628, 23 August 2001)*. However, in his dissenting opinion, Chief Justice Davide observed that the relief is not available in this case because it is an alternative remedy which presupposes that the party concerned failed to avail of the remedy of appeal. In this case, petitioners did in fact avail of the remedy of appeal. The remedy can only be resorted to on any of the grounds mentioned in the rules, namely, fraud, accident, mistake or excusable negligence. (id.) Negligence, to be "excusable," must be one which ordinary diligence and prudence could not have guarded against. The mishandling of petitioner's cause by its counsel could hardly be characterized as excusable, much less unavoidable. *(Gold Line Transit v. Ramos, G.R. No. 144813, 15 August 2001)*. [ii] Extension of Reglementary Period. As a rule, the extension should be tacked to the original period and commence immediately after the expiration of such period. However, such extension has been allowed to commence from the specific time prayed for in the motion for extension. *(Labad v. University Of Southeastern Phil., G.R. No. 139665, 9 August 2001).*

ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS

The CA shall exercise exclusive original jurisdiction over actions for annulment of judgments of the RTC. An annulment of judgment may be availed of only in case of extrinsic fraud and lack of jurisdiction. *(So v. CA, G.R. No. 138869, 21 August 2001).*

DISMISSAL OF APPEAL

Failure to Pay Correct Amount of Docket Fees. Appeal may be dismissed by the CA on its own motion, or on that of the appellee, for failure of the appellant to pay the docket and other lawful

fees as so prescribed in Sec.4 of Rule 41. When insufficient filing fees were initially paid by Deogracias and Rosalina, they had no intention to defraud the Government. They merely paid the amount computed by the Clerk of Court. They were in good faith and relied on the assessment of the Clerk of Court. The Manchester ruling does not apply. *(Soriano v. CA, G.R. No. 100633, 28 August 2001).*

JUDGMENTS

Memoranda. Administrative Circular No. 28 of 3 July 1989. *(Guillas v. Muñez, A.M. No. RTJ-00-1571, 28 August 2001).*

Case Partly Heard By Judge. A Judge may validly render a decision although he has only partly heard the testimony of the witnesses. After all, he could utilize and rely on the records of the case, including the transcripts of testimonies heard by the former presiding judge. *(Domingo v. CA, G.R. No. 127540, 17 October 2001).*

Grant of Relief Not Expressly Prayed for. Whether the exact amount of the relief was not expressly prayed for is of no moment for the reason that the relief was plainly warranted by the allegations of the respondents as well as by the facts as found by the appellate court. A party is entitled to as much relief as the facts may warrant. *(First Metro Investment Corporation v. Este del Sol Mountain Reserve, Inc., G.R. No. 141811, 15 November 2001).*

PROVISIONAL REMEDIES

PRELIMINARY INJUNCTION

May be granted at any stage of an action or proceeding, even before the issues are joined, and prior to the judgment or final order, ordering a party or a court, agency or a person to refrain from a particular act or acts. An ancillary or preventive

remedy that may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. The dismissal of the principal action results in the denial of the prayer for the issuance of the writ. In applications for preliminary injunction, the requirement of hearing and prior notice before injunction may issue has been relaxed to the point that not all petitions for preliminary injunction must undergo a trial-type hearing. *(Batangas Laguna Tayabas Bus Company v. Bitanga, G.R. No. 137934, 10 August 2001).* To be entitled to an injunctive writ, petitioner must show, *inter alia,* the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damage. In this case, petitioner's right is in dispute and has yet to be determined. *(Ong v. CA, G.R. No. 130360, 15 August 2001).* May only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. Respondents do not deny their indebtedness. Their properties are by their own choice encumbered by mortgages. Upon the non-payment of the loans, which were secured by the mortgages sought to be foreclosed, the mortgaged properties are properly subject to a foreclosure sale. Moreover, respondents questioned the alleged void stipulations in the contract only when petitioner initiated the foreclosure proceedings. Clearly, respondents have failed to prove that they have a right protected and that the acts against which the writ is to be directed are violative of said right. *(Agustilo v. CA, G.R. No. 142875, 7 September 2001).*

TEMPORARY RESTRAINING ORDER (TRO)

(A) Administrative Circular No. 20-95 (Special Rules on Temporary Restraining Orders and Preliminary Injunctions) requires that an application for a TRO shall be acted upon only after all parties are heard in a summary hearing. A TRO may be issued *ex parte* by the Executive Judge in matters of extreme

emergency in order to prevent grave injustice and irreparable injury. TRO shall be effective only for seventy-two (72) hours from issuance. The *ex-parte* issuance of a 20-day TRO is unauthorized and may make the judge administratively liable. *(Sayson v. Zerna, A.M. No. RTJ-99-1506, 9 August 2001).* (b) In the event that the application for preliminary injunction is denied or not resolved within the specified period, the TRO is deemed automatically vacated. The effectivity of a TRO is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued. *(Agustilo v. CA, G.R. No. 142875, 7 September 2001).* (c) A TRO issued by the CA is effective only for sixty (60) days from service on the party or person sought to be enjoined. When the period lapses without a writ of preliminary injunction being issued, the TRO automatically expires and a judicial declaration to this effect is not necessary. (id.) (d) TRO issued by the Supreme Court or a member thereof shall be effective until further orders. (*id.*)

SPECIAL CIVIL ACTIONS

INTERPLEADER

(Rizal Commercial Banking Corporation v. Metro Container Corporation, G.R. No. 127913, 13 September 2001).

DECLARATORY RELIEF

Under the exclusive jurisdiction of the RTC. It is not among the actions within the original jurisdiction of the Supreme Court even if only questions of law are involved. *(Ombudsman v. Hon. Ibay, G.R. No. 137538, 3 September 2001).*

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Forcible Entry. *(Sunny Motors Sales, Inc. v. CA, G..R. No. 119900, 16 August 2001).* In actions for forcible entry, the plaintiff must allege that he is deprived of the possession of land or building by force, intimidation, threat, strategy, or stealth and that the action shall be filed within one year from the time of such unlawful deprivation of possession. This requirement implies that the possession of the disputed land by the defendant is unlawful from the beginning as he acquired possession thereof by unlawful means. The plaintiff must allege and prove that he was in prior physical possession of the property in litigation until he was deprived thereof by the defendant. The one year period within which to bring an action for forcible entry is generally counted from the date of actual entry by the defendant on the land. *(Gener v. De Leon, G.R. No. 130730, 19 October 2001).*

Unlawful Detainer. It is essential in unlawful detainer that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. The evidence revealed that the possession of defendant was illegal at the inception and not merely tolerated as alleged in the complaint, considering that defendant started to occupy the subject lot and then built a house thereon without the permission and consent of petitioners and before them, their mother. Clearly, defendant's entry into the land was effected clandestinely, without the knowledge of the owners. Consequently, it is categorized as possession by stealth which is forcible entry. *(Go v. CA, G.R. No. 142276, 14 August 2001).*

Forcible Entry Distinguished from Unlawful Detainer. (1) In an action for forcible entry, the plaintiff must allege and prove that he was in prior physical possession of the premises until deprived thereof; while in illegal detainer, the plaintiff need not have been in prior physical possession; and (2) In forcible entry,

the possession by the defendant is unlawful ab initio because he acquires possession by force, intimidation, threat, strategy, or stealth, while in unlawful detainer, possession is originally lawful but becomes illegal by reason of the termination of his right of possession under his contract with the plaintiff. *(Tirona v. Hon. Alejo, G.R. No. 129313, 10 October 2001).*

CERTIORARI, PROHIBITION AND MANDAMUS

CERTIORARI

Nature Of Action. In an action for certiorari, the inquiry should be limited only to question of jurisdiction. *(Ala-Martin v. Hon. Sultan, G.R. No. 117512, 2 October 2001).* Where the findings of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved party may file a petition for certiorari under Rule 65 of the Rules of Court. *(Nava v. COA, G.R. No. 136470, 16 October 2001)*. This special civil action cannot be used as a substitute for the lost remedy of appeal. *(Obando v. CA, G.R. No. 139760, 5 October 2001).*

When to File. (a) Rule 65, Sec. 4 (as amended by the Court in its Resolution in A.M. No. 00-2-03-SC, which took effect on 1 September 2000). The 60-day period within which to file the petition starts to run from receipt of notice of the denial of the motion for reconsideration, if one is filed. The new period was made applicable to pending cases, such as in the case at bar. *(San Luis v. CA, G.R. No. 142649, 13 September 2001; Serrano v. CA, G.R. No. 139420, 15 August 2001; Republic v. Desierto, G.R. No. 136506, 23 August 2001).*

(b) The petition for certiorari was filed with the CA in October 1996. At that time, the prevailing rule was that certiorari brought

under Rule 65 of the Rules of Court may be filed within a reasonable time from receipt of the resolution denying the motion for reconsideration. In previous cases, the Court generally considered the period of three (3) months as reasonable. However, such period is merely used as a yardstick to determine the reasonableness of the period in filing the petition. If the petition is filed beyond three months, then under normal circumstances, it was filed beyond a reasonable time and should be dismissed. This, however, does not preclude courts from entertaining the petition if warranted by the demands of justice and provided laches has not set in. *(Yu v. People, G.R. No. 131106, 7 December 2001).*

MANDAMUS

While as a general rule, the performance of an official act or duty, which necessarily involves the exercise of discretion or judgment, cannot be compelled by mandamus, this rule does not apply in cases where there is gross abuse of discretion, manifest injustice, or palpable excess of authority. *(Lopez v. Office of the Ombudsman, G.R. No. 140529, 6 September 2001).*

CONTEMPT

Direct Contempt. (a) Complainant refused to sign the certificate of arraignment and declared her refusal to do so in a loud voice while at the same time making faces, to the great embarrassment of the court. *(Eballa v. Paas, A.M. No. MTJ-01-1365, 9 August 2001).* (b) After a perusal of the charges of direct contempt of court, the Court found that counsel's innuendoes were not necessarily disrespectful to the court as to be considered contumacious. *(Soriano v. CA, G.R. No. 100633, 28 August 2001).*

Indirect Contempt. Respondents' act of removing the monument marker amounts to a willful disregard of the decision

of the Supreme Court regarding the territorial boundary of Camarines Norte and the Province of Quezon. When court decisions reach finality, it is the duty of counsel as officers of the Court and members of the Bar to obey those decisions, whatever their personal opinion may be in respect of its merits. *(Province of Camarines Norte v. Province of Quezon, G.R. No. 80796, 11 October 2001).*

II. SPECIAL PROCEEDINGS

SETTLEMENT OF ESTATE OF DECEASED PERSONS

Letters of Administration. Persons to whom said letters may be issued. Sec. 2 of Rule 79. *(Locsin v. Locsin, G.R. No. 146737, 10 December 2001).*

HABEAS CORPUS

The period of appeal shall be forty-eight (48) hours from notice of judgment appealed from. *(City Warden of the Manila City Jail v. Estrella, G.R. No. 141211, 31 August 2001).*

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

(a) Rule 108 of the Revised Rules of Court. Is the recourse for effecting substantial changes or corrections in entries of the civil register, such as those which may affect nationality, status or filiation. The only requisite is that the proceedings be an appropriate adversary proceeding and complies with all the procedural requirements thereunder, as to parties, notice and publication - as contra-distinguished from a summary proceeding. *(Lee v. CA, G.R. No. 118387, 11 October 2001.*

(b) R.A. No. 9048 (Enacted into law on 8 February 2001). Clerical or typographical errors in entries of the civil register are now to be corrected and changed by the city or municipal civil registrar or consul general without need of a judicial order. The obvious effect is to remove from the ambit of Rule 108 the correction or changing of such errors. Hence, what is left for the scope of operation of Rule 108 are substantial changes and corrections in entries of the civil register. (*id.*).

III. CRIMINAL PROCEDURE

PROSECUTION OF OFFENSES

Information. Under the 2000 Rules of Criminal Procedure which took effect on 1 December 2000, aggravating circumstances not alleged in the information cannot be appreciated to modify appellant's liability. (Please see CRIMINAL LAW. Aggravating Circumstances). It is essential that an accused must know from the information whether he is criminally accountable not only for his acts but also for the acts of his co-accused as well. An indictment for conspiracy must specifically and sufficiently allege it, using such words as "conspired," "confederated," or the phrase "acting in concert" or "in conspiracy," or their synonyms or derivatives and/or definitive acts constituting conspiracy. *(Garcia v. CA, G.R. No. 124036, 23 October 2001).* The information must charge but one offense, except when the law prescribes a single punishment for various offenses. *(People v. Barbosa, G.R. No. 126899, 2 August 2001).*

PROSECUTION OF CIVIL ACTION

Prejudicial Question. For a civil action to be considered prejudicial to a criminal case as to warrant the suspension of the criminal proceedings until the final resolution of the civil, the

following must be present: (1) The civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) In the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) Jurisdiction to try said question must be lodged in another tribunal. There is no prejudicial question to the trial for criminal violation of B.P. 22 against petitioner, pending the resolution of the civil action for specific performance, recovery of overpayment, and damages. *(Sabandal v. Hon. Tongco, G.R. No. 124498, 5 October 2001; Manalo v. CA, G.R. No. 141297, 8 October 2001; R & M General Merchandise v. CA, G.R. No. 144189, 5 October 2001).*

PRELIMINARY INVESTIGATION

Nature. (a) The right is personal and may be waived expressly or by implication. *(Benedicto v. CA, G.R. No. 125359, 4 September 2001).* Where accused-appellant has submitted himself to the jurisdiction of the trial court, he is deemed to have waived his right to preliminary investigation. *(People v. Liwanag, G.R. No. 120468, 15 August 15, 2001)*. (b) The holding of a preliminary investigation is a function of the Executive Department and not of the Judiciary. The decision whether or not to dismiss the complaint against private respondent is necessarily dependent on the sound discretion of the prosecuting fiscal. Decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice who, under the Revised Administrative Code, exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings. Findings of the Secretary of Justice are not subject to review unless shown to have been made with grave abuse. *(Public Utilities Department v. Guingona, G.R. No. 130399, 20 September 2001).* (c) A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may

engender a well-grounded belief that an offense has been ommitted and that the accused is probably guilty thereof. *(Odin Security Agency v. Sandiganbayan, G.R. No. 135912, September 17, 2001).* Petitioner's arguments that private respondents conspired with Nationwide and granted it undue favor, disregarding the fact that petitioner is the lowest bidder, are misplaced. They are all matters of defense. (*id.*).

ARREST

Warrant of Arrest. Before, it was mandatory for the investigating judge (Municipal Trial Court) to issue a warrant for the arrest of the accused if he finds probable cause. Now, Sec. 6 (b), Rule 112 of the Revised Rules on Criminal Procedure provides that a municipal trial judge can issue a warrant when two requisites concur: (1) there is a finding of probable cause; and (2) there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice. Thus, when a municipal trial judge issues a warrant of arrest solely based on his finding of probable cause and without the consequent determination of the need to place a respondent under the custody of the law, he is guilty of gross ignorance repugnant to the orderly administration of justice. *(Arcilla v. Judge Palaypayon, A.M. MTJ-01-1344, 5 September 2001).*

Warrantless Arrest. (a) Valid: [i] In a legitimate buy-bust operation. *(People v. Julian-Ferdandez, G.R. Nos. 143850-53, 18 December 2001).* [ii] Appellant caught *in flagrante. (People v. Gonzales, G.R. No. 121877, 12 September 2001; People v. Del Mundo, G.R. No. 138929, 2 October 2001).* (b) Right to assail legality – waived, when accused voluntarily submitted himself to the court by entering a plea, instead of filing a motion to quash the information for lack of jurisdiction over his person. *(People v. Licayan, G.R. Nos. 140900 & 140911, 15 August 2001).* (c) The illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon

a sufficient complaint after a trial free from error. *(People v. Calimlim, G.R. No. 123980, 30 August 2001).* Illegality of arrest is not a jurisdictional defect. *(People v. Del Mundo, G.R. No. 138929, 2 October 2001).*

Probable Cause. "Personal determination" does not mean that judges must themselves personally conduct the examination of the complainant and his witnesses. What is emphasized is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if, on the basis thereof, he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. What the judge is never allowed to do is follow blindly the prosecutor's bare .certification as to the existence of probable cause. *(Atty. Talingdan v. Judge Eduarte, A.M. No. RTJ-01-1610, 5 October 2001).*

GUIDELINES IN CASES WHERE MINORS ARE HELD OR ARRESTED:

(1) Immediately upon arrest, the judge shall order that the minor be committed to the care of the DSWD, local rehabilitation center or a detention home in the province or city. The said agency or center shall be responsible for the minor's appearance during trial;

(2) In the absence of such agency or center within a reasonable distance from the venue of the trial, the provincial, city or municipal jail shall provide quarters for the minor separate from the adult detainees;

(3) Upon recommendation of the DSWD or any other authorized agency, the judge may, in his discretion, release the minor on recognizance to his parents or other suitable person who shall be responsible for his appearance when required; and

(4) In those cases falling under the exclusive jurisdiction of the military tribunal, the minor may be committed at any military detention or rehabilitation. *(Ligad v. Dipolog, A.M. No. MTJ-01-1386, 5 December 2001).*

BAIL

Neither a Matter of Right or Discretion. The issue of denial of bail has been rendered academic by the conviction of the accused. When an accused is charged with a capital offense, or an offense punishable by *reclusion perpetua*, or life imprisonment or death, and evidence of guilt is strong, bail must be denied. *(People v. Liwanag, G.R. No. 120468, 15 August 2001).*

When a Matter of Discretion. The grant of bail to an accused charged with an offense that carries the penalty mentioned above is discretionary on the trial court and calls for judicial determination that the evidence of guilt is strong. *(Andres v. Beltran, A.M. No. RTJ-00-1597, 20 August 2001).*

Matter of Right. Consequent to the enactment of R.A. 8294, illegal possession of firearms, ammunitions and explosives is now bailable. *(Al-Ghoul v. CA, G.R. No. 126859, 4 September 2001).*

Condition of Bail. The presence of counsel is not a condition of the bail nor a reason for an increase or forfeiture of bail. *(Andres v. Beltran, A.M. No. RTJ-00-1597, 20 August 2001). Return of cash bail. (People v. Garcia, G.R. No. 135666, 20 July 2001).*

1996 Bail bond Guide for the National Prosecution Service. Department Circular No. 4. *(Cabañero v. Judge Cañon, A.M. No. MTJ-01-1369, September 20, 2001).*

RIGHTS OF THE ACCUSED

To Cross Examine Witnesses Against Him. Subject to the rules on the admissibility and relevance of evidence. Where the witness testified only on the rape case and not on anything about acts of lasciviousness committed upon her person (subject of another case), she may not be questioned on the latter as it is not connected with her direct testimony. *(People v. Rivera, G.R. No. 139180, 31 July 2001).* Use of testimony of witness in another case who is deceased, out of the country or cannot with due diligence be found in the Philippines, unavailable or otherwise unable to testify. *(People v. Concorcio, G.R. No. 121201-02, 19 October 2001).*

ARRAIGNMENT AND PLEA

Arraignment. Upon the filing of a complaint or information in court, jurisdiction over the case is vested with the trial court and the disposition of the case rests upon its sound discretion. Complainant should have filed her motion for reinvestigation with the court rather than with the city prosecutor's office. The judge cannot be faulted for proceeding with complainant's arraignment. *(Eballa v. Paas, A.M. No. MTJ-01-1365, August 9, 2001).* Sec. 1 (a), Rule 116 of the Rules of Court requires that the accused-appellant be furnished a copy of the complaint or information with the list of witnesses to be read to him in the language or dialect known to him. *(People v. Molina, G.R. No. 141129-33, 14 December 2001).* Counsel de officio should have reasonable time (at least one hour under the 1985 Rules of Criminal Procedure) to consult with the accused as to his plea before proceeding with the arraignment. Where it

appears that a counsel *de officio* resorted to procedural shortcuts that amounted to inadequate counseling, the Court will strike down the proceedings had in order to promote a judicious dispensation of justice. A judgment of conviction cannot stand upon an invalid arraignment. *(People v. Bascuguin, G.R. No. 144404, 24 September 24, 2001).*

Re-arraignment. After the accused withdrew the plea of guilty, the trial court should re-arraign him. *(People v. Nuelan, G.R. No. 123075, 8 October 2001).*

Plea of Guilty to Capital Offenses. Three (3) things are enjoined on the trial court after a plea of guilty to a capital offense has been entered by the accused:

(1) The court must conduct a *searching inquiry* into the voluntariness and full comprehension of the consequences of his plea;

(2) The court must require the prosecution to present evidence to prove the guilt of the accused and the precise degree of his culpability; and

(3) The court must ask the accused if he desires to present evidence in his behalf and allow him to do so if he desires. (*id.*).

(A) The *searching inquiry* must focus on the voluntariness of the plea and the full comprehension of its consequences so that the plea of guilty can be truly said to be based on a free and informed judgment. There are no hard and fast rules as to how a judge may conduct a *searching inquiry,* but the following are guidelines:

(a) Ascertain from the accused himself: [i] How he was brought into the custody of the law; [ii] Whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and [iii] Under what conditions he was detained and interrogated during the investigations. The objective is to rule out the possibility that the accused has been coerced or

placed under a state of duress either by actual threats of physical harm coming from malevolent or avenging quarters.

(b) Ask the defense counsel a series of questions as to whether he had conferred with the accused and completely explained to him the meaning and consequences of a plea of guilty.

(c) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.

(d) Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. Not infrequently, an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions.

(e) Require the accused to fully narrate the incident that spawned the charges against him or make him reenact the manner in which he perpetrated the crime, or cause him to supply missing details of significance.

(People v. Aranzado, G.R. Nos. 132442-44, 24 September 2001; People v. Molina, G.R. Nos. 141129-33, 14 December 2001; People v. Chua, G.R. No. 137841, 1 October 2001).

Plea Of Guilty. Aggravating Circumstances. A plea of guilty does not mean admission of the qualifying and generic aggravating circumstances alleged in the information. Such plea cannot stand in place of the evidence that must be presented and called for by Sec. 3, Rule 116 of the Rules of Court. Trial courts are required to

demand that the prosecution should prove the exact liability of the accused. *(People v. Almendras, G.R. No. 137277, 20 December 2001).*

Remand of Case. An improvident plea of guilty does not automatically require a remand of the case. To warrant a remand, it must also be proved that as a result of the improvident plea, there was inadequate presentation of facts by either the prosecution or the defense during the trial. *(People v. Molina, G.R. Nos. 141129-33, 14 December 2001).*

MOTIONS

Motion to Dismiss or Withdraw Information. Once a case has been filed with the court, it is that court, and no longer the prosecution, which has full control of the case, so much so that the information may not be dismissed without its approval. Significantly, once a motion to dismiss or withdraw the information is filed, the court may grant or deny it, in the faithful exercise of judicial discretion. In doing so, the trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after his assessment of the evidence in the possession of the prosecution. The judge must not merely accept the prosecution's word for its supposed insufficiency. *(Odin Security Agency v. Sandiganbayan, G.R. No. 135912, 17 September 2001).*

Court Orders Must Be In Writing. R.A. No. 6031, effective 4 August 1969, made inferior courts also courts of record. There is all the more reason for insisting that the trial court put its order in writing in this case where it has to resolve a motion for reduction of bail. Respondent judge should explain the reason for the denial of complainant's motion, instead of simply noting her action on the margin of such motion. *(Eballa v. Paas, A.M. No. MTJ-01-1365, 9 August 2001).*

JUDGMENT

Acquittal. Not reviewable by certiorari. *(Ala-Martin v. Hon. Sultan, G.R. No. 117512, 2 October 2001)*. Is immediately final upon its promulgation. It cannot be recalled for correction or amendment, except in the cases already mentioned nor withdrawn by another order reconsidering the dismissal of the case since the inherent power of a court to modify its order or decision does not extend to a judgment of acquittal in a criminal case. *(Argel v. Pascua, A.M. No. RTJ-94-1131, 20 August 2001).*

Contents of. *(People v. Mendoza, G.R. No. 143702, 13 September 2001; Monsanto v. Zerna, G.R. No. 142501, 7 December 2001).*

NEW TRIAL

Motion for New Trial. Grounds. (*Lumanog v. Hon. Salazar, G.R. No. 142065, 7 September 2001; People v. Dante, G.R. No. 127652, 5 December 2001)*. Newly discovered evidence. *(People v. Agravante, G.R. Nos. 137297 & 138547-48, 11 Dcember 2001).*

APPEAL

Automatic Review. Capital offenses. *(People v. Chua, G.R. No. 137841, 1 October 2001)*. The automatic review is deemed to include an appeal of the less serious crime, although not so punished by death, where the less serious crime arose out of the same occurrence or was committed by the accused on the same occasion as that which gave rise to the more serious offense. *(People v. Torres, G.R. Nos. 135522-23, 2 October 2001).*

Appeal By Government. Where the accused after conviction by the trial court did not appeal his conviction, an appeal by the

government seeking to increase the penalty imposed by the trial court places the accused in double jeopardy and should therefore be dismissed. Even assuming that the penalties imposed by the trial court were erroneous, these cannot be corrected by the Court on appeal by the prosecution. (*People v. Viernes, G.R. Nos. 136733-35, 13 December 2001)*. An appeal in a criminal proceeding throws the whole case open for review. *(People v. Leones, G.R. No. 128514, 3 October 2001)*. It becomes the duty of the Court to correct any error in the appealed judgment, whether or not made the subject of an assignment of error. *(People v. Damitan, G.R. No. 140544, 7 December 2001).* The law does not require the accused and/or counsel to manifest an intention to appeal a judgment of conviction immediately after its promulgation. Precisely, the law gives the accused fifteen (15) days from the date of promulgation of judgment of conviction to avail of other remedies, either by filing a Motion for Reconsideration or New Trial which stops the running of the period for perfecting an appeal or file a Notice of Appeal. *(Lilia v. Judge Fanuñal, A.M. No. RTJ-99-1503, 13 December 2001).*

SEARCH AND SEIZURE

Place to be Searched, Things to be Seized. Must be adequately described. The place to be searched cannot be changed, enlarged nor amplified by the police. Policemen may not be restrained from pursuing their task with vigor, but in doing so, care must be taken that constitutional and legal safeguards are not disregarded. Exclusion of unlawfully seized evidence is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. The two-witness requirement under Sec. 10, Rule 126 of the Revised Rules of Court applies only in the absence of the lawful occupants of the premises searched. *(Al-Ghoul v. CA, G.R. No. 126859, 4 September 2001).*

Warrantless Searches and Seizures. *T*here are eight (8) instances where a warrantless search and seizure is valid: (1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations. In this case, the warrantless ***search and seizure of the subject handguns and ammunition is valid as they were incidental to a lawful arrest. It was made after a fatal shooting,*** and pursuit of a fast-moving vehicle seeking to elude pursuing police officers, and a more than reasonable belief on the part of the police officers that the fleeing suspects aboard said vehicle had just engaged in criminal activity. Moreover, when caught in *flagrante delicto* with firearms and ammunition which they were not authorized to carry, appellants were actually violating P.D. No. 1866, another ground for a valid arrest under the Rules. *(People v. Abriol, G.R. No. 123137, 17 October 2001).*

Buy-bust Operations. *(People v. Julian-Ferdandez, G.R. Nos. 143850-53, 18 December 2001).*

Question On Search Warrant. Whenever a search warrant has been issued by one court or branch and a criminal prosecution is initiated in another court or branch as a result of the service of the search warrant, a motion questioning the validity of the search warrant should be consolidated with the criminal case for orderly procedure and the presiding judge in the criminal case should have the right to act on the motion challenging the validity of the search warrant or petitions to exclude evidence unlawfully obtained. *(Ong v. CA, G.R. No. 132839, 21 November 2001).*

IV. EVIDENCE

RULES OF ADMISSIBILITY

REAL EVIDENCE

Forensic Ballistics. Identification of firearm through gun barrel imprints of bullet fired from gun. *(People v. Abriol, G.R. No. 123137, 17 October 2001).*

GUNSHOT WOUNDS. (id.).

Paraffin Test. (id.). Negative result will not necessarily exculpate accused. *(People v. Castillon III, G.R. No. 132718, 5 October 2001).*

DOCUMENTARY EVIDENCE

Parol Evidence. Rule. *(Roble v. Arbasa, G.R. No. 130707. July 31, 2001; R & M General Merchandise v. CA, G.R. No. 144189, October 5, 2001).* One of the recognized exceptions to the rule is when a party puts in issue in his pleading the failure of the document to express the true intent and agreement of the parties thereto. *(American Home Assurance Company v. Tantuco Enterprises, Inc. G.R. No. 138941, 8 October 2001).*

Public Document. Documents acknowledged before notaries public are public documents admissible in evidence without the necessity of preliminary proof as to their authenticity and due execution. Respondents claim that the signature appearing in the deed of sale was not that of Generosa because she was already bedridden with both legs amputated before she died. Forgery cannot be presumed; it must be proved by clear, positive and convincing evidence by whoever alleges the same, a burden respondents failed to discharge. *(Fernandez v. Fernandez, G.R. No. 143256, 28 August 2001).*

Private Document. A daily time record is a private document. As a prerequisite to its admission in evidence, its identity and authenticity must be properly laid and reasonably established. *(People v. Guanson, G.R. No. 130966, 13 December 2001).*

TESTIMONIAL EVIDENCE

QUALIFICATION OF WITNESSES

Expert Witness. There is no definite standard of determining the degree of skill or knowledge that a witness must possess in order to testify as an expert. It is sufficient that the following factors are present: (a) training and education; (b) particular first-hand familiarity with the facts of the case; and (c) presentation of authorities or standards upon which his opinion is based. The question of whether a witness is properly qualified to give an expert opinion rests with the discretion of the trial court. *(People v. Abriol, G.R. No. 123137, 17 October 2001).*

Disqualification by Reason of Marriage. Priveleged Communication. *(Ala-Martin v. Hon. Sultan, G.R. No. 117512, 2 October 2001).*

Dead Man's Statute. Disqualification by Reason of Death or Insanity of Adverse Party. (Sec. 23, Rule 130 of the Rules of Court). If one party to the alleged transaction is precluded from testifying by death, insanity, or other mental disabilities, the surviving party is not entitled to the undue advantage of giving his own uncontradicted and unexplained account of the transaction. Before this rule can be successfully invoked, it is necessary that: (1) The witness is a party or assignor of a party to a case or person in whose behalf a case is prosecuted; (2) The action is against an executor or administrator or other representative of a deceased person or a person of unsound mind; (3) The subject-matter of the

action is a claim or demand against the estate of such deceased person or against person of unsound mind; and (4) The testimony refers to any matter of fact which occurred before the death of such deceased person or before such person became of unsound mind. When it is the executor or administrator or representatives of the estate that sets up the counterclaim, the plaintiff may testify to occurrences before the death of the deceased to defeat the counterclaim. Protection under the dead man's statute was effectively waived when counsel for petitioner widow cross-examined private respondent on matters occurring during the deceased's lifetime. (*Santos v. Santos, G.R. No. 133895, 2 October 2001).*

ADMISSIONS AND CONFESSIONS

Extra-judicial Confession. (a) Given under custodial investigation without the assistance of counsel is inadmissible in evidence. *(People v. Mendoza, G.R. No. 143702, 13 September 2001).* (b) However, a confession to a radio reporter in the course of an interview is admissible where it was not shown that said reporter was acting for the police or that the interview was conducted under circumstances where it is apparent that the suspect confessed to the killing out of fear. *(People v. Abulencia, G.R. No. 138403, 22 August 2001)*. (c) Valid and admissible, having been voluntarily executed with the assistance of counsel, who explained to the accused the consequences of his confession. While as a rule such confession cannot be used as evidence against a co-accused for the same is considered hearsay, it may nevertheless be utilized as corroborative evidence to prove the existence of conspiracy among the accused in committing the crime. The implication of this rule is that there must be a finding of other circumstantial evidence which, when taken together with the confession, establishes the guilt of a co-accused beyond reasonable doubt. Here, the accused, after executing his extrajudicial confession, led the police to the lair of his co-accused, where the authorities recovered the movables taken

from the victim's house. *(People v. Francisco, G.R. No. 138022, 23 August 2001).*

Offer of Compromise by Accused. Implied admission of guilt. *(People v. Viernes, G.R. Nos. 136733-35, 13 December 2001).*

Previous Conduct as Evidence. Moral Character of Accused. *(People v. Concorcio, G.R. No. 121201-02, 19 October 2001).*

Impeachment of Witness. A witness may be impeached by evidence that his general reputation for truth, honesty, or integrity is bad. However, a witness cannot be impeached by evidence of particular wrongful acts unless there is a showing of previous conviction by final judgment. Existence of a pending information may not be shown to impeach him. *(People v. Nanas, G.R. No. 137299, 21 August 2001).* If a witness is not impeached during cross-examination, his testimony must be taken as any other testimony, with the presumption of truthfulness as it was given under oath. *(People v. Ruiz, G.R. No. 135679 & 137375, 10 October 2001).*

TESTIMONIAL KNOWLEDGE

Hearsay. A private certification where the person who issued the same was never presented as a witness. The same is true of letters. While it may be admitted because of lack of objection by the adverse party's counsel, it is nonetheless without probative value. *(Tin v. People, G.R. No. 126480, 10 August 2001).* When the trial court, motu proprio, used the joint affidavit to impeach the witness, it did so in error. *(People v. Ruiz, G.R. No. 135679 & 137375, 10 October 2001).*

Exceptions to the Hearsay Rule: (a) **Dying Declaration.** *(People v. Quimson, G.R. No. 130499, 5 October 2001; People v. Bituon, G.R. No. 142043, 13 September 2001; People v. Gadia, G.R. No. 132384, 21 September 2001).*

(b) ***Res Gestae.*** The prosecution witness testified that when he conducted the investigation immediately after the incident, he questioned the people at the scene of the crime if they knew who shot the victim. The response he got was: *"yun hong pulis na nakatira sa tapat,"* referring to petitioner. The trial court properly admitted this statement as part of res gestae. *(De la Cruz v. CA, G.R. No. 139150, 20 July 2001).* While it was not adequately shown that the statements testified to were in the nature of dying declarations, the same could be taken as being part of *res gestae. (People v. Mosende, G.R. No. 137001, 5 December 2001; People v. Quimson, G.R. No. 130499, 5 October 2001).*

BURDEN OF PROOF AND PRESUMPTIONS

Presumption of Regularity in the Performance of Official Functions. *(People v. Abriol, G.R. No. 123137, 17 October 2001).* Cannot prevail over the presumption of innocence. *(People v. Ruiz, G.R. No. 135679 & 137375, 10 October 2001).* Especially when the death penalty is at stake. *(People v. Molina, G.R. Nos. 141129-33, 14 December 2001).*

Suppressed Evidence. The presumption that suppressed evidence is unfavorable does not apply where the evidence was at the disposal of both the defense and the prosecution. *(People v. Mazo, G.R. No. 136869, 17 October 2001).*

Flight. Evidence of guilt. *(People v. Corre, G.R. No. 137271, 15 August 2001).* Negates self-defense. *(People v. Geneblazo, G.R. No. 133580, 20 July 2001).*

PRESENTATION OF EVIDENCE

Handwriting. (Sec. 22 of Rule 132). *(Biona v. CA, G.R. No. 105647, 31 July 2001).*

OFFER AND OBJECTION

Formal Offer Of Evidence. No evidence shall be admitted which has not been formally offered. Neither can affidavits be considered on the assertion alone of the defense that the same had been appended to the criminal complaints or on the ground that their existence had been admitted by the prosecution. Formal offer of evidence is essential because the decision of a judge must rest solely and strictly upon the evidence presented during the trial, and no finding of fact can be sustained without a solid footing on evidence. *(People v. Logmao, G.R. Nos. 134831-32, 31 July 2001; Ala-Martin v. Hon. Sultan, G.R. No. 117512, 2 October 2001).* Evidence offered in rebuttal is not automatically excluded just because it would have been more properly admitted in the case in chief. Whether evidence could have been more properly admitted in the case in chief is not a test of admissibility of evidence in rebuttal. *(People v. Mazo, G.R. No. 136869, 17 October 2001).*

Evidence In Criminal Cases. The prosecution has the prerogative to choose the evidence *(De la Cruz v. CA, G.R. No. 139150, 20 July 2001),* or the witnesses *(Tin v. People, G.R. No. 126480, 10 August 2001; People v. Mazo, G.R. No. 136869, 17 October 2001)* it wishes to present. *(People v. Ferrer, G.R. No. 142662, 14 August 2001).*

WEIGHT AND SUFFICIENCY OF EVIDENCE

Circumstantial Evidence. (a) For this evidence to convict, it is required that: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. The circumstantial evidence presented and proved must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to accused as the guilty person, to the exclusion of all others. *(People v. Baulite,*

G.R. No. 137599, 8 October 2001; People v. Ayola, G.R. No. 138923, 4 September 2001; People v. Leaño, G.R. No. 138886, 9 October 2001). Where the witness did not actually see the very act of committing the offense, the accused can still be identified as the perpetrator, as when the latter is the person or one of the persons last seen with the victim immediately before and right after the perpetration of the crime. In this case, the positive identification forms part of circumstantial evidence. *(People v. Castillon III, G.R. No. 132718, October 5, 2001).* (b) Established: [i] robbery with homicide (People v. Corre, G.R. No. 137271, 15 August 2001; [ii] homicide *(People v. Parba, G.R. No. 133886, 5 September 2001; People v. Gallo, G.R. No. 133002, 19 October 2001)*; [iii] murder *(People v. Abriol, G.R. No. 123137, 17 October 2001; People v. Francisco, G.R. No. 138022, 23 August 2001).*

Motive. Material when the evidence is circumstantial or inconclusive, and there is some doubt on whether a crime has been committed or whether the accused has committed it. Not necessary when there is a clear and positive identification of the perpetrator of the crime. *(People v. Garcia, G.R. No. 135666, 20 July 2001; People v. Abriol, G.R. No. 123137, 17 October 2001; People v. Ramos, G.R. Nos. 135068-72, 20 September 2001; People v. Leaño, G.R. No. 138886, 9 October 2001).*

Positive Identification. (a) Pertains essentially to proof of identity and not per se to that of being an eyewitness to the very act of commission of the crime. Two types: [i] A witness may identify a suspect or accused in a criminal case as the perpetrator of the crime as an eyewitness to the very act of the commission of the crime. This constitutes direct evidence. [ii] Although a witness may not have actually seen the very act of commission of a crime, he may still be able to positively identify a suspect or accused as the perpetrator of a crime, as when the latter is the person or one of the persons last seen with the victim immediately before and right after the commission of the crime. This is part of circumstantial evidence. *(People v. Francisco, G.R. No. 138022, 23 August 2001).*

(b) Established. Even though the prosecution witnesses failed to identify the companions of the appellant, they consistently pointed to the appellant as the assailant. *(People v. Garcia, G.R. No. 135666, 20 July 2001).* (c) Not Established. The so-called identification was marked with unexplained uncertainties and inconsistencies. *(People v. Ramos, G.R. Nos. 135068-72, 20 September 2001).*

Equipoise Rule. Where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates, the party having the burden of proof loses. *(Tin v. People, G.R. No. 126480, 10 August 2001; Marubeni Corporation v. Lirag, G.R. No. 130998, 10 August 2001).*

Negative Averment. There is no merit to the claim that the prosecution failed to prove that petitioners have no license or authority to sell and distribute shabu. Where the negative of an issue does not permit of direct proof, or the facts are more immediately within the knowledge of the *accused, the onus probandi* rests upon him. Stated otherwise, it is not incumbent upon the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which, if untrue, could readily be disproved by the production of documents or other evidence within the defendant's knowledge or control. *(People v. Julian-Ferdandez, G.R. Nos. 143850-53, 18 December 2001).*

CREDIBILITY OF WITNESSES

(a) Evaluation by the Trial Court and the Appellate Court. When an accused assails the identification made by witnesses, he in effect attacks the credibility of those witnesses. *(People v. Bracero, G.R. No. 139529, 31 July 2001; People v. Gomez, G.R. No. 132673-75, 17 October 2000; People v. Perreras, G.R. No. 139622, 31 July 31, 2001; De la Cruz v. CA, G.R. No. 139150, July 20, 2001).* When the issue is

which of the conflicting versions of the prosecution and the defense is credible, the trial court's answer is generally viewed as correct and entitled to the highest respect. *(People v. Callos, G.R. No. 123913-14, 11 October 2001).* And where such assessment is affirmed by the CA, the Court ought not to interfere with the trial court's findings on the credibility of a witness. *(People v. Ubaldo, G.R. No. 129389, 17 October 2001; People v. De Guzman, G.R. No. 124037, 2 October 2001;).* Exceptions to the rule: [i] when patent inconsistencies in the statements of witnesses are ignored by the trial court or [ii] when the conclusions arrived at are clearly unsupported by the evidence. *(People v. Garcia, G.R. No. 135666, 20 July 2001; People v. Laxa, G.R. No. 138501, 20 July 2001).*

(b) Relationship of Witness to Victim. Does not affect the credibility of the witness where there is no showing of improper motive on the part of the witness. *(People v. Vicente, G.R. No. 142447, 21 December 2001; People v. Iglesia, G.R. No. 132354, 13 September 2001; People v. Morial, G.R. No. 129295, 15 August 2001; People v. Pablo, G.R. Nos. 113822-23, 15 August 2001).* That the witnesses worked for the victim does not in any way render their testimonies incredulous. *(De la Cruz v. CA, G.R. No. 139150, 20 July 2001).*

(b) Delay in Reporting Crime. Does not affect the credibility of the witness, when justified, as in the following: [i] Existence of continuous threats against the victim, her tender age, apathy of her relatives and moral ascendancy of offender. *(People v. Barbosa, G.R. No. 126899, 2 August 2001)*; [ii] Tormentor was a city policeman who threatened complainants at gunpoint that he would harm them if they reported the matter to anyone. Complainants were both unschooled who believed the threat entirely. *(Sarabia v. People, G.R. No. 142024, 20 July 2001).* [iii] Complainant's attacker is her own uncle in whose house she and her brothers lived. He threatened her and she believed his threats. *(People v. Supnad, G.R. Nos. 133791-94, 8 August 2001).* [iv] Other cases of justified delays: *(People v. Gomez, G.R. No. 132673-75, 17 October 2000; People v. Bation, G.R. No.*

134769-71, 12 October 2001; People v. Cabangcal, G.R. No. 135065, 8 August 2001; People v. Morial, G.R. No. 129295, 15 August 2001; People v. Aguero, G.R. No. 139410, 20 September 2001; People v. Nanas, G.R. No. 137299, 21 August 2001; People v. Callos, G.R. No. 123913-14, 11 October 2001; People v. Ubaldo, G.R. No. 129389, 17 October 2001; People v. Gomez, G.R. No. 132673-75, 17 October 2001; People v. Glabo, G.R. No. 129248, 7 December 2001; People v. Ariola, G.R. No. 142602-05, 3 October 2001; People v. Evangelista, G.R. No. 132044, 5 October 2001; People v. Logmao, G.R. Nos. 134831-32, 31 July 2001).

(c) Alibi and Denial. [i] Not Given Credence. Bare denial of accused-appellant cannot overcome the positive declaration by complainant. Alibi cannot prosper if it is sought to be established mainly by the accused and his relatives, and not by credible persons. *(People v. Rivera, G.R. No. 139180, 31 July 2001; People v. Perreras, G.R. No. 139622, 31 July 2001; People v. Corre, G.R. No. 137271, 15 August 2001; People v. Hamto, G.R. No. 128137, 2 August 2001; People v. Sanchez, G.R. No. 121039-45, 18 October 2001; De la Cruz v. CA, G.R. No. 139150, 20 July 2001; People v. Mosende, G.R. No. 137001, 5 December 2001; People v. Clariño, G.R. No. 134634, 31 July 2001; People v. Morial, G.R. No. 129295, 15 August 2001; People v. Cabangcala, G.R. No. 135065, 8 August 2001; People v. Mosquerra, G.R. No. 129209, 9 August 2001; People v. Quimson, G.R. No. 130499, 5 October 2001)*. The witness presented by accused-appellant to prove the authenticity of the "Morning Report" of the NISF merely testified on what appears on the report and not as to the fact that he actually saw accused-appellant at his post at the 3rd gate of Fort Bonifacio. Moreover, while accused-appellant claimed that some top navy officials support him, not one of them testified to back-up his defense of alibi. *(People v. Ojerio, G.R. No. 132320, 7 September 2001)*. [ii] Given Credence. There are instances when an accused may really have no other defense but denial and *alibi* that if established to be the truth, may tilt the scales of justice in his favor, especially when the prosecution evidence itself is weak. *(People v. Morales, G.R. No. 134292, 16 August 2001).*

(d) Inconsistencies or Lack of Precision on Details: (1) Minor. [i] Did not affect the credibility of the witness. Re specifics of the firearms or weapons used. *(People v. Quimson, G.R. No. 130499, 5 October 2001)*. [ii] Discrepancies between a witness' affidavit and his testimony in open court. *(People v. Bracero, G.R. No. 139529, 31 July 2001; People v. Rivera, G.R. No. 139180, 31 July 2001).* [iii] Location of the victim's wounds. *(People v. Hermosa, G.R. No. 131805, 7 September 2001; De la Cruz v. CA, G.R. No. 139150, 20 July 2001; People v. Reapor, G.R. No. 130962, 5 October 2001; People v. Concorcio, G.R. No. 121201-02, 19 October 2001; People v. Cariño, G.R. No. 131203, 2 August 2001)*. Re color of accused-appellant's shirt and bag and his error in the approximation of time. *(People v. Castillon III, G.R. No. 132718, 5 October 2001).* For a discrepancy to serve as basis for acquittal, it must refer to significant facts vital to the guilt or innocence of the accused. An inconsistency, which has nothing to do with the elements of the crime, cannot be a ground to reverse a conviction. *(People v. Almazan, G.R. Nos. 138943-44, 17 September 2001)*. (2) Material. To the simple question of who brought the marijuana to the police headquarters, the policemen allegedly involved in the operation gave contradictory answers. *(People v. Laxa, G.R. No. 138501, 20 July 2001).*

(e) Detailed Testimony. The testimony of a witness, giving the details of an incident that cannot easily be fabricated, deserves credence for it indicates sincerity and truthfulness in the narration of events. It acquires greater weight and credence when, as in this case, it coincides with the physical evidence. *(People v. Clariño, G.R. No. 134634, 31 July 2001)*

(f) In Relation to Rape: (1) Child Witness. *(People v. Asuncion, G.R. No. 136779, 7 September 2001)*. (2) Place of Commission. Fly-over area. That the place was well lighted and eight other persons, mostly street children, were also under the fly-over at the time of the incident does not negate complainant's testimony. *(People v. Bohol, G.R. Nos. 141712-13, 22 August 2001).* It is not impossible

to commit rape inside a house where there are several occupants and even in the same room where other members of the family are sleeping. *(People v. Barbosa, G.R. No. 126899, 2 August 2, 2001; People v. Evangelista, G.R. No. 132044, 5 October 2001)*. For rape to be committed, it is not necessary for the place to be ideal, for rapists respect neither time nor place for carrying out their evil designs. *(People v. Rivera, G.R. No. 139180, 31 July 2001)*. (3) Complainant's failure to remember the date of the commission of the rape cannot be taken against her. (id.). (4) The lone testimony of the offended party in a rape case, if free from serious and material contradictions, is sufficient to prove the guilt of the accused beyond reasonable doubt. *(People v. Ariola, G.R. No. 142602-05, 3 October 2001; People v. Gomez, G.R. No. 132673-75, 17 October 2001).* (5) Considering complainant's tender age, her shy demeanor, and manner of testifying in court, the trial court found her testimony to be straightforward, natural, and convincing and accorded the same full faith and credit. *(People v. Rivera, G.R. No. 139180, 31 July 2001)*. That complainant did not cry for help while being raped was adequately explained. *(People v. Barbosa, G.R. No. 126899, 2 August, 2001)*. (6) A medical report is not necessary in a prosecution for rape as long as the evidence on hand convinces the court that conviction is proper. (id.). (7) Pregnancy is not an element of the crime of rape and is totally immaterial to the question of accused-appellant's guilt. *(People v. Rivera, G.R. No. 139180, 31 July 2001).* (8) Accused-appellant's claim that filing of complaint was ill motivated – not given credence. *(id.; People v. Torres, G.R. Nos. 135522-23, 2 October 2001)*. (9) As to complainant's conduct after the commission of rape, suffice it to state that different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. *(People v. Dizon, G.R. No. 129236, 17 October 2001).* (10) Mental Retardate. The competence and credibility of mentally deficient rape victims as witnesses has been upheld by the Court where it is shown that they can communicate their ordeal capably and consistently. *(People v.*

Toralba, G.R. No. 139411, 9 August 2001; People v. Hamto, G.R. No. 128137, 2 August 2001; People v. De los Santos, G.R. No. 141128, 30 August 2001).

Affidavit Of Retraction Or Desistance. The attitude of courts towards affidavits of retraction is one of distrust or disapprobation. *(People v. Morial, G.R. No. 129295, 15 August 2001; People v. Bation, G.R. No. 134769-71, 12 October 2001; People v. Dante, G.R. No. 127652, 5 December 2001).*

IV. LEGAL FEES

Docket Fees. The court acquires jurisdiction over any case only upon the payment of the prescribed docket fees. It is necessary to determine the true nature of the complaint in order to resolve the issue of whether or not respondents paid the correct amount of docket fees. (Gochan v. Gochan, G.R. No. 146089, 13 December 2001). (a) Where the complaint or similar pleading sets out a claim purely for money or damages and there is no precise statement of the amounts being claimed, the rule is that the pleading will not be accepted nor admitted, or shall otherwise be expunged from the record; although the Court may, on motion, permit amendment of the complaint and payment of the fees; provided, the claim has not in the meantime become time-barred. (Chief Justice Davide, dissenting, id.*) (*b) Where the pleading does specify the amount of every claim, but the fees paid are insufficient, the rule now is that the court may allow a reasonable time for the payment of the prescribed fees, or the balance thereof, and upon such payment, the defect is cured and the court may properly take cognizance of the action; unless, in the meantime, prescription has set in and consequently barred the right of action. *(id.)* (c) Where the action involves real property and a related claim for damages as well, the legal fees shall be assessed on the basis of both the value of the property and the total amount of related damages sought. The Court acquires jurisdiction over the action if the filing

of the initiatory pleading is accompanied by the payment of the requisite fees; or, if the fees are not paid at the time of the filing of the pleading, as of the time of full payment of the fees within such reasonable time as the court may grant, unless, prescription has set in the meantime. (d) Where, as in the case, the fees prescribed for an action involving real property have been paid, but the amounts of damages (actual, moral and nominal) being demanded are unspecified, the action may not be dismissed. The Court has jurisdiction over the action involving the real property, acquiring it upon the filing of the complaint or similar pleading and payment of the prescribed fee. And it is not divested of that authority by the circumstance that it may not have acquired jurisdiction over the accompanying claims for damages because of lack of specification thereof. What should be done is simply to expunge those claims for damages as to which no amounts are stated or allow, on motion, a reasonable time for the amendment of the complaints so as to allege the precise amount of each item of damages and accept payment of the requisite fees therefore within the relevant prescriptive period. (*id.*).

TAXATION

NATIONAL INTERNAL REVENUE CODE

INCOME TAX

Tax Amnesty. Income Tax, Branch Profit Remittance Tax and Contractor's Tax. (Executive Orders Nos. 41 and 64, as amended). Taxpayers who may avail of the amnesty. *(Commissioner of Internal Revenue v. Marubeni Corporation, G.R. No. 137377, 18 December 2001).*

Contractor's Tax. Independent Contractors. A contractor's tax is a tax imposed upon the privilege of engaging in business. It is generally in the nature of an excise tax on the exercise of a privilege of selling services or labor rather than a sale on products; and is directly collectible from the person exercising the privilege. Being an excise tax, it can be levied by the taxing authority only when the acts, privileges or business are done or performed within the jurisdiction of said authority. Like property taxes, it cannot be imposed on an occupation or privilege outside the taxing district. (*id.*).

Tax Refund. Two-year Prescriptive Period (Sec. 292 of the Tax Code). Petitioner's claim for tax refund is barred by prescription. *(Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 144653, 28 August 2001).*

SPECIFIC TAXES

(a) **On Refined and Manufactured Mineral Oil, Motor Fuel and Diesel Fuel Oil.** Forfeiture of cash refund. *(Aras-asan Timber Co. v. Commissioner of Internal Revenue, G.R. No. 132155, 16 August*

2001). (b) Tobacco. Removal of Tobacco products without prepayment of tax. *(Commissioner of Internal Revenue v. La Campana Fabrica de Tabacos, G.R. No. 145275, 15 November 2001).*

PROTESTING AN ASSESSMENT

Disputed Assessment. Deficiency assessment of the Commission of Internal Revenue for surcharge, interests and other penalties. Appeals from decisions of the Collector of Internal Revenue (Sec. 7 of R.A. No. 1125, creating the Court of Tax Appeals). *(Vda de San Agustin v. Commissioner of Internal Revenue, G.R. No. 138485, 10 September 2001).*

Civil Penalties and Interest. (*id.*).

TARIFF AND CUSTOMS CODE

Forfeiture of Goods. Not favored in law or equity. Mere negligence is not equivalent to the fraud contemplated by law. What is here involved is an honest mistake, not even directly attributable to private respondent, which will not deprive the government of its right to collect the proper tax. *(Republic v. Court of Tax Appeals, G.R. No. 139050, 2 October 2001).*

INVESTMENT INCENTIVES

New or Expanding Export Producers Duly Registered with Tte BOI. Tax credit on Net Value Earned and Net Local Content of Exports. *(Pilipinas Kao v. CA, G.R. No. 105014, 18 December 2001).*

LOCAL GOVERNMENT TAXES

Real Property Taxes. *(Manzano v. Perez, G.R. No. 112485, 9 August 2001).*