The BEDAN REVIEW is an annual publication by the students of San Beda College Alabang, School of Law. It features literary compositions contributed by members of the Bedan community on topics of interest to law students and legal practitioners.

The views expressed in these articles are solely those of the contributors and do not necessarily reflect the views of either the San Beda College Alabang - School of Law and the Board of Editors of The Bedan Review.

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The Bedan Review invites the submission of unsolicited essays, articles or reviews academically addressing legal issues and developments. The Review will give preference to articles under 25 law review pages in length, which is equivalent to 12,500 words. Articles in excess of 50 pages may still be published under exceptional circumstances. Manuscripts must be submitted online at thebedanreview@sanbeda-alabang.edu.ph in Microsoft Word document format or Rich Text format. Include the author’s name, contact information and biographical information.

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EDITOR'S NOTE

“The life of law has not been logic; it has been experience.”

– Oliver Wendell Holmes Jr. (Associate Justice of the Supreme Court of the United States from 1902 to 1932)

Every law review attempts to foster its own credibility by developing and maintaining a reputation for objectivity and open-mindedness. The law embodies the story of the country’s development through the years. Laws are indeed evolving and it can be exemplified through the new laws and resolutions that have been passed each year. It is inevitable that society changes and in effect, the law changes through time as well as the decisions of the Court. It is the duty of the Review to be vigilant with these changes and to keep up to date with the current legal and social issues.

The Bedan Review, on its fourth publication has strived to contribute to the academic discourse surrounding issues in the country and abroad by publishing articles by both students and law practitioners. It enhances the learning experience for students by providing opportunities to develop and improve legal writing and research skills, with in-depth exposure to a rapidly expanding body of law that amplifies general course work.

Turning to our current journal issue, we again present a diverse selection of stimulating articles from law professors and students. As national and local elections are approaching, the article of Commissioner Rene Sarmiento is very timely as it tackled on the issue of Mall Voting for PWDs. Another interesting article was written by Justice Cosico with regard to the Supreme Court’s decision on DAP. The Review has consistently published articles on Environmental Law written by Ambassador Amado S. Tolentino Jr. that is committed both to making major contributions to the field of environmental law and to provide substantive learning opportunities to the student body. Atty. Saul Hofilena Jr. also made a contribution of his article based on a research on the earliest legal document in the Philippines. History is always interesting as it traces the fruits down to its roots.

I am deeply honored and proud to say that the participation of the student body in this year’s law journal has increased. Also, almost all of the members of the Review have actively participated in the contribution of their works. To my Associate Editor, Vericson Quitco,
member Lorenzo Delgado and Moujeck Cabales who is part of the student body, thank you for engaging to delve and research in 2015’s significant current political and social issues. We also presented recent jurisprudence in Labor Law under the supervision of Atty. Paulino Ungos Jr. and summarized by the members of the Review. Likewise, Dean Ed Vincent S. Albano has provided the survey of cases in Remedial Law and Civil Law.

We would like to thank our steadfast faculty advisor, Atty. Bruce Villafuerte Rivera who also managed to contribute an article for this year’s issue. His guidance and support make our journal possible. We are indebted to him for the time and effort that he put into our journal.

On a final note, the outgoing board would like to send its best wishes to next year’s new editorial board, current and incoming members. We hope that they will continue the efforts and appreciation for academic scholarship. Legal research is indeed an important matter to which students of law must not set aside.

Roselle Anne B. Catipay
Editor-in-Chief
FOREWORD

Jurisdiction of the arbitration court to hear territorial claims over the South China Sea

An arbitration tribunal in Netherlands has ruled on October 29, 2015 that it has jurisdiction to hear on several issues in the maritime dispute case between China and the Philippines over the South China Sea (West Philippine Sea). The full text of the press release of the arbitration court with regard to the award of jurisdiction and admissibility as well as the positions of both parties involved and the next steps for further proceedings are herein provided by Ambassador Rolando Gregorio.

Mall Voting for PWDs: Legal & Constitutional, Rights-based and Inclusive Friendly
Comm. Rene V. Sarmiento

One of the most important rights of a citizen is his right to suffrage, this article is a discourse on the potential, legality and validity of conducting mall voting for persons with disabilities. The author named different constitutional provisions as well as international conventions to support mall voting which are designed to encourage persons with disabilities to participate more actively in political and public life. The article addressed the possible criticisms and opposition to mall voting for PWDs.

The Supreme Court ruling on the Disbursement Acceleration Program
Justice Rodrigo V. Cosico

Under the Doctrine of Separation of Powers one person or body of persons should not exercise all the three forms of power of the governance - Executive, Legislature and Judiciary. The article is a discussion on the unconstitutionality of the Development Acceleration Program for violating the doctrine on separation of powers and constitutional prohibitions against reappropriation of government funds. The author also expounded on the liability of the authors of the Development Acceleration Program and the impact of the Supreme Court’s ruling on the 2015 and 2016 national budget.

Synergies: Ramsar Convention on Wetlands, Convention on Biological Diversity, Climate Change Convention
Ambassador S. Tolentino Jr.

Wetlands, biodiversity and climate change interact and are interdependent with each other. These are manifest at the way resources and services wetland provide are affected by climate
change. The Ramsar Convention and the Convention on Biological Diversity give recognition to
the importance of wise use of wetlands in dealing with the ecosystem management, specifically
in minimizing degradation, promoting restoration as well as improving management practices of
wetlands, and increasing adaptive capacity of society to respond to changes in the ecosystem due
to climate change.

An Ancient Legal Document: The Laguna Copperplate
Atty. Saul Hofileña Jr.

History leads us back to old legal documents that allow us to examine the roots of our
legal system and principles today. In this article, the earliest legal document was found to be
written on a copper that was known as the Laguna Copperplate. It further discussed on where it
was found and how the inscriptions on the copper were being deciphered by the paleographer.
The author considered the Laguna Copperplate as the most significant object evidence of
prehistoric Philippines and is the oldest surviving legal document of the Philippines.

Political Secession and the Exercise of Religious Freedom
Roselle Anne B. Catipay

The constitutional provision of the "separation of church and state" is commonly
invoked, and which has today become so familiar. Generally, the State cannot meddle in the
internal affairs of the church, much less question its faith and dogmas or dictate upon it. It cannot
favor one religion and discriminate against another. The Philippine Constitution has provided for
“non-establishment” and “free exercise” clauses which are expounded in this article. It also made
comparisons of the evolution of the constitutional provisions on the separation of church and
state to clearly establish the relevance of this principle in our society.

Enrile’s Bail: Humanitarianly Unconstitutional?
Vericson D. Quitco

The year 2015 was all about the Pork Barrel Scam which involved several politicians
including Senator Juan Ponce Enrile. It was publicly known that he was charged with Plunder, a
non-bailable offense, but was released on bail due to health reasons. This Supreme Court
decision has been regarded as one of the most controversial decisions made as such was based on
human rights. The author criticized and expounded on posting of bail based on humanitarian
grounds by citing Justine Leonen’s dissenting opinion.
Forgive and Forget?: Abandoning the Condonation Doctrine Principle in Election Laws
Grace M. Anastacio

The Supreme Court has ruled in Carpio-Morales vs. CA and Binay, Jr. that condonation doctrine will be abandoned but it will apply prospectively. It is a principle that many other elected officials had invoked since 1959. Under the doctrine, the administrative offenses of an elected official are already deemed forgiven when the public decides to re-elect him or her for another term. This article will cite the decisions in the old cases that brought the “condonation doctrine” in the Philippine jurisprudence and further elucidate on how it was overturned in the Binay case.

Equality before the Law: The infamous case of Obergefell et al. v. Hodges
Lorenzo Delgado and Roselle Anne Catipay

This article summarized the US Supreme Court landmark case of Obergefell et al v. Hodges on the fundamental right to marry guaranteed to same-sex couples. It likewise pinned down whether or not the principles laid down by the US Supreme Court is applicable to the Philippine laws.

Legalize It, Medically: Medical Marijuana and Cannabis Regulation
Moujeck Steve O. Cabales

The article expounded on the cannabis plant and its effects, presented the current Philippine and international laws pertaining to the use thereof, and introduced the salient provisions of the House Bill 4477. The debate as to whether cannabis should decriminalize had been a long and contentious issue. Over time, the wealth of medical literature and scholarly research pertaining to the plant’s medicinal properties have led not only to shifting attitudes pertaining to use and consumption, but also to changes in legislation either relaxing or decriminalizing cannabis use. Perhaps in response to these changing views, the Bill was introduced to ‘to provide accessible, affordable, safe medical cannabis to qualifying patients with debilitating medical condition as certified by medical doctors’.

Atty. Bruce V. Rivera
Faculty Adviser
PRESS RELEASE

ARBITRATION BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE PEOPLE’S REPUBLIC OF CHINA

The Hague, 29 October 2015

The Tribunal Renders Award on Jurisdiction and Admissibility; Will Hold Further Hearings

The Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea (the “Convention”) in the arbitration instituted by the Republic of the Philippines against the People’s Republic of China has issued its Award on Jurisdiction and Admissibility. This arbitration concerns the role of “historic rights” and the source of maritime entitlements in the South China Sea, the status of certain maritime features in the South China Sea and the maritime entitlements they are capable of generating, and the lawfulness of certain actions by China in the South China Sea that are alleged by the Philippines to violate the Convention.
In light of limitations on the matters that can be submitted to compulsory dispute settlement under the Convention, the Philippines has emphasized that it is not requesting the Tribunal to decide the question of sovereignty over maritime features in the South China Sea that are claimed by both the Philippines and China. Nor has the Philippines requested the Tribunal to delimit any maritime boundary between the two States. China has repeatedly stated that “it will neither accept nor participate in the arbitration unilaterally initiated by the Philippines.” China has, however, made clear its view—in particular through the publication in December 2014 of a “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” (“China’s Position Paper”)—that the Tribunal lacks jurisdiction to consider the Philippines’ Submissions.

Under the Convention, an arbitral tribunal must satisfy itself that it has jurisdiction to decide a matter presented to it, even if a party chooses not to participate in the proceedings or to make a formal objection. Accordingly, the Tribunal decided in April 2015 that it would treat China’s Position Paper as effectively constituting a plea concerning the Tribunal’s jurisdiction and convened a Hearing on Jurisdiction and Admissibility that took place in The Hague on 7, 8 and 13 July 2015.

The Tribunal’s Award of today’s date is unanimous and concerns only whether the Tribunal has jurisdiction to consider the Philippines’ claims and whether such claims are admissible. The Award does not decide any aspect of the merits of the Parties’ dispute. In its Award, the Tribunal has held that both the Philippines and China are parties to the Convention and bound by its provisions on the settlement of disputes. The Tribunal has also held that China’s decision not to participate in these proceedings does not deprive the Tribunal of jurisdiction and that the Philippines’ decision to commence arbitration unilaterally was not an abuse of the Convention’s dispute settlement procedures. Reviewing the claims submitted by the Philippines, the Tribunal has rejected the argument set out in China’s Position Paper that the Parties’ dispute is actually about sovereignty over the islands in the South China Sea and therefore beyond the Tribunal’s jurisdiction. The Tribunal has also rejected the argument set out in China’s Position Paper that the Parties’ dispute is actually about the delimitation of a maritime boundary between them and therefore excluded from the Tribunal’s jurisdiction through a declaration made by China in 2006. On the contrary, the Tribunal has held that each of the Philippines’ Submissions reflect disputes between the two States concerning the interpretation or application of the Convention. The Tribunal has also held that no other States are indispensable to the proceedings.

Turning to the preconditions to the exercise of the Tribunal’s jurisdiction set out in
the Convention, the Tribunal has rejected the argument in China’s Position Paper that the 2002 China–ASEAN Declaration on the Conduct of Parties in the South China Sea constitutes an agreement to resolve disputes relating to the South China Sea exclusively through negotiation. On the contrary, the Tribunal has held that the China–ASEAN Declaration was a political agreement that was not intended to be legally binding and was therefore not relevant to the provisions in the Convention that give priority to the resolution of disputes through any means agreed between the Parties. The Tribunal has likewise held that certain other agreements and joint statements by China and the Philippines do not preclude the Philippines from seeking to resolve its dispute with China through the Convention. Further, the Tribunal has held that the Philippines has met the Convention’s requirement that the Parties exchange views regarding the settlement of their dispute and has sought to negotiate with China to the extent required by the Convention and general international law.

The Tribunal then considered the limitations and exceptions set out in the Convention that preclude disputes relating to certain subjects from being submitted to compulsory settlement. The Tribunal observed that whether these limitations and exceptions would apply to the Philippines’ claims was, in some cases, linked to the merits of the claims. For instance, whether the Tribunal would have jurisdiction to address China’s claims to historic rights in the South China Sea may depend upon the Tribunal’s assessment of the nature of China’s claimed rights. Similarly, whether the Tribunal would have jurisdiction to address Chinese activities in the South China Sea may depend upon the Tribunal’s decision on whether any of the maritime features claimed by China are islands capable of generating maritime zones overlapping those of the Philippines. The Tribunal also noted that the location of certain activities and the Convention’s exception for military activities may affect its jurisdiction over certain of the Philippines’ claims.

In light of the foregoing, the Tribunal has concluded that it is presently able to decide that it does have jurisdiction with respect to the matters raised in seven of the Philippines’ Submissions. The Tribunal has concluded, however, that its jurisdiction with respect to seven other Submissions by the Philippines will need to be considered in conjunction with the merits. The Tribunal has requested the Philippines to clarify and narrow one of its Submissions.

The Tribunal will convene a further hearing on the merits of the Philippines’ claims. In consultation with the Parties, the Tribunal has provisionally set the dates for the merits hearing. As with the Hearing on Jurisdiction and Admissibility, the hearing on the merits will not be open to the public, however the
Tribunal will consider requests from interested States to send small delegations of observers. The Permanent Court of Arbitration (the “PCA”), which acts as Registry in the case, will issue further Press Releases upon the commencement and closing of the merits hearing. The Tribunal expects that it will render its Award on the merits and remaining jurisdictional issues in 2016.

An expanded summary of the Tribunal’s reasoning is set out below.

* * * * * * *

SUMMARY OF THE AWARD ON JURISDICTION AND ADMISSIBILITY

1. Background to the Arbitration and to the Proceedings on Jurisdiction and Admissibility

This arbitration concerns an application by the Philippines for rulings in respect of three inter-related matters concerning the relationship between the Philippines and China in the South China Sea. First, the Philippines seeks a ruling on the source of the Parties’ rights and obligations in the South China Sea and the effect of the United Nations Convention on the Law of the Sea on China’s claims to “historic rights” within its so-called “nine-dash line”. Second, the Philippines seeks a ruling on whether certain maritime features claimed by both China and the Philippines are properly characterised as islands, rocks, low tide elevations or submerged banks under the Convention. The status of these features under the Convention may determine the maritime zones they are capable of generating. Finally, the Philippines seeks rulings on whether certain Chinese activities in the South China Sea have violated the Convention, by interfering with the exercise of the Philippines’ sovereign rights and freedoms under the Convention or through construction and fishing activities that have harmed the marine environment.

The Chinese Government has adhered to the position of neither accepting nor participating in these arbitral proceedings. It has reiterated this position in diplomatic notes, in public statements, in the “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” dated 7 December 2014, and in two letters to members of the Tribunal from the Chinese Ambassador to the Kingdom of the Netherlands. The Chinese Government has also made clear that these statements
and documents “shall by no means be interpreted as China’s participation in the arbitral proceeding in any form.”

Under the Convention, a tribunal constituted under Annex VII has jurisdiction to consider a dispute between States Parties to the Convention to the extent that the dispute involves the “interpretation or application” of the Convention. However, the Convention excludes certain types of disputes from the jurisdiction of a tribunal and includes certain preconditions that must be met before any tribunal may exercise jurisdiction.

For reasons set out in Procedural Order No. 4 and explained in the PCA’s Fourth Press Release in this matter, dated 22 April 2015, available at http://www.pcacases.com/web/view/7, the Tribunal considered the communications by China to constitute, in effect, a plea that the Philippines’ Submissions fall outside the scope of the Tribunal’s jurisdiction. Accordingly, the Tribunal conducted a hearing in July 2015 on the scope of its jurisdiction and the admissibility of the Philippines’ claims.

The Tribunal also has a duty pursuant to Article 9 of Annex VII to the Convention to satisfy itself that it has jurisdiction over the dispute. Accordingly, the Tribunal made clear before and during the hearing that it would consider possible issues of jurisdiction and admissibility whether or not they were addressed in China’s Position Paper.

2. The Parties’ Positions

The Philippines’ has made 15 Submissions in these proceedings, requesting the Tribunal to find that:

(1) China’s maritime entitlements in the South China Sea, like those of the Philippines, may not extend beyond those permitted by the United Nations Convention on the Law of the Sea (“UNCLOS” or the “Convention”);

(2) China’s claims to sovereign rights and jurisdiction, and to “historic rights”, with respect to the maritime areas of the South China Sea encompassed by the so-called “nine-dash line” are contrary to the Convention and without
lawful effect to the extent that they exceed the geographic and substantive limits of China’s maritime entitlements under UNCLOS;

(3) Scarborough Shoal generates no entitlement to an exclusive economic zone or continental shelf;

(4) Mischief Reef, Second Thomas Shoal and Subi Reef are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, and are not features that are capable of appropriation by occupation or otherwise;

(1) Mischief Reef and Second Thomas Shoal are part of the exclusive economic zone and continental shelf of the Philippines;

(2) Gaven Reef and McKennan Reef (including Hughes Reef) are low-tide elevations that do not generate entitlement to a territorial sea, exclusive economic zone or continental shelf, but their low-water line may be used to determine the baseline from which the breadth of the territorial sea of Namyit and Sin Cowe, respectively, is measured;

(3) Johnson Reef, Cuarteron Reef and Fiery Cross Reef generate no entitlement to an exclusive economic zone or continental shelf;

(4) China has unlawfully interfered with the enjoyment and exercise of the sovereign rights of the Philippines with respect to the living and non-living resources of its exclusive economic zone and continental shelf;

(5) China has unlawfully failed to prevent its nationals and vessels from exploiting the living resources in the exclusive economic zone of the Philippines;

(6) China has unlawfully prevented Philippine fishermen from pursuing their livelihoods by interfering with traditional fishing activities at Scarborough Shoal;

(7) China has violated its obligations under the Convention to protect and
preserve the marine environment at Scarborough Shoal and Second Thomas Shoal;

(8) China’s occupation and construction activities on Mischief Reef

(a) violate the provisions of the Convention concerning artificial islands, installations and structures;

(b) violate China’s duties to protect and preserve the marine environment under the Convention; and

(c) constitute unlawful acts of attempted appropriation in violation of the Convention;

(9) China has breached its obligations under the Convention by operating its law enforcement vessels in a dangerous manner causing serious risk of collision to Philippine vessels navigating in the vicinity of Scarborough Shoal;

(10) Since the commencement of this arbitration in January 2013, China has unlawfully aggravated and extended the dispute by, among other things:

(d) interfering with the Philippines’ rights of navigation in the waters at, and adjacent to, Second Thomas Shoal;

(e) preventing the rotation and resupply of Philippine personnel stationed at Second Thomas Shoal; and

(f) endangering the health and well-being of Philippine personnel stationed at Second Thomas Shoal; and

(11) China shall desist from further unlawful claims and activities.
With respect to jurisdiction, the Philippines has asked the Tribunal to declare that the Philippines’ claims “are entirely within its jurisdiction and are fully admissible.” The Philippines’ arguments on jurisdiction, advanced during the July 2015 Hearing are summarized in the PCA’s Sixth Press Release in this matter, dated 13 July 2015, available at http://www.pcacases.com/web/view/7.

China does not accept and is not participating in this arbitration but has stated its position that the Tribunal “does not have jurisdiction over this case.” In its “Position Paper of the Government of the People’s Republic of China on the Matter of Jurisdiction in the South China Sea Arbitration Initiated by the Republic of the Philippines” of December 2014, China advanced the following arguments:

- The essence of the subject-matter of the arbitration is the territorial sovereignty over several maritime features in the South China Sea, which is beyond the scope of the Convention and does not concern the interpretation or application of the Convention;
- China and the Philippines have agreed, through bilateral instruments and the Declaration on the Conduct of Parties in the South China Sea, to settle their relevant disputes through negotiations. By unilaterally initiating the present arbitration, the Philippines has breached its obligation under international law;
- Even assuming, arguendo, that the subject-matter of the arbitration were concerned with the interpretation or application of the Convention, that subject-matter would constitute an integral part of maritime delimitation between the two countries, thus falling within the scope of the declaration filed by China in 2006 in accordance with the Convention, which excludes, inter alia, disputes concerning maritime delimitation from compulsory arbitration and other compulsory dispute settlement procedures;

3. The Tribunal’s Award

a. Preliminary Matters

In its Award, the Tribunal noted that both the Philippines and China are parties to the Convention and that the provisions for the settlement of disputes, including through arbitration, form an integral part of the Convention. Although the Convention specifies certain limitations and exceptions to the subject matter of the disputes that may be submitted to compulsory settlement, it does not permit other
reservations and a State may not except itself generally from the Convention’s mechanism for the resolution of disputes.

The Tribunal also noted China’s non-participation and held that this fact does not deprive the Tribunal of Jurisdiction. Article 9 of Annex VII to the Convention provides that:

Absence of a party or failure of a party to defend its case shall not constitute a bar to the proceedings. Before making its award, the arbitral tribunal must satisfy itself not only that it has jurisdiction over the dispute but also that the claim is well founded in fact and in law.

Although China did not participate in the constitution of the Tribunal, the Tribunal held that it had been properly constituted pursuant to the provisions of Annex VII to the Convention. The Tribunal detailed the steps it had taken to satisfy itself regarding its jurisdiction, including through questions posed to the Philippines and through the Hearing on Jurisdiction and Admissibility in July 2015. The Tribunal also recalled the steps it had taken to safeguard the procedural rights of China, including by ensuring that all communications and documents were delivered to China and that China was accorded adequate notice and opportunity to comment and by reiterating that it remains open to China to participate in the proceedings at any stage. The Tribunal also recalled the steps it had taken to ensure that the Philippines was not disadvantaged by China’s non-participation.

Finally, the Tribunal considered the argument set out in China’s Position Paper that the Philippines’ unilateral resort to arbitration constituted an abuse of the dispute settlement provisions of the Convention. The Tribunal noted that, although certain provisions of the Convention address the abuse of rights and provide a preliminary procedure to dismiss claims that are facially unfounded, it was more appropriate to consider China’s concerns about the Tribunal’s jurisdiction as a preliminary objection. The Tribunal also noted that the mere act of unilaterally initiating an arbitration cannot constitute an abuse of the Convention.

b. Existence of a Dispute Concerning Interpretation and Application of the Convention

The Tribunal next considered whether there is a dispute between the Parties concerning the interpretation or application of the Convention, which is the basis for the dispute settlement mechanisms of the Convention. In so doing, the Tribunal considered two objections set out in China’s Position Paper: first, that the Parties’
dispute is actually about sovereignty over the islands of the South China Sea and therefore not a matter concerning the Convention and, second, that the Parties’ dispute is actually about the delimitation of the maritime boundary between them and therefore excluded from dispute settlement by an exception set out in the Convention that States choose to activate. China activated the exception for disputes concerning sea boundary delimitations when it made a declaration in 2006.

With respect to the former objection, the Tribunal noted that there is a dispute between the Parties regarding sovereignty over islands but held that the matters submitted to arbitration by the Philippines do not concern sovereignty. The Tribunal considered it to be expected that the Philippines and China would have disputes regarding multiple subjects and noted that a decision on the claims presented by the Philippines would not require the Tribunal to decide sovereignty, explicitly or implicitly, and did not appear to be intended to advance the Philippines’ position with respect to sovereignty. The Tribunal also emphasized that the Philippines had asked that it not rule on sovereignty over the islands in the South China Sea.

With respect to the latter objection, the Tribunal noted that a dispute concerning whether a State possesses an entitlement to a maritime zone is a distinct matter from the delimitation of maritime zones in an area in which they overlap. While a wide variety of issues are commonly considered in the course of delimiting a maritime boundary, it does not follow that a dispute over each of these issues is necessarily a dispute over boundary delimitation. Accordingly, the Tribunal held that the claims presented by the Philippines do not concern sea boundary delimitation and are not, therefore, subject to the exception to the dispute settlement provisions of the Convention. The Tribunal also emphasized that the Philippines had not asked it to delimit any boundary.

Turning to the matters raised in the Philippines’ Submissions, the Tribunal reviewed the record to determine whether disputes existed between the Parties at the time the Philippines commenced this arbitration and whether such disputes concerned the interpretation and application of the Convention. In so doing, the Tribunal noted that it was necessary to address some ambiguity regarding China’s position on the matters before it and recalled that the existence of a dispute may be inferred from the conduct of a State, or from silence, and is a matter to be determined objectively. The Tribunal considered that each of the Philippines’ claims reflected a dispute concerning the Convention and noted in particular that a dispute concerning the interaction between the Convention and other rights (including any Chinese “historic rights”) is a dispute concerning the Convention.
c. **Involvement of Indispensable Third-Parties**

Having identified the disputes presented by the Philippines’ Submissions, the Tribunal considered whether the absence from this arbitration of other States such as Viet Nam that have claims to the islands of the South China Sea would be a bar to the Tribunal’s jurisdiction. The Tribunal noted that this arbitration differs from past cases in which a court or tribunal has found the involvement of a third-party to be indispensable. Because the Tribunal will not rule on sovereignty, the rights of Viet Nam and other States do not need to be determined before the Tribunal can proceed. The Tribunal also recalled that, in December 2014, Viet Nam submitted a “Statement of the Ministry of Foreign Affairs of Viet Nam” for the Tribunal’s attention, in which Viet Nam asserted that it has “no doubt that the Tribunal has jurisdiction in these proceedings.”

d. **Preconditions to Jurisdiction**

The Tribunal then considered the preconditions to jurisdiction set out in the Convention. Although the dispute settlement mechanism of the Convention provides for compulsory settlement, including through arbitration, it also permits parties to agree on the settlement of disputes through alternative means of their own choosing. Articles 281 and 282 of the Convention may prevent a State from making use of the mechanisms under the Convention if they have already agreed to another means of dispute resolution. Article 283 also requires the Parties to exchange views regarding the settlement of their dispute before beginning arbitration.

The Tribunal considered the applicability of Articles 281 and 282 to the following instruments to determine whether the Parties had agreed to another means of dispute settlement: (a) the 2002 China–ASEAN Declaration on the Conduct of Parties in the South China Sea, (b) a series of joint statements issued by the Philippines and China referring to the resolution of disputes through negotiations, (c) the Treaty of Amity and Cooperation in Southeast Asia, and (d) the Convention on Biological Diversity. The Tribunal held that the 2002 China–ASEAN Declaration is a political agreement and not legally binding, does not provide a mechanism for binding settlement, and does not exclude other means of settlement. The Tribunal reached the same conclusion with respect to the joint statements identified in China’s Position Paper. With respect to the Treaty of Amity and Cooperation in Southeast Asia and the Convention on Biological Diversity, the Tribunal noted that both are legally binding agreements with their own procedures for disputes, but that neither provides a binding mechanism and neither
excludes other procedures. Additionally, the Tribunal noted that although there is overlap between the environmental provisions of the UN Convention on the Law of the Sea and the Convention on Biological Diversity, this does not mean that a dispute concerning one instrument is necessarily a dispute concerning the other or that the environmental claims brought by the Philippines should instead be considered under the framework of the Convention on Biological Diversity. Accordingly, the Tribunal concluded that none of these instruments prevent the Philippines from bringing its claims to arbitration.

With respect to the exchange of views on the settlement of the dispute, the Tribunal held that Article 283 requires parties to exchange views on the means of settling their dispute, not the substance of that dispute. The Tribunal held that this requirement was met in the record of diplomatic communications between the Philippines and China, in which the Philippines expressed a clear preference for multilateral negotiations involving the other States surrounding the South China Sea while China insisted that only bilateral talks could be considered. The Tribunal also considered whether, independently of Article 283, the Philippines was under an obligation to pursue negotiations before resorting to arbitration. In this respect, the Tribunal held that the Philippines had sought to negotiate with China and noted that it is well established that international law does not require a State to continue negotiations when it concludes that the possibility of a negotiated solution has been exhausted.

e. Exceptions and Limitations to Jurisdiction

Finally, the Tribunal examined the subject matter limitations to its jurisdiction set out in Articles 297 and 298 of the Convention. Article 297 automatically limits the jurisdiction a tribunal may exercise over disputes concerning marine scientific research or the living resources of the exclusive economic zone. Article 298 provides for further exceptions from compulsory settlement that a State may activate by declaration for disputes concerning (a) sea boundary delimitations, (b) historic bays and titles, (c) law enforcement activities, and (d) military activities. By declaration on 25 August 2006, China activated all of these exceptions.

The Tribunal considered that the applicability of these limitations and exceptions may depend upon certain aspects of the merits of the Philippines’ claims:

(a) First, the Tribunal’s jurisdiction may depend upon the nature and validity of any
claim by China to “historic rights” in the South China Sea and whether such rights are covered by the exclusion from jurisdiction of “historic bays or titles.”

(b) Second, the Tribunal’s jurisdiction may depend upon the status of certain maritime features in the South China Sea and whether the Philippines and China possess overlapping entitlements to maritime zones in the South China Sea. If so, the Tribunal may not be able to reach the merits of certain claims because they would first require a delimitation of the overlapping zones (which the Tribunal is not empowered to do).

(c) Third, the Tribunal’s jurisdiction may depend on the maritime zone in which alleged Chinese law enforcement activities in fact took place.

(d) Fourth, the Tribunal’s jurisdiction may depend upon whether certain Chinese activities are military in nature.

Following the practice of other international courts and tribunals, the Tribunal’s Rules of Procedure call for it to rule on objections to jurisdiction as a preliminary matter, but permit the Tribunal to rule on such objections in conjunction with the merits if the objection “does not possess an exclusively preliminary character.” For the foregoing reasons, the Tribunal concluded that it was presently able to rule that it has jurisdiction over certain of the claims brought by the Philippines but that others were not exclusively preliminary and would be deferred for further consideration in conjunction with the merits.

f. Decisions of the Tribunal

In its Award, the Tribunal reached a number of unanimous decisions. The Tribunal:

A. FINDS that the Tribunal was properly constituted in accordance with Annex VII to the Convention.

B. FINDS that China’s non-appearance in these proceedings does not deprive the Tribunal of jurisdiction.

C. FINDS that the Philippines’ act of initiating this arbitration did not constitute an abuse of process.
D. FINDS that there is no indispensable third party whose absence deprives the Tribunal of jurisdiction.

E. FINDS that the 2002 China–ASEAN Declaration on Conduct of the Parties in the South China Sea, the joint statements of the Parties referred to in paragraphs 231 to 232 of this Award, the Treaty of Amity and Cooperation in Southeast Asia, and the Convention on Biological Diversity, do not preclude, under Articles 281 or 282 of the Convention, recourse to the compulsory dispute settlement procedures available under Section 2 of Part XV of the Convention.

F. FINDS that the Parties have exchanged views as required by Article 283 of the Convention.

G. FINDS that the Tribunal has jurisdiction to consider the Philippines’ Submissions No. 3, 4, 6, 7, 10, 11, and 13, subject to the conditions noted in paragraphs 400, 401, 403, 404, 407, 408, and 410 of this Award.

H. FINDS that a determination of whether the Tribunal has jurisdiction to consider the Philippines’ Submissions No. 1, 2, 5, 8, 9, 12, and 14 would involve consideration of issues that do not possess an exclusively preliminary character, and accordingly RESERVES consideration of its jurisdiction to rule on Submissions No. 1, 2, 5, 8, 9, 12, and 14 to the merits phase.

I. DIRECTS the Philippines to clarify the content and narrow the scope of its Submission 15 and RESERVES consideration of its jurisdiction over Submission No. 15 to the merits phase.

J. RESERVES for further consideration and directions all issues not decided in this Award.

4. Next Steps

A further hearing will take place at the headquarters of the Permanent Court of
Arbitration in the Peace Palace in The Hague. The hearing will provide an opportunity for the Parties to present oral arguments and answer questions on the merits of the Philippines’ claims and any remaining issues deferred from the jurisdictional phase. The hearing will not be open to the public. However, as with the Hearing on Jurisdiction and Admissibility, and after seeking the views of the Parties, the Tribunal will consider written requests from interested States to send delegations to attend the hearing as observers. Those States which sent observers to the Hearing on Jurisdiction and Admissibility, namely Malaysia, the Republic of Indonesia, the Socialist Republic of Viet Nam, the Kingdom of Thailand and Japan, will be informed of the hearing dates. The Tribunal had already provisionally sought the views of the Parties on the dates for the hearing and will shortly confirm the schedule. The PCA will issue Press Releases upon the commencement and the closing of the hearing.

* * *

The Tribunal in this matter is composed of Judge Thomas A. Mensah of Ghana, Judge Jean-Pierre Cot of France, Judge Stanislaw Pawlak of Poland, Professor Alfred Soons of the Netherlands, and Judge Rüdiger Wolfrum of Germany. Judge Thomas A. Mensah serves as President of the Tribunal. The Permanent Court of Arbitration acts as the Registry in the proceedings.

These arbitral proceedings were initiated on 22 January 2013 by the Republic of the Philippines.

On 30 March 2014, the Philippines submitted a Memorial addressing both the merits of its claims and the Tribunal’s jurisdiction.

On 16 December 2014, after China did not submit a Counter-Memorial by the date indicated by the Tribunal, the Tribunal requested further written argument from the Philippines concerning certain issues of jurisdiction and the merits.

On 16 March 2015, the Philippines filed a Supplemental Written Submission, pursuant to the Tribunal’s request.

On 7, 8, and 13 July 2015, the Tribunal convened a Hearing on Jurisdiction and Admissibility at the Peace Palace in The Hague, the Netherlands.

Further information about the case, including the Award on Jurisdiction and
Admissibility, the Rules of Procedure, earlier Press Releases, and transcripts and photographs of the Hearing on Jurisdiction and Admissibility, may be found at http://www.pcacases.com/web/view/7 or requested via e-mail.

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**Background to the PCA:** The Permanent Court of Arbitration is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. Headquartered at the Peace Palace in The Hague, the Netherlands, the Permanent Court of Arbitration facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

**Contact:** Permanent Court of Arbitration, bureau@pca-cpa.org

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**Hearing on Jurisdiction and Admissibility in session, July 2015, Peace Palace, The Hague.**
Clockwise from top left: Registrar and PCA Senior Legal Counsel Judith Levine, Judge Stanislaw Pawlak, Prof. Alfred H. A. Soons, Judge Thomas A. Mensah (Presiding Arbitrator), Judge Jean-Pierre Cot, Judge Rüdiger Wolfrum, PCA Senior Legal Counsel
Garth Schofield; Secretary for Foreign Affairs of the Philippines, H.E. Mr. Albert F. Del Rosario; Agent for the Philippines, Solicitor General Mr. Florin T. Hilbay, Counsel for the Philippines, Mr. Paul Reichler, Prof. Philippe Sands, Prof. Bernard H. Oxman, Prof. Alan E. Boyle, Mr. Lawrence Martin.
MALL VOTING FOR PWDs: LEGAL & CONSTITUTIONAL, RIGHTS-BASED AND INCLUSIVE-FRIENDLY

By: Comm. Rene V. Sarmiento (ret.)¹

“We have a moral duty to remove the barriers to participation, and to invest sufficient funding and expertise to unlock the vast potential of people with disabilities.”

- - Stephen Hawking
Author, Physicist, Advocate
World Health Organization World Report on Disability, 2011

Mall voting is an important sequel to the trailblazing mall registration conducted nationwide by the Commission on Elections (COMELEC) before the 2010 and 2013 national elections. Hailed internationally as a good election practice, mall registration saw the registration of Persons with Disabilities (PWDs) in shopping malls all over the country. For the 2010 and 2013 national elections, SM malls nationwide were opened and used as special registration venues as well as satellite registration sites. Manuel Agcaoili of AKAP-PINOY, a national federation of 456 disabled people’s organization (DPOs), first requested accessible registration venues nationwide and satellite voter registration at SM Malls and said that facilities in malls are disabled friendly and easy to reach (Vera Files, 2014, p. 72). For the 2016 national elections,

¹ Comm. Sarmiento is a former Presiding Commissioner, First Division of the Commission on Elections. He is a current lecturer in the Philippine Judicial Academy. He is a graduate of San Beda College Mendiola with a degree in Political Science. He took his Bachelor of Laws degree from the University of the Philippines. He was a member of the 1986 Constitutional Commission, which drafted the 1987 Philippine Constitution. His passion for government service is well-respected, he served as a Consultant of the Presidential Committee on Human Rights (1987) and as a member of the Presidential Human Rights Committee (1991-1994). Moreover, he is also a campaigner of peace, as such, he became a member of the Government of the Republic of the Philippines (GRP) Panel for Talks with the CPP/NPA/NDF and later on was promoted as Vice-Chairman (1996-2006). He also became a Deputy Presidential Adviser/Undersecretary of the Peace Process (2005-2006) and also became a Cabinet Member In-Charge of the Government Interfaith Initiatives (2005-2006). He was awarded the Special Mabini Presidential Award for 2013 for his devotion and efforts in the COMELEC to advance the electoral rights of Persons with Disabilities. He became the authors of several books in the country, to wit: Towards More Justice and More Liberty (Understanding Writ of Amparo and Habeas Data (2008) , Grow in Grace, Govern in Wisdom (Reading in Legal Philosophy) (2009), We, The Sovereign Filipino People (The Book on Seven Filipino Constitutions) (2010); and Automated Election, Civil Society and Democracy (2011). He is a current law professor in San Beda College – Mendiola and Alabang, teaching Political Law Review, Legal Philosophy and Human Rights Law. He is known and well-respected by his students for his inspirational and historical rich manner of instruction.
mall registration for PWDs was conducted by the COMELEC in SM Malls, Ayala Malls, Robinsons, Wilcon City Center, Tutuban Mall, Eastwood Mall, Starmall, Gaisano Grand Mall, Lucky Chinatown Mall, Pacific Mall and Puregold.

Now that thousands of Filipino voters are beneficiaries of and are familiar with mall registration (as of December 1, 2015, COMELEC estimates more than 200,000 new PWD voters), the use of malls for voting purposes in a national election will be a big breakthrough in electoral democracy, a first in the Philippines and in the world. Electoral Commission and election observers will surely take note of this mall voting as they had done in the past when mall registration was first introduced before the 2010 national elections. In the 2nd Regional Dialogue on Access to Elections held in Bali, Indonesia from November 10-11, 2012, in the 3rd Regional Dialogue on Access to Elections held in Jakarta, Indonesia from January 28-29, 2015, in the Conference on the Inclusion of Persons with Disabilities in the Electoral Processes held in Islamabad, Pakistan from September 3-4, 2014 and in the South Asia Regional Disability Rights Dialogue on Political Participation held in Colombo, Sri Lanka from September 30–October 4, 2015, mall registration in the Philippines was mentioned as a good election model to make elections inclusive, barrier-free and rights-based.

Mall voting for PWDs is legal and constitutional. As long as the secrecy of ballot is ensured, the COMELEC, under the 1987 Constitution, can decide the location of polling places and promulgate rules to enable and empower Persons with Disabilities to vote in malls. Article IX, C, Section 2 of the 1987 Constitution provides that the COMELEC shall decide, except those involving the right to vote, all questions affecting determination of the number and location of polling places. Complementing this provision is Article V (Suffrage) that authorizes the COMELEC to promulgate rules to enable the disabled to vote as long as the secrecy of the ballot is ensured.

The UN Convention on the Rights of Persons with Disabilities, the landmark international instrument that the Philippines signed on September 25, 2007 and ratified on April 15, 2008, amply support mall voting for PWDs. The UN website describes the Convention as the “first comprehensive human rights treaty of the 21st century” and it requires States Parties to ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand or use. Today, the Convention as the guiding international standard in disability inclusion has been signed by 82 percent of the UN member states and ratified by 72 percent of the states (IFES and NDI, 2014, p. 30).
Mall voting for PWD is rights-based and inclusive-friendly. The right to suffrage under Article V of the 1987 Constitution is open to all including PWDs (all citizens of the Philippines, at least 18 years old, a resident of the Philippines for at least one year and a resident of the place where he/she will vote for at least 6 months). The right to participate in political and public life on an equal basis with others including the right and opportunity to vote and be elected are recognized in Article 29 of the UN Convention on the Rights of Persons with Disabilities.

Inclusiveness and empowerment are buzzwords that are dear to PWDs. Inclusiveness, in fact, is a principle globally recognized for enjoyment by PWDs. Article 3 of the Convention on the Rights of Persons with Disabilities states:

“Article 3 - General principles

The principles of the present Convention shall be:

a. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
b. Non-discrimination;
c. Full and effective participation and inclusion in society;
d. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
e. Equality of opportunity;
f. Accessibility;
g. Equality between men and women;”

Critics and opponents of mall voting for PWDs may cite Sec. 155 of the Omnibus Election Code to frustrate the use of mall facilities for voting. The provision forbids the use of a private building owned, leased, or occupied by any candidate or of any persons who is related to any candidate with the fourth civil degree of consanguinity or affinity, or any office of the government or leader of any political party or groups or faction, nor in any building or

nationwide premises under the actual control of a private entity, political party or religious organization.


Hail mall voting for PWDs!

References:

THE SUPREME COURT RULING ON THE
DISBURSEMENT ACCELERATION PROGRAM

By Justice Rodrigo V. Cosico

In another decision of the decade, the Supreme Court declared as unconstitutional certain “acts and practices” of the Aquino administration’s stimulus program, i.e., the Disbursement Acceleration Program (DAP). Voting unanimously, the Highest Tribunal struck down certain “acts and practices” under the DAP that were unconstitutional. Thirteen members of the Court concurred with the ponencia of Associate Justice Lucas Bersamin while one member in the person of Associate Justice Teresita de Castro inhibited herself.

The Supreme Court ruling on DAP is another big blow to discretionary funds in government after the Court nullified in November, 2013, the controversial Priority Development Assistance Fund (PDAP) in the midst of allegations that the congressional pork barrel allocations went to ghost projects and kickbacks. This time, critics call DAP as “presidential pork”.

In the process, the Supreme Court struck down on July 1, 2014 the presidential budgetary prerogative, including a circular allowing the release of savings of the executive branch to agencies and projects outside the annual government budget approved by Congress. The High

2 Justice Cosico worked as a court employee simultaneously studying law at San Pablo Colleges. He passed the bar in 1961, and took up his LL.M. at the University of the Philippines, with a UPLC scholarship from 1977 to 1980. In 1976 he became a United Nations Asia Far East Institute Fellow in Fuchu, Japan. In 1999 Justice Cosico participated in the Academy of American and International Law at Dallas, Texas, USA. In 2003, the student government of his alma mater San Pablo Colleges gave him the distinction of being the school’s Most Outstanding Alumnus for Government Service -- Judiciary/Law on December 30, 1998. Justice Cosico served with the National Prosecution Service for 23 years prior to his appointment as Regional Trial Court Judge in January of 1987. As a Judge, he was twice finalist, in 1993 and again in 1995, for the Annual Awards for Judicial Excellence. On August 20, 1997, after more than 10 years as a trial court judge, he was promoted to the Court of Appeals, where he has served as Associate Justice. In recognition of his long exemplary service in the judiciary, the Rotary Club of Manila honored him with the Justice George Malcolm Award in 2005. Justice Rodrigo V. Cosico spent 44 years in public service without interruption, and without succumbing to the temptation of having a more lucrative practice of law in the private sector. In spite of his busy schedule, he has found time to serve with the academe. He taught at the University of Perpetual Help School of Law from 1994 to 2000. He was also law professor at the San Beda College of Law in Alabang. On May 7, 2008, the City Government of his native city, San Pablo, on the occasion of its Charter Foundation, recognized Justice Rodrigo V. Cosico, as one of its Ten Outstanding Citizens. He retired from his position as Associate Justice of the Court of Appeals on July 4, 2008. As of the date of his retirement, he has disposed all the cases assigned to him for decision.

Justice Cosico is the son of Alfredo Cosico, chief clerk in the city attorney’s office, and Carmen Villanueva, a housewife. He is married to Evelyn P. Cordova with whom he has three children: Rex, Engeline and Christian. Justice Cosico and his wife Evelyn reside in a simple and well-managed household in San Pedro, Laguna. He dotes on his five grandchildren, Rexanne Monique, Mark Joshua, Chloe Julian, Chelsea Jane, and Cheska Jeanine.
Court decided in favor of nine petitioners that decried the “presidential pork barrel”, the National Budget Circular No. 541 and related executive issuances as unconstitutional.”

In its decision, the Supreme Court said that the DAP violated “the doctrine of separation of powers” and Section 25, Article VII of the Constitution, which cited exemptions to the prohibition against the reappropriation of government funds.

As earlier stated, the Court specified certain “acts and practices” under the DAP that were unconstitutional, including “the withdrawal of unobligated allotments from the implementing agencies, and the declaration of the withdrawn unobligated allotments and unreleased appropriations as savings” before the end of the fiscal year and outside the approved national budget.

The Supreme Court decision also voided the DAP provision allowing “cross-border transfers” of Malacanang’ savings “to augment the appropriation of other offices outside the executive” It also barred the practice of “funding projects, activities and programs that were not covered by any appropriation in the General Appropriations Act”.

These acts constitute the gist of the nullified Department of Budget and Management Circular No. 541, which allowed the withdrawal of “unobligated allotments of agencies with low levels of obligations as of June 20, 2012, both for continuing and current allotments”, and the release of these funds to “augment existing programs and projects of any agency and to fund priority programs and projects not considered in the 2012 budget but expected to be started or implemented during the current year.”

The Court also voided the practice of using “unprogrammed funds despite the absence of a certification by the National Treasurer that the revenue collections exceeded the revenue targets for noncompliance with the conditions provided in the GAA”

As an aftermath of the SC ruling, the petitioners vowed to hold President Aquino, Secretary Abad and other top officials accountable for budget releases under the DAP even while Malacanang had earlier discontinued the fund.

Seeking to separate DAP money from PDAP, President Aquino said in Oc-ber 2013 that legislator-identified projects implemented through the stimulus program amounted to a “mere 9 percent” of government savings pooled by the Department of Budget and Management. DAP savings were pegged at P142.23 billion. “Why, then, is the DAP being made an issue?” the President protested then.
That same month, the Inquirer, a leading newspaper with general circulation throughout the Philippines, reported that six administration senators requested in 2011 the amount of P100 million each for “priority projects” That year, legislators were told that Malacanang had some P6 billion in “savings” available for projects they could nominate.

Also in 2011, Senators Estrada and Revilla, along with Senators Ferdinand Marcos, Jr. and Vicente Sotto III each asked for the release of P100 million. But they allegedly channeled the amounts to non-government organizations identified with Janet Lim-Napoles, the supposed mastermind of the pork barrel scam, based on documents allegedly obtained by the Inquirer.

The backbone of the DAP is the National Budget Circular No. 541, which enabled the DBM to collect “unobligated allotments of agencies with low levels of obligations as of June 20, 2012, both for continuing and current allotments.”

As stated by Sec. Abad in the circular, “this measure will allow the maximum utilization of available allotments to fund and undertake other priority expenditures of the national government”.

A chronological order of the events which gave rise to the DAP casewas narrated by a leading newspaper as follows:

“In September 2013, Senator Jinggoy Estrada, in a privilege speech entitled “The Untold PDAF Story that the People Should Know” said that congressmen were ‘rewarded, bribed’ and given ‘additional’ by the Aquino administration to get its way in Congress.

“Senator Estrada said that after the conviction in May 2012 of Chief Justice Renato Corona, 20 senators received at least P50 million in additional lump-sum allocations under their Priority Development Assistance Fund (PDAF), or the congressional pork barrel.

“Senator Estrada suggested that the bonuses were an “incentive” for the senators’ vote ousting Corona for dishonesty in his statement of assets, liabilities and net worth.

“Budget Secretary Florencio Abad later confirmed the release of P1.107 billion to 20 senators but pointed out that the funds came from the Disbursement Acceleration Program (DAP)

“The DAP is a mechanism designed by the Aquino administration in 2011 ostensibly to accelerate spending on projects and boost the country’s economic growth. The program was conceptualized in September 2011 and was approved by President Aquino the following month
upon the recommendation of the Development Budget Coordination Committee and the Cabinet clusters. Little was publicly known of the facility, until Estrada’s disclosure.

“According to the Department of Budget and Management (DBM), the DAP was created in view of the prevailing underspending in government disbursements for the first eight months of 2011.

9 petitions vs. DAP

‘Critics said the DAP was unconstitutional and another form of pork barrel. At least nine petitions against DAP were filed in the Supreme Court last year.

“In October last year, following the Estrada blast, President Aquino made a rare public address on prime time TV in defense of the controversial DAP.

“In the 12-minute speech that sought to set the record straight on the controversial economic stimulus program, Mr. Aquino assailed certain politicians for allegedly seeking to muddle the issue and bedevil his administration.

No evidence vs President

“In November of that year, the high court opened the oral arguments on the legality of the DAP. During the five-hour hearing, Senior Associate Justice Antonio Carpio looked for evidence that the President had authorized Abad to create the DAP.

“Carpio said he had seen no official document that showed Mr. Aquino had re-aligned government savings for the DAP and authorized the DBM to do it.

“In January, during the resumption of the hearing, the Aquino administration urged the high court to dismiss the petitions seeking to declare the DAP unconstitutional.

Moot, academic

“Solicitor General Francis Jardeleza said that the anti-DAP petitions had become moot because the Palace stopped its use since mid-2013. “For his part, Abad told the court that the DAP had already served fully its purpose and that was why the economic managers recommended its termination to the President.

‘In 2011, a total of P83.53 billion was released to provide additional funds for programs and projects, such as healthcare, public works, housing and resettlement, and agriculture. The
following year, P58.7 billion was released to augment tourism, road infrastructure, rehabilitation and extension of light rail systems, and rural electrification.

‘Of the total P142.23 billion for the DAP in 2011 and 2012, the DBM said 9 percent or P12.8 billion went to programs and projects identified by legislators.

“In 2013, some P15 billion was approved for the hiring of policemen, additional funds for the modernization of the Philippine National Police, the redevelopment of Roxas Boulevard, and funding for Typhoon ‘Pablo’ rehabilitation projects for Compostela Valley and Davao Oriental”, the DBM said (Sources: Inquirer Research from its Archives).

The court’s ruling weakened the executive power but strengthened Congress’ power of the purse. In particular, the high court’s ruling weakened the executive’s ability to realign funds.

The Makati Business Club (MBC) had a tempered comment on the subject saying it expected the Supreme Court decision to “better guide the government in the prudent management and utilization of public resources”. MBC Executive Director Peter Perfecto stated: “We recall that the DAP was the means by which government accelerated much-needed infrastructure projects that had slowed down due to a careful review by the Aquino administration of all projects in line with its policy of zero tolerance for corruption”.

Executive Director Perfecto added: “The MBC nevertheless views with respect the Supreme Court’s unanimous ruling declaring three acts and practices under the disbursement Acceleration Program, National Budget Circular No. 41, and related issuances as unconstitutional”

As an aftermath of the Supreme Court’s ruling, former National Treasurer Leonor Briones opined that President Aquino may face an impeachment complaint. She said, “He is vulnerable to an impeachment complaint”. xxx “It’s a victory for us in (the budget watchdog) the Social Watch because we have been campaigning against the abuse of savings since 2006”

National Budget Circular No. 541 allowed Sec. Abad’s agency to collect “unobligated allotments of agencies with low levels of obligations as of June 20, 2012, both for continuing and current allotments."

Briones opined that with the budget secretary implementing the DAP and the President publicly depending the mechanism, “either Abad or the President or both could be made accountable now that the practice had been declared unconstitutional.
Senator Ralph Recto, however, doubted that an impeachment case against the President would prosper. He was joined in his belief by Senator Antonio Trillanes IV.

Members of the Makabayan bloc and Act Teachers Rep. Antonio Tinio believed otherwise. “For sure, President Aquino will be facing an impeachment complaint when Congress reopens at the end of this month “ xxx said Rep. Tinio. But Speaker Feliciano Belmonte Jr. said the court decision did not provide any grounds to impeach the President. He said the President had always practiced “good faith and sincere intentions” in his policy decisions. He added: “Incidentally, they have no votes,” noting that at least one-third vote of the 290 house members was required to impeach the President.

In separate concurring opinions on the Supreme Court decision striking down four specific acts of the disbursement Acceleration Program (DAP), five Justices in effect said that President Aquino overstepped his powers while his budget secretary may have consciously circumvented the law in hatching ‘noble’ Initiatives designed to stimulate the economy.

The justices said that Mr. Aquino had ‘usurped’ Congress’ power of the purse and that Budget Secretary Florencio Abad “may have knowingly” created an unconstitutional program given his experience in the workings of state fund.

The unanimous decision of the Supreme Court penned by Associate Justice Lucas Bersamin declared as unconstitutional certain “acts and practices” under the DAP, particularly the realignment of Malacanang’s savings to other projects outside the approved national budget and without certification from the state treasury.

The Supreme Court ruling stated that the effects of the DAP done in good faith - “roads, bridges, homes for the homeless, hospitals, classrooms and the like” - before its nullification may remain untouched per the doctrine of operative fact.

Such principle may, however, not apply on the program’s sponsors unless they could prove good faith before the proper tribunal. The liability of the DAP’s “authors, proponents and implement(e)rs” is thus implied.

Five of the thirteen justices who voted to nullify certain acts under the DAP opted to issue separate opinions which are summarized hereunder. Associate Justice Antonio Carpio cited how the DAP and National Budget Circular No. 541 in 2012 allowed the transfer of unused funds for projects and programs outside the Congress-approved General Appropriations Act (GAA).

“Under the DAP and NBC, the President disregards the specific appropriations in the
GAA and treats the GAA as the President’s self-created all-purpose fund, which the President can spend as he chooses without regard to the specific purposes for which the appropriations are made in the GAA.” Justice Carpio said.

In short, the President under the DAP and NBC 541 usurps the power of the purse of Congress, making Congress inutile and a surplusage.” said the magistrate, even as he noted the DAP’s intent ‘to fast-track public spending and push economic growth”. Associate Justice Estela Perlas-Bernabe echoed the same view, saying the President should remember the bounds of his budget prerogative. “Ultimately, notwithstanding any confusion as to the DAP’s actual workings or the laudable intentions behind the same, the one guiding principle to which the executive should be respectfully minded is that no policy or program of government can be adopted as an avenue to wrest control of the power of the purse from Congress”, Justice Bernabe said.

Associate Justice Arturo Brion drew parallels between the DAP and the Priority Development Assistance Fund (PDAP), congressional discretionary funds also found unconstitutional in November 2013 in light of allegations that it had been disbursed to ghost projects and bogus nongovernment organizations in a deeply entrenched scheme involving legislators and businesswoman Janet Lim Napoles. He cited how the amount involved, at P150 billion, was ‘almost 15 times’ higher than the P10 10 billion PDAF case.

Justice Brion said the DAP case ‘involves circumstances that are similar to the PDAP and much more’ as it involved top officials and ‘demonstrated the lack of respect for public funds, institutions, and the Constitution.”

In particular, he chastised Secretary Abad for executing a program that a man of his experience in national appropriations – having served in Congress for 12 years and even at one time chair of the House Appropriations Committee could have easily spotted as unconstitutional.

“There are indicators showing that the DBM Secretary might have established the DAP knowingly aware that it is tainted with unconstitutionality. As a lawyer and with at least 12 years of experience behind him as a congressman who was even the chair of the House Appropriations Committee, it is inconceivable that he did not know the illegality or unconstitutionality that tainted his brainchild,” he said.

Given Sec. Abad’s knowledge about how the national budget worked, Brion said it was “not hard to believe that he can run circles around the budget and its processes, and did, in fact, purposely use this knowledge for the administration’s objective of gathering the very sizable funds collected under the DAP”.


Associate Justice Marvic Leonen cautioned against inferring from the tribunal’s ruling the liability of those involved in the DAP. “Whether the constitutional violation is in good faith or in bad faith, or whether any administrative or criminal liability is forthcoming, is the subject of other proceedings in other forums. Likewise, to rule that a declaration of unconstitutionality per se is the basis for determining liability is a dangerous proposition. It is not proper that there are suggestions of administrative or criminal liability even before the proper charges are raised, investigated, and filed”, he said.

“Our decision today should not be misinterpreted as an authority to undo infrastructure built or expenditures made under the DAP. Nor should it be immediately used as basis for saying that any or all officials or beneficiaries are either liable or not liable. Each expenditure must be audited in accordance with our ruling”, he further said.

Associate Justice Mariano del Castillo called for public vigilance. “Ultimately, the remedy resides in the people: To press for needed reforms in the laws that currently govern the enactment and execution of the national budget and to be vigilant in the prosecution of those who may have fraudulently abused or misused public funds”, he said.

Two weeks after the Supreme Court ruling, a stubborn and combative President Aquino defended the DAP in a national television address and warned the Supreme Court of a possible clash with the executive branch saying “Your decision is difficult to understand” Mr. Aquino said the government would appeal the Supreme Court ruling despite a unanimous vote of 13-0. ‘My message to the Supreme Court: We don’t want to get to a point where two coequal branches of government would clash and where a third branch would have to mediate”, Mr. Aquino warned toward the end of his 23 minute speech aired by major TV networks.

The President said the government would file a motion for reconsideration to “give way to a more complete look at our laws” In the coming days, he said he and his cabinet would release additional details on the benefits supposedly arising from the DAP.

Shortly after the speech, Malacanang finally released a list of 116 projects funded by ‘savings’ pooled by Budget Secretary Florencio Abad, the chief architect of the DAP. President Aquino said that the Supreme Court did not take into account his administration’s legal basis for the program, in particular, Section 39 of the 1987 Administrative Code of the Philippines which states that:

**Sec. 39.** Except as otherwise provided in the General Appropriations Act, any savings in the regular appropriations authorized in the General Appropriations Act for programs and projects of any department, office or agency, may, with the approval of the President, be used to cover a deficit in any another item of the regular appropriations: Provided, that the creation of new positions or increase of salaries shall not be allowed to be funded...
from budgetary savings except when specifically authorized by law: Provided, further, that whenever authorized positions are transferred from one program or project to another within the same department, office or agency, the corresponding amounts appropriated for personal services are also deemed transferred, without, however, increasing the total outlay for personal services of the department, office or agency concerned.

“The Supreme Court in its ruling noted that the budget department listed Chapter 5, Book VI of Executive Order No. 292 (Administrative Code of 1987) as one of the legal bases for DAP’s use of savings.

“It did not specifically mention Section 39 in its ruling but included Section 38, Chapter 5, Book VI of the Administrative Code of 1987. The ruling stated: “The respondents rely on Section 38, Chapter 5, Book VI of the Administrative Code of 1987 to justify the withdrawal of unobligated allotments. But the provision authorized only the suspension or stoppage of further expenditures, not the withdrawal of unobligated allotments, to wit: ‘Section 38. Suspension of Expenditure of Appropriations. – Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President upon notice to the head of office concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for personal services appropriations used for permanent officials and employees’.

However, Associate Justice Estela Perlas-Bernabe, in her separate concurring opinion took note of Section 39. She said: “When the executive department exercises its power of fiscal management through, for instance, withdrawing unobligated allotments and pooling them under Sections 38 and 39, Chapter 5, Book VI of the Administrative Code of 1987… the President acts within his sphere of authority for he is merely managing the execution of the budget taking into account existing fiscal deficits as well as the circumstances that occur during actual PAP implementation (the matter of fiscal deficits and implementation circumstance will be expounded on in the succeeding discussion). However, he must always observe and comply with existing constitutional and statutory limitations when doing so – that is, his directives in such respect should not authorize or allow expenditures for an unappropriated purpose nor sanction overspending or the modification of the purpose of the appropriation item, or even the suspension or stoppage of any expenditure without satisfying the public interest requirement, else he would be substituting his will over that of Congress and thereby violate the separation of powers principle, not to mention, act against his mandate to faithfully execute the laws.”

Malacanang’s claim that President Aquino is empowered by Sec. 39 of the 1987 Administrative Code to use savings on priority activities that promote economic well-being has drawn criticism from two distinguished luminaries on constitutional law.

Fr, Ranhilio C. Aquino, dean of the San Beda Graduate School of Law, said: “Whenever
the grant of power the Administrative Code may seem to afford the President, such a statutory provision must always be read in consonance with the Constitution, and never against it.”

Fr. Joaquin Bernas likewise opined that the Administrative Code and other statutes and executive orders must be compatible with the 1987 Constitution in order to remain in effect. He said: “There is no authorization for what is called ‘cross border transfer’ that is, the transfer of savings in one office or department to another office or department”. Thus savings in the President’s budget may not be moved to other departments or offices, e.g., to Congress, to the judiciary, or to a constitutional commission. President Aquino’s tirades against the Supreme Court has drawn another reaction from Fr. Bernas who stated in his published article in defense of the Supreme Court: “It neither has the arms like what the President has, nor the money under the control of Congress. It only has the Constitution for its shield and armory”.

Does Malacanang hope to overturn the Supreme Court’s DAP ruling by filing a motion for reconsideration? Every lawyer knows that the Supreme Court would not reverse its previous ruling considering its earlier 13-0 vote. However, it can urge the Supreme Court to modify or clarify its own ruling. In accord with reason, logic and fairness.

The February 3, 2015 resolution of the Supreme Court indeed modified and clarified its original decision. Thus, under the Constitution, money allotted in the General Appropriations Act (GAA) for one program, activity or project (PAP) cannot be spent for another PAP. Much less can it be spent for a PAP not included at all in the GAA. Even Congress cannot “authorize the transfer of appropriation” from one budget Item to another.

However, the Constitution allows one exception, to wit: “The President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions may by law, be authorized to augment any item in the GAA for their respective offices from savings in other items of their respective appropriations”. This limited exception is called the power of augmentation.

The Supreme Court ruled that the following DAP acts of transferring funds are unconstitutional or illegal because they failed to follow the strict requirements of the exception:

“1. Transfer of savings ‘prior to the end of the fiscal year’; savings are not generated unless the PAP for which they are intended have been legally ‘completed, discontinued or abandoned.’

“2. Transfers at any time from one branch to another branch of government; hence a ‘cross-border’ transfer from the executive to the legislative is unconstitutional.
“3. Transfer to a PAP not included in the GAA.

“4. Transfer of ‘unprogrammed funds’ or UF (money from unexpected sources, like dividends) without a certification from the national treasurer that the revenue collections exceeded the ‘total of the revenue targets’”

(See With Due Respect by CJ Artemio V. Panganiban, February 15, 2015)

The Supreme Court further ruled that, under the doctrine of operative fact, these four acts, though unconstitutional or illegal, remain valid and the public officials who committed them in good faith are not culpable. But the doctrine ‘cannot apply to the authors, proponents and implementers of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities.”

In its new resolution, the Supreme Court deleted ‘proponents and implementers’ but retained ‘authors’. Proponents refer to lawmakers, governors, mayors, and others who requested funding for the PAPs and the implementers are the executive officers who built or undertook the PAPs.

I agree with former Chief Justice Panganiban that the deletion is fair because the proponents and implementers were innocent participants. Thus, even Sen. Jinggoy Estrada, who ‘exposed’ the DAP did not know that the funds came from augmentations.

The Supreme Court also clarified that the ‘authors’ enjoy the presumptions of innocence, good faith and regularity in the performance of official duties. These presumptions can be eroded only if and when, after proper charges are filed and due process observed in specific cases, other tribunals (like the Department of Justice, Office of the Ombudsman and trial courts) find enough evidence showing their bad faith and culpability. Further, in relation to item 3, the Supreme Court said that ‘as long as there is an item in the GAA for which Congress has set aside a specific amount of public fund, savings may be transferred thereto for augmentation purposes’ And in relation to item 4, UPs may be used on a quarterly basis ‘upon proof that the total revenues exceed the target.’

Clearly, the DAP decision cannot by itself be a source of liability. The Supreme Court partially granted the motion for reconsideration by limiting personal liability only to the ‘authors’ of the DAP, and only after other tribunals find evidence showing bad faith and culpability.

Far from condemning it, said the Supreme Court “The DAP is a policy instrument that the Executive, by its own prerogative, may utilize to spur economic growth and development”
Moreover, unlike in the case involving the PDAP (Priority Development Assistance Fund), the Supreme Court did not find any public money malevolently flowing into private pockets, or to pseudo-foundations, or to fake nongovernment organizations.

Following the Supreme Court resolution on the government’s motion for reconsideration, former Senator Panfilo Lacson, an ally of President Aquino revealed that lump-sum appropriations or discretionary funds, which are prone to corruption can still be found in the 2015 national budget. The former Senator said he and his team discovered lump-sum appropriations in the national budget while they were reviewing the 2015 General Appropriations Act (GAA).

In a speech before the Philippine Institute of Certified Public Accountants at the Intercontinental Hotel, Makati City, the former Senator said: “To date...we have already discovered a total of P424 billion worth of lump-sum appropriations, or discretionary funds, parked in the budget of just 11 of the 21 major line agencies of the national government. Hold your breath. It is still counting”.

In July 2014, the Supreme Court declared unconstitutional parts of the Disbursement Acceleration Program (DAP) pooled funds from savings of agencies that financed projects outside the approved national budget. Lump-sum funds included the President’s Social Fund, Special Purpose Funds and Malampaya Fund, the People’s Initiative Against Pork Barrel last 2014.

The group’s proposed Pork Barrel Abolition Act sought to prohibit the inclusion of pork barrel or lump-sum funds in the budget, except calamity and intelligence funds. It also sought to require line-item appropriations for all proposed budgets. The bill proposed to abolish the President’s Social Fund and require all unspent, unobligated and unreleased funds to revert to the general fund by the end of the fiscal year.

Lacson said his group was surprised when it found out that “regional lump sums” disappeared in the 2015 GAA and were replaced by 1,389 line budget items for farm-to-marked road projects in different parts of the country. “Does this mean the return of the ghost of PDAP, which had earlier been declared unconstitutional by the Supreme Court in a landmark ruling on July 1, 2014?” he said.

Having found detailed lump-sum appropriations in 9 different departments, an agency and the police, Lacson wondered whether the DAP had been revived. “After the PDAF, we also discovered the obvious reincarnation of the SC unconstitutionally declared Budget Circular No. 541, which earlier gave the DBM (Department of Budget and Management) the authority to pool
and declare as savings unobligated, unutilized and unreleased appropriations, not at the end of the fiscal year but the second quarter,” he said.

“We found it in Section 70 and Section 73 of the General Provisions of the 2015 GAA. Are we now looking at the rebirth of the DAP?” Lacson said. In a statement, the DBM said Lacson’s “doomsday assertions” on lump sum funds and the supposed resurrection of the DAP under the 2015 budget were inaccurate.

“A careful reading of the national budget would prove that quickly enough. While the General Appropriations Act may appear complex, it will very clearly show two things: that the supposed DAP provisions are not in the GAA and that there are fewer lump sums in the administration’s spending plan this year. As a matter of fact, 87 percent of the Special Purpose Funds under the 2015 Budget has already been disaggregated,” the DBM said.

“Meanwhile, you will note that all remaining lump-sum items are funds whose specific purposes are impossible to determine in the planning process. For example: We cannot foretell where disasters will strike or what the extent of the potential damage might be, so the National Disaster Risk Reduction and Management Fund is necessarily a lump-sum,” it said.

The DBM urged Lacson to reach out to the DBM if he had any misgivings about the national budget, “so we can prevent the misinterpretation of budget data”.

Sen. Serge Osmeña III confirmed the lump-sum funds in the budget. He said pork barrel funds continued to exist in the budget despite a Supreme Court ruling declaring the graft-ridden Priority Development Assistance Funds (PDAF), a lump-sum budgetary item and a pork barrel, unconstitutional.

Osmeña said that the pork of members of Congress was back and that senators could identify projects worth at least P200 million. Some senators, he said, could identify projects worth P1 billion to P2 billion. He also said Malacanang had promised Congress that it could still identify projects placed in the budgets of different agencies and that lump-sum funds would also be found in the P3.02 trillion national budget for 2016 that Malacanang would submit to Congress.

A day after he disclosed that the 2015 GAA contained lump-sum funds, Lacson said he intended to raise to the high court his questions about the national budget. Sen. Serge Osmeña III urged the former Senator to go to the Supreme Court as he confirmed Lacson’s findings that the budget contained pork barrel funds.
On the other hand, Senator Francis Escudero insisted that the 2015 national budget had no pork barrel funds, saying that lawmakers can identify projects for funding but only before the budget is passed.

Escudero said there were indeed lump-sum appropriations in this year’s national budget but these were only for calamity funds and for maintenance and other operating expenses of government agencies.

“You need them (lump-sum funds). The government needs to be flexible,” Escudero said citing instances when government needed to have such funds for calamities and disasters because it could not predict how much would be spent for relief and rehabilitation. Escudero noted that what the high court ruling on PDAP had prohibited was lawmakers itemizing projects after the budget had been passed or engaging in “post-enactment intervention” as this would be tantamount to resurrecting pork barrel funds.

But the high court ruling did not say that the executive department was prohibited from engaging in post-enactment intervention, Escudero said.

On Lacson and Osmena’s assertions that lawmakers could identify projects, Escudero said this did not mean that the allocations for the projects were pork.

Such actions fell under a “pre-enactment intervention,” in which the lawmakers identified the projects during the budget deliberations and thus, were not violating the high court ruling, he said.

Should former Senator Lacson’s questions about the national budget eventually reached the Supreme Court, it’s the turn of the latter to resolve with finality the legal questions involved therein.
Synergies: Ramsar Convention on Wetlands, Convention on Biological Diversity, Climate Change Convention

Amado S. Tolentino, Jr.³

Wetlands, biodiversity and climate change interact and are interdependent with each other. These are manifest at the way resources and services wetland provide are affected by climate change. While climate change is a major threat to biodiversity, destruction of biodiversity contributes, to a great extent, to climate change. In fact, scientific reports show that changes in climate have exerted additional pressure and have already affected biodiversity which by itself can help build ecosystem resiliency and assist to the effects of climate. An example is deforestation which results to one fifth (1/5) of total greenhouse gas emissions. Halting deforestation and preserving biodiversity contribute significantly to climate change mitigation by developing carbon sink. In the same way, reports of wetland degradation like peatlands due to drainage and fires in many parts of the world and its associated impacts on greenhouse gas emissions as well as biodiversity conservation had become a serious international environmental concern.

Specific Asian country illustrations abound. Among these are (i) The climate change threatened transboundary Mekong River upon which people from five riparian countries (Lao

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He participated in the progressive development of UNEP’s Montevideo (Environmental Law) Programmes I & II in 1982 and 1993 and was also involved in the formulation of the draft Covenant on Environment and Development. Apart from his many contributions to international organizations and conferences, he is also known for a large number of academic publications in the field of environmental law. He has provided legal assistance to some Asian and Pacific countries for the development of laws on natural resources and the environment. Currently, he is a contributing columnist to The Manila Times’ “Ambassadors’ Corner” about ASEAN environmental issues and concerns and continues to lecture at the San Beda Alabang School of Law.

He remains active in the Asociacion Internacional de Derecho de Aguas (Rome); International Steering Committee, Ramsar Center Japan; Advisory Board, Asia Pacific Center for Environmental Law, Faculty of Law, National University of Singapore; and the International Council of Environmental Law (Bonn) of which he is Executive Governor (for developing countries).
PDR, Myanmar, Thailand, Cambodia, Vietnam) are dependent for a healthful and food secured living while another is about Chilika Lake (India) where, due to changes in climate, plankton and aquatic plant population are changing with adverse impact on the fisheries and livelihood; 
(ii) A report from Malaysia giving a new perspective on health effects of mosquito vectors that needs to be taken into account in managing the coastal wetlands and, also from Malaysia, a study on the future survival of migratory water birds along the East Asian-Australasian Flyway because of the threats posed by climate change; (iii) Situation from the Philippines with the Tubbataha Reefs in Palawan as backdrop, showing mass coral bleaching resulting from increased sea water temperature and strategies at building ecosystem resilience to climate change; (iv) The ecologically critical St. Martin’s Island in Bangladesh which is the site of, among others, coral damage and coastal erosion, and the management actions required to stem threats to wetlands and biodiversity conservation within the area; and (v) The case study in some Asian settings in pursuance of Ramsar COP 10 Resolution X.31 which reports on rice paddy as a wetland type and the impacts of changes in climate and uncontrolled pesticide use not only on rice production but also on the conservation of diverse species found therein. In general, those shared experiences about ecosystem-based adaptation to climate change impact activities like establishing corridors to help species migration, planting drought resistant crops and restoring degraded habitats.

**Partnership between Ramsar Convention and the Convention on Biological Diversity**

Linking climate change with the Ramsar Convention (1971 Convention on Wetlands of International Importance adopted in the city of Ramsar in Iran) and the 1992 Convention on Biological Diversity (CBD) is highlighted by Ramsar’s “wise use” practices and the CBDs ecosystem approach. Wise use of wetlands is defined as the maintenance of their ecological character achieved through the implementation of ecosystem approaches within the context of sustainable development while ecosystem approach encourages policymakers to adopt a more encompassing approach dealing with ecosystem management i.e., plant, animal and micro-organism communities and their non-living environment interacting as a functional unit. These mandates of the two conventions make them mutually supportive explained by the ecological connectivity between the ecosystems that they work with and the policy linkages resulting therefrom. They may have different country focal points but for effective implementation, both conventions require consideration of the ecosystem linkages, thereby strengthening the significance of their complementarity and partnership. In fact the two conventions agreed on a joint work plan (2007-2010) for combined actions on climate change, wetlands and biodiversity. The agreement is based on the reality that Ramsar Convention is the lead partner for wetlands in implementing the CBD, thus emphasizing the supportive intent of the objectives and principles of the two conventions.
Further illustration of the collaboration between the Ramsar and the biodiversity conventions is the fact that while the CBD focus on inland waters, wetlands is the unifying theme for all CBD ecosystem Program of Work; e.g. agricultural systems, forests, mountains, coastal/marine areas. Among lead works requested by CBD from Ramsar in the past are on (i) Further development of criteria for identifying sites of international importance for wetland biodiversity; (ii) Development of a joint framework for reporting on inland waters; and (iii) In-depth- review of CBD inland waters Program of Work.

Actually, wetlands have always been implicitly recognized as a cross-cutting ecosystem type in deliberations about the Convention on Biological Diversity. The 2014 CBD COP 12 held in Korea emphasized the critical importance of coastal wetlands for biodiversity and ecosystem functions and services in particular for migratory birds species, sustainable livelihoods, climate change adaptation and disaster risk reduction. The COP invited Parties to give due attention to the conservation and restoration of coastal wetlands and welcomed the work of the Ramsar Convention and initiatives that support the conservation and restoration of coastal wetlands including options to build a “Caring for Coasts” initiative as part of the global movement to restore coastal wetlands.

Likewise, worth noting is the close cooperation between Ramsar and CBD Secretariats which includes, but is not limited to, guidance to CBD from Ramsar on environmental impact assessment guidelines; Ramsar participation in the revision of CBD inland waters work program; and joint development/publication of technical reports. Add to those the use by CBD of national reporting which aims (i) to capture lessons/experiences to allow parties to develop future action and (ii) for Ramsar to consider including questions on the other CBD inland water targets in the Ramsar 11 national report format to increase levels of harmonization in reporting which contributes a lot to efficiency and effectiveness of the conventions. In the context of Strategic Plan for Biodiversity (2011-2020) the Ramsar Convention is the lead implementing partner for wetlands for the CBD. Indeed, the working relations between the two conventions and their secretariats continue to flourish.

Gaps between the Convention on Biological Diversity and Ramsar Convention

Be that as it may, in practice, the relevant linkages between the two conventions are not always well incorporated in each other’s programs. For instance, in the CBDs program on forests, it is necessary to incorporate Ramsar within the framework of forest management to address its linkage to wetlands. After all, a significant proportion of forests are wetlands or, as often said, “many wetlands are forested, and many forests are wetlands.” While policy integration of wetlands, water and forests is evident in the Ramsar Convention implementation, water as a cross-cutting theme should also be emphasized in the CBD processes. To be more specific, the Ramsar Convention guidelines on the wise use of forested wetlands could be
included in sustainable forest management practices under CBD to better account the interrelationships between forests and wetlands vis-à-vis water.

A further review of the Ramsar Convention will also reveal that it has an understated role in addressing climate change being concentrated, as it does, on sustainable use of various wetland categories. Yet, the Convention’s attention to effective wetland management is vital in mitigating and adapting to the effects of changes in climate which substantially affect the ecological character of wetlands. On the other hand, although the Convention on Biological Diversity does not have any specific provision on measures for climate change, its Conferences of the Parties have emphasized that the linked challenges of biodiversity loss and climate change must be addressed with equal priority and in close coordination if the most severe impacts of each are to be addressed and avoided.

**Climate Change vis-à-vis Ramsar Convention and Convention on Biological Diversity**

Synergies and collaboration between the Ramsar Convention and Convention on Biological Diversity are evidenced by, among others, a 2002 resolution (viii.3) at the Ramsar COP 8 (Spain) which called upon countries to take action to minimize the degradation as well as promote restoration and improve management practices of those peatlands and other wetland types that are significant carbon stores, or have the ability to sequester carbon and are considered mitigation factors as well as to increase the adaptive capacity of society to respond to changes in those ecosystems due to climate change.

In 2004, the COP of CBD, on the other hand, called for synergies between CBD and the 1992 UN Framework Convention on Climate Change (UNFCC) including its Kyoto Protocol. An Ad Hoc Technical Expert Group on Biodiversity and Climate Change to collaborate with the Integrated Panel on Climate Change was set up to examine the scientific impact of climate change on biodiversity and provide advice for the integration of biodiversity considerations in the UNFCC.

The CBD COP 10 in Nagoya further expanded the mandate for cooperation. It requested the Secretariat to develop joint activities with the other multilateral environmental agreements (MEAs) especially in the areas of marine and coastal biodiversity, protected areas and biodiversity and climate change. Furthermore, the Parties invited the COP of UNFCC to collaborate with the CBD Secretariat in order to identify areas for party-driven collaboration. The COP to CBD also noted the importance of biodiversity of inland water ecosystems, recognizing that the Ramsar Convention work on wetlands and peatlands is important in mitigating and adapting to the effects of climate change.
While confirming that the 2010 biodiversity target has not been met in full, the CBD Strategic Plan for Biodiversity (2011-2020) targets that by 2020, ecosystem resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification” (Target 15). As we are all aware, clearance of forests and wetlands reduce ecosystem services such as water provision and also affect global climate by releasing greenhouse gasses. Or, to be more to the point, conversion of forests for agricultural purposes as a land use strategy results to high net release of greenhouse gases from the converted peatland. Meeting the target requires efforts to ensure continued provision of ecosystem services and to ensure access to these services. To cite as a beneficial effect, maintenance and restoration of wetland ecosystems generally provide cost effective ways to address climate change. This is where the Global Environmental Facility (GEF) Payment for Ecosystem Services (PES) scheme for funding of mechanisms that reward good stewardship of natural resources fits in.

Depending on the outcome of future climate negotiations, the Ramsar Convention may play a larger role in mitigation and adaptation against climate change especially because Ramsar has been included in the Joint Liaison Group meetings between the Rio Conventions to further cooperate on joint action and operation on climate change issues. Needless to say, the joint action presupposes institutional coordination not only at the international but also at the regional and national levels. Meaning, there should be synergy at the domestic level in regard to the objectives of the CBD and Ramsar Convention and the actions they require to be addressed including climate change concerns.

Such collaboration, cooperation, coordination and synergy between the Ramsar Convention and CBD should be extended to other related MEAs like the Convention to Combat Desertification, Convention on Migratory Species, Convention on International Trade in Endangered Species of Fauna and Flora, etc and NGOs which could also provide a link or bridge between the two conventions on account of their general interest in current environmental issues and concerns.

Recently, the 3rd session of the plenary of the Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) (2014) further called for increased synergies with relevant MEAs. At the same time, international institutions like UNESCO, FAO, UNEP and UNDP look forward to greater involvement in the UN collaborative partnership arrangements from the Platform, in particular UNEPs Live Knowledge Platform and UNESCOs Future Earth Initiative. After all, climate change and biodiversity conservation are inherently linked and expressed as Reducing Emissions from Deforestation and Forest Degradation (REDD) or RED-Plus which includes the conservation and management of terrestrial ecosystems. Be it noted that IPBES
mentioned above has 123 member countries and a similar function in the context of CBD as the Integrated Panel on Climate Change does in the context of the UNFCC.

Lastly, Ramsar’s 2015 COP12 gave the Convention a new sense of direction and relevance by charting the way for the Convention to link up to other international processes notably (i) the UN post 2015 Sustainable Development Goals (SDGs) highlighting the need to extend Ramsar’s reach into fisheries, sanitation and infrastructure development; (ii) the benefits from the results of the ongoing Intergovernmental Platform on Biodiversity and Ecosystem Services (IPBES) and the opportunity to feed into revision of the Aichi Targets in 2020; and (iii) the Sendai Framework on Disaster Risk Reduction. Efforts to link with international regimes and processes were matched with ensurance that the Convention maintains a focus on providing guidance and support to local authorities and Ramsar site managers.

Conclusion

UNFCC is just one multilateral environmental agreement whose program of work on mitigation and adaptation to climate change does not substantially address wetland conservation and biodiversity concerns. But, on the other land, the CBD and Ramsar Convention have important roles in addressing climate change. They should continue to capitalize on linkages between their already existing programs and climate change concerns in order to raise their political standing. The two conventions must continue developing and implementing policies that promote their objectives without aggravating the causes and effects of climate change. There is much that the Ramsar Convention and CBD can work on to create more synergies with each other with the end in view of larger roles in the matter of measures for mitigation and adaptation to climate change.

An examination of the records of developments on implementation of the Convention on Biological Diversity and Ramsar Convention will reveal evidences of an expanding bridge with climate change, e.g. ecosystem approach, sustainable forestry management, integrated water resources management, etc. This is bolstered by Ramsar’s definition of “wise use” which emphasizes the more specific objective of “maintenance of the ecological character” of wetlands rather than the more general “sustainable utilization of wetlands.” Apart from guidelines, MOUs, harmonized reporting from the two conventions, this is the right time for the enactment of national legislations to implement MEAs on wetlands and biodiversity conservation *vis-a-vis* climate change which, on account of their technical nature should be supported by guidelines to ensure effective implementation and enforcement. In this regard, governments need to know their responsibilities at which the general public including the business sector would be a big boost to successful governance of wetlands and biodiversity as they relate to the serious climate change problem confronting Asia and the rest of the world.
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The oldest Philippine legal document was not written on paper or stone but on copper. Known as the Laguna Copperplate and allegedly forged in the year 800 A.D., it speaks of a payment of a debt in gold by a certain Namwran to the Chief of Dewata representing the Chief of Mdang. The document was transcribed in copper by a scribe upon the instruction of Jayadewa, the Chief Commander of Tundun (Tondo). The copperplate is now with the National Museum of the Philippines.

EARLY WRITING SYSTEM

In the 16th century, the missionary Fr. Pedro Chirino wrote in his *Relaciones de las Islas Filipinas* that almost all the natives knew how to read and write in the *baybayin or the native syllabary*, undoubtedly the medium of communication among the inhabitants of these Islands. Strangely, the *baybayin* we have today, in the National Archives and private collections, were all written after the coming of the Spaniards. In fact, the two *baybayin* documents which were declared as National Cultural Treasures and owned by the University of Santo Tomas are two

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4 The author graduated from the Ateneo College of Law in 1985. He has taught Introduction to Law, Insurance Law, Criminal Law I and II, Special Issues in International Law and International Law at San Beda College of Law in Alabang and San Beda College of Law in Manila. At present, he teaches International Law at San Beda Manila and Alabang and he is the Dean of the College of Law of the Asian Development Foundation College. In 2012, he was given the Patnubay Award for history by the City of Manila.

He has been a director of a college library, a national antiquarian society, and the Integrated Bar. He was a writer for the Bulletin of the American Historical Collection and other publications. He is a member of P.E.N., an international organization of poets, playwrights, editors, essayists, and novelists. He is also a member of the Philippine Studies Association, the Manila Studies Association and the Philippine National Historical Society. He has written numerous articles on history and law in various specialized journals.

He has also written a best-selling book, *Under the Stacks*, a book about Philippine history. He has also written another book entitled the Last Bohemian and a coffee table book entitled Vestments of the Golden Leaf, a book on the history of tobacco and tobacco labels in the Philippines. He has also compiled a book on poetry entitled Elegy.

He has also written a book entitled Cartas Philippines's, which is also a book about Philippine history and two books on International Law to be released this year.
deeds of sale for certain parcels of land dated February 15, 1613 and December 4, 1625, respectively.

Baybayin means writting or syllabary. The Philippines still has several extant baybayins, i.e., the baybayins of the Palaw'ans, Tagbanuas and the Mangyans.

The Laguna Copperplate

BURIAL SITE IN LAGUNA

The journey of the copperplate began on ancient burial grounds, in a place called Dulongbayan, in Lumban, Laguna, which became a major source of pre-Hispanic artifacts coveted by Philippine collectors in the 1960’s. Through the years, the Lumban River meandered and expanded until it intruded on a sizeable portion of an ancient burial site. That was why the copperplate was dredged from the Lumban River by a man identified only as Erning who was using a bucket–type conveyor to scoop gravel from the river which would later be sold to construction projects.
Erning sold the unusual copperplate to a certain Jerry Mendiola who later showed it to Albert Dealino, a well-known antique dealer from Siniloan, Laguna, whose shop was located in the main market of the town.

Wry and thin, Dealino inherited the trade from his father who specialized in pre-Hispanic antiquities. Dealino bought the copperplate from Mendiola for a P250.00—a pittance considering its importance. The very next day, he was seen at an auction of the Philippine Numismatic and Antiquarian Society, the oldest collectors’ club in the Philippines, founded before World War II and an organization wrapped in lore and mystery. However, that morning at the auction, Dealino displayed the copperplate with strange inscriptions openly with his other wares.

The first person who showed interest in the copperplate was a woman who offered P2,000 which offer Dealino politely declined. Then Bill Elwell, an American dealer, examined the copperplate. Having the trained eye of a professional numismatist, he then offered P5,000 and Dealino accepted. The Laguna copperplate changed hands for the second time from the time it was discovered by Erning, the gravel man, at the Lumban River.

Elwell then sold the copperplate to Venancio Magbuhos. Magbuhos is an amiable fellow, self-taught in the antique trade and an ubiquitous figure in the antique market. Thus, one of the nation’s most important artifact changed hands for the third time. Magbuhos, without knowing the importance of the copperplate, then sold it to the National Museum. The copperplate changed hands for the fourth time.

**DECIPHERING THE INSCRIPTIONS**

When Antoon Postma, a Dutch paleographer who now lives with the Mangyans of Mindoro, laid eyes on the Laguna Copperplate in the National Museum, he immediately became aware of its historical importance. He then contacted his friend, Dr. Johannes G. de Casparis, who identified the script. Postma and de Casparis, two scientists working together, finally unlocked for the Philippines and the world, the secrets of the Laguna copperplate.

The Postma-de Casparis translation goes:

Hail! In the Saka-year 822; the month of March-April; according to the astronomer: the 4th day of the dark half of the moon; on Monday. At
that time, Lady Angkatan together with her relative, Bukah by name, the child of His Honor Namwran, was given, as a special favor, a document of full acquittal, by the Chief and Commander of Tundun, the former Leader of Pailah, Jayadewa. To the effect that His Honor Namwran, through the Honorable Scribe, was totally cleared of a debt to the amount of 1 kati and 8 suwarma (weight of gold), in the presence of His Honor the Leader of Puliran, Kasumuran; His Honor the Leader of Pailah namely: Ganasakti; (and) His Honor the Leader of Binwangan, namely: Bisruta. And, (His Honor Namwran) with his whole family, on orders of the Chief of Dewata representing the Chief of Mdang, because of his loyalty as a subject (slave?) of the Chief, therefore all the descendants of His Honor Namwran have been cleared the whole debt that His Honor owed the Chief of Mdang.

This is issued in case there is someone, whosoever, sometime in the future, who will state that the debt is not yet acquitted by His Honor.

In his book, *The Philippines from the 6th to the 16th Centuries*, the historian Eufemio P. Patanñe, wrote that the inscriptions on the copperplate are similar to the standard form of early Kawi, circa 10th century A.D.

The writer E. P. Patanñe gives a more intelligible and readable version of the translation made by Postma and de Casparis:

In the Saka-year 822 (A.D. 900) in the month of March-April on the fourth day of the dark half of the moon which is a Monday, Lady Angkatan with her child Bukah, she the wife of His Honor Namwran, appeared before the Chief and Commander of Tundun (Tondo) and scribe. Upon the instruction of the Chief and Commander of Tundun, Jayadewa, former chief of Pailah, a legal document was recorded clearing Namwran of a debt in gold amounting to 1 kati and 8 suwarma (around 926.4 grams). The debt was owed the Chief of Dewata representing the Chief of Mdang. Witnessing the legal ceremony were the Leader of Puliran (Pulilan), Kasumuran; the Leader of Pailah, Ganasakti, and the Leader of Binwangan, Bisruta. The document cleared Namwran and all his descendants of the debt and stressed the point that it was final and none should challenge it in the future.
EPILOGUE

The copperplate is a most intriguing document. Small and terse and oxidized by age, it nevertheless tells us that all did not begin with the coming of the European colonizers. The copperplate proves that we could have evolved on our own as a nation before we were robbed by the Spaniards and other conquerors of our lands and souls. This is because the ability to read and write is one of the manifestations of a nascent civilization.

Several copperplate documents exist in museums in Indonesia and Bali. The documents are almost identical in size to the copperplate discovered in Laguna. What distinguishes the Laguna Copperplate is that it mentioned place names in our archipelago such as Tundun (now Tondo, Manila), Puliran (Pulilan, Bulacan) and Pailah (Paila, Bulacan).

The Laguna Copperplate is the most significant object evidence of prehistoric Philippines and is the oldest surviving legal document of the Philippines.

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Sworn Affidavit of Venancio Magbuhos notarized on October 10, 2009
Political Secession and the Exercise of Religious Freedom

By Roselle Anne B. Catipay

INTRODUCTION

“Although the Church and the political community both manifest themselves in visible organizational structures, they are by nature different because of their configuration and because of the ends they pursue. (Compendium of the Social Doctrine of the Church, 424-25)

It is a reality that both the Church and the State have the same constituents to serve, attend to and care for – the people in the country where Church and State precisely co-exist. In order to prevent or attenuate possible conflicts between the Church and State, the juridical experience have variously defined stable form of contact and suitable instruments for guaranteeing harmonious relations

The Church and the State are both duly organized according to their respective constitutive being, intrinsic nature and inherent finality. They both have their own proper structures as demanded by their respective goals and objectives. They are wherefore well discernible and understandable to the people they exist for and are relevant to. That is to say, the political community is mentioned in the same breath or pointed out in the same level with the Church, whereas once thus concretely organized with concrete and proper institutional structures pursuant to its constitution and finality, it thus becomes as a State and wherefore rightfully stands parallel to the Church, as they are both institutions.

At the outset, it cannot be denied that we all live in a heterogeneous society. It is made up of people of diverse ethnic, cultural and religious beliefs and backgrounds. Our government, in law and in practice, has allowed these various religious, cultural, social and racial groups to thrive in a single society together. It has embraced minority groups and is tolerant towards all - the religious people of different sects and the non-believers. The undisputed fact is that our people generally believe in a deity, whatever they conceived Him to be, and to whom they call for guidance and enlightenment in crafting our fundamental law.

The Filipino people in "imploring the aid of Almighty God" manifested their spirituality innate in our nature and consciousness as a people, shaped by tradition and historical experience. As this is

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6 Arch. Oscar. V. Cruz, CHURCHMEN & POLITICIANS (2010)

7 Imbong et.al. vs. Ochoa Jr., et al., G.R. No. 204819, April 8, 2014
embodied in the preamble, it means that the State recognizes with respect the influence of religion in so far as it instills into the mind the purest principles of morality.\textsuperscript{8}

\textbf{The reason for the separation of the church and state}

Religion was closely intertwined with the law. Under the Spanish Constitution, “Catholicism was the state religion and Catholics alone enjoyed the right of engaging in public ceremonies of worship. Thus, the Catholic Church was the established religion in the Philippine Islands, a fact that placed the Church under the protection of the Spanish Penal Code, which punished crimes against the state religion.\textsuperscript{9} The primacy of religion was one of the first things that changed when the Philippines shook free from Spanish rule. Both the Treaty of Paris and the Malolos Constitution, early manifestations of Philippine law, provided that there would no longer be a prescribed state law for the Philippines.\textsuperscript{10}

Under the union of Church and State there is no liberty of either or both. It is under the proper observance of separation of Church and State that there is real liberty – liberty of the Church from the State and freedom of the State from the Church. The various freedoms specifically including religious freedom can best thrive under separation of Church and State.

\textbf{Malolos Constitution}

The chosen representatives to the Malolos Congress approved this provision:

\textbf{Article 5.} The State recognizes the equality of all religious worship and the separation of Church and State.

On this achievement, the authors of Evangelical Christianity in the Philippines had the following comment:

“The significance of the action taken by the Malolos Congress gains in importance when it is borne in mind that all those Filipinos who took part in the constitutional convention were schooled under a regime in which Church and State were united. They had been trained under the influence of the Catholic orders for all institutions of higher learning in that epoch were directed by the religious orders. The meeting place was none other than a Roman Catholic Church, the memorable church at Barasoain, Malolos.

It is therefore, worthy to be immortalized in history because it struck at the very root of many of the evils which had pervaded Philippine administration under Spanish rule. It speaks eloquently of the

\footnotesize\textsuperscript{8} Id.
\footnotesize\textsuperscript{10} Id.
devotion of the Filipinos to the principle of the separation of church and state and the ideal of religious freedom.”

Comparative Tables of Constitutional Provisions Relating To Religion:

On Separation of the Church and State

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<td>Art. XV. General Provisions</td>
<td>Art. II. Declaration of Principles</td>
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<td>Section 15. The separation of the Church and the State shall be inviolable</td>
<td>Section 6. The separation of the Church and the State shall be inviolable</td>
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Though there was no explicit provision in the 1935 Constitution, it did not deviate from the principle enshrined by the Philippine Commission under the instructions from President McKinley during the American regime, which survives to this day with practically the same wording as it is currently found in the 1987 Constitution.

The principle of separation of Church and State is based on mutual respect. Generally, the State cannot meddle in the internal affairs of the church, much less question its faith and dogmas or dictate upon it. It cannot favor one religion and discriminate against another. On the other hand, the church cannot impose its beliefs and convictions on the State and the rest of the citizenry. It cannot demand that the nation follow its beliefs, even if it sincerely believes that they are good for the country. This provision is nothing less than constitutional in nature or fundamental in observance. This is the standard secular thought and principle of practically all States in the modern world – except those that, for one reason or another, could not yet go away from their deeply original and much ingrained religioso-cultural configuration. There is some kind of a union between a Church, religion or sect and a State still existing as a reality particularly in old non-Christian countries. And it is also in such nations that basic human rights are sadly violated, that human domination and subservience is thus some kind of a given fact. It is to the credit of the framers of the past and present Constitutions that the separation – as accordingly qualified by certain existing national and local religious realities – “shall be inviolable”. This evidently means that there cannot and may not be any reason or cause at all that the separation could be in any way

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11 Camilio Olayviano Osias. CHURCH AND STATE. (1965)
12 Imbong et. Al. vs Ochoa et al., G.R. No. 204819, April 8, 2014
13 Arch. Oscar. V. Cruz, CHURCHMEN & POLITICIANS (2010)
undermined, much less subject to change with any contrary argument and at any time – considering that the Constitution of the Philippines provides a republican democracy for the country.\footnote{id}

The priority rationale of the qualified separation between the Church and the State is squarely premised on the reality that those who are the citizens of the former and at the same time also faithful followers in the latter, are mostly the same people. Obviously, they both want and need the attention, concern and service of both the Church and the State whereby each responds to their temporal and spiritual needs, respectively.\footnote{id}

\textbf{Non-Establishment and Free Exercise Clauses}

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<td>Art. III. Bill of Rights</td>
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<td>Section 7. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.</td>
<td>Section 8. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.</td>
<td>Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.</td>
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The Philippine Constitution has consistently provided for “non-establishment” and “free exercise” clauses. The wordings have not changed from the 1935 Constitution until the present.

There are two parts of this provision. The first prohibits the establishment of any religion and the second guarantees the free exercise of religion. The policy has been one of government neutrality. This reinforces Section 6, Article II on the separation of Church and State. There are four requirements of propositions of government neutrality: (1) Government must not prefer one religion over another, or religion over irreligion; (2) Government funds must not be used for religious purposes; (3) Government action must not aid religion and (4) Government action must not result in excessive entanglement with religion.\footnote{id} While there is no unanimity in the interpretation of non-establishment as a political principle,
there is substantial agreement on the values non-establishment seeks to protect. These are voluntarism and insulation of the political process from interfaith dissension. Voluntarism as a value is both personal and social. As a personal value, it is nothing more than the inviolability of the human conscience which is also protected by the free exercise clause. As a social value, protected by the non-establishment clause, it means that the growth of a religious sect as a social force must come from the voluntary support of its members because of the belief that both spiritual and secular society will benefit of official patronage. Such voluntarism cannot be achieved unless the political process is insulated from religion and unless religion is insulated from politics. Non-establishment assures such insulation and thereby prevents interfaith dissension.\textsuperscript{17}

The free exercise clause simply means that religious worship or profession of one’s religion is guaranteed to be free from any form of governmental interference. There are two aspects to this right – the freedom to believe and the freedom to act. The freedom to believe is something that may not be regulated, but the freedom to act may properly be the subject of regulation and police power. Judges must therefore perform a “balancing act” holding on one hand the religious freedom of the actor, and on the other, the secular interest of the State.\textsuperscript{18}

**Tax Exemption for Religious Purposes**

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<td>Section 14 (3) Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.</td>
<td>Section 17 (3) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, and non-profit cemeteries, and all lands, buildings, and improvements actually, directly, and exclusively used for religious or charitable purposes shall be exempt from taxation.</td>
<td>Section 28 (3) Charitable institutions, churches and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements, actually, directly, and exclusively used for religious, charitable, or educational purposes shall be exempt from taxation.</td>
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\textsuperscript{17} Id

\textsuperscript{18} Sedfrey Candelaria et al., WALKING THE LINE: THE PHILIPPINE APPROACH TO CHURCH STATE-CONFLICT
Non-appropriation of public money for religious purposes

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<td>Section 23 (3) No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as assigned to the armed forces or to any penal institution, orphanage, or leprosarium</td>
<td>Section 18 (2) No public money or property shall ever be appropriated, applied, paid, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium</td>
<td>Section 29 (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.</td>
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These provisions regarding religion that appear in the articles regarding the legislative department are further the expressions of the inviolability of the separation of the Church and State. The first provision regards the tax exemption afforded to religious organizations and the structures they use. This provision has changed slightly from the earlier iteration in the 1935 Constitution. Significantly, the newer Constitutions have added *mosques* to the list of tax-exempt properties. This speaks to the capacity of the government to recognize and extend protection to more than one religion, even if the country is predominantly Catholic. This exemption is another expression of the protection of religious freedom.¹⁹

The second provision found in the Article on Legislative Department deals with the prohibition against spending public funds for religious purposes. Taken from the Jones Law, this provision complements the non-establishment clause. It has also remained unchanged from its first appearance in the 1935 Constitution.

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¹⁹ Sedfrey Candelaria et al., *WALKING THE LINE: THE PHILIPPINE APPROACH TO CHURCH STATE-CONFLICT*
Non-registration of religious denominations as political parties

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<td>Section 8 par. 2 No religious sect shall be registered as a political party and no political party which seeks to achieve its goal through violence shall be entitled to accreditation.</td>
<td>Section 2 par. 5. Religious denominations and sects shall not be registered.</td>
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While the government wishes to provide adequate representation for all sectors of society, giving such power to religious institutions would be violative of the Constitutional mandate of separating Church and State. It is worthy to note, however, that “a member of the religious sector may become a sectoral representative, but not as representing the religious sector.”

Recent Developments on Church-State conflict

In the recent case of Imbong vs. Ochoa (G.R. No. 204819, April 8, 2014), the Supreme Court decided on the controversial issue of Reproductive Health Bill. Despite efforts to push the bill to a reproductive health law, the Court sees it principally as a population control measure.

Limitations of the Exercise of Religious Freedom

The petitioners recognize that the guarantee of religious freedom is not absolute, however they argue that the RH Law fails to satisfy the "clear and present danger test" and the "compelling state interest test" to justify the regulation of the right to free exercise of religion and the right to free speech. In ascertaining the limits of the exercise of religious freedom, the compelling state interest test is proper. Underlying the compelling state interest test is the notion that free exercise is a fundamental right and that laws burdening it should be subject to strict scrutiny. In Escritor, it was written:

20 Joaquin G. Bernas. S.J., A COMMENTARY
Philippine jurisprudence articulates several tests to determine these limits. Beginning with the first case on the Free Exercise Clause, American Bible Society, the Court mentioned the "clear and present danger" test but did not employ it. Nevertheless, this test continued to be cited in subsequent cases on religious liberty. The Gerona case then pronounced that the test of permissibility of religious freedom is whether it violates the established institutions of society and law. The Victoriano case mentioned the "immediate and grave danger" test as well as the doctrine that a law of general applicability may burden religious exercise provided the law is the least restrictive means to accomplish the goal of the law. The case also used, albeit inappropriately, the "compelling state interest" test. After Victoriano, German went back to the Gerona rule. Ebralinag then employed the "grave and immediate danger" test and overruled the Gerona test. The fairly recent case of Iglesia ni Cristo went back to the "clear and present danger" test in the maiden case of American Bible Society. Not surprisingly, all the cases which employed the "clear and present danger" or "grave and immediate danger" test involved, in one form or another, religious speech as this test is often used in cases on freedom of expression. On the other hand, the Gerona and German cases set the rule that religious freedom will not prevail over established institutions of society and law. Gerona, however, which was the authority cited by German has been overruled by Ebralinag which employed the "grave and immediate danger" test. Victoriano was the only case that employed the "compelling state interest" test, but as explained previously, the use of the test was inappropriate to the facts of the case.

In this case, it is not within the province of the Court to determine whether the use of contraceptives or one's participation in the support of modern reproductive health measures is moral from a religious standpoint or whether the same is right or wrong according to one's dogma or belief. For the Court has declared that matters dealing with "faith, practice, doctrine, form of worship, ecclesiastical law, custom and rule of a church ... are unquestionably ecclesiastical matters which are outside the province of the civil courts."

The jurisdiction of the Court extends only to public and secular morality. Whatever pronouncement the Court makes in the case at bench should be understood only in this realm where it has authority. Stated otherwise, while the Court stands without authority to rule on ecclesiastical matters, as vanguard of the Constitution, it does have authority to determine whether the RH Law contravenes the guarantee of religious freedom."

At first blush, it appears that the RH Law recognizes and respects religion and religious beliefs and convictions. It is replete with assurances the no one can be compelled to violate the tenets of his religion or defy his religious convictions against his free will. Provisions in the RH Law respecting religious freedom are the following:

1. The State recognizes and guarantees the human rights of all persons including their right to equality and nondiscrimination of these rights, the right to sustainable human development, the right to health which includes reproductive health, the right to education and information, and the

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21 Id.
22 Id.
right to choose and make decisions for themselves in accordance with their religious convictions, ethics, cultural beliefs, and the demands of responsible parenthood. (Section 2, Declaration of Policy)

2. The State recognizes marriage as an inviolable social institution and the foundation of the family which in turn is the foundation of the nation. Pursuant thereto, the State shall defend:

(a) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood." (Section 2, Declaration of Policy)²³

The Court further said that there was no violation of the guarantee of religious freedom. The State may pursue its legitimate secular objectives without being dictated upon the policies of any one religion. To allow religious sects to dictate the policy would violate the provision in the Constitution under Section 5 of Article III or the non-establishment clause. This would result for the State to adhere to a particular religion and therefore, establishes a religion. Thus, the State can enhance its population control program through the Reproductive Health Law.

Members of INC invoked the separation of the church and state

Last August 2015, members of Iglesia Ni Kristo gathered in front of the Department of Justice after the expelled Iglesia ni Kristo minister Isaias Samson Jr. filed an illegal detention case against INC leaders. He said that he and his family were put under armed guard and restricted to their house for several days, while the Sanggunian interrogated him with regard to his knowledge of the person "Antonio Evangelista," a pseudonym, who has been publicly writing blog reports about financial anomalies taking place within the INC.

INC members brought posters and streamers against the alleged DOJ persecution that bore messages relating to the freedom of religion. "Freedom of religion. Church and state separation. Take this into consideration!" said one.

Certainly, they are invoking the constitutional provisions on the separation of the church and state as well as the free exercise of religion. Point must be taken however that not every individual who are present in the protest action are aware of the meaning of such provisions. It is imperative for every citizen to be knowledgeable of the fundamental law as well as to know when it shall be invoked. If the basis of their protest was the illegal detention case being filed by Samson, the use of the provision of the Constitution was indeed misplaced.

In a criminal case, it is irrelevant whether the organization is religious or not. In adherence to the principle of generality, criminal law is binding on all persons who live or sojourn in the Philippine

²³ Id.
By entertaining the case filed by Samson against another person or a group of persons, there is no violation of any constitutional provision.

**What do INC members meant by separation of church and state**

The church questioned the motive by then Justice Secretary Leila De Lima to personally oversee the filing of illegal detention case against the entire membership of the church’s Sanggunian headed by Ka Glicero Santos Jr., instead of giving more attention to the plight of the 44 PNP-SAF members killed in the bloody encounter last January 2015.

As with most changes in leadership, Eduardo Manalo who succeeded his father in 2010 had his own inner circle, resulting in the exclusion of some formerly influential senior members from this elite group. The grumbling led to a full-blown schism in recent weeks. According to the INC source, some officials of the ruling Liberal Party were aware of this internal rift and decided to “exploit” it in an effort to weaken the bloc voting strength of the group.

“Angel Manalo (Eduardo’s younger brother) was out of the power loop, along with a few others,” “What some administration people did was approach the disgruntled members and urge them to go against the leadership.” The goal of this move is supposed to weaken the INC, “which they knew would never support Mar Roxas (the administration’s bet for the 2016 polls),” the source said. Thus, by breaking it up, the power of INC will be neutralized.

The INC insider said the administration’s template was a 1930s-era schism within the then nascent church led by a minister, Teofilo Ora. This rebellion obviously failed, but Ora was able to bring with him some members and set up the “Iglesia ng Dios kay Kristo Hesus”—a small group that still exists today.

“They thought that they could use the internal dissent in INC to foster another rebellion like what happened in the 1930s,” the source said, explaining that this “intrusion” by the government in the church’s internal affairs is what the group decried when they urged the “separation of church and state.”

The INC member said they suspected further intrusions by the government into its internal affairs when they received information that Angel Manalo and former minister Isias Samson Jr. were being urged to speak out against the church’s leadership. “The kidnapping charge against the members of the church hierarchy was yet another attempt to sway INC’s 1.2-million bloc voting members to support the administration candidate.”

This recent INC adventure into open defiance of State authority can therefore be seen not so much as an exercise of religious freedom, and a demand for the State to respect the separation of church and State, but a continuation of the INC’s history as a reaction to a Spanish-dominated Catholic Church, and

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its struggle for independence from such foreign domination not only in the aspect of religion, but all social, political, and economic dimensions as well.

It is an expressed worldview that need not necessarily correspond with the actual reality of the Filipino people consecrating a single identity and nationhood. But then again, what is a nation but an imagined community to which affiliation rests only so far as there is collective consent to belong to it.

So is the INC defiance actually an issue of separation of church and State and religious freedom, or the resurgence of the underlying historical consciousness of the INC as a separate collective resistant to any form of domination – including that of the State – other than their own self-imposed hierarchy of leadership and belief in exclusive deliverance and salvation?

**Conclusion**

The constitutional provision of separation of church and state must be clear for each and every citizen irrespective of their religion. It may be simple in concept but complex in practice. It must be therefore understood that neither has it forbidden voluntary cooperation nor any contact between each other.

They may differ in their domain and purpose, but they do not necessarily antagonize or cancel each other. In fact it is only through their co-existence and harmony that the well-being of man is achieved, that is, the State providing for the material goods of man and religion ministering to man’s spiritual needs. This co-existence comes about because they have a common form of reference—man’s well-being.

But the mantra of “Separation of Church and State” in no way means that the Church should be silent and stay still about the faith She professes and/or about the morals. No person or institution under our constitutional system can place themselves above or beyond the reach of law.
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Enrile’s Bail: Humanitarianly Unconstitutional?

Vericson D. Quitco

“Indeed, mercy and compassion temper justice. However, mercy and compassion should never replace justice. There is injustice when we, as the court of last resort, conveniently rid ourselves of the burden of enforcing the Rule of Law by neglecting to do the kind of rigorous, deliberate, and conscious analysis of the issues raised by the parties. There is injustice when we justify the result we want with ambiguous and unclear standards.

Compassion as an excuse for injustice not only fails us as justices of this court. It also fails us in our own humanity.”

-Justice Marvic Mario Victor F. Leonen

Factual Background

In mid-2015, a bombarding news about Senator Juan Ponce Enrile, Sr. disseminated all over the media with regard to his release on bail. Sen. Enrile was charged with Plunder, a non-bailable offense as regards his involvement in the Pork Barrel Scam. He has been alleged as one of those senators who misused their Priority Development Assistance Fund (a.k.a. pork barrel).

On June 5, 2014, the Office of the Ombudsman charged Enrile and several others with plunder in the Sandiganbayan on the basis of their purported involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF). Thereafter, on June 10, 2014 and June 16, 2014, Enrile prayed thru his Omnibus Motion and Supplemental Opposition that he be allowed to post bail should probable cause be found against him.

The Sandiganbayan thru a resolution denied Sen. Enrile’s motion, particularly on the matter of bail, on the ground of its prematurity considering that Enrile had not yet then voluntarily surrendered or been placed under the custody of the law. Then and there, Sandiganbayan ordered Enrile’s arrest.

Thereafter, Sen. Enrile filed his Motion for Detention at the PNP General Hospital, and his Motion to Fix Bail (dated July 7, 2014 and was heard by Sandiganbayad on July 8, 2014). Enrile argued that he should be allowed to post bail because the Prosecution had not yet established that the evidence of his guilt was strong and that his age and physical condition must further be seriously considered.

25 The author is the Associate Editor of The Bedan Review Law Journal and a 4th year student in the School of Law of San Beda College Alabang (2015-2016). He graduated Cum Laude at San Beda College Alabang with a Bachelor’s Degree in Legal Management. He is a Dean’s Lister in the School of Law of San Beda College Alabang in 2014.
On July 14, 2014, Sandiganbayan issued its first assailed resolution denying Enrile’s *Motion to Fix Bail*. Part of the resolution was:

“\[I\]t is only after the prosecution shall have presented its evidence and the Court shall have made a determination that the evidence of guilt is not strong against accused Enrile can he demand bail as a matter of right. Then and only then will the Court be duty-bound to fix the amount of his bail.

To be sure, no such determination has been made by the Court. In fact, accused Enrile has not filed an application for bail. Necessarily, no bail hearing can even commence. It is thus exceedingly premature for accused Enrile to ask the Court to fix his bail.

Lastly, accused Enrile asserts that the Court should already fix his bail because he is not a flight risk and his physical condition must also be seriously considered by the Court.

Admittedly, the accused’s age, physical condition and his being a flight risk are among the factors that are considered in fixing a reasonable amount of bail. However, as explained above, it is premature for the Court to fix the amount of bail without an anterior showing that the evidence of guilt against accused Enrile is not strong.

**WHEREFORE**, premises considered, accused Juan Ponce Enrile’s *Motion to Fix Bail* dated July 7, 2014 is **DENIED** for lack of merit.

**SO ORDERED.**

Thereafter, Sen. Enrile filed before the Supreme Court a petition for *certiorari* to assail and annul the resolutions issued by the Sandiganbayan. Enrile insisted that the resolutions, which respectively denied his *Motion To Fix Bail* and his *Motion For Reconsideration*, were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

**Controversial Decision of the Supreme Court – Re: Enrile’s State of Health as Ground to Grant Bail**

Supreme Court’s Decision provides, “Nonetheless, in now granting Enrile’s petition for *certiorari*, the Court (Supreme Court) is guided by the earlier mentioned principal purpose of bail, which is to guarantee the appearance of the accused at the trial, or whenever so required by the court. The Court is further mindful of the Philippines’ responsibility in the international community arising from the national
commitment under the *Universal Declaration of Human Rights* to:

x x x uphold the fundamental human rights as well as value the worth and dignity of every person. This commitment is enshrined in Section II, Article II of our Constitution which provides: “The State values the dignity of every human person and guarantees full respect for human rights.” The Philippines, therefore, has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. In other words, the Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail.

x x x x

The currently fragile state of Enrile’s health presents another compelling justification for his admission to bail, but which the Sandiganbayan did not recognize. Dr. Jose C. Gonzales, the Director of the Philippine General Hospital (PGH), classified Enrile as a geriatric patient who was found during the medical examinations conducted at the UP-PGH to be suffering from the following conditions:

1. **Chronic Hypertension with fluctuating blood pressure levels on multiple drug therapy;**

2. **Diffuse atherosclerotic cardiovascular disease composed of the following:**
   a. Previous history of cerebrovascular disease with carotid and vertebral artery disease;
   b. Heavy coronary artery calcifications;
   c. Ankle Brachial Index suggestive of arterial calcifications.

3. **Atrial and Ventricular Arrhythmia (irregular heart beat) documented by Holter monitoring;**

4. **Asthma-COPD Overlap Syndrom (ACOS) and postnasal drip syndrome;**

5. **Ophthalmology:**
   a. Age-related macular degeneration, neovascular s/p laser of the Retina, s/p Lucentis intra-ocular injections;
   b. S/p Cataract surgery with posterior chamber intraocular lens.

6. **Historical diagnoses of the following:**
   a. High blood sugar/diabetes on medications;
Dr. Gonzales attested that the following medical conditions, singly or collectively, could pose significant risks to the life of Enrile, to wit: (1) uncontrolled hypertension, because it could lead to brain or heart complications, including recurrence of stroke; (2) arrhythmia, because it could lead to fatal or non-fatal cardiovascular events, especially under stressful conditions; (3) coronary calcifications associated with coronary artery disease, because they could indicate a future risk for heart attack under stressful conditions; and (4) exacerbations of ACOS, because they could be triggered by certain circumstances (like excessive heat, humidity, dust or allergen exposure) which could cause a deterioration in patients with asthma or COPD.

Based on foregoing, there is no question at all that Enrile’s advanced age and ill health required special medical attention. His confinement at the PNP General Hospital, albeit at his own instance, was not even recommended by the officer-in-charge (OIC) and the internist doctor of that medical facility because of the limitations in the medical support at that hospital.

**Criticism – Justice Leonen’s Dissent has more substance and better argued?**

The controversial decision of the Supreme Court has a very vast effect on Rules on Criminal Procedure. Can there really be posting of bail based on ‘humanitarian’ grounds?

Justice Leonen stressed that bail is not a matter of right in cases where the crime charged is plunder and the imposable penalty is reclusion perpetua. Neither was there grave abuse of discretion by the Sandiganbayan when it failed to release accused on bail for medical or humanitarian reasons. His release for medical and humanitarian reasons was not the basis for his prayer in his Motion to Fix Bail filed before the Sandiganbayan. Neither did he base his prayer for the grant of bail in this Petition on his medical condition. Neither petitioner nor the prosecution as respondent developed their arguments on this point at the Sandiganbayan or in this court to establish the legal and factual basis for this special kind of bail in this case.

One of the issue presented by Justice Leonen on his dissent is that:
“What are our specific bases for saying that the medical condition of the accused entitles him to treatment different from all those who are now under detention and undergoing trial for plunder? Is it simply his advanced age? What qualifies for advanced age? Is it the medical conditions that come with advanced age? Would this apply to all those who have similar conditions and are also undergoing trial for plunder? Is he suffering from a unique debilitating disease which cannot be accommodated by the best care provided by our detention facilities or hospital or house arrest? Are there sufficient evidence and rules to support our conclusion?” This issue has never been resolved by the Supreme Court but it rather focused its decision on the basis of state of health of Sen. Enrile.

As provided for in his dissent, despite brushing aside all of petitioner’s arguments, the majority, instead of denying the Petition for Certiorari, grants it on some other ground that was not even argued nor prayed for by petitioner. In essence, the majority now insists on granting bail merely on the basis of the certification in a Manifestation and Compliance dated August 14, 2014 by Dr. Jose C. Gonzales stating that petitioner is suffering from numerous debilitating conditions. This certification was submitted as an annex to a Manifestation before this court regarding the remoteness of the possibility of flight of the accused not for the purposes of asking for bail due to such ailments.

Nowhere in the rules of procedure do we allow the grant of bail based on judicial notice of a doctor’s certification. In doing so, we effectively suspend our rules on evidence by doing away with cross-examination and authentication of Dr. Gonzales’ findings on petitioner’s health in a hearing whose main purpose is to determine whether no kind of alternative detention is possible.

Justice Leonen also pointed out that there have been defilement of the Rules on Evidence.

Under Section 2 of Rule 129 of the Revised Rules on Evidence:

**SEC. 2. Judicial notice, when discretionary.** – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.

According to Justice Leonen, “Petitioner’s medical ailments are not matters that are of public knowledge or are capable of unquestionable demonstration. His illness is not a matter of general notoriety.

Assuming that the medical ailments of petitioner are relevant issues for bail, the prosecution is now deprived of a fair opportunity to present any evidence that may rebut the findings of Dr. Gonzales or any
other medical documents presented by petitioner in this Court. Due process requires that we remand this matter for a bail hearing to verify Dr. Gonzales’ findings and to ensure that that is still the condition that prevails at present.

That we make factual determinations ourselves to grant provisional liberty to one who is obviously politically privileged without the benefit of the presentation of evidence by both the prosecution and the accused, without the prosecution being granted the opportunity to cross-examine the evidence, and without consideration of any rebutting evidence that may have been presented should a hearing be held, casts serious doubt on our neutrality and objectivity.

The better part of prudence is that we follow strictly our well-entrenched, long-standing, and canonical procedures for bail. Doctrinally, the matter to determine is whether the evidence of guilt is strong. This is to be examined when a hearing is granted as a mandatory manner after a petition for bail is filed by the accused. The medical condition of the accused, if any, should be pleaded and heard.

As a conclusion on the judicial notice, Justice Leonen said, “If we are to take judicial notice of anything, then it should be that there are those accused of murder, trafficking, sale of dangerous drugs, incestuous rape, rape of minors, multiple counts of rape, or even serious illegal detention who languish in overcrowded detention facilities all over our country. We know this because the members of this court encounter them through cases appealed on a daily basis. Many of them suffer from diseases that they may have contracted because of the conditions of their jails. But they and their families cannot afford hospitals better than what government can provide them. After all, they remain in jail because they may not have the resources to launch a full-scale legal offensive marked with the creativity of well-networked defense counsel. After all, they may have committed acts driven by the twin evils of greed or lust on one hand and poverty on the other hand.

Moreover, bail for the provisional liberty of the accused, regardless of the crime charged, should be allowed independently of the merits of the charge, provided his continued incarceration is clearly shown to be injurious to his health or to endanger his life. Indeed, denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during trial.

Justice Leonen even presented a logical fallacy on the argument that bail may be granted on humanitarian grounds:

Premise: There are those whose continued incarceration is clearly shown to be injurious to their health OR whose lives are endangered due to incarceration.

Premise: Petitioner is suffering from some ailments.

Therefore: Petitioner should be released.
Furthermore, Sandiganbayan already issued Resolutions allowing accused to remain at the Philippine National Police General Hospital and continue medical examinations until further orders from the court, subject to reportorial requirements and at accused’s personal expense.

According to Justice Leonen, there were standing orders of the Sandiganbayan that authorize accused to be brought to any hospital immediately if he exhibits symptoms that cannot be treated at the Philippine National Police General Hospital subject only to reportorial requirements to the court. In granting bail to petitioner, we are, in effect, declaring that the Sandiganbayan’s decisions in relation to its supervision of the accused’s detention were tainted with grave abuse of discretion.

However, these orders were not the subject of this Petition for Certiorari.

To the Sandiganbayan, based upon the facts as presented to it, accused does not seem to be suffering from a unique debilitating disease whose treatment cannot be provided for by our detention facilities and temporary hospital arrest in accordance with their order. How the majority arrived at a conclusion different from the Sandiganbayan has not been thoroughly explained. Neither did this issue become the subject of intense discussion by the parties through their pleadings.

It is unclear whether this privilege would apply to all those who have similar conditions and are also undergoing trial for plunder. It is unclear whether petitioner’s incarceration aggravates his medical conditions or if his medical conditions are simply conditions which come with advanced age.

Justice Leonen emphasized that the majority has not set specific bases for finding that the medical condition of petitioner entitles him to treatment different from all those who are now under detention and undergoing trial for plunder. There is no showing as to how grave his conditions are in relation to the facilities that are made available to him. There is also no showing as to whether any of his medical ailments is actually aggravating in spite of the best care available. If his health is deteriorating, there is no showing that it is his detention that is the most significant factor or cause for such deterioration.

Usually, when there is a medical emergency that would make detention in the hospital necessary, courts do not grant bail. They merely modify the conditions for the accused’s detention. There is now no clarity as to when special bail based on medical conditions and modified arrest should be imposed.

Finally, there is no guidance as to whether this special bail based on medical condition is applicable only to those of advanced age and whether that advanced age is beyond 90 or 91 years old. There is no guidance as to whether this is applicable only to cases involving plunder. There is no guidance in the majority’s opinion as to whether this is only applicable to the medical conditions or stature or titles of petitioner.

With regard to the issue on Human Rights, Justice Leonen pointed out that there are no specific and binding international law provisions that compel this court (Supreme Court) to release petitioner given his
medical condition. The Universal Declaration of Human Rights, relied upon in the majority opinion, is a general declaration to uphold the value and dignity of every person. **It does not prohibit the arrest of any accused based on lawful causes nor does it prohibit the detention of any person accused of crimes. It only implies that any arrest or detention must be carried out in a dignified and humane manner.** Petitioner’s remedies under the Universal Declaration of Human Rights that safeguard his fundamental right to liberty are qualified by the Constitution. Article III, Section 13 of the Constitution clearly states that bail is available to all persons before conviction “except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong.

**Conclusion or Controversy? Selective Justice**

“Liberty is indeed a cherished value. It is an intrinsic part of our humanity to fight for it and ensure that it allows all of us to lead the kind of lives that we will consider meaningful. This applies to petitioner as accused. Yet it also applies with equal force to all the individuals in our communities and in this society.

Our collective liberty, the kind that ensures our individual and collective meaningful existence, is put at risk if justice is wanting. Special privileges may be granted only under clear, transparent, and reasoned circumstances. Otherwise, we accept that there are just some among us who are elite. Otherwise, we concede that there are those among us who are powerful and networked enough to enjoy privileges not shared by all."

-Justice Marvic Mario Victor F. Leonen

According to Justice Leonen, “the majority’s (SC’s Justices) opinion—other than the invocation of a general human rights principle—does not provide clear legal basis for the grant of bail on humanitarian grounds. Bail for humanitarian considerations is neither presently provided in our Rules of Court nor found in any statute or provision of the Constitution.

This case leaves this court open to a justifiable criticism of granting a privilege ad hoc: only for one person—petitioner in this case.

Worse, it puts pressure on all trial courts and the Sandiganbayan that will predictably be deluged with motions to fix bail on the basis of humanitarian considerations. The lower courts will have to decide, without guidance, whether bail should be granted because of advanced age, hypertension, pneumonia, or dreaded diseases. They will have to decide whether this is applicable only to Senators and former Presidents charged with plunder and not to those accused of drug trafficking, multiple incestuous rape, serious illegal detention, and other crimes punishable by reclusion perpetua or life imprisonment. They will have to decide whether this is applicable only to those who are in special detention facilities and not to the aging or sick detainees in overcrowded detention facilities all over this country.

Our trial courts and the Sandiganbayan will decide on the basis of personal discretion causing petitions for certiorari to be filed before this court. This will usher in an era of truly selective justice not based on
clear legal provisions, but one that is unpredictable, partial, and solely grounded on the presence or absence of human compassion on the day that justices of this court deliberate and vote.”

He further claimed that the controversial decision of the Supreme Court was specifically tailored for the benefit of Sen. Enrile. The decision is the result of obvious political accommodation rather than a judicious consideration of the facts and the law.

We, students of law has no other choice but to follow what has been decided by the Supreme Court regardless of our personal opinion. But we can always use Justice Leonen’s argument whenever someday we face the same problem during exams or even during the time we are already lawyers and practicing law.
Forgive and Forget?: Abandoning the Condonation Doctrine Principle in Election Laws

By: Grace M. Anastacio

In the event that an elected official, despite his commission of prior administrative offenses, be considered as “condoned” by his reelection? The so called Condonation Doctrine espouses the theory that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer’s previous misconduct to the extent of cutting off the right to remove him therefor. (43 Am. Jur. P. 4, citing Atty. Gen. vs Hasty, 184 Ala. 121, 63 So. 50 L.R.A. (NS) 553) Simply put, reelection extinguishes the administrative liability of the public officer.

This has been answered in the affirmative by our Supreme Court as early as 1959 in the case of Arturo B. Pascual vs Hon. Provincial Board of Nueva Ecija, G.R. No. L-1195, October 31, 1959.

In the abovementioned case, Arturo Pascual had been elected as mayor of San Jose, Nueva Ecija. During his second term, administrative charges were filed and charged against him for “maladministrative, abuse of authority, and usurpation of judicial functions.” Pascual contends that he should not be disciplined during his second term of office after a reelection. The main issue of the controversy is the legality of disciplining an elective municipal official for a wrongful act committed by him during his immediately preceding term of office. It is here that the Supreme Court had the opportunity to enunciate what is now known as the “Condonation Doctrine”. In so ruling, the Supreme Court ratiocinated that:

“Offenses committed, or acts done during previous term are generally held not to furnish cause for removal and this is especially true where the Constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the term was elected or appointed.” 67 C.J.S. p. 24, citing Rice vs State, 161 S.W. 2d. 401; Montgomery vs. Nowell, 40 S.W. 2d. 41; People ex rel. Bagshaw vs Thompson, 130 P. 2d 237; Board of Com’rs of Kingfisher County vs Shutler, 21 P. 222; State vs Blake, 280 P. 388; In re Fudula, 147 A. 67, State vs Ward, 43 S.W. 2d 217

In another case, Rodolfo E. Aguinaldo vs Hon. Luis Santos, G.R. No. 411, August 21, 1992; the Supreme Court then reiterated the Condonation Doctrine, saying that:

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“The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to reelect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his fault or misconduct, if he had been guilty of any. It is not for the court, by reason of such fault or misconduct, to practically overrule the will of the people.”

(Lizares v. Hechanova, et. Al., 17 SCRA 5, 59-60 [1966]) (See also Oliveros v. Villaluz, 57 SCRA 163 [1974])

However, in the most recent case of Conchita Carpio-Morales, in her capacity as the Ombudsman vs Court of Appeals and Jejomar Erwin S. Binay, Jr., G.R. Nos. 217126-27, November 10, 2015; the Supreme Court had the occasion to exercise its judicial power to overturn and abandon old doctrines when the times and the circumstances call for its overturn. The case involved charging Mayor Binay Jr, with six (6) administrative cases for Grave Misconduct, Serious Dishonesty, and Conduct Prejudicial to the Best Interest of the Service, and six (6) criminal cases for violation of Section 3(e) of RA 3019, Malversation of Public Funds, and Falsification of Public Documents (OMB cases). Mayor Binay Jr. invoked the Condonation Doctrine.

The Supreme Court, in the case of Binay Jr., finally abandoned the Condonation Doctrine. Explaining itself in overturning a judicial precedent that has been in force since 1959, the Supreme Court said that the Pascual case was a decision that has been promulgated prior to the 1987 Constitution, Therefore it was decided within the context of the 1935 Constitution which was silent with respect to public accountability. On the other hand, the 1987 Philippine Constitution has introduced a new article on accountability of public officers found in Article XIII. Section 1 thereof states that “public office is a public trust.” Accordingly, “public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable to the people”. Further, the Supreme Court went on saying:

“To begin with, the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official’s administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term.”

The Court explained that it was correctly pointed out by the Ombudsman that most misdeeds of our public officials are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposed that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown. Thus,
“Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes knowledge and in the absence of knowledge there can be no condonation. One cannot forgive something of which one has no knowledge.”

This recent ruling in the Binay Jr. case is a positive win for every citizen in the country. We are accorded social justice that we are granted to by the Constitution. It makes our public officers accountable for each and every action that they do while they are seated in office. Abandoning the Condonation Doctrine is a way of eliminating the fraudulent practices of our local politicians who are emboldened to commit such graft and corrupt practices acts knowing that they can always fall back on the forgiveness of the people by running and being reelected again, who, without the people’s knowledge are unaware and ignorant of the misdeeds of the former.

Most commentators and writers who speak of the abandonment of the Condonation Principle rarely connect this with Social Justice. It is to be reminded that under the 1987 Philippine Constitution, Sec 1. provides that “The Congree shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.”

This is social justice in the sense that political power is being regulated in order to serve the best interests of the people; we now see that the common good is upheld by making sure that the right to make our public officers liable for their misdeeds of misappropriating public funds, and making sure that the wealth and property of the State is given back to where it rightfully belongs. This serves as a warning to our public officers that they can no longer hide behind the principle of reelection to escape liability. We are protecting the right of our people by reducing political inequalities when the very basis of the Condonation principle is but a twisted attempt to afford impunity to our erring officials. We are assured of the growth of law and the protection of the State to repress wrongs and to avoid evil doings. If this is not what social justice is about, I do not know what is. The Supreme Court’s abandonment of the Condonation Doctrine is actually a very powerful legal weapon to prevent and curb government misconduct. This cleanses our electoral system of defects and vices, and actually encourages our future public officers to actually do good, and deliver what they promised if elected.

We are assured that our public officials remain accountable to the Filipino People. Allow me to stress that under the 1987 Philippine Constitution, Article XI, Section 1 provides: “Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty; act with patriotism and justice, and lead modest lives.”
This powerful provision implies and compels our public servants to a sense of duty and moral responsibility. This concept of public trust traces its way to history going back to Plato. Two of Plato’s rules state that, first, to keep the good of the people so clearly in view that regardless of their own interests they will make their every action conform to that; and second, to care for the welfare of the whole body politic and not in serving the interests of some one party to betray the rest. This is a showing that reminds our public officers what public office is really about. Responsibility. Integrity. Loyalty. Acting with Patriotism and Justice. And leading modest lives. These concepts have been set aside by our public servants for such a long time that they have to be reminded of it over and over again.

The reversal of the Condonation Principle is to be rejoiced. This is a manifestation that the Filipino citizens are not to be left without any recourse but to consider “forgiven” our erring public officials while they run away scot free. This entails more vigilance on the part of our people to make sure that these public wrongs and morally wrong acts do not go unpunished. We are given the chance to be more responsible in voting for those people who we will, for the meantime, entrust the administration of our government. On the other hand, this also ensures that those seated in power remain mindful of their oaths which they undertook before they exercise public functions. No secret remains hidden forever. No bad will prevail. This is a promise that will keep our government from breaking down and failing. Accountability is the key, and no longer can our public officers hide in the dark forever. They will be liable. They will be accountable. And not even re-election can extinguish their liability. The Supreme Court has made this a victory for our entire Filipino nation. Prospectively, we are promised better public service. We are given social justice. We have not forgiven, and we certainly have not forgotten.
Equality before the Law: The infamous case of Obergefell et al. v. Hodges

By Lorenzo Delgado and Roselle Anne Catipay

No matter how strong the legal case for same-sex marriages may be, there are still legitimate questions about whether the Court should require states to sanction them. There are many reasons for the judiciary to be cautious about taking the issue of same-sex marriage away from the people and legislatures. Pure majoritarianism can oppress dissenting individuals and minorities, but indiscriminate antimajoritarianism can easily slip into antidemocratic elitism.

Judicial humility can be a virtue and the Court’s own history shows that it ought to be reluctant to impose its own views on civil rights upon the American public. Throughout the American history, the Court has been a less reliable defender of minority rights that Congress has.

Upon ruling in favor by the US Supreme Court of same-sex marriage, a relatively small number of people who have been prevented would now be eligible to marry. Yet the accountable branches of government would not lose the power to take necessary steps to strengthen the institution of the marriage. They could augment the legal and financial benefits of marriage, make the divorce process more demanding, or require counseling prior to marriage.

Obergefell et al. V. Hodges, Director, Ohio Department of Health, et al.
Argued April 28, 2015—Decided June 26, 2015*

Facts:

These cases come from Michigan, Kentucky, Ohio, and Tennessee, States that define marriage as a union between one man and one woman. The petitioners are 14 same-sex couples and two men whose same-sex partners are deceased; Whereas, the respondents are state officials responsible for enforcing the laws in question. The petitioners claim the respondents violate the Fourteenth Amendment by denying them the right to marry or to have their marriages, lawfully performed in another State, given full recognition.

Petitioners filed these suits in United States District Courts in their home States. Each District Court ruled in their favor. The respondents appealed the decisions against them to the United States Court of Appeals for the Sixth Circuit. It consolidated the cases and reversed the judgments of the District Courts. The Court of Appeals held that a State has no constitutional obligation to license same-sex marriages or to recognize same-sex marriages performed out of State. The petitioners sought certiorari.

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29 Ibid.
Issue
1. Whether the Fourteenth Amendment requires a State to license a marriage between two people of the same sex;
2. Whether the Fourteenth Amendment requires a State to recognize a same-sex marriage licensed and performed in a State which does grant that right.

Held:

The Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-State.

(a) Before turning to the governing principles and precedents, it is appropriate to note the history of the subject now before the Court.

(1) The history of marriage as a union between two persons of the opposite sex marks the beginning of these cases. To the respondents, it would demean a timeless institution if marriage were extended to same-sex couples. But the petitioners, far from seeking to devalue marriage, seek it for themselves because of their respect—and need—for its privileges and responsibilities, as illustrated by the petitioners’ own experiences.

(2) The history of marriage is one of both continuity and change. Changes, such as the decline of arranged marriages and the abandonment of the law of coverture, have worked deep transformations in the structure of marriage, affecting aspects of marriage once viewed as essential. These new insights have strengthened, not weakened, the institution. Changed understandings of marriage are characteristic of a Nation where new dimensions of freedom become apparent to new generations.

This dynamic can be seen in the Nation’s experience with gay and lesbian rights. Well into the 20th century, many States condemned same-sex intimacy as immoral, and homosexuality was treated as an illness. Later in the century, cultural and political developments allowed same-sex couples to lead more open and public lives. Extensive public and private dialogue followed, along with shifts in public attitudes. Questions about the legal treatment of gays and lesbians soon reached the courts, where they could be discussed in the formal discourse of the law. In 2003, this Court overruled its 1986 decision in Bowers v. Hardwick, 478 U. S. 186, which upheld a Georgia law that criminalized certain homosexual acts, concluding laws making same-sex intimacy a crime “demean the lives of homosexual persons.” Lawrence v. Texas, 539 U. S. 558, 575. In 2012, the federal Defense of Marriage Act was also struck down. United States v. Windsor, 570 U. S. ___. Numerous same-sex marriage cases reaching the federal courts and state supreme courts have added to the dialogue.

(b) The Fourteenth Amendment requires a State to license a marriage between two people of the same sex.
(1) The fundamental liberties protected by the Fourteenth Amendment’s Due Process Clause extend to certain personal choices central to individual dignity and autonomy, including intimate choices defining personal identity and beliefs. See, e.g., *Eisenstadt v. Baird*, 405 U. S. 438, 453; *Griswold v. Connecticut*, 381 U. S. 479, 484–486. Courts must exercise reasoned judgment in identifying interests of the person so fundamental that the State must accord them its respect. History and tradition guide and discipline the inquiry but do not set its outer boundaries. When new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed.

Applying these tenets, the Court has long held the right to marry is protected by the Constitution. For example, *Loving v. Virginia*, 388 U. S. 1, 12, invalidated bans on interracial unions, and *Turner v. Safley*, 482 U. S. 78, 95, held that prisoners could not be denied the right to marry. To be sure, these cases presumed a relationship involving opposite-sex partners, as did *Baker v. Nelson*, 409 U. S. 810, a one-line summary decision issued in 1972, holding that the exclusion of same-sex couples from marriage did not present a substantial federal question. But other, more instructive precedents have expressed broader principles. See, e.g., *Lawrence*, supra, at 574. In assessing whether the force and rationale of its cases apply to same-sex couples, the Court must respect the basic reasons why the right to marry has been long protected. See, e.g., *Eisenstadt*, supra, at 453–454. This analysis compels the conclusion that same-sex couples may exercise the right to marry.

(2) Four principles and traditions demonstrate that the reasons marriage is fundamental under the Constitution apply with equal force to same-sex couples.

The first premise of this Court’s relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy. This abiding connection between marriage and liberty is why *Loving* invalidated interracial marriage bans under the Due Process Clause. See 388 U. S., at 12. Decisions about marriage are among the most intimate that an individual can make. See *Lawrence*, supra, at 574. This is true for all persons, whatever their sexual orientation.

A second principle in this Court’s jurisprudence is that the right to marry is fundamental because it supports a two-person union unlike any other in its importance to the committed individuals. The intimate association protected by this right was central to *Griswold v. Connecticut*, which held the Constitution protects the right of married couples to use contraception, 381 U. S., at 485, and was acknowledged in *Turner*, supra, at 95. Same-sex couples have the same right as opposite-sex couples to enjoy intimate association, a right extending beyond mere freedom from laws making same-sex intimacy a criminal offense. See *Lawrence*, supra, at 567.

A third basis for protecting the right to marry is that it safeguards children and families and thus draws meaning from related rights of childrearing, procreation, and education. See, e.g., *Pierce v. Society of Sisters*, 268 U. S. 510. Without the recognition, stability, and predictability marriage offers, children suffer the stigma of knowing their families are somehow lesser. They also suffer
the significant material costs of being raised by unmarried parents, relegated to a more difficult and uncertain family life. The marriage laws at issue thus harm and humiliate the children of same-sex couples. See *Windsor, supra*, at ___. This does not mean that the right to marry is less meaningful for those who do not or cannot have children. Precedent protects the right of a married couple not to procreate, so the right to marry cannot be conditioned on the capacity or commitment to procreate.

Finally, this Court’s cases and the Nation’s traditions make clear that marriage is a keystone of the Nation’s social order. See *Maynard v. Hill*, 125 U. S. 190, 211. States have contributed to the fundamental character of marriage by placing it at the center of many facets of the legal and social order. There is no difference between same- and opposite-sex couples with respect to this principle, yet same-sex couples are denied the constellation of benefits that the States have linked to marriage and are consigned to an instability many opposite-sex couples would find intolerable. It is demeaning to lock same-sex couples out of a central institution of the Nation’s society, for they too may aspire to the transcendent purposes of marriage. The limitation of marriage to opposite-sex couples may long have seemed natural and just, but its inconsistency with the central meaning of the fundamental right to marry is now manifest.

(3) The right of same-sex couples to marry is also derived from the Fourteenth Amendment’s guarantee of equal protection. The Due Process Clause and the Equal Protection Clause are connected in a profound way. Rights implicit in liberty and rights secured by equal protection may rest on different precepts and are not always coextensive, yet each may be instructive as to the meaning and reach of the other. This dynamic is reflected in *Loving*, where the Court invoked both the Equal Protection Clause and the Due Process Clause; and in *Zablocki v. Redhail*, 434 U. S. 374, where the Court invalidated a law barring fathers delinquent on child-support payments from marrying. Indeed, recognizing that new insights and societal understandings can reveal unjustified inequality within fundamental institutions that once passed unnoticed and unchallenged, this Court has invoked equal protection principles to invalidate laws imposing sex-based inequality on marriage, see, *e.g.*, *Kirchberg v. Feenstra*, 450 U. S. 455, 460–461, and confirmed the relation between liberty and equality, see, *e.g.*, *M. L. B. v. S. L. J.*, 519 U. S. 102, 120–121.

The Court has acknowledged the interlocking nature of these constitutional safeguards in the context of the legal treatment of gays and lesbians. See *Lawrence*, 539 U. S., at 575. This dynamic also applies to same-sex marriage. The challenged laws burden the liberty of same-sex couples, and they abridge central precepts of equality. The marriage laws at issue are in essence unequal: Same-sex couples are denied benefits afforded opposite-sex couples and are barred from exercising a fundamental right. Especially against a long history of disapproval of their relationships, this denial works a grave and continuing harm, serving to disrespect and subordinate gays and lesbians.
The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. Same-sex couples may exercise the fundamental right to marry. *Baker v. Nelson* is overruled. The State laws challenged by the petitioners in these cases are held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.

There may be an initial inclination to await further legislation, litigation, and debate, but referenda, legislative debates, and grassroots campaigns; studies and other writings; and extensive litigation in state and federal courts have led to an enhanced understanding of the issue. While the Constitution contemplates that democracy is the appropriate process for change, individuals who are harmed need not await legislative action before asserting a fundamental right. *Bowers*, in effect, upheld state action that denied gays and lesbians a fundamental right. Though it was eventually repudiated, men and women suffered pain and humiliation in the interim, and the effects of these injuries no doubt lingered long after *Bowers* was overruled. A ruling against same-sex couples would have the same effect and would be unjustified under the Fourteenth Amendment. The petitioners’ stories show the urgency of the issue they present to the Court, which has a duty to address these claims and answer these questions. Respondents’ argument that allowing same-sex couples to wed will harm marriage as an institution rests on a counterintuitive view of opposite-sex couples’ decisions about marriage and parenthood. Finally, the First Amendment ensures that religions, those who adhere to religious doctrines, and others have protection as they seek to teach the principles that are so fulfilling and so central to their lives and faiths.

The Fourteenth Amendment requires States to recognize same-sex marriages validly performed out of State. Since same-sex couples may now exercise the fundamental right to marry in all States, there is no lawful basis for a State to refuse to recognize a lawful same-sex marriage performed in another State on the ground of its same-sex character.

**Dissenting Opinion of Justice Roberts**

He argued that, while same-sex marriage might be good and fair policy, the US Constitution does not address it and thus, it is beyond the purview of the Court to decide whether states have to recognize or license such unions. Instead, the issue should be decided by individual state legislatures based on the will of their electorates. He also argued that the majority opinion relied on an expansive reading of the Due Process and Equal Protection Clauses of the Fourteenth Amendment without engaging with the judicial analysis traditionally applied to such claims and disregarding the proper role of the courts in the democratic process.

An excerpt from his dissent reads:
“It can be tempting for judges to confuse our own preferences with the requirements of the law. But as this Court has been reminded throughout our history, the Constitution “is made for people of fundamentally differing views.” *Lochner v. New York*, 198 U. S. 45, 76 (1905) (Holmes, J., dissenting).

Accordingly, “courts are not concerned with the wisdom or policy of legislation.” *Id.*, at 69 (Harlan, J., dissenting). The majority today neglects that restrained conception of the judicial role. It seize for itself a question the Constitution leaves to the people, at a time when the people are engaged in a vibrant debate on that question. And it answers that question based not on neutral principles of constitutional law, but on its own “understanding of what freedom is and must become.”

**Dissenting Opinion of Justice Alito**

Justice Alito’s dissenting opinion is likewise remarkable as it impends that the limitation of the power of judiciary might soon be limitless. By allowing the majority of the Court to create a new right, it dangerously strayed from the democratic process and further expanded the power of judiciary. An excerpt of his opinion reads:

“Today’s decision will also have a fundamental effect on this Court and its ability to uphold the rule of law. If a bare majority of Justices can invent a new right and impose that right on the rest of the country, the only real limit on what future majorities will be able to do is their own sense of what those with political power and cultural influence are willing to tolerate. Even enthusiastic supporters of same-sex marriage should worry about the scope of the power that today’s majority claims.

Today’s decision shows that decades of attempts to restrain this Court’s abuse of its authority have failed. A lesson that some will take from today’s decision is that preaching about the proper method of interpreting the Constitution or the virtues of judicial self-restraint and humility cannot compete with the temptation to achieve what is viewed as a noble end by any practicable means.”

**Application with respect to Philippine Laws:**

It is a quest -a search for freedom and justice – sometimes the quest edges closer, sometimes it drifts away – but always, the results are formed by the combined efforts of the individuals who have been deeply involved in a particular case, filled with passion and compassion to correct the system, to redress his grievances, and which in turn beneficially affects the general populace. It has been said that the law is simply a history of the moral development of a race, thus it “cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics” (Justice Oliver Wendell Holmes, Jr.).

Certain acts, such as the participation of women in elections, and marriages involving people of different religions, which was illegal and reprehensible before are now considered as valid and legal, and are even welcomed with such warm cordiality; And in the same manner, it follows, that certain acts which are unacceptable now, may in the future be accepted. Thus whether an act is legal or illegal is
usually dependent on the element of time; whether an individual is a hero or a villain is often a question of timing. As Martin Luther King, Jr. wrote: “We should never forget that everything Hitler did in Germany was legal and everything the Hungarian freedom fighters did in Hungary was illegal”.

The same rule also applies to marriages. The requisites for a valid marriage are provided for by law, and in determining the validity of marriage, it is to be tested by the law in force at the time the marriage was contracted (Social Security System v. Jarque Vda. de Bailon, 485 SCRA 376; Stewart v. Vandervort, 34 W. Va. 524, 12 SE 736, 12 LRA 50; Ninal v. Bayadog, 328 SCRA 122)

The Philippine Law on Marriage

Based on Article 1 of the Family Code of the Philippines the term “Marriage” is defined as “a special contract of permanent union between a man and a woman entered into in accordance with the law for the establishment of conjugal and family life.”; and in Article 2 of the same code – one of the essential requisites of a valid marriage is the “Legal capacity of the contracting parties who must be male and a female”. Thus, absence of an essential requisite renders the marriage void ab initio.

There is no question that in our jurisdiction gay marriage is illegal, at the time being, but given the above ruling vis-à-vis the developments in society and in line with the generally accepted principles of international law the question that lingers in everyone’s mind, irrespective of sexual orientation, is whether or not the prohibition against gay marriages still remains to be a good law. Then another question pops out asking what makes up a good law.

In its general sense the “Law” is defined as the science of moral laws based on the rational nature of man, governing his free activity for the realization of his individual and social ends; In its specific sense, it is a rule of conduct, just, obligatory, promulgated by a legitimate authority for common observance and benefit.

Is the prohibition against gay marriages – just and reasonable at this point and time?

One of the main reasons for the prohibition against same sex marriage is the duty of procreation. As held in the abovementioned case, “an ability, desire, or promise to procreate is not and has not been a prerequisite for a valid marriage in any State. In light of precedent protecting the right of a married couple not to procreate, it cannot be said the Court or the States have conditioned the right to marry on the capacity or commitment to procreate. The constitutional marriage right has many aspects, of which childbearing is only one.”

Moreover other couples, often through no fault of their own, are childless; those who are unable to conceive usually opts to adopt, or they take advantage of the present advancement in medicine and technology like the in-vitro fertilization and other techniques which results in the commoditization of life.
As a rule, statutes should conform and must be in harmony with the Constitution. Any law, rule or regulation that is in conflict with the Constitution is void. But what is the position of the fundamental law with respect to the issue at bar.

Marriage, according to the Constitution, is an inviolable social institution and the foundation of the family and shall be protected by the State (Section 2, Article 15). Since the dawn of history, marriage has transformed strangers into relatives, binding families and societies together. Confucius taught that marriage lies at the foundation of government. In Ong v. Ong (G.R. No. 153206, October 23, 2006, 505 SCRA 76) it has been held that “The Constitution itself however does not establish the parameters of state protection to marriage and the family, as it remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it and put into operation the constitutional provisions that protect the same.”; In Maynard v. Hill (125 US 190, 8 S. Ct. 723, 31 L. Ed. 654) it was held that “Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature”. It is clear based on the aforementioned decisions that the Constitution does not prohibit, expressly or impliedly, marriages between two people of the same sex.

It has likewise been authoritatively stated that the “right to marry, establish a home and bring up children is a central part of the liberty protected by the Due Process Clause” (Zablocki v. Redhail, 434 U.S. 374, 54 L. Ed. 618).

**Marriage from the standpoint of International Law:**

Under Article 16 of the Universal Declaration of Human Rights

“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.”

Love is and will always be a Human Right. The right of individuals to enter into consensual marriage, regardless of sexual orientation, is enshrined in international human rights standards. For more than a decade, this non-discrimination principle has been interpreted by UN treaty bodies and numerous inter-governmental human rights bodies as prohibiting discrimination based on gender or sexual orientation. Non-discrimination on grounds of sexual orientation has therefore become an internationally recognized principle and many countries have responded by bringing their domestic laws into line with this principle in a range of spheres including partnership rights (Amnesty International)

In the case at bar, Petitioner James Obergefell, a plaintiff in the Ohio case, met John Arthur over two decades ago. They fell in love and started a life together, establishing a lasting, committed relation. In 2011, however, Arthur was diagnosed with amyotrophic lateral sclerosis, or ALS. This debilitating disease is progressive, with no known cure. Two years ago, Obergefell and Arthur decided to commit to
one another, resolving to marry before Arthur died. To fulfill their mutual promise, they traveled from Ohio to Maryland, where same-sex marriage was legal. It was difficult for Arthur to move, and so the couple were wed inside a medical transport plane as it remained on the tarmac in Baltimore. Three months later, Arthur died. Ohio law does not permit Obergefell to be listed as the surviving spouse on Arthur’s death certificate. By statute, they must remain strangers even in death, a state-imposed separation Obergefell deems “hurtful for the rest of time.”

April DeBoer and Jayne Rowse are co-plaintiffs in the case from Michigan. They celebrated a commitment ceremony to honor their permanent relation in 2007. They both work as nurses, DeBoer in a neonatal unit and Rowse in an emergency unit. In 2009, DeBoer and Rowse fostered and then adopted a baby boy. Later that same year, they welcomed another son into their family. The new baby, born prematurely and abandoned by his biological mother, required around-the-clock care. The next year, a baby girl with special needs joined their family. Michigan, however, permits only opposite-sex married couples or single individuals to adopt, so each child can have only one woman as his or her legal parent. If an emergency were to arise, schools and hospitals may treat the three children as if they had only one parent. And, were tragedy to befall either DeBoer or Rowse, the other would have no legal rights over the children she had not been permitted to adopt. This couple seeks relief from the continuing uncertainty their unmarried status creates in their lives.

Their stories reveal that they seek not to denigrate marriage but rather to live their lives, or honor their spouses’ memory, joined by its bond.

Justice Anthony Kennedy, writing on behalf of the court, said that “no union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family. In forming a marital union, two people become something greater than once they were. As some of the petitioners in these cases demonstrate, marriage embodies a love that may endure even past death. It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves. Their hope is not to be condemned to live in loneliness, excluded from one of civilization’s oldest institutions. They ask for equal dignity in the eyes of the law. The Constitution grants them that right.”

Conclusion

“A hundred and fifty years ago a slave by the name of Dred Scott sued to prove that he was a person and not a piece of property he lost, and as history has shown us that wasn’t justice. In every civil rights conflict we are only able to recognize the just point of view years after the fact, and when the next conflict comes along, we are once again blind to it as it is happening. Well this is different we say, but it isn’t. It is the same beast just wearing a different face and its happening again today. So I urge you ladies and gentlemen of the jury not to be a footnote on the wrong side of history. Don’t wait too long to be right” (Samantha Jackson–Ted 2).
The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a charter protecting the right of all persons to enjoy liberty as we learn its meaning. When new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed. (Justice Kennedy)

As the society changes, the law must be able to change with it, and adapt to the existing circumstances. It should be a vehicle of progress rather than a treadmill which leads only to deterioration.
Legalize It, Medically: Medical Marijuana and Cannabis Regulation
By Moujeck Steve O. Cabales

Abstract
The debate as to whether cannabis should decriminalized had been a long and contentious issue. Over time, the wealth of medical literature and scholarly research pertaining to the plant’s medicinal properties have led not only to shifting attitudes pertaining to use and consumption, but also to changes in legislation by various States either relaxing or decriminalizing cannabis use. Perhaps in response to these changing views, the House Bill 4477 was introduced to ‘to provide accessible, affordable, safe medical cannabis to qualifying patients with debilitating medical condition as certified by medical doctors’.31

This paper aims to scientifically describe the cannabis plant and its effects, present the current Philippine and international laws pertaining to the use thereof, and introduce the salient provisions of the Bill.

The Bill was filed on May 26, 2014; and as of this writing, the same is still pending in the House of Representatives, with the Committee on Health since June 2, 201432.

What is Cannabis?
The Comprehensive Dangerous Drugs Act of 2002 and the pending House Bill 4477 defines Cannabis as that which ‘refers to every kind, class, genus, specie of the plant Cannabis sativa L., Cannabis Americana, hashish, bhang, guaza, churrus, ganjab and embraces every kind, class and character of marijuana, whether dried or fresh and flowering, flowering or fruiting tops, or any part or portion of the plant and seed thereof, and all its geographic varieties, whether as a reefer, resin, extract, tincture or in any form whatsoever3334’.

On the other hand, the 1961 Single Convention on Narcotic Drugs [as amended by the 1972 Protocol], to which the Philippines is a signatory to, refers to cannabis as ‘the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated35; cannabis plant as ‘any plant of the genus Cannabis36; and cannabis resin as ‘the separated resin, whether crude or purified, obtained from the cannabis plant37.'
The cannabis plant has a long, slender stem; and out of each node springs a fan, which usually has five or four slender, serrated leaves (the symbolic representation thereof has become the ubiquitous cultural icon for ‘marijuana’). The plant could be a male, female or a hermaphrodite. A male flower consists of the stamen, which contains the pollen grains. On the other hand, the female flower is composed of the cola, calyx, pistil and trichomes, which consist the entire reproductive organ of the cannabis plant. As in all other plants, it reproduces through the fertilization of female flower (i.e. the pollen grains must inseminate the pistils of another flower)\textsuperscript{38}.

The Effects and the Medicinal Uses of the ‘Herb’

The calyxes of the female flower contains the glands that secrete the Tetrohydocannabinol chemical compound (THC) and other cannabinoids\textsuperscript{39}, which are the main psychoactive ingredients that cause the short-term effects to the human brain. In general, cannabis alters one’s state of consciousness (in common parlance, that ‘feeling of high’). Perhaps, to the uninitiated, the well-known short-term effects of cannabis are the relaxation, intensification of colors and sounds, a calm state of mind and that euphoric feeling; as are depicted in arts and music\textsuperscript{40}.

However, the wealth of scholarly research yielded that cannabis causes long-term adverse effects on the human brain. One prominent study have concluded that the cognitive impairments related to long-term and heavy marijuana use are ‘well-established’\textsuperscript{41}.

On the other side of the spectrum, the shifting attitudes pertaining to marijuana use have led not only to a change in legislations by various States\textsuperscript{42}, but have likewise opened up the on-going research for the plant’s potential use for medicinal purposes\textsuperscript{43}. In view thereof, the main thrust of House Bill 4477 is ‘to regulate the medical use of cannabis and establish for the purpose the Medical Cannabis Regulatory Authority’\textsuperscript{44}.

Current Philippine Law on Marijuana use

At the outset, it must be noted that the consumption and cultivation of cannabis is absolutely prohibited in our jurisdiction. The 1961 Single Convention on Narcotic Drugs [as amended by the 1972


\textsuperscript{39}Ibid.

\textsuperscript{40}The reader might want to note that ‘reggae music’ has been culturally associated with marijuana use.


\textsuperscript{42}Over the decades, several States in the world, especially in the United States, have decriminalized marijuana use, or at the very least, relaxed the prohibitory laws therefor.

\textsuperscript{43}In one example, the Multidisciplinary Association for Psychedelic Studies, a non-profit organization that conducts research on psychedelic drugs, has been given regulatory approval by the US Public Health Service to conduct study on beneficent purposes of marijuana for symptoms of post-traumatic stress disorder in US veterans. | MAPS [Multidisciplinary Association for Psychedelic Studies] (n.d.). Medical Marijuana. MAPS (Multidisciplinary Association for Psychedelic Studies). Retrieved from http://www.maps.org/research/mmj

\textsuperscript{44}Explanatory Note; Albano, Rodolfo III T. et al. (2014). House Bill/Resolution No. 4477: An Act Regulating the Medical Use of Cannabis, Establishing for the Purpose the Medical Cannabis Regulatory Authority and Appropriating Funds Therefor. Manila, Philippines: Republic of the Philippines House of Representatives.
Protocol], to which the Philippines is a signatory to, lists ‘Cannabis and Cannabis resin and extracts and tinctures of cannabis’ under Schedule I. This means that, cannabis is, at least under the Convention, limited ‘exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in use and possession of drugs.’

To give effect to and to carry out the provisions of the Convention, our lawmakers enacted RA 6425 (Dangerous Drugs Act of 1972) and, as an amendment thereto, the RA 9165 (Comprehensive Dangerous Drugs Act of 2002). The latter prohibits the importation, sale, trading, administration, dispensation, delivery, distribution and transportation, manufacture, possession, use, cultivation or culture of plants, unnecessary prescription, and unlawful prescription, of dangerous drugs and/or controlled precursors and essential chemicals. By the express provision of law, it is clear that cannabis is absolutely prohibited in our jurisdiction.

Exceptionally, perhaps recognizing that medical science is evolving, and that some dangerous drugs may also be put to medicinal purposes, RA 9165 also provides that the Dangerous Drugs Board is given, upon petition, the power to reclassify, add to or remove a drug or other substance from the list of dangerous drugs. As per DDB Board Regulation No. 3, Series of 2003, the Board may issue a license to an operator to import, export, bring into the Philippines in transit, or redirect from the Philippines while

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46 Art. 2 (1) of the 1961 Single Convention on Narcotic Drugs [as amended by the 1972 Protocol] states that ‘Except as to measures of control which are limited to specified drugs, the drugs in Schedule I are subject to all measures of control applicable to drugs under this Convention and in particular to those prescribed in article 4 c), 19, 20, 21, 29, 30, 31, 32, 33, 34 and 37.
47 Art. 4 c), et seq, supra.
48 Art. II, Sec. 4, RA 9165
49 Sec. 5, supra.
50 Sec. 8, supra.
51 Sec. 11 and Sec. 13, supra.
52 Sec. 15, supra.
53 Sec. 16, supra.
54 Sec. 18, supra.
55 Sec. 19, supra.
56 The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost (Sec. 11, Art. XIII, 1987 Philippine Constitution).
57 Sec. 93, supra, states that ‘Reclassification, Addition or Removal of Any Drug from the List of Dangerous Drugs. – The Board shall have the power to reclassify, add to or remove from the list of dangerous drugs. Proceedings to reclassify, add, or remove a drug or other substance may be initiated by the PDEA, the DOH, or by petition from any interested party, including the manufacturer of a drug, a medical society or association, a pharmacy association, a public interest group concerned with drug abuse, a national or local government agency, or an individual citizen. When a petition is received by the Board, it shall immediately begin its own investigation of the drug. The PDEA also may begin an investigation of a drug at any time based upon the information received from law enforcement laboratories, national and local law enforcement and regulatory agencies, or other sources of information.’ Further down the provision, it states that ‘(d) In case of removal of a drug from the list of dangerous drugs and precursors and essential chemicals, all persons convicted and/or detained for the use and/or possession of such a drug shall be automatically released and all pending criminal prosecution involving such a drug under this Act shall forthwith be dismissed xxx’
58 (w) “Operator” means any person who carries on a business of the manufacture, acquisition or sale of: (i) A dangerous drug for medical, scientific use or other lawful use; (ii) A controlled chemical, intended for lawful use, or a related business, such as import, export, transit, processing or acting as a broker, but excludes person carrying on a business of customs brokerage agent, warehouse depositor or carrier when acting solely in that capacity. (Art. I, Sec. 1 (w), DDB Board Regulation No. 3, Series of 2003.
in transit, any dangerous drug or controlled chemicals and their preparations\textsuperscript{59}, in accordance with the terms and conditions of the license. Further, pursuant to and in accordance with the terms and conditions of a license, an operator may ‘cultivate any cannabis plant, coca bush, opium poppy, ephedra, or any plants from which dangerous drugs may be obtained\textsuperscript{60}.

Moreover, the same Board Regulation provides that ‘No medical or veterinary practitioner or dentist or other authorized practitioner shall prescribe a dangerous drug, or drugs preparation, in parenteral form, containing Table I controlled chemicals as the only active medicinal ingredient or containing Table I controlled chemicals and therapeutically insignificant quantities of another active medicinal ingredient without an S-2 license issued by PDEA\textsuperscript{61}.

Prescinding from the aforesaid regulation, we may infer that, exceptionally, cannabis may be used and possessed for scientific and medical purposes, pursuant to a license issued by the DDB.

\section*{Medical Marijuana Regulation}

The House Bill 4477, entitled as ‘an Act Regulating the Medical Use of Cannabis, Establishing for the Purpose the Medical Cannabis Regulatory Authority and Appropriating Funds Therefor’, was principally authored by Hon. Rodolfo T. Albano III\textsuperscript{62}. The bill was filed on May 26, 2014, and as of writing is still pending before the Committee on Health.

In its Explanatory Note, the Bill states that ‘The recorded use of cannabis as medicine goes back to about 2,500-10,000 years ago in traditional Chinese and Indian medicine. Modern research has confirmed the beneficial uses of cannabis in treating and alleviating the pain, nausea and other symptoms associated with a variety of debilitating medical conditions including cancer, multiple sclerosis and HIV-AIDS as found by the National Institute of Medicine of the US in March, 1999.’\textsuperscript{63}

Further, the Bill aims that ‘it is the purpose and intent of this Act to provide accessible, affordable, safe medical cannabis to qualifying patients with debilitating medical condition as certified by medical doctors and approved by the Medical Cannabis Regulatory Authority. This bill also provides for the control measures and regulation on the medical use of cannabis to ensure patient’s safety and for effective and efficient implementation of this Act.’\textsuperscript{64}

\section*{Chronic or Debilitating Disease or Medical Condition}

\textsuperscript{59} Art. 3, Sec. 5 (2), ibid.  
\textsuperscript{60} (1), ibid.  
\textsuperscript{61} (3), ibid.  
\textsuperscript{62} District Representative, Isabela, 1\textsuperscript{st} District | Co-authors are: Hons. Agarao, Aggabao, Alcala, Almario, Angara-Castillo, Arbison, Bag-ao, Bagatsing, Balindong, Banal, Batocabe, Bello (S.), Bulut-Begtang, Cagas, Calixto-Rubiano, Catamco, Colmenares, De Jesus, De Venecia, Dy, Estrella, Fernandez, Ferrer (L.), Flores, Fortuno, Garcia (G.), Garcia-Albano, Gonzales, Gorriceta, Gutierrez, Hataman-Sallman, Iway, Kho, Lacson-Noel, Lagman, Lopez (C.), Lopez (C.J.), Madrona, Matugas, Mendoza (R.), Mercado, Mirasol, Noel, Oaminal, Ocampo, Ong, Ortega (V.), Paez, Panganiban, Paquiz, Revilla, Ramos, Reyes, Roman, Roque, Sacdalan, Sakaluran, Suarez, Tejada, Ting, Tinio, Ty, Villanueva, Violago, Zamora (R.), and Zarrate.  
\textsuperscript{63} Explanatory Note, House Bill 4477  
\textsuperscript{64} Ibid.
We may infer from the Explanatory Note that not all diseases or medical condition may be legally allowed medication through cannabis use. Only those patients with ‘chronic or debilitating disease or medical condition’ may be qualified for medical cannabis use.\(^{65}\)

In its Statement of Policy, the Bill states that ‘It is the policy of the State to provide measures to achieve a balance in the national drug control program so that patients with debilitating medical condition may receive adequate amount of treatment and appropriate medications from the regulated use of dangerous drugs. Toward this end, the State shall legalize and regulate the medical use of cannabis which has been confirmed to have beneficial and therapeutic uses to treat chronic or debilitating disease or medical condition xxx’\(^{66}\)

The Bill then enumerates what those medical conditions are. *Debilitating medical condition* means one of more of the following: cancer, glaucoma, epilepsy, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyothropic lateral sclerosis, Crohn’s disease, agitation of Alzheimer’s disease, cachexia/wasting syndrome, muscular dystrophy, severe fibromyalgia, spinal cord disease, including but not limited to arachnoiditis, Tarlov cysts, hydromyelia, syringomyelia, Rheumatoid arthritis, fibrous dysplasia, spinal cord injury, traumatic brain injury, Multiple Sclerosis, Arnold-Chiari malformation and Syringomyelia, Spinocerebellar Ataxia (SCA), Parkinson’s, Tourette’s, Myoclonus, Dystonia, Reflex Sympathetic Dystrophy, RSD (Complex Regional Pain Syndromes Type II), Neurofibromatosis, Chronic Inflammatory Demyelinating Polyneuropathy, Sjogren’s Syndrome, Lupus, Interstitial Cystitis, Myasthenia Gravis, Hydrocephalus, nail-patella syndrome, residual limb pain, or the treatment of these conditions xxx\(^{67}\)

However, the list is not exclusive, because it also includes ‘any other debilitating medical condition or its treatment that is added by the Medical Cannabis Regulatory Authority as recommended by a panel of doctors constituted for this purpose.’\(^{68}\) Stated otherwise, the Authority is given discretion to include any other medical conditions that may be qualified for medical cannabis use.

**Qualifying Medical Cannabis Physician, Patient and Caregiver**

Only those physicians who are qualified may certify the patient’s medical need to use cannabis for treatment. To be competent to certify the same, a physician shall have the following qualifications: a) a doctor’s degree in medicine; b) bona fide relationship with the patient; and c) license to prescribe drugs; d) professional knowledge of the use of medical cannabis.\(^{69}\)

Likewise, only those who are qualified medical cannabis patients may be treated with cannabis for medical use. ‘Qualifying patient’ means a person who has been diagnosed by a certifying physician with

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\(^{65}\) Sec. 3 (f), ibid: Medical use refers to delivery, possession, transfer, transportation or use of cannabis and its paraphernalia to treat or alleviate a registered qualified patient’s medical condition or symptoms associated with the patient’s debilitating disease or its acquisition, administration, cultivation or manufacturing for medical purposes.

\(^{66}\) Sec. 2, ibid.

\(^{67}\) Sec. 3 (e), ibid.

\(^{68}\) Ibid.

\(^{69}\) Sec. 9, ibid.
bona fide relationship with the patient as having debilitating medical condition as defined in Section 3 (e) and who in the physician’s professional opinion will receive therapeutic or palliative benefits from the medical use of cannabis. The Authority shall issue registered identification (ID) cards to qualified patients after a careful review of the documents required by the Authority and included in the implementing rules and regulations of this Act. If the qualified patient is younger than eighteen (18) years of age, the certifying physician shall not recommend the issuance of the ID card unless she/he has explained the potential risks and benefits of the medical use of marijuana to the custodial parent or legal guardian who has the responsibility for health care decisions for the qualifying patient and she/he consents in writing to the following: a) allow the qualified patient’s medical use of cannabis; b) serve as the qualified patient’s designated caregiver; and c) control the acquisition, dosage, the frequency of medical use of cannabis by the patient. Stated otherwise, the qualified patient’s custodial parent or legal guardian must consent in writing to the aforementioned.

Moreover, a cannabis patient caregiver [the qualified patient’s custodial parent or legal guardian] must be at least 21 years of age and must not have been convicted of an offense for the use of dangerous drugs under Republic Act (RA) No. 9165. The caregiver shall give consent in writing of her/his willingness to assist the qualified patient in the medical use of cannabis and shall not divert the medical cannabis in his/her possession to any person other than the patient. She/he shall assist only one (1) cannabis patient at a time.

Applications and renewals, their contents, and supporting information submitted by qualified patients an designated caregivers; xxx the individual names and other information identifying persons to whom the Authority has issued registry identification cards, are confidential and shall not be disclosed to any individual or public or private entity, except as necessary for the performance of official duties under this Act.

Exemption from Civil and Criminal Liability

Obviously, to give effect to the intents and purposes of the Act, the Bill provides for the exemption from civil and criminal liability in favor of the qualified medical cannabis physicians, patients and caregivers.

The following shall be exempt from civil and criminal liability: a) qualified patient for using cannabis in the prescribed dosage for treatment of debilitating medical condition as determined and certified by a bona fide recommending physician; b) registered and designated cannabis caregiver for

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70 Sec. 3 (a), ibid: Bona fide relationship refers to a physician and patient relationship wherein a licensed physician has made a complete assessment of the patient’s medical history and current medical condition, including an appropriate diagnostic and personal physical examination sufficient to determine that the patient is suffering from a debilitating medical condition xxx
71 Sec. 10, ibid.
72 Sec. 11, ibid.
73 Sec. 12, ibid.
74 Sec. 21, ibid.
assisting a registered qualified patient and for possessing not more than the exact prescribed dosage of *cannabis* needed by the qualifying patient; c) the certifying physician for prescribing medical *cannabis* or providing written certifications stating that in the physician’s professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of *cannabis* to treat or alleviate the patient’s serious or debilitating medical condition or symptoms: *provided*, that the physician has established a bona fide relationship with the patient and conducted a thorough clinical analysis of the patient’s medical conditions xxx\(^75\)

Stated otherwise, there is civil and criminal liability in favor of the patient and caregiver only as to the allowed dosage as prescribed by the qualified physician, on the basis of the ‘thorough clinical analysis’. The exemption does not apply beyond the prescribed dosage. In patient’s medical use of *cannabis*, the seizure (of medical *cannabis* and its paraphernalia) shall not be prevented if it exceeds the amount or dosage prescribed by the qualified physician.\(^76\)

Further, a certifying physician shall not be subject to administrative action by the Philippine Medical Association or by any other occupational or professional licensing board or bureau for prescribing *cannabis* as treatment to qualified patient.\(^77\)

Moreover, there is exemption from civil and criminal liability in favor of: d) registered and licensed medical *cannabis* compassionate center and its agents for selling *cannabis* seeds to similar entities that are registered to dispense *cannabis* for medical use or for acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, selling or dispensing *cannabis* or related supplies and educational materials to qualified patients and their designated caregivers; and e) registered medical *cannabis* safety compliance facility and its agents for possessing and testing *cannabis* for medical research and compliance purposes.\(^78\)

Finally, medical *cannabis* and its paraphernalia which is possessed, owned or used in connection with the medical use of *cannabis* under this Act shall not be seized or confiscated.\(^79\)

**Prohibited Acts**

As in all other regulated areas of human activity, there are certain prohibited acts of which qualified medical *cannabis* patients and physicians may be held liable. The right, as intended by the Bill, to use *cannabis* for medical purposes is not absolute.

It shall be prohibited for a qualifying patient to: 1. Possess and smoke *cannabis* and engage in the medical use of cannabis in any mode of public transportation or in any public place; 2. Operate, navigate or being in actual physical control of any motor vehicle, aircraft, motorboat while under the influence of

\(^75\) Sec. 18, ibid.
\(^76\) Sec. 20, ibid.
\(^77\) Sec. 19, ibid.
\(^78\) Sec. 18, ibid.
\(^79\) Sec. 20, ibid.
cannabis; Provided, that a registered qualifying patient or visiting qualifying patient shall not be considered to be under the influence of cannabis solely because of the presence of metabolites or components of cannabis that appear in insufficient concentration to cause impairment; 3. Undertake under the influence of cannabis, task that would require the use of body or motor functions impaired by the use of cannabis; and 4. Use cannabis for purposes other than treatment of a debilitating condition. 80

Also, it shall be prohibited for an authorized physician to prescribe medical cannabis to any person without establishing a bona fide relationship with the patient and to refer patients or caregivers to a MCCC (Medical Cannabis Compassion Centers) on which the physician holds any financial interest. 81

Moreover, it shall be prohibited for any person to: 1. Advertise medical cannabis sales in printed materials, on radio or television, social media, or by paid-in-person solicitation of customers xxx and 2. Violate the confidentiality of information under Section 21 of this Act. 82

Medical Cannabis Regulatory Authority

The Bill also seeks to establish a Medical Cannabis Regulatory Authority, under the auspices of the Department of Health, which shall regulate the medical use of cannabis in the country. 83

The Authority shall have the following powers and functions: a) Approve the recommendation made by the certifying doctor who has a bona fide relationship with the patient that, after completing a medical assessment of the patient’s medical history and current medical condition, including an appropriate personal physical examination, in his professional medical opinion, a patient is suffering from a debilitating medical condition, and is likely to receive therapeutic or palliative benefit from the medical use of cannabis; b) Issue registry identification cards to patients and caregivers who are qualified or allowed to use and administer cannabis upon qualification and submission of the requirements set by the Authority; c) Evaluate applications for registration and issuance of certification as Medical Cannabis Compassionate Center or Medical Cannabis Safety Compliance Facility based on the safety and regulatory requirements set by the Authority; d) Establish rules and regulations for the issuance of safety compliance and registration certificates; e) Suspend or revoke the registration certificate of Medical Cannabis Compassionate Centers or Medical Cannabis Safety Compliance Facilities or order their closure for multiple or serious violations by the registrants or any of their agents of any rule promulgate by the Authority; f) Confiscate cannabis and its paraphernalia in the possession of any person who is committing or has committed a violation of this Act; and g) Intensify research that may result in improved understanding of cannabis treatment for diseases and other adverse health conditions. 84

Compassionate Center and Safety Compliance Facility

80 Sec. 25 (a), ibid.
81 (b), ibid.
82 (d), ibid.
83 Sec. 4, ibid.
84 Sec. 5, ibid.
Medical Cannabis Compassionate Center refers to any entity registered with the Medical Cannabis Regulatory Authority created under this Act, and licensed to acquire, possess, cultivate, manufacture, deliver, transfer, transport, sell, supply and dispense cannabis, paraphernalia or related supplies and educational materials to registered qualifying patients.  

On the other hand, the Medical Cannabis Safety Compliance Facility refers to any entity registered with the Cannabis Regulatory Authority created under this Act, that conducts scientific and medical research on medical use of cannabis and provides testing services for its potency and contaminants relative to its safe and efficient use, cultivation, harvesting, packaging, labelling, distribution and proper security xxx

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85 Sec. 3 (c), ibid.
86 (d), ibid.
Sexual intercourse during working hours inside company premises is serious misconduct
By Stefan Elise Bernardo

In *Imasen Philippine Manufacturing Corporation v. Alarcon, G.R. No. 194884, October 22, 2014*, the court ruled that having sexual intercourse during working hours inside company premises is considered as a serious misconduct. The facts reveal that the security guard of petitioner, Imasen Philippine Manufacturing Corporation submitted a report stating that he found respondents Ramonchito and Joann, employees of Imasen, having sexual intercourse at around 12:40am (during their 8pm to 5am work shift) within Imasen's plant premises. The respondents denied the charges against them. After administrative hearing on the incident, it was found that the respondents were guilty of the act charged which it considered as "gross misconduct contrary to the existing policies, rules and regulations of the company." This warranted the dismissal of the respondents. The respondents filed a case for illegal dismissal against Imasen.

Both the Labor Arbiter and National Labor Relations Commission found the respondents' dismissal valid. This decision was, however, reversed by the CA ruling that the respondents' act, while provoked by "reckless passion in an inviting environment and time," was not done with wrongful intent or with the grave or aggravated character that the law requires. It also pointed out that the penalty of dismissal is not commensurate to the respondents' act, considering especially that the respondents had not committed any infraction in the past.

The Supreme Court reinstated the decision of NLRC that rendered the act of sexual intercourse inside the premises of the company during working hours as a serious misconduct. Sexual acts and intimacies between two consenting adults belong, as a principled ideal, to the realm of purely private relations. Whether aroused by lust or inflamed by sincere affection, sexual acts should be carried out at such place, time and circumstance that, by the generally accepted norms of conduct, will not offend public decency nor disturb the generally held or accepted social morals. Under these parameters, sexual acts between two consenting adults do not have a place in the work environment.

Indisputably, the respondents engaged in sexual intercourse inside company premises and during work hours. These circumstances, by themselves, are already punishable misconduct. Further, the respondents did not only disregard company rules but flaunted their disregard in a manner that could reflect adversely on the status of ethics and morality in the company. Their infraction transgressed the bounds of socially and morally accepted human public behavior, and at the same time showed brazen disregard for the respect that their employer expected of them as employees. By their misconduct, the respondents, in effect, issued an open invitation for others
to commit the same infraction, with like disregard for their employer's rules, for the respect owed to their employer, and for their co-employees' sensitivities. Taken together, these considerations reveal a depraved disposition that the Court cannot but consider as a valid cause for dismissal.

The constitutional and legal protection of security of tenure of employees equally recognizes the employer's right and prerogative to manage its operation according to reasonable standards and norms of fair play. Accordingly, except as limited by special law, an employer is free to regulate, according to his own judgment and discretion, all aspects of employment, including the discipline, dismissal and recall of workers.

**Appeal Bond**

I. Appeal bond issued by a blacklisted bonding company is not valid

*By John Kenneth Gonzales*

Appeal bond issued by a blacklisted bonding company is not valid. The subsequent lifting of the blacklisting does not validate it. This was pronounced in the case of *MCCEU vs. Mount Carmel College*, G.R. No. 187621, September 24, 2014. The relevant facts are as follows:

The petitioners were elementary and high school academic and non-academic personnel employed by Mount Carmel College (respondent), located in New Escalante, Negros Occidental. In April 1999, the petitioners were informed of their retrenchment by the respondent due to the closure of the elementary and high school departments of the school. The petitioners contend that such closure was merely a subterfuge of their termination due to their union activities. According to the petitioners, they organized a union in 1997 (Mount Carmel College Employees Union [MCCEU]), and were in the process of negotiating with the respondent as regards their collective bargaining agreement when the respondent decided to close the two departments in June 1999. The petitioners alleged that such closure was motivated by ill-will just to get rid of the petitioners who were all union members because in June 2001, the school re-opened its elementary and high school departments with newly-hired teachers. They claimed for the remaining separation pay differentials since what they received was only computed at 15 days for every year of service when they were retrenched.

The respondent, on the other hand, denied committing any act of unfair labor practice and alleged that their retrenchment was valid as it was due to the financial losses it suffered as result of a decline in its enrolment. The respondent claimed that as it was, the expenses for its academic and non-academic personnel were already eating into its budget portion allocated for capital and administrative development, and that the teachers' demand for increased salaries and benefits, coupled with the decline in the enrolment, left the school with no choice but to close down its grade school and high school departments.

Labor Arbiter (LA) declared the petitioners to have been illegally dismissed, among others. According to the LA, the respondent's alleged losses were not serious as its financial statements even
showed a net surplus. Thus, the LA ordered the respondent to pay the petitioners separation pay in lieu of reinstatement, plus attorney's fees. Thus, respondents appealed and CBIC issued the appeal bond on March 15, 2004 and the latter’s black listing was lifted on January 24, 2005.

In this case, it was not disputed that at the time CBIC issued the appeal bond, it was already blacklisted by the NLRC. The latter, however, opined that "respondents should not be faulted if the Bacolod branch office of the bonding company issued the surety bond" and that "[r]espondents acted in good faith when they transacted with the bonding company for the issuance of the surety bond."

The issue or not Respondents good faith should validate the Appeal bond issued by a blacklisted bonding company and whether or not the subsequent lifting of the blacklisting validates the Appeal bond issued.

Good faith is not an excuse for setting aside the mandatory and jurisdictional requirement of the law. It was improper to honor the appeal bond issued by a surety company which was no longer accredited by this Court. Having no authority to issue judicial bonds not only does Intra Strata cease to be a reputable surety company — the bond it likewise issued was null and void. It is not within respondents' discretion to allow the filing of the appeal bond issued by a bonding company with expired accreditation regardless of its pending application for renewal of accreditation.

The condition of posting a cash or surety bond is not a meaningless requirement — it is meant to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the former's appeal. Such aim is defeated if the bond issued turned out to be invalid due to the surety company's expired accreditation. Much more in this case where the bonding company was blacklisted at the time it issued the appeal bond. The blacklisting of a bonding company is not a whimsical exercise. When a bonding company is blacklisted, it meant that it committed certain prohibited acts and/or violations of law, prescribed rules and regulations. Trivializing it would release a blacklisted bonding company from the effects sought to be achieved by the blacklisting and would make the entire process insignificant.

Also, the lifting of CBIC's blacklisting on January 24, 2005 does not render the bond it issued on March 15, 2004 subsequently valid. It should be stressed that what the law requires is that the appeal bond must be issued by a reputable bonding company duly accredited by the NLRC or the Supreme Court at the time of the filing of the appeal. To rule otherwise would make the requirement ineffective, and employers using "fly-by-night" and untrustworthy bonding companies could easily manipulate their obligation to post a valid bond by raising such justification.

II. Requisites for reduction of appeal bond

*By Jordan Villota*

The general rule provides that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of cash or surety bond, the Court has
relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits.

In *McBurnie v. Ganzon, G.R. Nos. 178034 & 178117/G.R. Nos. 186984-85 : OCTOBER 17, 2013*, Andrew James McBurnie (McBurnie), an Australian national, instituted a complaint for illegal dismissal and other monetary claims against Eulalio Ganzon, EGI-Managers, Inc., and E. Ganzon, Inc., (respondents). McBurnie claimed that on May 11, 1999, he signed a 5-year employment agreement with the company EGI as an Executive Vice-President who shall oversee the management of the company hotels and resorts within the Philippines. He performed work for the company until sometime in November 1999, when he figured in an accident that compelled him to go back to Australia while recuperating from his injuries. While in Australia, he was informed by respondent Ganzon that his services were no longer needed because their intended project would no longer push through.

On September 30, 2004, the Labor Arbiter declared McBurnie as having been illegally dismissed from employment. The respondents filed their Memorandum of Appeal and Motion to Reduce Bond, and posted an appeal bond in the amount of P100, 000.00. They claimed that an award of more than P60 Million Pesos to a single foreigner who had no work permit and who left the country for good one month after the purported commencement of his employment was a patent nullity.

On March 31, 2005, the NLRC denied the motion to reduce bond explaining that in cases involving monetary award, an employer seeking to appeal the LA decision to the Commission is unconditionally required by Art. 223 of the Labor Code to post bond equivalent to the monetary award. The motion for reconsideration was denied, the respondents appealed to the CA via a Petition for Certiorari and Prohibition.

The NLRC dismissed their appeal due to respondent's failure to post the required additional bond.

On October 27, 2008, the CA rendered a decision allowing the respondent's motion to reduce appeal bond and directing the NLRC to give due course to their appeal. On September 18, 2009, the third division of the court rendered its decision granting respondents motion to reduce appeal bond. This Court also reinstated and affirmed the NLRC decision dismissing respondent's appeal for failure to perfect an appeal and denying their motion for reconsideration. The aforementioned decision became final and executory on March 14, 2012. McBurnie filed a Motion for Reconsideration where he invoked that the Court September 18, 2009 decision had become final and executory.

The issue in this case is whether or not the respondent properly complied with the rule respecting the reduction of appeal bonds.
While the CA, in this case, allowed an appeal bond in the reduced amount of P10,000,000.00 and then ordered the case remand to the NLRC, this Court Decision dated September 18, 2009 provides otherwise, as it reads in part: While the bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the 10-day reglementary period, the employer is still expected to post the cash or surety bond securing the full amount within the said 10-day period. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the 10-day period.

To clarify, the prevailing jurisprudence on the matter provides that the filing of a motion to reduce bond, coupled with compliance with the two conditions emphasized in Garcia v. KJ Commercial, for the grant of such motion, namely, (1) a meritorious ground, and (2) posting of a bond in a reasonable amount, shall suffice to suspend the running of the period to perfect an appeal from the labor arbiter decision to the NLRC. To require the full amount of the bond within the 10-day reglementary period would only render nugatory the legal provisions which allow an appellant to seek a reduction of the bond.

The rule that the filing of a motion to reduce bond shall not stop the running of the period to perfect an appeal is not absolute. The Court may relax the rule. In Intertranz Container Lines, Inc. v. Bautista, the Court held: Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of cash or surety bond. The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.

A serious error of the NLRC was its outright denial of the motion to reduce the bond, without even considering the respondent's arguments and totally unmindful of the rules and jurisprudence that allow the bond reduction. Instead of resolving the motion to reduce the bond on its merits, the NLRC insisted on an amount that was equivalent to the monetary award.

Although the general rule provides that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond, the Court has relaxed this requirement under certain exceptional circumstances in order to resolve
controversies on their merits. These circumstances include: (1) the fundamental consideration of substantial justice; (2) the prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved. Guidelines that are applicable in the reduction of appeal bonds were also explained in *Nicol v. Footjoy*[^89] Industrial Corporation. The bond requirement in appeals involving monetary awards has been and may be relaxed in meritorious cases, including instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

It is in this light that the Court finds it necessary to set a parameter for the litigants and the NLRC guidance on the amount of bond that shall hereafter be filed with a motion for a bond reduction. To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant.

All motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to 10% of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant motion is pending resolution by the Commission. In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney fees. Only after the posting of a bond in the required percentage shall an appellant period to perfect an appeal under the NLRC Rules be deemed suspended.

**Reinstatement Pending Appeal**

It was held in *Philippine Airlines, Inc. vs. Paz G.R. No. 192924. November 26, 2014*[^89] that if the Labor Arbiter's decision ordering the reinstatement of an illegally dismissed employee is reversed by a higher tribunal, the employee may be barred from collecting the accrued reinstatement salaries, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.

The respondent herein obtained a favorable ruling from the Labor Arbiter in the complaint for illegal dismissal case he filed against PAL but the same was reversed on appeal by the NLRC. Also, PAL was under rehabilitation receivership during the entire period that the illegal dismissal case was being heard. The question now being raised, i.e., whether the respondent may collect reinstatement salaries which he is supposed to have received from the

[^89]: G.R. No. 159372 July 27, 2007
time PAL received the LA decision, ordering his reinstatement, until the same was overturned by the NLRC.

The rule is that the employee is entitled to reinstatement salaries notwithstanding the reversal of the LA decision granting him said relief. In *Roquero v. Philippine Airlines* the Court underscored that it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court. This is so because the order of reinstatement is immediately executory. Unless there is a restraining order issued, it is ministerial upon the Labor Arbiter to implement the order of reinstatement.

However, the Court somehow relaxed the rule in *Garcia v. Philippine Airlines Inc.* by taking into consideration the cause of delay in executing the order of reinstatement of the Labor Arbiter. It was declared, thus:

After the labor arbiter’s decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer.

The test is two-fold: (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer’s unjustified act or omission. If the delay is due to the employer’s unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter’s decision.

Despite the self-executory nature of the order of reinstatement, the respondent in this case nonetheless secured a partial writ of execution on May 25, 2001. Even then, the respondent was not reinstated to his former position or even through payroll. A scrutiny of the circumstances, however, will show that the delay in reinstating the respondent was not due to the unjustified refusal of PAL to abide by the order but because of the constraints of corporate rehabilitation. It bears noting that a year before the respondent filed his complaint for illegal dismissal on June 25, 1999, PAL filed a petition for approval of rehabilitation plan and for appointment of a rehabilitation receiver with the SEC. The inopportune event of PAL’s entering rehabilitation receivership justifies the delay or failure to comply with the reinstatement order of the LA. Thus, in *Garcia*, the Court held:

It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall ipso jure be suspended. In light of the fact that PAL’s failure to comply with the reinstatement order was justified by the exigencies of corporation rehabilitation, the respondent may no longer claim salaries which he should have received during the period that the LA decision ordering his reinstatement is still pending appeal until it was overturned by the NLRC.
In *PLDT v. Estrañero*, G.R. No. 192518, October 15, 2014, the Supreme Court ruled that an employer cannot withhold wages to pay the employee’s obligations to a third party. The facts of the case provide that in the year 1995, PLDT adopted a company-wide Manpower Reduction Program (MRP) to reduce its workforce. It offered the affected employees an attractive redundancy pay consisting of 100% of their basic monthly salary for every year of service, in addition to their retirement benefits, if entitled. For those who were not qualified to the retirement benefits, they were offered separation or redundancy package of 200% of their basic monthly salary for every year of service.

By virtue of the MRP, a number of positions were declared redundant and among those gravely affected by the MRP was the Fleet Management Division where the respondent was assigned. The respondent expressed his conformity to his inclusion in the MRP. He was entitled to 200% of his basic monthly salary for every year of service by way of redundancy pay. However, the respondent had outstanding liabilities arising from various loans he obtained from different entities, namely: the Home Development Mutual Fund (HDMF), PLDT Employees Credit Cooperative, Inc., PLDT Service Cooperative, Inc., Social Security System (SSS), and the *Manggagawa ng Komunikasyon sa Pilipinas*. Thus, PLDT deducted the said amount from the payment that the respondent was supposed to receive as his redundancy pay. As a result, when the respondent was made to sign the Receipt, Release and Quitclaim, it showed that his take home pay was in the amount of "zero pesos."

The issue in this case was whether or not the petitioners can validly deduct the respondent's outstanding loan obligation from his redundancy pay to which the Court resolved that PLDT has no legal right to withhold the respondent's redundancy pay and other benefits to recompense for his outstanding loan obligations to different entities. The respondent's entitlement to his redundancy pay is mandated by law which the petitioners cannot unjustly deny.

**Article 113. Wage Deduction.** —No employer, in his own behalf or in behalf of any person, shall make any deduction from wages of his employees, except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has
been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by Secretary of Labor.

It is clear in the Labor Code that no employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except in cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment, among others. The Omnibus Rules Implementing the Labor Code provides that deductions from the wages of the employees may be made by the employer when such deductions are authorized by law, or when the deductions are with the written authorization of the employees for payment to a third person.

Therefore, any withholding of an employee's wages by an employer may only be allowed in the form of wage deductions under the circumstances provided in Article 113 of the Labor Code, as well as the Omnibus Rules implementing it. Further, Article 116 of the Labor Code provides that it is unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker without the worker's consent. In this case, the deductions made to the respondent's redundancy pay do not fall under any of the circumstances provided under Article 113, nor was it established with certainty that the respondent has consented to the said deductions or that the petitioners had authority to make such deductions.

On the other hand, in Milan v. NLRC G.R. No. 202961, Feb. 4, 2015, the Court ruled that an employer can validly withhold the final pay and benefits pending settlement of accountabilities. The facts of the case are as follows:

The employees of respondent Solid Mills, Inc. were allowed to occupy SMI Village, a property owned by Solid Mills. According to Solid Mills, this was out of liberality and for the convenience of its employees . . . [and] on the condition that the employees . . . would vacate the premises anytime the Company deems fit. The National Labor Relations Commission ruled that because of petitioners’ failure to vacate Solid Mills’ property, Solid Mills was justified in withholding their benefits and separation pay. Solid Mills granted the petitioners the privilege to occupy its property on account of petitioners’ employment. It had the prerogative to terminate such privilege. The termination of Solid Mills and petitioners’ employer-employee relationship made it incumbent upon petitioners to turn over the property to Solid Mills.

Institution of clearance procedures has legal bases

Clearance procedures are instituted to ensure that the properties, real or personal,
belonging to the employer but are in the possession of the separated employee, are returned to the employer before the employee’s departure. As a general rule, employers are prohibited from withholding wages from employees. The Labor Code provides:

**Art. 116. Withholding of wages and kickbacks prohibited.** It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker’s consent.

The Labor Code also prohibits the elimination or diminution of benefits.

**Art. 100. Prohibition against elimination or diminution of benefits.** Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

However, our law supports the employers’ institution of clearance procedures before the release of wages. As an exception to the general rule that wages may not be withheld and benefits may not be diminished, the Labor Code provides:

**Art. 113. Wage deduction.** No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

1. In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

2. For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

3. **In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.**

The Civil Code provides that the employer is authorized to withhold wages for debts due:

**Article 1706.** Withholding of the wages, except for a debt due, shall not be made by the employer.

“Debt” in this case refers to any obligation due from the employee to the employer. It includes any accountability that the employee may have to the employer. There is no reason to
limit its scope to uniforms and equipment, as petitioners would argue.

More importantly, respondent Solid Mills and NAFLU, the union representing petitioners, agreed that the release of petitioners’ benefits shall be “less accountabilities.”

“Accountability,” in its ordinary sense, means obligation or debt. The ordinary meaning of the term “accountability” does not limit the definition of accountability to those incurred in the worksite. As long as the debt or obligation was incurred by virtue of the employer-employee relationship, generally, it shall be included in the employee’s accountabilities that are subject to clearance procedures. The return of the property’s possession became an obligation or liability on the part of the employees when the employer-employee relationship ceased. Thus, respondent Solid Mills has the right to withhold petitioners’ wages and benefits because of this existing debt or liability.

The law does not sanction a situation where employees who do not even assert any claim over the employer’s property are allowed to take all the benefits out of their employment while they simultaneously withhold possession of their employer’s property for no rightful reason. Withholding of payment by the employer does not mean that the employer may renege on its obligation to pay employees their wages, termination payments, and due benefits. The employees’ benefits are also not being reduced. It is only subjected to the condition that the employees return properties properly belonging to the employer. This is only consistent with the equitable principle that “no one shall be unjustly enriched or benefited at the expense of another.”

Constructive Dismissal
By Rizza Mariz Mañalac

In Exocet Security And Allied Services Corporation and/or Ma. Teresa Marcelo v. Armando D. Serrano, G.R. No.198538, September 29, 201, it was held that the six-month period of floating status is not a case of constructive dismissal where the employee was the one who refused to accept a new assignment.

In the aforementioned case, JG Summit Holdings Inc. engaged the services of petitioner Exocet Security and Allied Services Corporation, a security agency, to provide for its security personnel. Exocet assigned respondent Serrano as “close-in” security personnel for one of JG Summit’s corporate officers. After the said assignment, Serrano was re-assigned again as close-in security. Then, Serrano was relieved by JG Summit from his duties. He reported back to Exocet, but more than six months had elapsed and yet Serrano was not given any reassignment. As a result, Serrano filed a complaint for illegal dismissal against Exocet with the National Labor Relations Commission. Exocet denied dismissing Serrano alleging that it was Serrano who
refused to be assigned as a general security and insisted to be assigned to a VIP security assignment on the ground that he is not used to being a regular security guard.

It was ruled that Serrano was not constructively dismissed. The Court held that the act of placing a security guard on “floating status” or a temporary “off-detail” is considered a temporary retrenchment measure. The Court has applied Article 292 of the Labor Code by analogy to set the specific period of temporary lay-off to a maximum of six (6) months. If after the period of 6 months, the security agency/employer cannot provide work or give assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay.

There is no question that Serrano was placed on floating status after his relief from his post as a VIP security by his security agency’s client. Yet, his security agency has not acted in bad faith when it placed Serrano on such floating status. Exocet did make an offer to Serrano to go back to work. It is just that the assignment was not the security detail desired by Serrano even though it does not involve a demotion in rank or diminution in salary, pay, benefits or privileges.

Thus, it is manifestly unfair and unacceptable to immediately declare the mere lapse of the six-month period of floating status as a case of constructive dismissal, without taking into consideration peculiar circumstances that resulted in the security guard’s failure to assume another post. The Court declared that the if the security guard’s own refusal to accept a non-VIP detail was the reason that he was not given any assignment within the six-month period, it cannot be said that the security guard was constructively dismissed. Therefore, Exocet should not then be held liable.
Presumption of marriage.

In *Luis Uy v. Sps. Mendoza*, G.R. No. 206220, August 19, 2015, Carpio, J, the SC once again had the occasion to say that there is a presumption established in our Rules “that a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Section 3(aa), Rule 131, Rules of Court). *Semper praesumitur pro matrimonio* – Always presume marriage. (Delgado vda. de De la Rosa v. Heirs of Marciana Rustia vda. de Damian, 516 Phil. 130 [2006]). However, this presumption may be contradicted by a party and overcome by other evidence.

Marriage may be proven by any competent and relevant evidence. In *Pugeda v. Trias*, 114 Phil. 781 [1962], it was held that testimony by one of the parties to the marriage, or by one of the witnesses to the marriage, as well as the person who officiated at the solemnization of the marriage, has been held to be admissible to prove the fact of marriage.

Documentary evidence may also be shown. In *Villanueva v. Court of Appeals*, G.R. No. 84464, June 21, 1991, 198 SCRA 472, it was held that the best documentary evidence of a marriage is the marriage contract itself. Under Act No. 3613 or the Marriage Law of 1929, as amended by Commonwealth Act No. 114, which is applicable to the present case being the marriage law in effect at the time Uy and Rosca cohabited, the marriage certificate, where the contracting parties state that they take each other as husband and wife, must be furnished by the person solemnizing the marriage to (1) either of the contracting parties, and (2) the clerk of the Municipal Court of Manila or the municipal secretary of the municipality where the marriage was solemnized. The third copy of the marriage contract, the marriage license and the affidavit of the interested party regarding the solemnization of the marriage other than those mentioned in Section 5 of the same Act shall be kept by the official, priest, or minister who solemnized the marriage.

Here, Uy was not able to present any copy of the marriage certificate which he could have sourced from his own personal records, the solemnizing officer, or the municipal office where the marriage allegedly took place. Even the findings of the RTC revealed that Uy did not
show a single relevant evidence that he was actually married to Rosca. On the contrary, the documents Uy submitted showed that he and Rosca were not legally married to each other.

**PSYCHOLOGICAL INCAPACITY**

Psychological incapacity has no definition in the law. In fact, that was intended by the framers of the Family Code in order not to constrict the courts to the definition in deciding whether a person is suffering from psychological incapacity. The source of psychological incapacity is Canon Law where it provides that a person is incapable to contract marriage if because of causes of a psychological nature, he would be unable to assume the essential obligations of marriage. Decisions however of the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines declaring a marriage void while not controlling or decisive, should be given great respect by our courts.

**Effect of Church Tribunal’s declaration of nullity of marriage is not decisive.**

After the celebration of the marriage of the spouses in *Mallilin v. Jamesolamin and Republic*, G.R. No. 192718, February 18, 2015, they lived together as husband and wife but he was the one who cleaned the house; his mother was the one who prepared their meals; his sister was the one who washed the dishes because she did not want to have her polished nails destroyed. When she went back to school she was dating another man. She likewise left their conjugal home. An action for nullity of the marriage on the ground of psychological incapacity was filed against her. During the pendency of the action, he filed a Petition before the Metropolitan Tribunal of First Instance for the Archdiocese of Manila. The RTC declared the marriage void on the ground of psychological incapacity followed by the decision of the Church Metropolitan Tribunal declaring the marriage void on the ground of grave lack of due discretion on the part of both parties as contemplated by the second paragraph of Canon 1095. This was affirmed by the National appellate Matrimonial Tribunal (NAMT). The CA reversed the decision and ruled that the real cause of marital discord was the sexual infidelity of the woman which is a mere ground for legal separation. On appeal to the SC, he contended that her illness was rooted on some debilitating psychological condition which incapacitated her to carry the responsibilities of a married woman. He also bolstered his contention by citing the decision of the Church Metropolitan Tribunal which was affirmed by the NAMT. In ruling that his contention is incorrect, the SC

**Held:** The root cause of her alleged psychological incapacity was not medically and clinically identified and sufficiently proven. Her disposition of not cleaning the room, preparing their meal,
washing their clothes and propensity for dating and receiving different male visitors was not grave, deeply rooted and incurable within the parameters of jurisprudence on psychological incapacity. Sexual infidelity or perversity and abandonment do not, by themselves, constitute grounds for declaring a marriage void based on psychological incapacity.

While it is true that the decision of the Church Metropolitan Tribunal as affirmed by the NAMT should be accorded great respect, it is not controlling and decisive. Besides, the decision of NAMT in this case was based on the second paragraph of Canon 1095 which refers to those who suffer from a grave lack of discretion of judgment concerning essential marital rights and obligations to be mutually given and accepted. This is not a cause of psychological nature similar to, and contemplated by Article 36 of the Family Code. The cause of psychological nature under Article 36 is covered by the third paragraph of Canon 1095 as pointed out by the Family Code Revision Committee which drafted the Family Code. His petition therefore can only make a case for legal separation where custody and separation of properties will be settled.

Basis of the NAMT decision

In *Santos v. Santos*, 310 Phil. 21, 37 [1995], the Court referred to the deliberations during the sessions of the Family Code Revision Committee, which drafted the Code, to provide an insight on the import of Article 36 of the Family Code. It went out to state that a part of the provision is similar to the third paragraph of Canon 1095 of the Code of Canon Law, which reads:

> “Canon 1095. The following are incapable of contracting marriage:

3. those who, because of causes of a psychological nature, are unable to assume the essential obligations of marriage.”

The basis of the declaration of nullity of marriage by the National Appellate Matrimonial Tribunal is not the third paragraph of Canon 1095 which mentions causes of a psychological nature, but the second paragraph of Canon 1095 which refers to those who suffer from a grave lack of discretion of judgment concerning essential matrimonial rights and obligations to be mutually given and accepted.”

Hence, Robert’s reliance on the NAMT decision is misplaced. To repeat, the decision of the NAMT was based on the second paragraph of Canon 1095 which refers to those who
suffer from a grave lack of discretion of judgment concerning essential matrimonial rights and obligations to be mutually given and accepted, a cause not of psychological nature under Article 36 of the Family Code. A cause of psychological nature similar to Article 36 is covered by the third paragraph of Canon 1095 of the Code of Canon Law (Santos v. Santos).

To hold that annulment of marriages decreed by the NAMT under the second paragraph of Canon 1095 should also be covered would be to expand what the lawmakers did not intend to include. What would prevent members of other religious groups from invoking their own interpretation of psychological incapacity? Would this not lead to multiple, if not inconsistent, interpretations?

To consider church annulments as additional grounds for annulment under Article 36 would be legislating from the bench. As stated in Republic v. Court of Appeals and Molina, 335 Phil. 664 [1997], interpretations given by the NAMT of the Catholic Church in the Philippines are given great respect by our courts, but they are not controlling or decisive.

In Republic v. Galang, G.R. No. 168335, June 6, 2011, 650 SCRA 524, 543-544), it was written that the Constitution set out a policy of protecting and strengthening the family as the basic social institution, and the marriage was the foundation of the family. Marriage, as an inviolable institution protected by the State, cannot be dissolved at the whim of the parties. In petitions for declaration of nullity of marriage, the burden of proof to show the nullity of marriage lies with the plaintiff. Unless the evidence presented clearly reveals a situation where the parties, or one of them, could not have validly entered into a marriage by reason of a grave and serious psychological illness existing at the time it was celebrated, the Court is compelled to uphold the indissolubility of the marital tie.

The allegations of the petitioner make a case for legal separation.

Bringing her children to mahjong sessions exposed them to culture of gambling; psychological incapacitated.

This case originated as an action to declare a marriage void on the ground of psychological incapacity due to the act of the woman of continuously bringing her children to mahjong sessions. It was dismissed, but the SC reconsidered its decision ruling that bringing her children to her mah-jong sessions exposed them to culture of gambling that erode their moral fiber, hence, she is suffering from psychological incapacity.

In Valerio Kalaw v. Ma. Elena Fernandez, G.R. No. 166357, January 14, 2015, Bersamin, J, the SC in its original decision dated September 19, 2011 (657 SCRA 822) dismissed
the complaint for declaration of nullity of the marriage of the parties on the ground of psychological incapacity alleging that she always brought her children to mahjong sessions.

A fair assessment of the facts would show that respondent was not totally remiss and incapable of appreciating and performing her marital and parental duties. Not once did the children state that they were neglected by their mother.

In the decision of September 19, 2011, the Court further declared as follows:

Respondent admittedly played mahjong, but it was not proven that she engaged in mahjong so frequently that she neglected her duties as a mother and a wife.

Judgment reconsidered; bringing children to mahjong sessions exposed them to culture of gambling; eroded moral fiber.

The frequency of the respondent’s mahjong playing should not have delimited the Court’s determination of the presence or absence of psychological incapacity. Instead, the determinant should be her obvious failure to fully appreciate the duties and responsibilities of parenthood at the time she made her marital vows. Had she fully appreciated such duties and responsibilities, she would have known that bringing along her children of very tender ages to her mahjong sessions would expose them to a culture of gambling and other vices that would erode their moral fiber. Nonetheless, the long-term effects of the respondent’s obsessive mahjong playing surely impacted on her family life, particularly on her very young children.

The fact that the respondent brought her children with her to her mahjong sessions did not only point to her neglect of parental duties, but also manifested her tendency to expose them to a culture of gambling. Her willfully exposing her children to the culture of gambling on every occasion of her mahjong sessions was a very grave and serious act of subordinating their needs for parenting to the gratification of her own personal and escapist desires.

She revealed her wanton disregard for her children’s moral and mental development. This disregard violated her duty as a parent to safeguard and protect her children, as expressly defined under Article 209 and Article 220 of the Family Code, to wit:

Article 209. Pursuant to the natural right and duty of parents over the person and property of their unemancipated children, parental authority and responsibility shall include the caring for and rearing of such children for civic consciousness and efficiency and the development of their moral, mental and physical character and well-being.
Article 220. The parents and those exercising parental authority shall have with respect to their unemancipated children or wards the following rights and duties:

(1) **To keep them in their company, to support, educate and instruct them by right precept and good example**, and to provide for their upbringing in keeping with their means;

(2) x x x x

(3) **To provide them with moral and spiritual guidance**, inculcate in them honesty, integrity, self-discipline, self-reliance, industry and thrift, stimulate their interest in civic affairs, and inspire in them compliance with the duties of citizenship;

(4) **To enhance, protect, preserve and maintain their physical and mental health at all times**;

(5) To furnish them with good and wholesome educational materials, supervise their activities, recreation and association with others, **protect them from bad company, and prevent them from acquiring habits detrimental to their health, studies and morals**.

**Law and Court’s mandate to protect inviolability of marriage.**

To stress, the mandate of the courts is to protect the inviolability of marriage as the basic foundation of our society does not preclude striking down a marital union that is “ill-equipped to promote family life,” thus:

Now is also the opportune time to comment on another common legal guide utilized in the adjudication of petitions for declaration of nullity in the adjudication of petitions for declaration of nullity under Article 36. All too frequently, this Court and lower courts, in denying petitions of the kind, have favorably cited Sections 1 and 2, Article XV of the Constitution, which respectively state that “[t]he State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development[.]” and that [m]arriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.” These provisions highlight the importance of the family and the constitutional protection accorded to the institution of marriage.
But the Constitution itself does not establish the parameters of state protection to marriage as a social institution and the foundation of the family. It remains the province of the legislature to define all legal aspects of marriage and prescribe the strategy and the modalities to protect it, based on whatever socio-political influences it deems proper, and subject of course to the qualification that such legislative enactment itself adheres to the Constitution and the Bill of Rights. This being the case, it also falls on the legislature to put into operation the constitutional provisions that protect marriage and the family. This has been accomplished at present through the enactment of the Family Code, which defines marriage and the family, spells out the corresponding legal effects, imposes the limitations that affect married and family life, as well as prescribes the grounds for declaration of nullity and those for legal separation. While it may appear that the judicial denial of a petition for declaration of nullity is reflective of the constitutional mandate to protect marriage, such action in fact merely enforces a statutory definition of marriage, not a constitutionally ordained decree of what marriage is. Indeed, if circumstances warrant, Sections 1 and 2 of Article XV need not be the only constitutional considerations to be taken into account in resolving a petition for declaration of nullity.

Indeed, Article 36 of the Family Code, in classifying marriages contracted by a psychologically incapacitated person as a nullity, should be deemed as an implement of this constitutional protection of marriage. Given the avowed State interest in promoting marriage as the foundation of the family, which in turn serves as the foundation of the nation, there is a corresponding interest for the State to defend against marriages ill-equipped to promote family life. Void ab initio marriages under Article 36 do not further the initiatives of the State concerning marriage and family, as they promote wedlock among persons who, for reasons independent of their will, are not capacitated to understand or comply with the essential obligations of marriage.

On the basis of the above, the SC reconsidered its earlier decision, hence, nullifying the marriage on the ground of psychological incapacity.

**Molina, a rigid rule; must be relaxed; reason.**

The Molina guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of “less
specificity” obviously to enable “some resiliency in its application.” Instead, every court should approach the issue of nullity “not on the basis of a priori assumptions, predilections or generalizations, but according to its own facts” in recognition of the verity that no case would be on “all fours” with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every “trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court.” (Separate Statement of Justice Teodoro Padilla in Republic v. Court of Appeals).

In the task of ascertaining the presence of psychological incapacity as a ground for the nullity of marriage, the courts, which are concededly not endowed with expertise in the field of psychology, must of necessity rely on the opinions of experts in order to inform themselves on the matter, and thus enable themselves to arrive at an intelligent and judicious judgment. Indeed, the conditions for the malady of being grave, antecedent and incurable demand the in-depth diagnosis by experts.

**Totality of evidence is sufficient; no need for personal examination by a physician.**

The expert is ultimately necessary to enable the trial court to properly determine the issue of psychological incapacity of the respondent (if not also of the petitioner). Consequently, the lack of personal examination and interview of the person diagnosed with personality disorder did not per se invalidate the findings of the experts. The Court has stressed in Marcos v. Marcos, G.R. No. 136490, October 19, 2000, 343 SCRA 755, 757, that there is no requirement for one to be declared psychologically incapacitated to be personally examined by a physician, because what is important is the presence of evidence that adequately establishes the party’s psychological incapacity. Hence, “if the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.”

The totality of the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. If other evidence showing that a certain condition could possibly result from an assumed state of facts existed in the record, the expert opinion should be admissible and be weighed as an aid for the court in interpreting such other evidence on the causation. Indeed, an expert opinion on psychological incapacity should be considered as conjectural or speculative and without any probative value only in the absence of other evidence to establish causation. The expert’s findings under such circumstances would not constitute hearsay that would justify their exclusion as evidence. (Camacho-Reyes, supra, note 15, at 487). This is so, considering that any ruling that brands the scientific and technical procedure adopted by Dr. Gates as weakened by bias should be eschewed if it was clear that her psychiatric evaluation had been based on the parties’ upbringing and psychodynamics.
Serious efforts must be exerted to locate absent spouse for the latter to be declared presumptively dead; reiteration of strict standard rule.

In Rep. v. Edna Orcelino-Villanueva, G.R. No. 210929, July 29, 2015, Mendoza, J, in a petition to declare her spouse presumptively dead, the petitioner alleged that from her work in Singapore, she took a leave of absence to look for her spouse; inquired from her parents-in-law and friends on the whereabouts of her husband. The RTC granted the petition which was affirmed by the CA. Before the SC, the Office of the Solicitor General contended that such efforts were not sufficient to warrant the declaration of the spouse presumptively dead as they consisted merely of bare and uncorroborated assertions, never amounted to a diligent and serious search required under prevailing jurisprudence. The SC agreed with the OSG and

**Held:** Article 41 of the Family Code provides that before a judicial declaration of presumptive death may be granted, the present spouse must prove that he/she has a well-founded belief that the absentee is dead. (Republic v. Cantor, G.R. No. 184621, December 10, 2013). In this case, petitioner failed.

The well-founded belief in the absentee’s death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort (not a mere passive one). Mere absence of the spouse (even beyond the period required by law), lack of any news that the absentee spouse is still alive, mere failure to communicate, or general presumption of absence under the Civil Code would not suffice. (Rep. v. Cantor). The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse’s whereabouts but, more importantly, whether the absent spouse is still alive or is already dead. (Republic of the Philippines v. Court of Appeals (10th Div.), 513 Phil. 391, 397-398 [2005]).

**Reason for strict standard approach.**

This strict standard approach ensures that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws in light of the State’s policy to protect and strengthen the institution of marriage. Courts should never allow procedural shortcuts but instead should see to it that the stricter standard required by the Family Code is met. (Rep. v. Cantor, supra.).
Accordingly, in a string of cases, the Court has denied petitions for the declaration of presumptive death on the said basis.

In *Republic of the Philippines v. Court of Appeals*, 513 Phil. 391 [2005], the Court ruled that the present spouse failed to prove that he had a well-founded belief that his absent spouse was already dead before he filed his petition. His efforts to locate his absent wife allegedly consisted of the following:

1. He went to his in-laws’ house to look for her;
2. He sought the barangay captain’s aid to locate her;
3. He went to her friends’ houses to find her and inquired about her whereabouts among her friends;
4. He went to Manila and worked as a part-time taxi driver to look for her in malls during his free time;
5. He went back to Catbalogan and again looked for her; and
6. He reported her disappearance to the local police station and to the NBI.

Despite these claimed "earnest efforts," the Court still ruled against the present spouse. The Court explained that he failed to present the persons from whom he made inquiries and only reported his wife’s absence after the OSG filed its notice to dismiss his petition in the RTC.

Similarly in *Republic v. Granada*, G.R. No. 187512, June 13, 2012, 672 SCRA 432, 444-445, the Court ruled that the present spouse failed to prove her “well-founded belief” that her absent spouse was already dead prior to her filing of the petition. She simply did not exert diligent efforts to locate her husband either in the country or in Taiwan, where he was known to have worked. Moreover, she did not explain her omissions. In said case, the Court wrote:

The belief of the present spouse must be the result of proper and honest to goodness inquiries and efforts to ascertain the whereabouts of the absent spouse and whether the absent spouse is still alive or is already dead. Whether or not the spouse present acted on a well-founded belief of the death of the absent spouse depends upon inquiries to be drawn from a great many circumstances occurring before and after the disappearance of an absent spouse and the nature and extent of the inquiries made by the present spouse.

In *Nolasco*, the present spouse filed a petition for declaration of presumptive death of his wife, who had been missing for more than four years. He testified that his efforts to find her consisted of:

1. Searching for her whenever his ship docked in England;
(2) Sending her letters which were all returned to him; and
(3) Inquiring from their friends regarding her whereabouts, which all proved fruitless.

The Court held that the present spouse’s methods of investigation were too sketchy to form a basis that his wife was already dead. It stated that the pieces of evidence only proved that his wife had chosen not to communicate with their common acquaintances, and not that she was dead.

Recently, in Republic v. Cantor (Cantor), the Court considered the present spouse’s efforts to have fallen short of the "stringent standard" and lacked the degree of diligence required by jurisprudence as she did not actively look for her missing husband; that she did not report his absence to the police or seek the aid of the authorities to look for him; that she did not present as witnesses her missing husband’s relatives or their neighbors and friends, who could corroborate her efforts to locate him; that these persons, from whom she allegedly made inquiries, were not even named; and that there was no other corroborative evidence to support her claim that she conducted a diligent search. In the Court’s view, the wife merely engaged in a "passive search" where she relied on uncorroborated inquiries from her in-laws, neighbors and friends. She, thus, failed to conduct a diligent search. Her claimed efforts were insufficient to form a well-founded belief that her husband was already dead.

**Void marriage; property relationship is governed by the rule on co-ownership.**

In Virginia Ocampo v. Deogracio Ocampo, G.R. No. 198908, August 3, 2015, Peralta, J, Virginia filed a complaint for declaration of nullity of her marriage with her husband on the ground of psychological incapacity. The trial court declared the marriage void. Since no appeal was made, the judgment became final and executory. The trial court ordered the parties to submit a project of partition of their properties, but for their failure to do so, the court set the case for hearing for them to adduce evidence in support of their respective stand. Later on, the court issued an ordered declaring the properties as belonging to them on a 50-50 sharing which Virginia appealed. The CA denied her appealed, hence a petition for review was filed by the husband questioning whether he should be deprived of his share in the conjugal partnership of gains by reason of bad faith and psychological incapacity.

Finding lack of merit in the petition the SC

**Held:** While Virginia and Deogracio tied the marital knot on January 16, 1978, it is still the Family Code provisions on conjugal partnerships, however, which should govern the property relations between Deogracio and Virginia even if they were married before the effectivity of the Family Code.
Article 105 of the Family Code explicitly mandates that the Family Code shall apply to conjugal partnerships established before the Family Code without prejudice to vested rights already acquired under the Civil Code or other laws. Thus, under the Family Code, if the properties are acquired during the marriage, the presumption is that they are conjugal. Hence, the burden of proof is on the party claiming that they are not conjugal. This is counter-balanced by the requirement that the properties must first be proven to have been acquired during the marriage before they are presumed conjugal. (Villanueva v. Court of Appeals, 471 Phil. 394, 411 [2004]).

The applicable law, however, in so far as the liquidation of the conjugal partnership assets and liability is concerned, is Article 129 of the Family Code in relation to Article 147 of the Family Code.

In a void marriage, as in those declared void under Article 36 of the Family Code, the property relations of the parties during the period of cohabitation is governed either by Article 147 or Article 148 of the Family Code. Article 147 of the Family Code applies to union of parties who are legally capacitated and not barred by any impediment to contract marriage, but whose marriage is nonetheless void. Article 147 of the Family Code provides:

Article 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal shares and the property acquired by both of them through their work or industry shall be owned by them in equal shares. In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

This particular kind of co-ownership applies when a man and a woman, suffering no illegal impediment to marry each other, exclusively live together as husband and wife under a void marriage or without the benefit of marriage. It is clear, therefore, that for Article 147 to operate, the man and the woman: (1) must be capacitated to marry each other; (2) live exclusively with each other as husband and wife; and (3) their union is without the benefit of marriage or their marriage is void. The term "capacitated" in the first paragraph of the provision pertains to the
legal capacity of a party to contract marriage. Any impediment to marry has not been shown to have existed on the part of either Virginia or Deogracio. They lived exclusively with each other as husband and wife.

However, their marriage was found to be void under Article 36 of the Family Code on the ground of psychological incapacity. (See Marietta N. Barrido v. Leonardo V. Nonato, G.R. No. 176492, October 20, 2014).

From the foregoing, property acquired by both spouses through their work and industry should, therefore, be governed by the rules on equal co-ownership. Any property acquired during the union is *prima facie* presumed to have been obtained through their joint efforts. A party who did not participate in the acquisition of the property shall be considered as having contributed to the same jointly if said party's efforts consisted in the care and maintenance of the family household. Efforts in the care and maintenance of the family and household are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. (Barrido v. Nonato, G.R. No. 176492, October 20, 2014).

**Family home is exempted from forced sale, etc.**

In *Sps. Eulogio v. Paterno Bell, Sr., et al.*, G.R. No. 186322, July 8, 2015, Sereno, J, the Spouses Bell sold a residential house and lot for P1M to Sps. Eulogio in 1995 without the consent of their children, hence, the latter filed a complaint for annulment of documents, reconveyance, quieting of title and damages against the Sps. Eulogio. The trial court rendered a judgment declaring the sale void, but at the same time declared the same as an equitable mortgage which cannot bind the children due to lack of consent. Both parties’ appealed to the CA which affirmed the judgment of the trial court and which became final and executory. A writ of execution was issued by the RTC but which was enjoined by the CA considering that there was a declaration that the property was a family home. The basis of the RTC in issuing the writ of execution was that the present value of the family home has exceeded the statutory limit. In enjoining the sale, the CA ruled that what is determinative of its exemption is its value at the time of its constitution and not the current/present value. Ruling on the issue of whether the family home may be sold on execution under Art. 160 of the Family Code, the SC

**Held:** Unquestionably, the family home is exempt from execution. (Article 153 of the Family Code).

The family home is a real right that is gratuitous, inalienable and free from attachment. (Taneo v. Court of Appeals, 363 Phil. 652 [1999]). The great controlling purpose and policy of the Constitution is the protection or the preservation of the homestead – the dwelling place. A houseless, homeless population is a burden upon the energy, industry, and morals of the
No greater calamity, not tainted with crime, can befall a family than to be expelled from the roof under which it has been gathered and sheltered. (Gomez v. Gealone, G.R. No. 58281, 13 November 1991, 203 SCRA 474, citing Young v. Olivarez, 41 Phil 391, 395 [1921]). The family home cannot be seized by creditors except in special cases. (C.J.S. Exemption §26, at 44 [1943]).

The nature and character of the property that debtors may claim to be exempt, however, are determined by the exemption statute. The exemption is limited to the particular kind of property or the specific articles prescribed by the statute; the exemption cannot exceed the statutory limit.

Articles 155 and 160 of the Family Code specify the exceptions mentioned in Article 153, to wit:

ARTICLE 155. The family home shall be exempt from execution, forced sale or attachment except:

(1) For nonpayment of taxes;
(2) For debts incurred prior to the constitution of the family home;
(3) For debts secured by mortgages on the premises before or after such constitution; and
(4) For debts due to laborers, mechanics, architects, builders, material men and others who have rendered service or furnished material for the construction of the building.

ARTICLE 160. When a creditor whose claims is not among those mentioned in Article 155 obtains a judgment in his favor, and he has reasonable grounds to believe that the family home is actually worth more than the maximum amount fixed in Article 157, he may apply to the court which rendered the judgment for an order directing the sale of the property under execution. The court shall so order if it finds that the actual value of the family home exceeds the maximum amount allowed by law as of the time of its constitution. If the increased actual value exceeds the maximum allowed in Article 157 and results from subsequent voluntary improvements introduced by the person or persons constituting the family home, by the owner or owners of the property, or by any of the beneficiaries, the same rule and procedure shall apply.

At the execution sale, no bid below the value allowed for a family home shall be considered. The proceeds shall be applied first to the amount mentioned
in Article 157, and then to the liabilities under the judgment and the costs. The excess, if any, shall be delivered to the judgment debtor.

Related to the foregoing is Article 157 of the Family Code, which provides:

ARTICLE 157. The actual value of the family home shall not exceed, at the time of its constitution, the amount of three hundred thousand pesos in urban areas, and two hundred thousand pesos in rural areas, or such amounts as may hereafter be fixed by law.

In any event, if the value of the currency changes after the adoption of this Code, the value most favorable for the constitution of a family home shall be the basis of evaluation.

For purposes of this Article, urban areas are deemed to include chartered cities and municipalities whose annual income at least equals that legally required for chartered cities. All others are deemed to be rural areas.

The exemption of the family home from execution, forced sale or attachment is limited to P300,000 in urban areas and P200,000 in rural areas, unless those maximum values are adjusted by law. If it is shown, though, that those amounts do not match the present value of the peso because of currency fluctuations, the amount of exemption shall be based on the value that is most favorable to the constitution of a family home. Any amount in excess of those limits can be applied to the payment of any of the obligations specified in Articles 155 and 160.

Any subsequent improvement or enlargement of the family home by the persons constituting it, its owners, or any of its beneficiaries will still be exempt from execution, forced sale or attachment provided the following conditions obtain: (a) the actual value of the property at the time of its constitution has been determined to fall below the statutory limit; and (b) the improvement or enlargement does not result in an increase in its value exceeding the statutory limit. Otherwise, the family home can be the subject of a forced sale, and any amount above the statutory limit is applicable to the obligations under Articles 155 and 160.

Certainly, the humane considerations for which the law surrounds the family home with immunities from levy do not include the intent to enable debtors to thwart the just claims of their creditors.
It was contended that the case falls under the exemption as the actual value of the family home has already increased evidenced by the Deed of Sale for P1M.

The SC brushed aside such contention and ruled that it has been judicially determined with finality that the property is a family home and that its value at the time of its constitution was within the statutory limit. Moreover, respondents have timely claimed the exemption of the property from execution. (Ramos v. Pangilinan, G.R. No.185920, July 20, 2010, 625 SCRA 181). On the other hand, there is no question that the money judgment awarded to petitioners falls under the ambit of Article 160.

Notwithstanding petitioners’ right to enforce the trial court’s money judgment, however, they cannot obtain its satisfaction at the expense of respondents’ rights over their family home. It is axiomatic that those asserting the protection of an exception from an exemption must bring themselves clearly within the terms of the exception and satisfy any statutory requirement for its enforcement.

To warrant the execution sale of respondents’ family home under Article 160, petitioners needed to establish these facts: (1) there was an increase in its actual value; (2) the increase resulted from voluntary improvements on the property introduced by the persons constituting the family home, its owners or any of its beneficiaries; and (3) the increased actual value exceeded the maximum allowed under Article 157.

During the execution proceedings, none of those facts was alleged – much less proven – by petitioners. The sole evidence presented was the Deed of Sale, but the trial court had already determined with finality that the contract was null, and that the actual transaction was an equitable mortgage. Evidently, when petitioners and Spouses Bell executed the Deed of Sale in 1990, the price stated therein was not the actual value of the property in dispute.

RECOGNITION OF CHILDREN

SSS Form indicating child as legitimate child is admission of legitimate filiation.

In Rodolfo Aguilar v. Edna G. Siasat, G.R. No. 200169, January 28, 2015, Del Castillo, J, Rodolfo, filed an action seeking to order Edna to surrender the titles over parcels of land belonging to his parents Alfredo and Candelaria alleging that he is the son and sole heir of his parents. Edna contended that he is not the son of Alfredo and Candelaria but a stranger to them and merely grew up with them out of generosity. At the trial, he presented evidence such as his school records stating that the spouses are his parents; ITR which indicated that Candelaria as his mother; SSS form duly subscribed and made under oath by Alfredo during his employment indicating Rodolfo as his son as well as his marriage certificate indicating Alfredo as his father.
Edna contended that he was not related to the spouses by consanguinity as the spouses had no issue at all. The RTC dismissed the action ruling that there was no solid evidence to prove that Rodolfo is the son of the spouses. In fact, there was an affidavit by Candelaria saying that she had no child with Alfredo. The CA affirmed the decision ruling that his school record not signed by the alleged father did not constitute evidence of filiation. (Reyes v. CA, 135 SCRA 439). The ITR was not honoured by the CA as proof of filiation citing Labagala v. Santiago, 371 SCRA 360, where the SC ruled that:

The CA likewise did not accept the SSS Form as sufficient proof to establish and prove the filiation of plaintiff-appellant to the deceased Aguilar spouses. While the former is a public instrument and the latter bears the signature of Alfredo Aguilar, they do not constitute clear and convincing evidence to show filiation based on open and continuous possession of the status of a legitimate child. Filiation is a serious matter that must be resolved according to the requirements of the law.

All told, the CA ruled that evidence failed to hurdle the “high standard of proof” required for the success of an action to establish one’s legitimate filiation when relying upon the provisions regarding open and continuous possession or any other means allowed by the Rules of Court and special laws.

In reversing the CA, the SC reiterating De Jesus v. Estate of Dizon, 418 Phil. 768 [2001],

**Held:** The filiation 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 legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. In the absence thereof, 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.** In fact, any authentic writing is treated not just a ground for compulsory recognition; it is in itself a voluntary recognition that does not require a separate action for judicial approval. Where, instead, a claim for recognition is predicated on other evidence merely tending to prove paternity, i.e., outside of a record of birth, a will, a statement before a court of record or an authentic writing, judicial action within the applicable statute of limitations is essential in order to establish the child’s acknowledgment.

A scrutiny of the records would show that petitioners were born during the marriage of their parents. The certificates of live birth would also identify Danilo de Jesus as being their father.
There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate. This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse. Quite remarkably, upon the expiration of the periods set forth in Article 170, and in proper cases Article 171, of the Family Code (which took effect on 03 August 1988), the action to impugn the legitimacy of a child would no longer be legally feasible and the status conferred by the presumption becomes fixed and unassailable.

Applying the foregoing pronouncement to the instant case, it must be concluded that petitioner – who was born on March 5, 1945, or during the marriage of Alfredo Aguilar and Candelaria Siasat-Aguilar and before their respective deaths – has sufficiently proved that he is the legitimate issue of the Aguilar spouses. Alfredo Aguilar’s SSS Form E-1 satisfies the requirement for proof of filiation and relationship to the Aguilar spouses under Article 172 of the Family Code; by itself, said document constitutes an “admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.”

Since he cannot produce his Certificate of Live Birth since all the records covering the period 1945-1946 of the Local Civil Registry of Bacolod City were destroyed, it necessitated the introduction of other documentary evidence – particularly Alfredo Aguilar’s SSS Form E-1 to prove filiation. It was erroneous for the CA to treat said document as mere proof of open and continuous possession of the status of a legitimate child under the second paragraph of Article 172 of the Family Code; it is evidence of filiation under the first paragraph thereof, the same being an express recognition in a public instrument.

As stated in De Jesus, filiation may be proved by an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned, and such due recognition in any authentic writing is, in itself, a consummated act of acknowledgment of the child, and no further court action is required. And, relative to said form of acknowledgment, the Court has further held that:

In view of the pronouncements herein made, the Court sees it fit to adopt the following rules respecting the requirement of affixing the signature of the acknowledging parent in any private handwritten instrument wherein an admission of filiation of a legitimate or illegitimate child is made:

1) Where the private handwritten instrument is the lone piece of evidence submitted to prove filiation, there should be strict compliance with the requirement that the same must be signed by the acknowledging parent; and
2) Where the private handwritten instrument is accompanied by other relevant and competent evidence, it suffices that the claim of filiation therein be shown to have been made and handwritten by the acknowledging parent as it is merely corroborative of such other evidence.

Our laws instruct that the welfare of the child shall be the “paramount consideration” in resolving questions affecting him. Article 3(1) of the United Nations Convention on the Rights of a Child of which the Philippines is a signatory is similarly emphatic:

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

It is thus “(t)he policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children x x x.” Too, “(t)he State as parens patriae affords special protection to children from abuse, exploitation and other conditions prejudicial to their development.” (Dela Cruz v. Gracia, 612 Phil. 167, 179-180 [2009]).

**PROOF OF FILIATION/SUCCESSION**

Putative father of an illegitimate child was the informant of the live birth; he is considered the father; considered as recognition.

In *Alejandra Arado Heirs, etc. v. Anacleto Alarcon, et al.*, G.R. No. 163362, July 8, 2015, Bersamin, J, Raymundo and Joaquina were married with a son Nicolas, who got married to Florencia. The latter had no issue but Nicolas had an extra-marital affair with Francisca and out of their relationship, Anacleto was born. Anacleto married Elenette. Raymundo died in 1939; Nicolas died in 1954; Florencia died in 1960; Joaquina died in 1981. Florencia had three (3) siblings namely Sulpicio, Braulia, and Veronica. Joaquin had four (4) siblings namely Alejandra, Nemesio, Cledonia and Melania. In 1992, the siblings of Joaquina filed a complaint for recovery of property and damages against Anacleto and Elenette.

They insisted that Anacleto was not duly recognized as Nicolas’ illegitimate son; that inasmuch as Anacleto was born to Francisca during the subsistence of Nicolas’ marriage to
Florencia, Anacleto could only be the spurious child of Nicolas; that there was no law for the acknowledgment of a spurious child; that even if Anacleto would be given the benefit of the doubt and be considered a natural child, Article 278 of the Civil Code states that “[r]ecognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing;” that the appearance of the father’s name in the certificate of birth alone, without his actual intervention, was insufficient to prove paternity; that the mere certificate by the civil registrar that the father himself registered the child, without the father’s signature, was not proof of the father’s voluntary acknowledgment; that the baptismal certificate was insufficient proof of paternity.

In turn, respondents countered that Nicolas recognized Anacleto as his illegitimate child because Nicolas had himself caused the registration of Anacleto’s birth.

The RTC dismissed the complaint which was affirmed by the CA which held that the Family Code can be applied to the case. The SC affirmed the holding by the RTC and the CA that the provisions of the Family Code should apply because the petitioners’ complaint was filed, litigated and decided by the RTC during the effectivity of the Family Code. Under the Family Code, the classification of children is limited to either legitimate or illegitimate. (Arts. 163, 164, F.C.). Illegitimate filiation is proved in accordance with Article 175 of the Family Code, to wit:

**ART. 175.** Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.

On the other hand, legitimate filiation is established in accordance with Articles 172 and 173 of the *Family Code*, which state:

**ART. 172.** The filiation of legitimate children is established by any of the following:

(1) The record of birth appearing in the civil register or a final judgment; 

or

(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.

In the absence of the foregoing evidence, the legitimate 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.

ART. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

Nicolas had duly acknowledged Anacleto as his illegitimate son. The birth certificate of Anacleto appearing in the Register of Births showed that Nicolas had himself caused the registration of the birth of Anacleto, he being the informant of the live birth to be registered. Considering that Nicolas, the putative father, had a direct hand in the preparation of the birth certificate, reliance on the birth certificate of Anacleto as evidence of his paternity was fully warranted. (Jison v. Court of Appeals, G.R. No. 124853, February 24, 1998, 286 SCRA 495, 523, where the Court opined: “It is settled that a certificate of live birth purportedly identifying the putative father is not competent evidence as to the issue of paternity, when there is no showing that the putative father had a hand in the preparation of said certificates, and the Local Civil Registrar is devoid of authority to record the paternity of an illegitimate child upon the information of a third person. Simply put, if the alleged father did not intervene in the birth certificate, e.g., supplying the information himself, the inscription of his name by the mother or doctor or registrar is null and void; the mere certificate by the registrar without the signature of the father is not proof of voluntary acknowledgment on the latter’s part.”

Baptismal certificate; no probative value.

Anacleto’s baptismal certificate was of no consequence in determining his filiation. In Cabatania v. Court of Appeals, G.R. No. 124814, October 21, 2004, 441 SCRA 96, 104, it was held that “while a baptismal certificate may be considered a public document, it can only serve as evidence of the administration of the sacrament on the date specified but not the veracity of the entries with respect to the child’s paternity;” and that baptismal certificates were “per se inadmissible in evidence as proof of filiation,” and thus “cannot be admitted indirectly as circumstantial evidence to prove [filiation].” Hence, there is no probative value to the baptismal certificate as proof of the filiation of Anacleto.
Pictures beside coffin of father; no probative value.

The weight accorded by the RTC and the CA to the picture depicting the young Anacleto in the arms of Joaquina as she stood beside the coffin of the departed Nicolas (Exhibit 5) was also undeserved. At best, the picture merely manifested that it was Joaquina who had acknowledged her filiation with Anacleto. Cautioning against the admission in evidence of a picture of similar nature, it was pointed out in Solinap v. Locsin, Jr., G.R. No. 146737, December 10, 2001, 371 SCRA 711, 725, that:

[R]espondent’s photograph with his mother near the coffin of the late Juan C. Locsin cannot and will not constitute proof of filiation, lest we recklessly set a very dangerous precedent that would encourage and sanction fraudulent claims. Anybody can have a picture taken while standing before a coffin with others and thereafter utilize it in claiming the estate of the deceased.

School records; no probative value.

The school records of Anacleto, which evinced that Joaquina was the guardian of Anacleto in his grade school years, and the marriage contract between Anacleto and Elenette, which indicated that Joaquina had given consent to Anacleto’s marriage, did not have the evidentiary value. Joaquina’s apparent recognition of Anacleto mattered little, for, as stressed in Cenido v. Apacionado, G.R. No. 132474, November 19, 1999, 318 SCRA 688, 709, the recognition “must be made personally by the parent himself or herself, not by any brother, sister or relative; after all, the concept of recognition speaks of a voluntary declaration by the parent, of if the parent refuses, by judicial authority, to establish the paternity or maternity of children born outside wedlock.”

The lack of probative value of the respondents’ aforecited corroborative evidence notwithstanding, Anacleto’s recognition as Nicolas’ illegitimate child remained beyond question in view of the showing that Nicolas had personally and directly acknowledged Anacleto as his illegitimate son.

How the properties should be divided.

The first eight of the subject properties had previously belonged to Raymundo, while the remaining two had been the paraphernal (exclusive) properties of Joaquina.

With Raymundo having died in 1939, the Spanish Civil Code of 1889 was the governing law on succession. Under Article 807 thereof, Joaquina and Nicolas, i.e., the surviving spouse and the legitimate son of Raymundo, were the forced heirs who acquired legal title to
Raymundo’s estate upon his death. In accordance with Article 834 thereof, Nicolas was entitled to inherit the entire estate of Raymundo, while Joaquina was entitled to a portion in usufruct equal to the one third portion available for betterment.

When Nicolas died in 1954, the Civil Code of the Philippines was already in effect. Under Article 1000 thereof, the heirs entitled to inherit from Nicolas’s estate were Joaquina (his mother), Florencia (his surviving spouse), and Anacleto (his acknowledged illegitimate son). Said heirs became co-owners of the properties comprising the entire estate of Nicolas prior to the estate’s partition in accordance with Article 1078 of the Civil Code.

Anacleto had an established right to inherit from Nicolas, whose estate included the first eight of the subject properties that had previously belonged to Raymundo. Anacleto became a co-owner of said properties, pro indiviso, when Nicolas died in 1954. Likewise, Joaquina succeeded to, and became a pro indiviso co-owner of, the properties that formed part of the estate of Nicolas. When Joaquina died in 1981, her hereditary estate included the two remaining properties, as well as her share in the estate of Nicolas. Inasmuch as Joaquina died without any surviving legitimate descendant, ascendant, illegitimate child or spouse, Article 1003 of the Civil Code mandated that her collateral relatives should inherit her entire estate.

No right of representation of Anacleto to the estate of Joaquina.

Anacleto was barred by law from inheriting from the estate of Joaquina. Anacleto could not inherit from Joaquina by right of representation of Nicolas, the legitimate son of Joaquina. (Articles 970 and 971 of the Civil Code). Under Article 992 of the Civil Code, an illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; in the same manner, such children or relatives shall not inherit from the illegitimate child. In Diaz v. Intermediate Appellate Court, G.R. No. 66574, February 21, 1990, 182 SCRA 427, 438, it was ruled that the right of representation is not available to illegitimate descendants of legitimate children in the inheritance of a legitimate grandparent. And, secondly, Anacleto could not inherit from the estate of Joaquina by virtue of the latter’s last will and testament, i.e., the Katapusan Tugon (Testamento). Article 838 of the Civil Code dictates that no will shall pass either real or personal property unless the same is proved and allowed in accordance with the Rules of Court. It has been clarified in Gallanosa v. Arcangel, No. L-29300, June 21, 1978, 83 SCRA 676, 683, that in order that a will may take effect, “it has to be probated, legalized or allowed in the proper testamentary proceeding. The probate of the will is mandatory.” It appears that such will remained ineffective considering that the records are silent as to whether it had ever been presented for probate, and had been allowed by a court of competent jurisdiction.
Collateral relatives of Joaquina are entitled to inherit.

As the petitioners were among the collateral relatives of Joaquina, they are the ones entitled to inherit from her estate.

Need for appropriate testate or intestate proceedings for heirs to claim specific portions of estate.

The parties did not establish that the estates of Raymundo, Nicolas and Joaquina had been respectively settled with finality through the appropriate testate or intestate proceedings, and partitioned in due course. Unless there was a proper and valid partition of the assets of the respective estates of Raymundo, Nicolas and Joaquina, whether extrajudicially or judicially, their heirs could not adjudicate unto themselves and claim specific portions of their estates, because, as declared in Carvajal v. Court of Appeals:

x x x Unless a project of partition is effected, each heir cannot claim ownership over a definite portion of the inheritance. Without partition, either by agreement between the parties or by judicial proceeding, a co-heir cannot dispose of a specific portion of the estate. For where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs. Upon the death of a person, each of his heirs becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the co-owners of the estate or co-heirs while it remains undivided.

Without the showing that such estates had been previously partitioned, none of the parties can lay claim over any of the disputed specific properties. The petitioners cannot contend, therefore, that they were the rightful owners of the properties of the late Joaquina to the exclusion of Anacleto. Thus, the dismissal of the petitioners’ complaint for recovery of such properties is proper.

EASEMENT

Obligation of lower estate to receive water, etc. flowing from higher estate.

In Sps. Vergara v. Sonkin, G.R. No. 193659, June 15, 2015, Perlas-Bernabe, J, the lots belonging to the parties are adjoining to one another. Sonkin’s property is slightly lower than the
Vergara property. Sonkin raised the height of the partition wall and caused the construction of their house which was attached to the partition wall such that a portion thereof became part of the wall of the master’s bedroom. The Vergaras leveled the uneven portion of their property as a result of which it became higher than the Sonkin property. Sonkin began complaining because water was leaking into their room through the partition wall. They demanded the Vergaras to build a retaining wall on their property to contain the landfill that they dumped into their property but it remained unheeded. A complaint was filed, but the Vergaras contended that the Sonkin’s act of raising the partition wall made the same susceptible to leakage. The trial court held the Vergaras liable and ordered the scrapping of the earth and filling materials dumped in the adjacent perimeter wall of the Sonkin property and erect a retaining wall and to provide adequate drainage system. The Court of Appeals reversed the decision but ordered the Vergaras to provide adequate drainage system to prevent the flow of water into the Sonkin property. On appeal, the SC

**Held:** The proximate cause of the damage done was the negligence of the Vergaras. But Sonkin had contributory negligence.

Art. 2179. When the plaintiff’s own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant’s lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Verily, contributory negligence is a conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.

It is undisputed that the Sonkin property is lower in elevation than the Vergara property, and thus, it is legally obliged to receive the waters that flow from the latter, pursuant to Article 637 of the Civil Code. This provision refers to the legal easement pertaining to the natural drainage of lands, which obliges lower estates to receive from the higher estates water which naturally and without the intervention of man descends from the latter, *i.e.*, not those collected artificially in reservoirs, etc., and the stones and earth carried by the waters, *viz*:

Art. 637. **Lower estates are obliged to receive the waters which naturally and without the intervention of man descend from the higher estates, as well as the stones or earth which they carry with them.**

The owner of the lower estate cannot construct works which will impede this easement; neither can the owner of the higher estate make works which will increase the burden.
In this light, Sps. Sonkin should have been aware of such circumstance and, accordingly, made the necessary adjustments to their property so as to minimize the burden created by such legal easement. Instead of doing so, they disregarded the easement and constructed their house directly against the perimeter wall which adjoins the Vergara property, thereby violating the National Building Code in the process, specifically Section 708 (a) thereof which reads:

The dwelling shall occupy not more than ninety percent of a corner lot and eighty percent of an inside lot, and subject to the provisions on Easement on Light and View of the Civil Code of the Philippines, shall be at least 2 meters from the property line.

**Effect of failure to observe 2-meter setback rule.**

While the proximate cause of the damage sustained by the house of Sps. Sonkin was the act of Sps. Vergara in dumping gravel and soil unto their property, thus, pushing the perimeter wall back and causing cracks thereon, as well as water seepage, the former is nevertheless guilty of contributory negligence for not only failing to observe the two (2)-meter setback rule under the National Building Code, but also for disregarding the legal easement constituted over their property. As such, Sps. Sonkin must necessarily and equally bear their own loss.

In view of Sps. Sonkin's undisputed failure to observe the two (2)-meter setback rule under the National Building Code, and in light of the order of the courts a quo directing Sps. Vergara to provide an adequate drainage system within their property, the Court deemed it proper, equitable, and necessary to order Erlinda, to comply with the aforesaid rule by the removal of the portion of her house directly abutting the partition wall. The underlying precept on contributory negligence is that a plaintiff who is partly responsible for his own injury should not be entitled to recover damages in full but must bear the consequences of his own negligence. The defendant must therefore be held liable only for the damages actually caused by his negligence. (Bank of America NT & SA v. Philippine Racing Club, 611 Phil. 687, 702 [2009] citing Lambert v. Heirs of Ray Castillon, 492 Phil. 834, 391-392 [2005]).

**Requisite of reconveyance of property.**

In *Ibot v. Heirs of Francisco Tayco*, G.R. No. 202950, April 6, 2015, Reyes, J, petitioner is the registered owner of a property. The respondents claimed to be the owners of the property, but presented no *indicia* of any document to support their claim although they alleged that it was sold to their predecessor-in-interest. The petitioner even sent a demand for them to vacate the property prior to the filing of an action for ejectment. In dismissing the claim, the SC ruled that they failed to prove it by preponderance of evidence and
**Held:** In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant’s claim.

In order to successfully maintain an action to recover the ownership of a real property, the person who claims a better right to it must prove two things: *first,* the identity of the land claimed; and *second,* his title thereto. (Sampaco v. Lantud, G.R. No. 163551, July 18, 2011, 654 SCRA 36, 50-51). While the first requisite was proven, the third was not as the claims were conflicting.

Generally, “in civil cases, the burden of proof is on the plaintiff to establish his case by a preponderance of evidence. If the plaintiff claims a right granted or created by law, the same must be proven by competent evidence. The plaintiff must rely on the strength of his own evidence,” “or evidence which is of greater weight or more convincing than that which is offered in opposition to it. Hence, parties who have the burden of proof must produce such quantum of evidence, with plaintiffs having to rely on the strength of their own evidence, not on the weakness of the defendant’s.” In an action for reconveyance, however, a party seeking it should establish not merely by a preponderance of evidence but by clear and convincing evidence that the land sought to be reconveyed is his.

In the case at bar, the respondents failed to dispense their burden of proving by clear and convincing evidence that they are entitled to the reconveyance.

Mere claim of ownership does not suffice. An action for reconveyance should be maintained by the true owner. It does not suffice that the respondents are in possession of the land subject hereof.

**PRESCRIPTION**

**TCT is imprescriptible; title prevails against mere possession.**

In *Suapo, et al. v. Sps. De Jesus, et al.*, G.R. No. 198356, April 20, 2015, Brion, J, an *accion publiciana* was filed seeking to compel the defendants to vacate the property they were occupying, alleging that they are the owners of the same with a Torrens Title. The defendants alleged that the action has prescribed because it was filed beyond a period of 10 years. They contended that they have been in open, public possession of the property for over a period of 10 years. The SC however did not agree with the defense, because the action is imprescriptible and expounding on the imprescriptibility of the action, the SC

**Held:** The defense of prescription has no legal basis. Lands covered by a title cannot be acquired by prescription or adverse possession. A claim of acquisitive prescription is baseless when the
land involved is a registered land because of Article 1126 of the Civil Code in relation to Act 496 [now, Section 47 of Presidential Decree (PD) No. 1529].

The owners enjoy a panoply of benefits under the Torrens system. The most essential insofar as the present case is concerned is Section 47 of PD No. 1529 which states that no title to registered land in derogation of the title of the registered owner shall be acquired by prescription or adverse possession.

In addition to the imprescriptibility, the person who holds a Torrens Title over a land is also entitled to the possession thereof. The right to possess and occupy the land is an attribute and a logical consequence of ownership. Corollary to this rule is the right of the holder of the Torrens Title to eject any person illegally occupying their property. Again, this right is imprescriptible. (Bishop v. CA, G.R. No. 86787, May 8, 1992, 208 SCRA 636, 641).

In Bishop v. CA, it was held that even if it be supposed that the holders of the Torrens Title are aware of the other persons’ occupation of the property, regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. (Arroyo v. BIDECO, G.R. No. 167880, November 14, 2012, 685 SCRA 430; Labrador v. Perlas, G.R. No. 173900, August 9, 2010, 627 SCRA 265).

OBLIGATIONS AND CONTRACTS

Rescission is the remedy if there is a breach of contract.

Both parties verbally agreed to incorporate a company that would hold the shares of Danton and Bakcom and which, in turn, would be the platform for their food business. Fong obligated himself to contribute half of the capital or P32.5 Million in cash. On the other hand, Dueñas bound himself to shoulder the other half by contributing his Danton and Bakcom shares, which were allegedly also valued at P32.5 Million. Aside from this, Dueñas undertook to process Alliance’s incorporation and registration with the SEC.

When the proposed company remained unincorporated, Fong cancelled the joint venture agreement and demanded the return of his P5 Million contribution.

For his part, Dueñas explained that he could not immediately return the P5 Million since he had invested it in his two companies. He found nothing irregular in this as eventually, the Danton and Bakcom shares would form part of Alliance’s capital.

Is Duenas correct? Explain.
**Held:** No. Duenas’ assertion is erroneous.

Dueñas violated his agreement with Fong. Aside from unilaterally applying Fong’s contributions to his two companies, Dueñas also failed to deliver the valuation documents of the Danton and Bakcom shares to prove that the combined values of their capital contributions actually amounted to P32.5 Million.

These acts led to Dueñas’ delay in incorporating the planned holding company, thus resulting in his breach of the contract.

On this basis, Dueñas’ breach justified Fong’s rescission of the joint venture agreement under Article 1191. As the Court ruled in *Velarde v. Court of Appeals*, 413 Phil. 360 [2001]:

The right of rescission of a party to an obligation under Article 1191 of the Civil Code is predicated on a breach of faith by the other party who violates the reciprocity between them. The breach contemplated in the said provision is the obligor’s failure to comply with an existing obligation. When the obligor cannot comply with what is incumbent upon it, the obligee may seek rescission and in the absence of any just cause for the court to determine the period of compliance, the court shall decree the rescission.

In the present case, private respondents validly exercised their right to rescind the contract, because of the failure of petitioners to comply with their obligation to pay the balance of the purchase price. Indubitably, the latter violated the very essence of reciprocity in the contract of sale, a violation that consequently gave rise to private respondents’ right to rescind the same in accordance with law.

**Fong breached the contract too; effect of mutual breach.**

Fong also breach his obligation in the joint venture agreement, when he expressly informed Duenas that he would be limiting his cash contribution from P32.5 Million to P5 Million.

Fong’s diminution of his capital share to P5 Million also amounted to a substantial breach of the joint venture agreement, which breach occurred before Fong decided to rescind his agreement with Dueñas. Thus, Fong also contributed to the non-incorporation of Alliance that needed P65 Million as capital to operate.

Fong cannot entirely blame Dueñas since the substantial reduction of his capital contribution also greatly impeded the implementation of their agreement to engage in the food business and to incorporate a holding company for it.
As both parties failed to comply with their respective reciprocal obligations, Article 1192 of the Civil Code, which provides applies:

Art. 1192. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages.

No damages shall be awarded to any party in accordance with the rule under Article 1192 of the Civil Code that in case of mutual breach and the first infractor of the contract cannot exactly be determined, each party shall bear his own damages. (Fong v. Duenas, G.R. No. 185592, June 15, 2015, Brion., J).

Note: Fong’s allegations primarily pertained to his cancellation of their verbal agreement because Dueñas failed to perform his obligations to provide verifiable documents on the valuation of the Danton’s and Bakcom’s shares, and to incorporate the proposed corporation. These allegations clearly show that what Fong sought was the joint venture agreement’s rescission.

As a contractual remedy, rescission is available when one of the parties substantially fails to do what he has obligated himself to perform. (Spouses Tumibay v. Spouses Lopez, G.R. No. 171692, June 3, 2013, 697 SCRA 21). It aims to address the breach of faith and the violation of reciprocity between two parties in a contract. Under Article 1191 of the Civil Code, the right of rescission is inherent in reciprocal obligations, viz:

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

**Rescission is restore parties to original status.**

Dueñas submitted that Fong’s prayer for the return of his cash contribution supported his claim that Fong’s complaint is an action for collection of a sum of money. However, he failed to appreciate that the ultimate effect of rescission is to restore the parties to their original status before they entered in a contract. As the Court ruled in Unlad Resources v. Dragon, 582 Phil. 61 [2008]:
Rescission has the effect of “unmaking a contract, or its undoing from the beginning, and not merely its termination.” Hence, rescission creates the obligation to return the object of the contract. It can be carried out only when the one who demands rescission can return whatever he may be obliged to restore. To rescind is to declare a contract void at its inception and to put an end to it as though it never was. It is not merely to terminate it and release the parties from further obligations to each other, but to abrogate it from the beginning and restore the parties to their relative positions as if no contract has been made.

Accordingly, when a decree for rescission is handed down, it is the duty of the court to require both parties to surrender that which they have respectively received and to place each other as far as practicable in his original situation.

Hence, Fong’s prayer for the return of his contribution did not automatically convert the action to a complaint for a sum of money. The mutual restitution of the parties’ original contributions is only a necessary consequence of their agreement’s rescission.

CONTRACTS

Contract is the law between the parties; effect of breach.

In Talampas, Jr. v. Moldez Realty, Inc., G.R. No. 170134, June 17, 2015, Brion, J, there was a contract where the petitioner undertook to perform roadworks, earthworks and sitegrading, etc. for a total cost of P10,500,000.00 to be paid on progress billing. P500,000.00 was paid as downpayment. While work was in progress, Moldex terminated the contract due to the redesign of the project which was not found in the contract. Petitioner demanded for payment of equipment rentals during the suspension of the contract and 20% of the contract price as cost of opportunity loss due to the early termination of the contract, but respondent refused to pay. A complaint for breach of contract was filed for the unilateral terminations of the agreement and fraud for failing to disclose the project’s lack of a conversion clearance certificate from the DAR which he claimed to be the real reason for the termination of the contract. The RTC decided in favor of the petitioners ruling that the project design was not a stipulated ground for the termination of the contract and that Moldex committed fraud.

The CA reversed the decision on appeal, ruling that there was no unilateral termination considering that petitioner consented to it. It also reversed the ruling on fraud.

In reversing the CA, the SC
**Held:** Contracts have the force of law between the parties and must be complied with in good faith. A contracting party’s failure, without legal reason, to comply with contract stipulations breaches their contract and can be the basis for the award of damages to the other contracting party.

The respondent failed to comply with its contractual stipulations on the unilateral termination when it terminated their contract due to the redesign of the *Metrogate Silang Estates’ subdivision plan* which is not one of the grounds agreed upon.

The respondent could not have validly and unilaterally terminated its contract with the petitioner, as the latter has not committed any of the stipulated acts of default. In fact, the petitioner at that time was willing and able to perform his obligations under their contract; he expressed this in his June 1, 1993 letter to the respondent.

Thus, the respondent’s termination of the subject contract violated the parties’ agreement as the reason for the termination, *i.e.*, the redesign of the project’s subdivision plan, was not a stipulated cause for the unilateral termination under their contract.

The request for an official letter of termination does not necessarily mean consent to the termination; by itself, the request for an official letter of termination does not really signify an agreement; it was nothing more than a request for a final decision from the respondent.

The respondent also contended that the petitioner ratified the termination of their contract by accepting payments for progress billings, costs of equipment mobilization/demobilization, refund of insurance bond payments, and the release of retention fees. The petitioner’s receipt of these payments to be acts of ratification or consent to the contract’s termination cannot be considered ratification.

**Effect of qualified acceptance of offer; receipt of payments and additional demands.**

Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. (Article 1319, Civil Code). The offer must be certain, and the acceptance, whether express or implied, must be absolute. (Articles 1319 and 1320, Civil Code). An acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds. (Traders Royal Bank v. Cuison Lumber Co., Inc., G.R. No. 174286, June 5, 2009, 588 SCRA 690m, 701, 703).

There was no such meeting of the minds between the parties on the matter of termination because the petitioner’s acceptance of the respondent’s offer to terminate was not absolute.
To terminate their contract, the respondent offered to pay the petitioner billings for accomplished works, unrecouped costs of equipment mobilization and demobilization, unrecouped payment of insurance bond, and the release of all retention fees — payments that the petitioner accepted or received.

But despite receipt of payments, no absolute acceptance of the respondent’s offer took place because the petitioner still demanded the payment of equipment rentals, cost of opportunity lost, among others. In fact, the payments received were for finished or delivered works and for expenses incurred for the respondent’s account. By making the additional demands, the petitioner effectively made a qualified acceptance or a counteroffer, which the respondent did not accept. Under these circumstances, we see no full consent.

In *Manila Metal Container Corporation v. Philippine National Bank*, G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465-466, the Court ruled:

> A qualified acceptance or one that involves a new proposal constitutes a counteroffer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis. Consequently, **when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer.** The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds.

**Simulated contracts are void; no title acquired.**

Once again, in *Clemente v. CA, et al.*, G.R. No.175483, October 14, 2015, Jardeleza, J, the SC had the occasion to say that a simulated contract is void. In fact, no trust was created over said properties.

In this case the owner executed a contract of sale over her properties but retained ownership over the same. In fact, she executed a special power of attorney for the transferee to administer the same. The validity of the contract was put to issue where the SC

**Held:** The contract is void as it was merely simulated and without any consideration.

A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. Article 1318 provides that there is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract; and
All these elements must be present to constitute a valid contract; the absence of one renders the contract void. As one of the essential elements, consent when wanting makes the contract non-existent. Consent is manifested by the meeting of the offer and the acceptance of the thing and the cause, which are to constitute the contract. A contract of sale is perfected at the moment there is a meeting of the minds upon the thing that is the object of the contract, and upon the price.

Here, there was no valid contract of sale between the parties because their consent was absent. The contract of sale was a mere simulation.

Simulation takes place when the parties do not really want the contract they have executed to produce the legal effects expressed by its wordings. Article 1345 of the Civil Code provides that the simulation of a contract may either be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. The case of *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta*, G.R. Nos. 165748 & 165930, September 14, 2011, 657 SCRA 555, 575 citing *Valerio v. Refresca*, G.R. No. 163687, March 28, 2006, 485 SCRA 494, 500-501 is instructive on the matter of absolute simulation of contracts, viz:

In absolute simulation, **there is a colorable contract but it has no substance** as the parties have no intention to be bound by it. The main characteristic of an absolute simulation is that the apparent contract is not really desired or intended to produce legal effect or in any way alter the juridical situation of the parties. **As a result, an absolutely simulated or fictitious contract is void**, and the parties may recover from each other what they may have given under the contract.

In short, in absolute simulation there appears to be a valid contract but there is actually none because the element of consent is lacking. This is so because the parties do not actually intend to be bound by the terms of the contract.

**There is no implied trust.**

There was no implied trust in this case.

Resulting trusts arise from the nature or circumstances of the consideration involved in a transaction whereby one person becomes invested with *legal title* but is obligated in equity to
hold his title for the benefit of another. It is founded on the equitable doctrine that valuable consideration and not legal title is determinative of equitable title or interest and is always presumed to have been contemplated by the parties. Since the intent is not expressed in the instrument or deed of conveyance, it is to be found in the nature of the parties’ transaction. Resulting trusts are thus describable as intention-enforcing trusts. An example of a resulting trust is Article 1453 of the Civil Code.

The SC further ruled that no implied trust can be generated by the simulated transfers because being fictitious or simulated, the transfers were null and void *ab initio* – from the very beginning – and thus vested no rights whatsoever in favor of petitioner. That which is inexistent cannot give life to anything at all. (Tongoy v. Court of Appeals, G.R. No. L-45645, June 28, 1983, 123 SCRA 99, 121).

Article 1453 contemplates that legal titles were validly vested in petitioner. Considering, however, that the sales lacked not only the element of consent for being absolutely simulated, but also the element of consideration, these transactions are void and inexistent and produce no effect. Being null and void from the beginning, no transfer of title, both legal and beneficial, was ever effected to petitioner.

**ESTOPPEL**

**Estoppel by deed arises if there is express commitment.**

In *Jose Go, et al. v. Bangko Sentral ng Pilipinas, et al.*, G.R. No. 202262, June 8, 2015, Bersamin, J, a compromise between the BSP and Orient Commercial Banking Corp. where properties of Ever Crest Golf Club Resort, Inc. and Mega Heights, Inc. were used to secure the payment of the obligations of Orient to BSP and agreed that the said properties shall be subject of existing writ of attachment until the obligation shall have been fully paid. As there was no compliance with the judgment based on compromise, BSP moved for execution of the compromise against the aforesaid properties. Ever Crest and Mega Heights objected on the ground that they were not impleaded as parties in the suit or signatory to the compromise agreement. Finding the argument untenable, the SC

**Held:** Petitioners are in estoppel by deed of virtue of the execution of the compromise agreement, especially so that they were the ones who offered their properties as security. They firmly committed in the compromise agreement, to have their properties with improvements be made subject to the writ of attachment in order “to secure the faithful payment of the outstanding obligation until such obligation shall have been fully paid by defendants to plaintiff,” and expressly assured Bangko Sentral in the same compromise agreement that “*all the corporate*
approvals for the execution of this Compromise agreement by Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., consisting of stockholders resolution and Board of Directors approval have already been obtained at the time of the execution of this Agreement.” They warranted in the compromise agreement that: “Failure on the part of the defendants to fully settle their outstanding obligations and to comply with any of the terms of this Compromise Agreement shall entitle the plaintiff to immediately ask for a Writ of Execution against all assets of the Ever Crest Golf Club Resort, Inc., and Mega Heights, Inc., now or hereafter arising upon the signing of this Compromise Agreement.” By such express commitments, they are estopped from claiming that the properties of Ever Crest and Mega Heights could not be the subject of levy pursuant to the writ of execution. In other words, they could not anymore assail the court for authorizing the enforcement of the judgment on the compromise agreement against the assets of Ever Crest.

**Three (3) kinds of estoppel.**

There are three kinds of estoppels, to wit: (1) estoppel *in pais*; (2) estoppel by deed; and (3) estoppel by laches. Under the first kind, a person is considered in estoppel if by his conduct, representations, admissions or silence when he ought to speak out, whether intentionally or through culpable negligence, “causes another to believe certain facts to exist and such other rightfully relies and acts on such belief, as a consequence of which he would be prejudiced if the former is permitted to deny the existence of such facts.” Under estoppel by deed, a party to a deed and his privies are precluded from denying any material fact stated in the deed as against the other party and his privies. Under estoppel by laches, an equitable estoppel, a person who has failed or neglected to assert a right for an unreasonable and unexplained length of time is presumed to have abandoned or otherwise declined to assert such right and cannot later on seek to enforce the same, to the prejudice of the other party, who has no notice or knowledge that the former would assert such rights and whose condition has so changed that the latter cannot, without injury or prejudice, be restored to his former state. (Co Chien v. Sta. Lucia Realty & Development, Inc., G.R. No. 162090, January 31, 2007, 513 SCRA 570, 581).

**TRUST**

**Implied trust converted to express trust.**

In *Go v. The Estate of the Later Felisia de Buenaventura, etc.*, G.R. No. 211972; *Guerrero, et al. v. The Estate of the Late Felisa de Buenaventura, etc.*, G.R. No. 212045, June 22, 2015, Perlas-Bersamin, J, in 1960 Felisa, as owner of a parcel of land, transferred the same to
her daughter Bella, married to Delfin, Sr. and Felimon, Sr., to assist them in procuring a loan from the GSIS. Her title was cancelled and a new one was issued under the names of Bella and Delfin. In a letter dated September 21, 1970, addressed to the latter, she said that the property still belonged to her and that she transferred the property due to their intention to procure a loan from the GSIS. She requested that beneath the letter, they should sign, and they signed and she likewise signed the same. The nature of the transfer of the property was the basic issue in a litigation between the parties where the SC

**Held:** Taking into considering the contents of the letter, the transfer was a case of an express trust.

The words of Felisa in the letter unequivocally and absolutely declared her intention of transferring the title over the subject property to Bella, Delfin, Sr., and Felimon, Sr. in order to merely accommodate them in securing a loan from the GSIS. She likewise stated clearly that she was retaining her ownership over the subject property and articulated her wish to have her heirs share equally therein. Hence, while in the beginning, an implied trust was merely created between Felisa, as trustor, and Bella, Delfin, Sr., and Felimon, Sr., as both trustees and beneficiaries, the execution of the September 21, 1970 letter settled, once and for all, the nature of the trust established between them as an express one, their true intention irrefutably extant thereon.

Bella's attempt to thwart the express trust established in this case by claiming that she affixed her signature on the September 21, 1970 letter only "to appease" her mother, Felisa, and that she could afford to sign the letter since the title covering the subject property was in their name as owners anyway, does not hold water. As held in *Lee Tek Sheng v. CA*, 354 Phil. 556 [1998], the "[m]ere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate or that the registrant may only be a trustee or that other parties may have acquired interest subsequent to the issuance of the certificate of title." Registration does not vest title; it is merely the evidence of such title. (Heirs of Rosa and Cirila Dumaliang v. Serban, 545 Phil. 243, 256 [2007]).

Bella never denied the purpose for which the sale to them of the subject property was effected. Instead, they relied heavily and anchored their defense on the existence of their certificate of title covering the subject property, which, to reiterate, was insufficient to prove their ownership over the same independent of the express trust.

**Action for reconveyance; prescription.**

On the issue of prescription, it was held that the action for reconveyance instituted by respondents has not yet prescribed, following the jurisprudential rule that express trusts prescribe in ten (10) years from the time the trust is repudiated.
In this case, there was a repudiation of the express trust when Bella, as the remaining trustee, sold the subject property to Wilson and Peter on January 23, 1997. As the complaint for reconveyance and damages was filed by respondents on October 17, 1997, or only a few months after the sale of the subject property to Wilson and Peter, it cannot be said that the same has prescribed.

Nature of trust.

Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. An express trust is created by the intention of the trustor or of the parties, while an implied trust comes into being by operation of law. (Heirs of Tranquilino Labiste v. Heirs of Jose Labiste, 605 Phil. 495, 503 [2009]).

Express trusts are created by direct and positive acts of the parties, by some writing or deed, or will, or by words either expressly or impliedly evincing an intention to create a trust. Under Article 1444 of the Civil Code, "[n]o particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended." It is possible to create a trust without using the word "trust" or "trustee." Conversely, the mere fact that these words are used does not necessarily indicate an intention to create a trust. The question in each case is whether the trustor manifested an intention to create the kind of relationship which to lawyers is known as trust. It is immaterial whether or not he knows that the relationship which he intends to create is called a trust, and whether or not he knows the precise characteristics of the relationship which is called a trust. (Torbela v. Spouses Rosario, 678 Phil. 1, 38-39 [2011]).

In the case of Tamayo v. Callejo, 150-B Phil. 31 [1972], the Court recognized that a trust may have a constructive or implied nature in the beginning, but the registered owner's subsequent express acknowledgement in a public document of a previous sale of the property to another party effectively converted the same into an express trust.

SALES

Delivery makes the vendee the owner.

In Sps. Badilla v. Bragat, G.R. No. 187013, April 22, 2015, Peralta, J, Sps. Pastrano sold a parcel of land to Ledesma in 1968 who in turn sold it to Spouses Badilla who took possession of the same. Claiming to be the owner, Bragat filed an action for reconveyance against Badilla. The latter filed an action for quieting of title claiming that they are the owners. The RTC ruled in favor of Bragat which was affirmed by the CA. In reversing the CA’s decision, the SC
Held: The Spouses Badilla are the owners considering that when Bragat bought the property, Spouses Pastrano were no longer the owner as they have already sold it to the Spouses Badilla who took possession of the property.

Although that sale appeared to be merely verbal, and payment therefor was to be made on installment, it was a partially consummated sale, with the Badillas paying the initial purchase price and Ledesma surrendering possession. That the parties intended for ownership to be transferred may be inferred from their lack of any agreement stipulating that ownership of the property is reserved by the seller and shall not pass to the buyer until the latter has fully paid the purchase price. (Art. 1478, NCC). The fact is, Ledesma even delivered to the Badillas the owner's duplicate copy of the title. The Civil Code states that ownership of the thing sold is transferred to the vendee upon the actual or constructive delivery of the same. (Arts. 1477, 1496, NCC). And the thing is understood as delivered when it is placed in the control and possession of the vendee. (Art. 1497, NCC). Payment of the purchase price is not essential to the transfer of ownership as long as the property sold has been delivered; and such delivery (tradiitio) operated to divest the vendor of title to the property which may not be regained or recovered until and unless the contract is resolved or rescinded in accordance with law. (Philippine National Bank v. Court of Appeals, 338 Phil. 795, 822 (1997), citing Sampaguita Pictures, Inc. v. Jalwindor Manufacturers, Inc. 182 Phil. 16, 22 (1979), and Pingol v. Court of Appeals, G.R. No. 102909, September 6, 1993, 226 SCRA 118, 128).

Effect if sale is verbal.

The same is true even if the sale is a verbal one, because it is held that when a verbal contract has been completed, executed or partially consummated, its enforceability will not be barred by the Statute of Frauds, which applies only to an executory agreement. (Ainza v. Spouses Padua,501 Phil. 295, 300 (2005)). Thus, where a party has performed his obligation, oral evidence will be admitted to prove the agreement. And, where it was proven that one party had delivered the thing sold to another, then the contract was partially executed and the Statute of Frauds does not apply. (Cordial v. Miranda,401 Phil. 307, 321 (2000), citing Hernandez v. Andal, 78 Phil. 196, 204, (1947); Pascual v. Realty Investment, Inc., 91 Phil. 257, 260 (1952); and Diwa v. Donato,July 29, 1994, 234 SCRA 608, 615-615, National Bank v. Philippine Vegetable Oil Co., 49 Phil. 857, 867 (1927)).

Well-settled is the rule that no one can give what one does not have - nemodat quod non habet – and, accordingly, one can sell only what one owns or is authorized to sell, and the buyer acquires no better title than the seller. Thus, the sales made on the dates May 5, 1984 and October 2, 1987 are void for being simulated and for lack of a subject matter. On these sales, Bragat cannot claim good faith as she herself knew of Pastrano's lack of ownership.
Acceptance of delivery inferred from conduct.

In *NFF Industrial Corporation v. G & L Associated Brokerage and/or Gerardo Trinidad*, G.R. No. 178169, January 12, 2015, Peralta, J, there was a controversy as to whether there was delivery of bulk bags of cement or not. Evidence showed that when the cement was delivered, the petitioner’s employees were allowed to pass through the guard-on-duty who allowed the entry of the delivery into its premises which was the designated delivery site and there was acknowledgment of the first batch of delivery and even followed up the remaining balance of the order for delivery. The sales invoices were served on the respondent company’s employees and there was never any complain relative thereto. It was contended that there was failure to strictly comply with the instructions to deliver the bulk bags to the specified person. Was there delivery, thus making the buyer liable? Explain.

**Held:** Yes. Despite its failure to strictly comply with the instruction to deliver the bulk bags to the specified person, acceptance of delivery may be inferred from the conduct of the respondents. Accordingly, respondents may be held liable to pay for the price of the bulk bags pursuant to Article 1585 of the Civil Code, which provides that:

> ARTICLE 1585. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

As early as *Sy v. Mina*, G.R. No. L-32217, August 15, 1988, 164 SCRA 213, citing Pan Pacific Company (Phils.) v. Advertising Corporation, G.R. No. L-22050, June 13, 1968, 23 SCRA 977, 991, it has been pronounced that the vendee’s acceptance of the equipment and supplies and accessories, and the use it made of them is an implied conformity to the terms of the invoices and he is bound thereby. The buyer’s failure to interpose any objection to the invoices issued to it, to evidence delivery of the materials ordered as per their agreement, should be deemed as an implied acceptance by the buyer of the said conditions. (*Naga Development v. Court of Appeals*, G.R. No. L-28173, September 30, 1971, 41 SCRA 106).

**Delivery, its concept and effect.**

Under the Civil Code, the vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (Art. 1495, NCC). The ownership of thing sold is considered acquired by the vendee once it is delivered to him in the following wise:
Art. 1496. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee.

Art. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

Thus, ownership does not pass by mere stipulation but only by delivery. Manresa explains, “the delivery of the thing x x x signifies that title has passed from the seller to the buyer.” Moreover, according to Tolentino, the purpose of delivery is not only for the enjoyment of the thing but also a mode of acquiring dominion and determines the transmission of ownership, the birth of the real right. The delivery under any of the forms provided by Articles 1497 to 1505 of the Civil Code signifies that the transmission of ownership from vendor to vendee has taken place. Here, emphasis is placed on Article 1497 of the Civil Code, which contemplates what is known as real or actual delivery, when the thing sold is placed in the control and possession of the vendee. In *Equatorial Realty Development, Inc. v. Mayfair Theater, Inc.*, the concept of “delivery” was elucidated, to wit:

Delivery has been described as a composite act, a thing in which both parties must join and the minds of both parties concur. It is an act by which one party parts with the title to and the possession of the property, and the other acquires the right to and the possession of the same. In its natural sense, delivery means something in addition to the delivery of property or title; it means transfer of possession. In the Law on Sales, delivery may be either actual or constructive, but both forms of delivery contemplate "the absolute giving up of the control and custody of the property on the part of the vendor, and the assumption of the same by the vendee."

Evidence clearly showed that there were deliveries and hence, the respondent should be made to answer for the value of the bulk bags of cement.

**Sale with pacto de retro 30-day period to repurchase applies if there is a claim that the contract was a loan with mortgage.**

In *Heirs of Antero Soliva v. Severino Soliva, et al.*, G.R. No. 159611, April 22, 2015, Brion, J, the vendor *a retro* reserved for herself and her heirs the right to repurchase the property within a period of 10 years from and after the date of the instrument. The contract was executed
in 1970. Between the dates 1970 and 1991, none of the heirs exercised the right to repurchase. They however invoked the 30-day period after finality of a judgment declaring the contract as a loan with a mortgage. In brushing aside such contention, the SC

**Held:** Paragraph 3 of Article 1606 covers only a situation where the alleged vendor a retro claims, in good faith, that their (the vendor and the vendee) real intention (to the contract) was a loan with mortgage.


Article 1606 is intended to cover suits where the seller claims that the real intention was a loan with equitable mortgage but decides otherwise. The seller, however, must entertain a good faith belief that the contract is an equitable mortgage. In *Felicen, Sr., et al. v. Orias, et al.*, it was said:

The application of the third paragraph of Article 1606 is predicated upon the bona fides of the vendor a retro. It must appear that there was a belief on his part, founded on facts attendant upon the execution of the sale with pacto de retro, honestly and sincerely entertained, that the agreement was in reality a mortgage, one not intended to affect the title to the property ostensibly sold, but merely to give it as security for a loan or obligation. In that event, if the matter of the real nature of the contract is submitted for judicial resolution, the application of the rule is meet and proper: that the vendor a retro be allowed to repurchase the property sold within 30 days from rendition of final judgment declaring the contract to be a true sale with right to repurchase. Conversely, if it should appear that the parties’ agreement was really one of sale – transferring ownership to the vendee, but accompanied by a reservation to the vendor of the right to repurchase the property – and there are no circumstances that may reasonably be accepted as generating some honest doubt as to the parties’ intention, the proviso is inapplicable. x x x If the rule were otherwise, it would be within the power of every vendor a retro to set at naught a pacto de retro, or resurrect an expired right of repurchase, by simply instituting an action to reform the contract – known to him to be in truth a sale with pacto de retro – into an equitable mortgage. x x x The rule would thus be
made a tool to spawn, protect and even reward fraud and bad faith, a situation surely never contemplated or intended by the law.

x x x where the proofs established that there could be no honest doubt as to the parties’ intention, that the transaction was clearly and definitely a sale with pacto de retro, the Court adjudged the vendor a retro not to be entitled to the benefit of the third paragraph of Article 1606.

The real intention of the parties was a Pacto de Retro sale, not an equitable mortgage, hence, reliance on paragraph 3, Article 1606 of the Civil Code is misplaced and his argument on this point cannot prosper.

**Right to repurchase is good only for 10 years.**

In *Cebu State College of Science & Technology (CSCST) v. Misterio, et al.*, G.R. No. 179025, June 17, 2015, Peralta, J, there was a contract of sale with right to repurchase after the school shall have ceased to exist or shall have transferred its school site elsewhere. The controversy that arose was the period to exercise the right to repurchase considering that it was not expressly stipulated. In resolving the controversy, the SC

**Held:** It cannot exceed ten (10) years. In cases of conventional redemption when the vendor a retro reserves the right to repurchase the property sold, the parties to the sale must observe the parameters set forth by Article 1606 of the New Civil Code, which states:

Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last **four years** from the date of the contract. Should there be an agreement, the period cannot exceed **ten years**. However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase.

Thus, depending on whether the parties have agreed upon a specific period within which the vendor a retro may exercise his right to repurchase, the property subject of the sale may be redeemed only within the limits prescribed by the aforequoted provision.
As stated in Yadao vs. Yadao (20 Phil. Rep., 260): "A pacto de retro is, in a certain aspect, the suspension of the title to the land involved. It was the intention of the legislature to limit the continuance of such a condition, with the purpose that the title to the real estate in question should be definitely placed, it being, in the opinion of the legislature, against public policy to permit such an uncertain condition relative to the title to real estate to continue for more than ten years."

Consistent with such view, the Court frowned upon agreements indicating indefinite stipulations for the exercise of the right to repurchase and restricted the redemption period to ten (10) years from the date of the contract of sale, in consonance with the provisions of the Civil Code.

Accordingly, when vendors a retro were granted the right to repurchase properties sold “at any time they have the money,” “in the month of March of any year,” or “at any time after the first year,” the Court had not hesitated in imposing the ten (10)-year period, the expiration of which effectively bars redemption of the subject properties. There have been numerous occasions wherein the SC invalidated stipulations permitting the repurchase of property only after the lapse of at least ten (10) years from the date of the execution of the contract for being in contravention of the limitation mandated by the Civil Code provision. Waivers of such period were likewise held to be void for being against public policy.

The Court deemed it necessary to keep within the ten (10)-year period those instances where parties agree to suspend the right until the occurrence of a certain time, event, or condition, insofar as the application of the four (4)-year period in the first paragraph of Article 1606 Civil Code would prolong the exercise of the right beyond ten (10) years. Thus, in Rosales v. Reyes, it was held that in cases where the four (4)-year period would extend the life of the contract beyond ten (10) years, the vendor a retro will only have the remainder of the said ten (10)-year period to redeem the property, in line with the manifest spirit of the law. When, for instance, the contract provides that the right may only be exercised after seven (7), eight (8), or nine (9) years after the execution of the sale, the vendor a retro may only redeem the property before the expiration of the ten (10)-year period from the date of the sale. In line with this, Umale v. Fernandez, et. al., pronounces that the period of redemption agreed upon by the parties may be extended after the four (4)-year period so long as the total period does not exceed ten (10) years from the date of the contract.

Void title can be the root of a valid title if transferred to innocent purchaser for value.

In Tolentino, et al. v. Sps. Latagan, et al., G.R. No.179874, June 22, 2015, Peralta, J, the SC once again expounded on the effect of a forged deed which effected the transfer of a real property and whether the purchaser of the property is a buyer in good faith.
Citing *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, the Court held that a forged deed of sale is null and void and conveys no title, for it is a well-settled principle that no one can give what one does not have; *nemo dat quod non habet*. Once can sell only what one owns or is authorized to sell, and the buyer can acquire no more right than what the seller can transfer legally. (Consolidated Rural Bank, Inc. v. Court of Appeals, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 363). Due to the forged Deed of Absolute Sale the buyer acquired no right over the subject property which he could convey to his daughter. All the transactions subsequent to the falsified sale between him and his daughter are likewise void.

However, it has also been consistently ruled that a forged or fraudulent document may become the root of a valid title, if the property has already been transferred from the name of the owner to that of the forger, (Lim v. Chuatoco, G.R. No. 161861, March 11, 2005, 453 SCRA 308), and then to that of an innocent purchaser for value. (Camper Realty Corp. v. Pajo-Reyes, et al., 646 Phil. 689 [2010]; Rufloe v. Burgos, supra.; citing Cayana v. Court of Appeals, G.R. No. 125607, March 18, 2004, 426 SCRA 10, 22). This doctrine emphasizes that a person who deals with registered property in good faith will acquire good title from a forger and be absolutely protected by a Torrens title. This is because a prospective buyer of a property registered under the Torrens system need not go beyond the title, especially when she has not notice of any badge of fraud or defect that would place her on guard. In view of such doctrine, the Court now resolves the second issue of whether or not Maria is an innocent purchaser for value.

**Non-payment of price or consideration; effect.**

It was contended that the daughter testified that she did not pay her father the price stated in the contract of sale, hence, the contract is simulated, thus, it void for lack of consideration.

Brushing aside such contention, the SC

**Held:** As to the lack of consideration for the second deed of sale, it is presumed that a written contract is for a valuable consideration. (Rules of Court, Rule 131). Thus, the execution of a deed purporting to convey ownership of a realty is in itself *prima facie* evidence of the existence of a valuable consideration and the party alleging lack of consideration has the burden of proving such allegation. (Ong v. Ong, G.R. No. L-67888, October 8, 1985, citing Caballero, et al. v. Caballero, et al., C.A. 45 O.G. 2536). Petitioners failed to present clear and convincing evidence to overturn such disputable presumption.
Implied trust; prescription to enforce is 10 years.

The cause of action for quieting of title, recovery and damages over the subject property acquired by respondents through a forged deed can be considered as that of enforcing an implied trust under Article 1456 of the Civil Code:

Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

In Heirs of Jose Olviga v. Court of Appeals, G.R. No. 104813, October 21, 1993, 227 SCRA 330, the Court explained when an action enforcing an implied trust prescribes:

With regard to the issue of prescription, this Court has ruled a number of times before that an action for reconveyance of a parcel of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property (Vda. de Portugal vs. IAC, 159 SCRA 178). But this rule applies only when the plaintiff is not in possession of the property, since if a person claiming to be the owner thereof is in actual possession of the property, the right to seek reconveyance, which in effect seeks to quiet title to the property, does not prescribe.

Petitioners were not in possession of the subject property when they filed their complaint for quieting of title, recovery and damages. If their complaint were to be considered as that of enforcing an implied trust, it should have been filed within 10 years from the issuance of the title in the name of the innocent purchaser for value. However, the complaint was filed about 20 years from the issuance of the title, which is way beyond the prescriptive period. Worse, such delay is unjustified and unreasonably long, and petitioners clearly failed to exercise due diligence in asserting their right over the property. Therefore, petitioners' complaint is likewise barred by laches, which has been defined as 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, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it. (Philippine Carpet Manufacturing Corporation v. Tagyamon, G.R. No. 191475, December 11, 2013, 712 SCRA 489, 498).
Mortgage of title must be with the approval of HLURB; invalidity is not of the whole mortgage.

In *United Overseas Bank of the Phil. v. The Board of Commissioners- HLURB, et al.*, G.R. No. 182133, June 23, 2015, Peralta, J, there was a condominium property that was sold, but the same was mortgaged without the approval of the HLURB. A unit-buyer filed a complaint to nullify the entire mortgage, where the Supreme Court ruled that it is only to the extent of the unit purchased by the party that the mortgage should be declared void. The SC recognized the fact that decisions vary in this particular subject matter.

In *Metropolitan Bank and Trust Co., Inc. v. SLGT Holdings, Inc.*, G.R. Nos. 175181-82 and G.R. Nos. 175354 & 175387-88, September 14, 2007, 533 SCRA 516, the Court nullified the entire mortgage contract executed between the subdivision developer and the bank albeit the fact that only two units or lot buyer/s filed a case for declaration of nullity of mortgage. In the said case, the entire mortgage contract was nullified on the basis of the principle of indivisibility of mortgage as provided in Article 208918 of the New Civil Code.

This notwithstanding, in the fairly recent case of *Philippine National Bank v. Lim*, the Court reverted to the previous ruling in *Far East Bank*, G.R. No. 171677, January 30, 2013, 689 SCRA 523, 543, citing *Manila Banking Corporation v. Rabina*, G.R. No. 145941, December 16, 2008, 574 SCRA 16, 23, that a unit buyer has no standing to seek for the complete nullification of the entire mortgage, because he has an actionable interest only over the unit he has bought. Hence, the mortgage was nullified only insofar as it affected the unit buyer.

The recent view espoused in *Philippine National Bank* is in accord with law and equity. While a mortgage may be nullified if it was in violation of Section 18 of P.D. No. 957, such nullification applies only to the interest of the complaining buyer. It cannot extend to the entire mortgage. A buyer of a particular unit or lot has no standing to ask for the nullification of the entire mortgage. Since buyer has an actionable interest only over its unit, it is but logical to conclude that it has no standing to seek for the complete nullification of the subject mortgage and the HLURB was incorrect when it voided the whole mortgage.

**Purpose of prior approval of HLURB.**

The prior approval requirement is intended to protect buyers of condominium units from fraudulent manipulations perpetrated by unscrupulous condominium sellers and operators, such as their failure to deliver titles to the buyer or titles free from lien and encumbrances. This is pursuant to the intent of P.D. No. 957 to protect hapless buyers from the unjust practices of
unscrupulous developers which may constitute mortgages over condominium projects sans the knowledge of the former and the consent of the HLURB.

Thus, failure to secure the HLURB’s prior written approval as required by P.D. No. 957 will not annul the entire mortgage between the condominium developer and the creditor bank, otherwise the protection intended for condominium buyers will inadvertently be extended to the condominium developer even though, by failing to secure the government’s prior approval, it is the party at fault.

To rule otherwise would certainly affect the stability of large-scale mortgages, which is prevalent in the real estate industry. To be sure, mortgagee banks would be indubitably placed at risk if condominium developers are empowered to unilaterally invalidate mortgage contracts based on their mere failure to secure prior written approval of the mortgage by the HLURB, which could be easily caused by inadvertence or by deliberate intent.

AGENCY

Agent has no power of strict dominion.

In V-Gent, Inc. v. Morning Star Travel & Tours, Inc., G.R. No. 186305, July 22, 2015, Brion, J, petitioner purchased 26 plane tickets from respondent. Since there were unused tickets, petitioner returned the same to the respondent which refunded the value of some of the tickets. For failure to pay the price of the other tickets despite demands, petitioner filed a complaint for sum of money. Respondent contended that petitioner had no cause of action since the tickets were purchased by the passengers. The trial court dismissed the action ruling that it was not the real party-in-interest. The CA affirmed the RTC’s ruling and dismissed the complaint for reason that V-Gent, Inc. as agent was not the real party-in-interest. Agreeing with the CA on appeal, the SC

Held: Every action must be prosecuted or defended in the name of the real party-in-interest - the party who stands to be benefited or injured by the judgment in the suit. In suits where an agent represents a party, the principal is the real party-in-interest; an agent cannot file a suit in his own name on behalf of the principal.

Rule 3, Section 3 of the Rules of Court provides the exception when an agent may sue or be sued without joining the principal.

Section 3. Representatives as parties. - Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be
deemed to be the real party-in-interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. **An agent acting in his own name and for the benefit of an undisclosed principal** may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

**When agent may sue in his own name.**

Thus an agent may sue or be sued solely in its own name and without joining the principal when the following elements concur: (1) the agent acted in his own name during the transaction; (2) the agent acted for the benefit of an undisclosed principal; and (3) the transaction did not involve the property of the principal.

When these elements are present, the agent becomes bound as if the transaction were its own. This rule is consistent with Article 1883 of the Civil Code which says:

Art. 1883. If an agent acts in his own name, the principal has no right of action against the persons with whom the agent has contracted; neither have such persons against the principal.

In such case, the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent.

In the present case, only the first element is present; the purchase order and the receipt were in the name of V-Gent. However, the remaining elements are absent because: (1) V-Gent disclosed the names of the passengers to Morning Star - in fact the tickets were in their names; and (2) the transaction was paid using the passengers' money. Therefore, Rule 3, Section 3 of the Rules of Court cannot apply.

In this case, V-Gent, the agent, sued to recover the money of its principals - the passengers - who are the real parties-in-interest because they stood to be injured or benefited in case Morning Star refused or agreed to grant the refund because the money belonged to them. From this perspective, V-Gent evidently does not have a legal standing to file the complaint.
The contention that by making a partial refund, Morning Star was already estopped from refusing to make a full refund on the ground that V-Gent is not the real party-in-interest to demand reimbursement is not quite correct.

The power to collect and receive payments on behalf of the principal is an ordinary act of administration covered by the general powers of an agent. On the other hand, the filing of suits is an *act of strict dominion*.

Under Article 1878 (15) of the Civil Code, a duly appointed agent has no power to exercise any act of strict dominion on behalf of the principal unless authorized by a special power of attorney. An agent's authority to file suit cannot be inferred from his authority to collect or receive payments; the grant of special powers cannot be presumed from the grant of general powers. Moreover, the authority to exercise special powers must be duly established by evidence, even though it need not be in writing.

**LOAN/INTEREST**

**On the issue of interest, 6% per annum.**

Article 1956 of the Civil Code spells out the basic rule that “[n]o interest shall be due unless it has been expressly stipulated in writing.”

On the matter of interest, the text of the acknowledgment receipt is simple, plain, and unequivocal. It attests to the contracting parties’ intent to subject to interest the loan. The controversy, however, stems from the acknowledgment receipt’s failure to state the exact rate of interest.

Jurisprudence is clear about the applicable interest rate if a written instrument fails to specify a rate. In *Spouses Toring v. Spouses Olan*, 589 Phil. 362 (2008), the court clarified the effect of Article 1956 of the Civil Code and noted that the legal rate of interest (then at 12%) is to apply: “In a loan or forbearance of money, according to the Civil Code, the interest due should be that stipulated in writing, and in the absence thereof, the rate shall be 12% per annum (now 6%).” (CIVIL CODE, art. 1956 and *Security Bank and Trust Company v. RTC of Makati, Br. 61*, 331 Phil. 787 (1996)).

*Spouses Toring* cites and restates (practically verbatim) what has been settled in *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*: “In a loan or forbearance of money, the interest due should be that stipulated in writing, and in the absence thereof, the rate shall be 12% per annum.” (331 Phil. 787, 794 (1996) [Per J. Hermosisima, Jr.,
First Division, citing Eastern Shipping Lines, Inc. v. Court of Appeals, G.R. No. 97412, July 12, 1994, 234 SCRA 78 [Per J. Vitug, En Banc], emphasis supplied).

Security Bank also refers to Eastern Shipping Lines, Inc. v. Court of Appeals, which, in turn, stated: (G.R. No. 97412, July 12, 1994, 234 SCRA 78 [Per J. Vitug, En Banc])

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 Civil Code. (CIVIL CODE, art. 2195, 1956, and 1169). (Emphasis supplied)

The rule is not only definite; it is cast in mandatory language. From Eastern Shipping to Security Bank to Spouses Toring, jurisprudence has repeatedly used the word “shall,” a term that has long been settled to denote something imperative or operating to impose a duty. (Philippine Registered Electrical Practitioners, Inc. v. Francia, Jr., 379 Phil. 634 (2000) [Per J. Quisumbing, Second Division]; University of Mindanao, Inc. v. Court of Appeals, 659 Phil. 1 (2011) [Per J. Peralta, Second Division]; and Bersabal v. Salvador, 173 Phil. 379 (1978) [Per J. Makasiar, First Division]). Thus, the rule leaves no room for alternatives or otherwise does not allow for discretion. It requires the application of the legal rate of interest.

The SC’s intervening Decision in Nacar v. Gallery Frames, G.R. No. 189871, August 13, 2013, 703 SCRA 439 [Per J. Peralta, En Banc], recognized that the legal rate of interest has been reduced to 6% per annum:

Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

This Circular shall take effect on 1 July 2013.
Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum — but will now be six percent (6%) per annum effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest when applicable.

Nevertheless, both Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 and Nacar retain the definite and mandatory framing of the rule articulated in Eastern Shipping, Security Bank, and Spouses Toring. Nacar even restates Eastern Shipping:

To recapitulate and for future guidance, the guidelines laid down in the case of Eastern Shipping Lines are accordingly modified to embody BSP-MB Circular No. 799, 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 6% 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 Civil Code.

Thus, it remains that where interest was stipulated in writing by the debtor and creditor in a simple loan or mutuum, but no exact interest rate was mentioned, the legal rate of interest shall apply. At present, this is 6% per annum, subject to Nacar’s qualification on prospective application.

Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of conventional interest.

This is so because interest in this respect is used as a surrogate for the parties’ intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest
is an affirmation of the contracting parties’ intent; that is, by their contract’s silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

2.5% interest per month; unconscionable; void.

Even if it can be shown that the parties have agreed to pay monthly interest at the rate of 2.5%, this is unconscionable. In Castro v. Tan, 620 Phil. 239, (2009) the willingness of the parties to enter into a relation involving an unconscionable interest rate is inconsequential to the validity of the stipulated rate:

The imposition of an unconscionable rate of interest on a money debt, even if knowingly and voluntarily assumed, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals. (citing Ibarra v. Aveyro, 37 Phil. 273, 282 (1917)).

The imposition of an unconscionable interest rate is void ab initio for being “contrary to morals, and the law.” (CIVIL CODE, Art. 1306).

In determining whether the rate of interest is unconscionable, the mechanical application of pre-established floors would be wanting. The lowest rates that have previously been considered unconscionable need not be an impenetrable minimum. What is more crucial is a consideration of the parties’ contexts. Moreover, interest rates must be appreciated in light of the fundamental nature of interest as compensation to the creditor for money lent to another, which he or she could otherwise have used for his or her own purposes at the time it was lent. It is not the default vehicle for predatory gain. As such, interest need only be reasonable. It ought not be a supine mechanism for the creditor’s unjust enrichment at the expense of another.

Interest earns interest.
Apart from respondents’ liability for conventional interest at the rate of 12% per annum (now 6%), outstanding conventional interest—if any is due from respondents—shall itself earn legal interest from the time judicial demand. This is consistent with Article 2212 of the Civil Code, which provides:

Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.


There was over payment; effect.

In this case, there was overpayment because of the wrong application of payment. Under Article 1253, NCC, if the debt produces interest, payment of the principal shall not be deemed to have been made until the interest have been covered. As there was overpayment, the principle of solution indebiti applies where the law provides:

Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

In Moreno-Lentfer v. Wolff, 484 Phil 552 [2004], the court explained the application of solutio indebiti:

The quasi-contract of solutio indebiti harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. It applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment, and (2) the payment is made through mistake, and not through liberality or some other cause. (Id. at 559–560, citing Power Commercial and Industrial Corp. v. Court of Appeals, 340 Phil. 705 (1997) [Per J. Panganiban, Third Division]; and National Commercial Bank of Saudi Arabia v. Court of Appeals, 480 Phil. 391 (2003) [Per J. Carpio-Morales, Third Division]).

As respondents had already fully paid the principal and all conventional interest that had accrued, they were no longer obliged to make further payments. Any further payment they made
was only because of a mistaken impression that they were still due. Accordingly, petitioners are now bound by a quasi-contractual obligation to return any and all excess payments delivered by respondents.

*Nacar* provides that “[w]hen 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.” This applies to obligations arising from quasi-contracts such as *solutio indebiti*.

Further, Article 2159 of the Civil Code provides:

Art. 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.

He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

**Stipulated interest of 3% or more is excessive; void.**

In *Marilag v. Martinez*, G.R. No. 201892, July 22, 2015, Perlas-Bernabe, J, a contract of loan secured by mortgage was entered into with a stipulated interest of 3% per month. Ruling that such interest rate is not valid, the SC

**Held:** It is void because it is excessive, iniquitous, unconscionable and exorbitant, hence, illegal, and void for being contrary to morals. In *Agner v. BPI, Inc.*, it was ruled that settled is the principle that stipulated interest rates of three percent (3%) per month and higher are excessive, iniquitous, unconscionable, and exorbitant. While Central Bank Circular No. 905-82 which took effect on January 1, 1983, (as amended by Cir. No. 799) effectively, removed the ceiling on interest rates for both secured and unsecured loans, regardless of maturity, nothing in the said circular could possibly be read as granting *carte blanche* authority to lenders to raise interest rates to levels which would either enslave their borrowers or lead to a hemorrhaging of their assets. Since the stipulation on the interest rate is void for being contrary to morals, if not against the law, it is as if there was no express contract on said interest rate; thus, the interest rate may be reduced as reason and equity demand.
SURETY/GUARANTY

Essence of continuing guaranty is surety; caption not controlling; intent controls.

In Allied Banking Corp. v. Yujuico, G.R. No. 163116, June 29, 2015, Bersamin, J, there were two (2) continuing guaranty undertakings containing identical provisions.

The parties, however, interchangeably used the terms guaranty and surety in characterizing the undertakings of Jesus under the continuing guaranties. The terms are distinct from each other, however, and the distinction is expressly delineated in the Civil Code, to wit, the SC said.

Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

Thus, in guaranty, the guarantor “binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.” The liability of the guarantor is secondary to that of the principal debtor because he “cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.” (Civil Code, Article 2058). In contrast, the surety is solidarily bound to the obligation of the principal debtor. (Ang v. Associated Bank, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 274-275).

Use of word guaranty not controlling; contents and intent control.

Although the first part of the continuing guaranties showed that the party as the signatory had agreed to be bound “either as guarantor or otherwise,” the usage of term guaranty or guarantee in the caption of the documents, or of the word guarantor in the contents of the documents did not conclusively characterize the nature of the obligations assumed therein. What properly characterized and defined the undertakings were the contents of the documents and the intention of the parties. In holding that the continuing guaranty executed in E. Zobel, Inc. v. Court of Appeals, G.R. No. 113931, May 6, 1998, 290 SCRA 1, 10, was a surety instead of a guaranty, the Court accented the distinctions between them, viz.:

“The use of the term “guarantee” does not ipso facto mean that the contract is one of guaranty. Authorities recognize that the word “guarantee” is
frequently employed in business transactions to describe not the security of the debt but an intention to be bound by a primary or independent obligation. As aptly observed by the trial court, the interpretation of a contract is not limited to the title alone but to the contents and intention of the parties.”

A contract of surety is an accessory promise by which a person binds himself for another already bound, and agrees with the creditor to satisfy the obligation if the debtor does not. A contract of guaranty, on the other hand, is a collateral undertaking to pay the debt of another in case the latter does not pay the debt.

Strictly speaking, guaranty and surety are nearly related, and many of the principles are common to both. However, under our civil law, they may be distinguished thus: A surety is usually bound with his principal by the same instrument, executed at the same time, and on the same consideration. He is an original promissor and debtor from the beginning, and is held, ordinarily, to know every default of his principal. Usually, he will not be discharged, either by the mere indulgence of the creditor to the principal, or by want of notice of the default of the principal, no matter how much he may be injured thereby. On the other hand, the contract of guaranty is the guarantor’s own separate undertaking, in which the principal does not join. It is usually entered into before or after that of the principal, and is often supported on a separate consideration from that supporting the contract of the principal. The original contract of his principal is not his contract, and he is not bound to take notice of its non-performance. He is often discharged by the mere indulgence of the creditor to the principal, and is usually not liable unless notified of the default of the principal.

Simply put, a surety is distinguished from a guaranty in that a guarantor is the insurer of the solvency of the debtor and thus binds himself to pay if the principal is unable to pay while a surety is the insurer of the debt, and he obligates himself to pay if the principal does not pay.

With the stipulations in the continuing guaranties indicating that he was the surety of the credit line he was solidarily liable to the bank for the indebtedness of the debtor. In other words, he thereby rendered himself “directly and primarily responsible” with the debtor, “without reference to the solvency of the principal.”

Effect of non-renewal of the continuing guaranties.
The continuing guaranties were not renewed after the expiration of the credit line. Yet, the practice was for the sureties to ensure credit lines issued by the bank annually with the new sureties absorbing the earlier surety agreements. Considering that no new surety agreements were issued, surety is not liable.

**TORTS and DAMAGES**

**Employer is liable for negligent act of employee acting within scope of assigned tasks.**

In *R. Transport Corp. v. Yu*, G.R. No. 174161, February 18, 2015, Peralta, J, a vehicular accident happened where Loreta J. Yu, after having alighted from a passenger bus in front of Robinson’s Galleria along the north-bound lane of Epifanio de los Santos (EDSA), was hit and run over by a bus driven by Antonio P. Gimena, who was then employed by petitioner R Transport Corporation. Loreta was immediately rushed to Medical City Hospital where she was pronounced dead on arrival.

The husband of the deceased, filed a Complaint for damages against petitioner R Transport, Antonio Gimena, and Metro Manila Transport Corporation (*MMTC*) for the death of his wife. MMTC denied its liability reasoning that it is merely the registered owner of the bus involved in the incident, the actual owner, being petitioner R Transport. It explained that under the Bus Installment Purchase Program of the government, MMTC merely purchased the subject bus, among several others, for resale to petitioner R Transport, which in turn operated the same within Metro Manila. Since it was not actually operating the bus which killed respondent’s wife, nor was it the employer of the driver thereof, MMTC alleged that the complaint against it should be dismissed. For its part, petitioner R Transport alleged that respondent had no cause of action against it for it had exercised due diligence in the selection and supervision of its employees and drivers and that its buses are in good condition.

After trial, R Transport Corporation and MMTC were held primarily and solidarily liable which was affirmed by the CA. On appeal to the SC, R Transport Corp. reiterated that it is not liable because it was not the owner of the bus and that the proximate cause of the victim’s death was the negligence of the bus where the victim alighted which unloaded its passengers on the lane where the subject bus was traversing. In disagreeing with the petitioner, the SC

**Held:** Both the trial and appellate courts found driver negligent in hitting and running over the victim and ruled that his negligence was the proximate cause of her death. Negligence has been defined as "the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.”* (Philippine National Railways v. Court of Appeals, et. al., 562 Phil. 141,

In this case, the records show that driver Gimena was clearly running at a reckless speed. As testified by the police officer on duty at the time of the incident and indicated in the Autopsy Report, not only were the deceased’s clothes ripped off from her body, her brain even spewed out from her skull and spilled over the road. The bus was travelling at a “normal speed” in preparation for a full stop in view of the fatal injuries sustained by the deceased. Moreover, the location wherein the deceased was hit and run over further indicates Gimena’s negligence. The bus bumped the deceased in a loading and unloading area of a commercial center.

Under Article 2180 of the New Civil Code, employers are liable for the damages caused by their employees acting within the scope of their assigned tasks. Once negligence on the part of the employee is established, a presumption instantly arises that the employer was remiss in the selection and/or supervision of the negligent employee. To avoid liability for the quasi-delict committed by its employee, it is incumbent upon the employer to rebut this presumption by presenting adequate and convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employees. (Lampesa v. De Vera, et. al., supra note 11, at 20-21, citing Syki v. Begasa, 460 Phil. 381, 386 (2003)).

Unfortunately, however, the records of this case are bereft of any proof showing the exercise by petitioner of the required diligence.

Not registered owner as defense; effect.

In its relentless attempt to evade liability, it cited the rulings in Vargas v. Langcay, 116 Phil. 478 [1962] and Tamayo v. Aquino, 105 Phil. 949 [1959], insisting that it should not be held solidarily liable with MMTC for it is not the registered owner of the bus which killed the deceased. However, in Jereos v. Court of Appeals, et al., 202 Phil. 715 [1982], such contention was rejected in the following wise:

Finally, the petitioner, citing the case of Vargas vs. Langcay, contends that it is the registered owner of the vehicle, rather than the actual owner, who must be jointly and severally liable with the driver of the passenger
vehicle for damages incurred by third persons as a consequence of injuries or
death sustained in the operation of said vehicle.

The contention is devoid of merit. While the Court therein ruled that
the registered owner or operator of a passenger vehicle is jointly and
severally liable with the driver of the said vehicle for damages incurred by
passengers or third persons as a consequence of injuries or death sustained
in the operation of the said vehicle, the Court did so to correct the erroneous
findings of the Court of Appeals that the liability of the registered owner or
operator of a passenger vehicle is merely subsidiary, as contemplated in Art.
103 of the Revised Penal Code. In no case did the Court exempt the actual
owner of the passenger vehicle from liability. On the contrary, it adhered to the
rule followed in the cases of Erezo vs. Jepte, Tamayo vs. Aquino, and De Peralta
vs. Mangusang, among others, that the registered owner or operator has the right
to be indemnified by the real or actual owner of the amount that he may be
required to pay as damage for the injury caused.

The right to be indemnified being recognized, recovery by the registered
owner or operator may be made in any form-either by a crossclaim, third-party
complaint, or an independent action. The result is the same.

Registered owner and actual operator; solidarily liable; when; action is based on contract.

Moreover, while it was held in Tamayo, that the responsibility of the registered owner
and actual operator of a truck which caused the death of its passenger is not solidary, the same is
due to the fact that the action instituted was one for breach of contract, to wit:

The decision of the Court of Appeals is also attacked insofar as it holds
that inasmuch as the third-party defendant had used the truck on a route not
covered by the registered owner's franchise, both the registered owner and the
actual owner and operator should be considered as joint tortfeasors and should be
made liable in accordance with Article 2194 of the Civil Code. This Article is as
follows:

Art. 2194. The responsibility of two or more persons who
are liable for a quasi-delict is solidary.

But the action instituted in the case at bar is one for breach of
contract, for failure of the defendant to carry safely the deceased for her
destination. The liability for which he is made responsible, i.e., for the death
of the passenger, may not be considered as arising from a quasi-delict. As the registered owner Tamayo and his transferee Rayos may not be held guilty of tort or a quasi-delict; their responsibility is not solidary as held by the Court of Appeals.

The question that poses, therefore, is how should the holder of the certificate of public convenience, Tamayo, participate with his transferee, operator Rayos, in the damages recoverable by the heirs of the deceased passenger, if their liability is not that of Joint tortfeasors in accordance with Article 2194 of the Civil Code. The following considerations must be borne in mind in determining this question. As Tamayo is the registered owner of the truck, his responsibility to the public or to any passenger riding in the vehicle or truck must be direct, for the reasons given in our decision in the case of Erezo vs. Jepte, supra, as quoted above. But as the transferee, who operated the vehicle when the passenger died, is the one directly responsible for the accident and death he should in turn be made responsible to the registered owner for what the latter may have been adjudged to pay. In operating the truck without transfer thereof having been approved by the Public Service Commission, the transferee acted merely as agent of the registered owner and should be responsible to him (the registered owner), for any damages that he may cause the latter by his negligence. (Tamayo v. Aquino).

**Effect if suit is based on tort.**

However, it must be noted that the case at hand does not involve a breach of contract of carriage, as in Tamayo, but a tort or quasi-delict under Article 2176, in relation to Article 2180 of the New Civil Code. As such, the liability for which petitioner is being made responsible actually arises not from a pre-existing contractual relation between petitioner and the deceased, but from a damage caused by the negligence of its employee. Petitioner cannot, therefore, rely on the ruling in Tamayo and escape its solidary liability for the liability of the employer for the negligent conduct of its subordinate is direct and primary, subject only to the defense of due diligence in the selection and supervision of the employee. (Rafael Reyes Trucking Corporation v. People of the Philippines, 386 Phil. 41, 57 [2000]).

Indeed, it is for the better protection of the public for both the owner of record and the actual operator to be adjudged jointly and severally liable with the driver. (Zamboanga Transportation Company, Inc. v. Court of Appeals, 141 Phil. 406, 413 [1969], citing the Decision of Court of Appeals Justice Fred Ruiz Castro, citing Dizon v. Octavio, et al., 51 O.G. No. 8, 4059-4061; Castanares v. Pages, CA-G.R. No. 21809-R, March 8, 1962; Redado v. Bautista, CA G.R. No. 19295-R, Sept. 19, 1961; Bering v. Noeth, CA-G.R. No. 28483-R, April
29, 1965). “The principle of holding the registered owner liable for damages notwithstanding that ownership of the offending vehicle has already been transferred to another is designed to protect the public and not as a shield on the part of unscrupulous transferees of the vehicle to take refuge in, inorder to free itself from liability arising from its own negligent act.”

Hence, considering that the negligence of driver was sufficiently proven by the records of the case, and that no evidence of whatever nature was presented by petitioner to support its defense of due diligence in the selection and supervision of its employees, petitioner, as the employer of Gimena, may be held liable for damages arising from the death of respondent Yu's wife.

**Liability of registered owner of vehicle although not the actual operator; reasons.**

Along the same vein, the SC, in *Metro Manila Transit Corp. v. Cuevas*, G.R. No. 167797, June 15, 2015, Bersamin, J, MMTC and Mina’s Transit Corp. entered into an agreement to sell several bus units where the former retained ownership until certain conditions have been met. In the meantime, Mina’s Transit operated the same. One of the buses hit and damaged a Honda Motorcycle. A complaint for damages was filed against MMTC which contended that it is not liable since the actual operator and employer was Mina’s which likewise contended that it exercised the diligence of a good father of a family in the selection and supervision of its employees. The trial court rendered a judgment holding MMTC liable which the SC affirmed and

**Held:** In view of MMTC’s admission in its pleadings that it had remained the registered owner of the bus at the time of the incident, it could not escape liability for the personal injuries and property damage suffered by the another. This is because of the registered-owner rule, whereby the registered owner of the motor vehicle involved in a vehicular accident could be held liable for the consequences. The registered-owner rule has remained good law in this jurisdiction considering its impeccable and timeless rationale, as enunciated in the 1957 ruling in *Erezo, et al. v. Jepte*, 102 Phil. 103, 108-109 [1975] where the Court pronounced:

Registration is required not to make said registration the operative act by which ownership in vehicles is transferred, as in land registration cases, because the administrative proceeding of registration does not bear any essential relation to the contract of sale between the parties (Chinchilla vs. Rafael and Verdaguer, 39 Phil. 888), but to permit the use and operation of the vehicle upon any public highway (section 5 [a], Act No. 3992, as amended.) The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused
accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.

“‘One of the principal purposes of motor vehicles legislation is identification of the vehicle and of the operator, in case of accident; and another is that the knowledge that means of detection are always available may act as a deterrent from lax observance of the law and of the rules of conservative and safe operation. Whatever purpose there may be in these statutes, it is subordinate at the last to the primary purpose of rendering it certain that the violator of the law or of the rules of safety shall not escape because of lack of means to discover him.’ The purpose of the statute is thwarted, and the displayed number becomes a ‘snare and delusion,’ if courts would entertain such defenses as that put forward by appellee in this case. No responsible person or corporation could be held liable for the most outrageous acts of negligence, if they should be allowed to place a ‘middleman’ between them and the public, and escape liability by the manner in which they recompense their servants.” (King vs. Brenham Automobile Co., 145 S.W. 278, 279.)

The Court has reiterated the registered-owner rule in other rulings, like in Filcar Transport Services v. Espinas, G.R. No. 174156, June 20, 2012, 674 SCRA 117, 128-130, to wit:

x x x It is well settled that in case of motor vehicle mishaps, the registered owner of the motor vehicle is considered as the employer of the tortfeasor-driver, and is made primarily liable for the tort committed by the latter under Article 2176, in relation with Article 2180, of the Civil Code.

In Equitable Leasing Corporation v. Suyom, we ruled that in so far as third persons are concerned, the registered owner of the motor vehicle is the employer of the negligent driver, and the actual employer is considered merely as an agent of such owner.

In that case, a tractor registered in the name of Equitable Leasing Corporation (Equitable) figured in an accident, killing and seriously injuring several persons. As part of its defense, Equitable claimed that the tractor was
initially leased to Mr. Edwin Lim under a Lease Agreement, which agreement has been overtaken by a Deed of Sale entered into by Equitable and Ecatine Corporation (Ecatine). Equitable argued that it cannot be held liable for damages because the tractor had already been sold to Ecatine at the time of the accident and the negligent driver was not its employee but of Ecatine.

In upholding the liability of Equitable, as registered owner of the tractor, this Court said that “regardless of sales made of a motor vehicle, the registered owner is the lawful operator insofar as the public and third persons are concerned; consequently, it is directly and primarily responsible for the consequences of its operation.” The Court further stated that “[i]n contemplation of law, the owner/operator of record is the employer of the driver, the actual operator and employer being considered as merely its agent.” Thus, Equitable, as the registered owner of the tractor, was considered under the law on quasi delict to be the employer of the driver, Raul Tutor; Ecatine, Tutor’s actual employer, was deemed merely as an agent of Equitable.

Thus, it is clear that for the purpose of holding the registered owner of the motor vehicle primarily and directly liable for damages under Article 2176, in relation with Article 2180, of the Civil Code, the existence of an employer-employee relationship, as it is understood in labor relations law, is not required. It is sufficient to establish that Filcar is the registered owner of the motor vehicle causing damage in order that it may be held vicariously liable under Article 2180 of the Civil Code.

Indeed, MMTC could not evade liability by passing the buck to Mina’s Transit. The stipulation in the agreement to sell did not bind third parties, who were expected to simply rely on the data contained in the registration certificate of the erring bus.

**Remedy of registered owner.**

Although the registered-owner rule might seem to be unjust towards MMTC, the law did not leave it without any remedy or recourse. According to *Filcar Transport Services v. Espinas,* MMTC could recover from Mina’s Transit, the actual employer of the negligent driver, under the principle of unjust enrichment, by means of a cross-claim seeking reimbursement of all the amounts that it could be required to pay as damages arising from the driver’s negligence. A cross-claim is a claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein, and may include a claim that the party against whom it is asserted is or
may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

DAMAGES

Court has ample discretion in awarding moral damages.

In *Alejandro Almendras, Jr. v. Alexis Almendras*, G.R. No. 179491, January 14, 2015, Sereno, J, the SC once again had the occasion to say that in awarding damages in libel cases, the court is given ample discretion to determine the amount, depending upon the facts of the particular case. (Philippine Journalists, Inc. v. Thoenen, 513 Phil. 607 [2005] citing Guevarra v. Almario, 56 Phil. 476 [1932]). Article 2219 of the Civil Code expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation. However, “while no proof of pecuniary loss is necessary in order that moral damages may be awarded, x x x it is nevertheless essential that the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant’s acts.” (Mahinay v. Velasquez, Jr., 464 Phil. 146 [2004] citing Kierulf v. Court of Appeals, 336 Phil. 414 [1997]). Considering that respondent sufficiently justified his claim for damages (i.e. he testified that he was “embarrassed by the said letters [and] ashamed to show his face in [sic] government offices”), plaintiff is entitled to moral and exemplary damages.

Compensatory damages for loss of capacity to earn; when recoverable.

Once again in *People v. Villar*, G.R. No. 202708, April 13, 2015, Del Castillo, J, the SC had the occasion to rule that under Article 2206 of the Civil Code, the heirs of the victim are entitled to indemnity for loss of earning capacity. Compensation of this nature is awarded not for loss of earnings, but for loss of capacity to earn. The indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof and the best obtainable evidence thereof. Thus, as a rule, documentary evidence should be presented to substantiate the claim for damages for loss of earning capacity. By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. (Jose v. Angeles, G.R. No. 187899, October 23, 2013, 708 SCRA 506).
Corollarily, in *OMC Carriers, Inc. v. Nabua*, G.R. No. 148974, July 2, 2010, 622 SCRA 624, 640, it was held that:

For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award for actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.

Finally, in *People v. Gonza*, 461 Phil. 167, 187 [2003], it was declared that -

Finally, the trial court was correct in not awarding damages for lost earnings. The prosecution merely relied on Zenaida Mortega's self-serving statement, that her husband was earning P5,000 per month as a farmhand. Compensation for lost income is in the nature of damages and requires due proof of the amount of the damages suffered. For loss of income due to death, there must be unbiased proof of the deceased's average income. Also, the award for lost income refers to the net income of the deceased, that is, his total income less average expenses. In this case, Zenaida merely gave a self-serving testimony of her husband's income. No proof of the victim's expenses was adduced; thus, there can be no reliable estimate of his lost income.

In fine, it is settled that the indemnity for loss of earning capacity is in the form of actual damages; as such, it must be proved by competent proof, “not merely by the self-serving testimony of the widow.” (Serra v. Mumar, G.R. No. 193861, March 14, 2012, 668 SCRA 335, 347). By way of exception, damages for loss of earning capacity may be awarded in two instances: 1) the victim was self-employed and receiving less than the minimum wage under the current laws (Serra v. Mumar) and no documentary evidence is available in the decedent's line of business; and, 2) the deceased was employed as a daily wage worker and receiving less than the minimum wage. Here, the award for loss of earning capacity lacks basis. For one, the widow of the deceased gave conflicting testimonies. Aside from giving inconsistent statements, the amounts mentioned were arbitrary and were not proved to be below the prescribed minimum wage. Plainly, this case does not fall under any of the exceptions exempting the submission of documentary proof. To reiterate, "[a]ctual 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. To
justify an award of actual damages, there must be competent proof of the actual amount of loss, credence can be given only to claims which are duly supported by receipts." (Tan v. OMC Carriers, Inc., G.R. No. 190521, January 12, 2011, 639 SCRA 471, 481 citing Viron Transportation Co., Inc. v. Delos Santos, G.R. No. 138296, November 22, 2000, 345 SCRA 509, 519). In fine, the award of loss of earning capacity must be deleted for lack of basis.


Survey of 2015 SC Decisions in
REMEDIAL LAW
By: DEAN ED VINCENT S. ALBANO

JURISDICTION

Accion publiciana; assessed value determines the court with jurisdiction.

In Suapo, et al. v. Sps. De Jesus, et al., G.R. No. 198356, April 20, 2015, Brion, J, there was an accion publiciana alleging that the assessed value of the property was P39,000.00 as shown by the tax declaration. The issue of jurisdiction of the MTC was raised and holding that such court has jurisdiction and expounding on the rule on such action, the SC

Held: Accion publiciana is an ordinary civil proceeding to determine the better right of possession of realty independent of title. It refers to an ejectment suit filed after the expiration of one year from the accrual of the cause of action or from the unlawful withholding of possession of the realty. (Vda. de Aguilar v. Alfaro, G.R. No. 164402, July 5, 2010, 623 SCRA 130, 140).

The objective of the plaintiffs in accion publiciana is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property.

This adjudication is not a final determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership.

MTC has jurisdiction.

RA No. 7691, divested the RTC of a portion of its jurisdiction and granted the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts the exclusive and original jurisdiction to hear actions where the assessed value of the property does not exceed Twenty Thousand Pesos (P20,000.00), if located outside of Metro Manila or Fifty Thousand Pesos (P50,000.00), if the property is located in Metro Manila.
The RTC used to have jurisdiction over such action.


In Quinagoran v. Court of Appeals, 557 phil. 650, 657 [2007], it was ruled that as things now stand, a distinction must be made between those properties the assessed value of which is below P20,000.00, if outside Metro Manila; and P50,000.00, if within.

Petition for certiorari before the CA; when court acquires jurisdiction over person of respondent.

In Reicon Realty Builders Corp. v. Diamond Dragon Realty & Management, Inc., G.R. No. 204796, February 4, 2015, Perlas-Bernabe, J, the basic question is: When does the CA acquire jurisdiction over the person of the respondent in a petition for certiorari. The SC ruled that the court shall acquire jurisdiction over the respondent by the service on him of its order or resolution indicating its initial action on the petition or by its voluntary submission to such jurisdiction. (Sec. 4, Rule 46, Rules of Court).

In this case, while the CA’s resolution indicating its initial action on the petition, requiring Diamond to comment, was returned with the notation “RTS-Moved Out,” the alternative mode of Diamond’s voluntary appearance was enough for the CA to acquire jurisdiction over its person. Diamond cannot escape this conclusion by invoking the convenient excuse of limiting its manifestation as a mere “special appearance,” considering that it affirmatively sought therein the dismissal of the certiorari petition. Seeking an affirmative relief is inconsistent with the position that no voluntary appearance had been made, and to ask for such relief, without the proper objection, necessitates submission to the Court’s jurisdiction. Here, Diamond’s special appearance cannot be treated as a specific objection to the CA’s jurisdiction over its person for the reason that the argument it pressed on was about the alleged error in the service of Reicon’s certiorari petition, and not the CA’s service of its resolution indicating its initial action on the said pleading. Properly speaking, this argument does not have anything to do with the CA’s acquisition of jurisdiction over Diamond for it is the service of the appellate court’s resolution indicating its initial action, and not of the certiorari petition itself, which is material to this analysis.
Effect if Diamond objected to service of resolution.

The conclusion would be different if Diamond had actually objected to the CA’s service of its resolution indicating its initial action; if such were the case, then its special appearance could then be treated as a proper conditional appearance challenging the CA’s jurisdiction over its person. To parallel, in ordinary civil cases, a conditional appearance to object to a trial court’s jurisdiction over the person of the defendant may be made when said party specifically objects to the service of summons, which is an issuance directed by the court, not the complainant. If the defendant, however, enters a special appearance but grounds the same on the service of the complainant’s initiatory pleading to him, then that would not be considered as an objection to the court’s jurisdiction over his person. It must be underscored that the service of the initiatory pleading has nothing to do with how courts acquire jurisdiction over the person of the defendant in an ordinary civil action. Rather, it is the propriety of the trial court’s service of summons – same as the CA’s service of its resolution indicating its initial action on the certiorari petition – which remains material to the matter of the court’s acquisition jurisdiction over the defendant’s/respondents’ person.

Voluntary appearance.

In Philippine Commercial International Bank v. Spouses Dy, 606 Phil. 615 [2009], it was ruled that “[a]s a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court’s jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court’s jurisdiction over his person cannot be considered to have submitted to its authority.

Prescinding from the foregoing, it is thus clear that:

1. Special appearance operates as an exception to the general rule on voluntary appearance;
2. Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner; and
3. Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.”

Considering that the tenor of Diamond’s objection in its special appearance had actually no legal bearing on the CA’s jurisdiction over its person (that is, since it objected to the propriety
of Reicon’s service of its petition, and not the CA’s service of its order indicating its initial action), it cannot be said that the proper objection to the appellate court’s jurisdiction, had been made by Diamond. Thus, by asking for an affirmative relief, i.e., the dismissal of Reicon’s certiorari petition, bereft of the proper jurisdictional objection, the Court concluded that Diamond had submitted itself to the jurisdiction of the appellate court.

BARANGAY CONCILIATION

Motion for execution of judgment based on compromise treated as initiatory pleading.

In Sebastian v. Ng, G.R. No. 164594, April 22, 2015, Brion, J, there was a compromise in the barangay. For failure to comply with the terms and conditions, a Motion for Execution was filed with the MTC, rather than a complaint for execution. It however contained ultimate facts constituting a cause of action, attaching thereto the compromise whose body was quoted. Ruling that the “Motion for Execution” is in proper form and substance, the SC

Held: It is well-settled that what are controlling in determining the nature of the pleading are the allegations in the body and not the caption.

Thus, the motion for execution filed was intended to be an initiatory pleading or an original action that is compliant with the requirement under Section 3, Rule 6 of the Rules of Court that the complaint should allege the plaintiff’s cause of action and the names and residences of the plaintiff and the defendant.

The motion could therefore be treated as an original action, and not merely as a motion/special proceeding. For this reason, the proper remedy prescribed under Section 417 of the Local Government Code was filed.

The kasunduans has the force and effect of a final judgment.

Under Section 416 of the Local Government Code, the amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date of its execution, unless the settlement or award has been repudiated or a petition to nullify the award has been filed before the proper city or municipal court. In this case, it was not repudiated.

Moreover, Section 14, Rule VI of the Katarungang Pambarangay Implementing Rules states that the party’s failure to repudiate the settlement within the period of ten (10) days shall
be deemed a waiver of the right to challenge the settlement on the ground that his/her consent was vitiated by fraud, violence or intimidation.

The MCTC has the authority and jurisdiction to enforce the kasunduan regardless of the amount involved.

Section 417 of the Local Government Code provides that after the lapse of the six (6) month period from the date of the settlement, the agreement may be enforced by action in the appropriate city or municipal court.

The law, as written, unequivocally speaks of the “appropriate city or municipal court” as the forum for the execution of the settlement or arbitration award issued by the Lupon. Notably, in expressly conferring authority over these courts, Section 417 made no distinction with respect to the amount involved or the nature of the issue involved. Thus, there can be no question that the law’s intendment was to grant jurisdiction over the enforcement of settlement/arbitration awards to the city or municipal courts the regardless of the amount. A basic principle of interpretation is that words must be given their literal meaning and applied without attempted interpretation where the words of a statute are clear, plain and free from ambiguity. (Globe-Mackay Cable and Radio Corporation v. NLRC, G.R. No. 82511, March 3, 1992, 206 SCRA 701, 711).

**RULE 3 – PARTIES**

Failure to implead indispensable party; not ground for dismissal.

Once again, the SC in *Land Bank of the Phils. v. Cacayuran*, G.R. No. 191667, April 22, 2015, Perlas-Bernabe, J, had the occasion to rule that failure to implead an indispensable party is not a ground for dismissal. The effect, however has once again been discussed in this case where there was a loan obtained by the Municipality of Agoo, La Union in order to develop the public plaza by constructing the “Agoo People’s Center.” A complaint was filed against LBP and the municipal officers praying that the commercialization of the public plaza be enjoined and that the subject loans be declared void for having been unlawfully entered into by the said officers. The complaint did not implead the municipality of Agoo. Ruling on the issue whether the municipality is an indispensable party, the SC

**Held:** The municipality is an indispensable party. “An indispensable party is one whose interest will be affected by the court’s action in the litigation, and without whom no final determination of the case can be had. The party’s interest in the subject matter of the suit and in the relief
sought are so inextricably intertwined with the other parties’ that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.” Thus, the absence of an indispensable party renders all subsequent actions of the court null and void, for want of authority to act, not only as to the absent parties but even as to those present.

Nevertheless, failure to implead any indispensable party to a suit does not necessarily result in the outright dismissal of the complaint. In *Heirs of Mesina v. Heirs of Fian, Sr.*, the Court definitively explained that in instances of non-joinder of indispensable parties, the proper remedy is to implead them and not to dismiss the case.

The non-joinder of indispensable parties is not a ground for the dismissal of an action. At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiffs failure to comply with the order. The remedy is to implead the non-party claimed to be indispensable.

The contention that the exclusion of the municipality was raised for the first time on appeal, hence, the SC cannot take cognizance of it is not correct. It ruled that the Court is not precluded from taking cognizance of the Municipality’s status as an indispensable party even at this stage of the proceedings. Indeed, the presence of indispensable parties is necessary to vest the court with jurisdiction and, corollarily, the issue on jurisdiction may that any resolution of this case would not be possible and, hence, not attain any real finality due to the non-joinder of the Municipality, the Court is constrained to set aside all subsequent actuations of the courts a quo in this case, including that of the Court’s, and remand the case all the way back to the RTC for the inclusion of all indispensable parties to the case and its immediate disposition on the merits. With this, the propriety of the Municipality’s present intervention is now mooted.

**Indispensable parties in partition action.**

In *Divinagracia v. Parilla, et al.*, G.R. No. 196750, March 11, 2015, Perlas-Bernabe, J, records reveal that Conrado, Sr. has the following heirs, legitimate and illegitimate, who are entitled to a *pro-indiviso* share in the subject land, namely: Conrado, Jr., Cresencio, Mateo, Sr., Coronacion, Cecilia, Celestial, Celedonio, Ceruleo, Cebeleo, Sr., Eduardo, Rogelio, and Ricardo. However, both Mateo, Sr. and Cebeleo, Sr. pre-deceased Conrado, Sr. leaving children, namely: *(a)* for Mateo, Sr.: Felcon, Landelin, Eusela, Giovanni, Mateo, Jr., Tito, and Gaylord; and *(b)* for Cebeleo, Sr.: Cebeleo, Jr. and Neobel. Santiago allegedly bought the shares of majority of the heirs of a property left by Conrado, Sr.. He filed a complaint for partition but did not implead Mateo’s children. Is the action proper without impleading such persons? Explain.
**Held:** No, because they are indispensable parties. The aforementioned heirs – whether in their own capacity or in representation of their direct ascendant – have vested rights over the subject land and, as such, should be impleaded as indispensable parties in an action for partition thereof. However, a reading of Santiago’s complaint shows that as regards Mateo, Sr.’s interest, only Felcon was impleaded, excluding therefrom his siblings and co-representatives. Similarly, with regard to Cebeleo, Sr.’s interest over the subject land, the complaint impleaded his wife, Maude, when pursuant to Article 972 of the Civil Code, the proper representatives to his interest should have been his children, Cebeleo, Jr. and Neobel. Verily, Santiago’s omission of the aforesaid heirs renders his complaint for partition defective.

Santiago’s contention that he had already bought the interests of the majority of the heirs and, thus, they should no longer be regarded as indispensable parties deserves no merit. As correctly noted by the CA, in actions for partition, the court cannot properly issue an order to divide the property, unless it first makes a determination as to the existence of co-ownership. The court must initially settle the issue of ownership, which is the first stage in an action for partition. (Samson v. Sps. Gabor, G.R. No. 182970, July 23, 2014; Reyes-de Leon v. Del Rosario, 479 Phil. 98 [2004]). Indubitably, therefore, until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties.

In this case, while it is conceded that Santiago bought the interests of majority of the heirs of Conrado, Sr. as evidenced by the subject document, as a vendee, he merely stepped into the shoes of the vendors-heirs. Since his interest over the subject land is merely derived from that of the vendors-heirs, the latter should first be determined as co-owners thereof, thus necessitating the joinder of all those who have vested interests in such land, *i.e.*, the aforesaid heirs of Conrado, Sr., in Santiago’s complaint.

In fine, the absence of the indispensable parties in the instant complaint for judicial partition renders all subsequent actions of the RTC null and void for want of authority to act, not only as to the absent parties, but even as to those present.

An indispensable party is one whose interest will be affected by the court’s action in the litigation, and without whom no final determination of the case can be had. The party’s interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties’ that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable. (Gabatin v. Land Bank of the Philippines, 486 Phil. 366, 379-380 (2004), citing Bank of the Philippine Islands v. CA, 450 Phil. 532, 541 (2003); further citation omitted). Thus, the absence of an indispensable party renders all subsequent actions of the court null and void, for want of authority to act, not only as to the absent parties but even as to those present. (Domingo v. Scheer, 466 Phil. 235, 265 (2004).
With regard to actions for partition, Section 1, Rule 69 of the Rules of Court requires that all persons interested in the property shall be joined as defendants, viz.:

SEC. 1. *Complaint in action for partition of real estate.* – A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

Thus, all the co-heirs and persons having an interest in the property are indispensable parties; as such, an action for partition will not lie without the joinder of the said parties.

However, the CA erred in ordering the dismissal of the complaint on account of Santiago’s failure to implead all the indispensable parties in his complaint. In *Heirs of Mesina v. Heirs of Fian, Sr.*, G.R. No. 201816, April 8, 2013, 695 SCRA 345, the Court definitively explained that in instances of non-joinder of indispensable parties, the proper remedy is to implead them and not to dismiss the case, to wit:

The non-joinder of indispensable parties is not a ground for the dismissal of an action. At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff’s failure to comply with the order. The remedy is to implead the non-party claimed to be indispensable.

In view of the foregoing, the correct course of action in the instant case is to order its remand to the RTC for the inclusion of those indispensable parties who were not impleaded and for the disposition of the case on the merits.

**RULE 4 – VENUE**

Venue of personal action is the place of principal office of corporation.

In *BPI Savings Bank, Inc. v. Sps. Yujuico*, G.R. No. 175796, July 22, 2015, Bersamin, J, after the foreclosure of a property, there was a deficiency. The foreclosure was done in Manila
where the property was located but the action for collection of the deficiency was filed in Makati City where the principal office of the plaintiff-mortgagee is located. Is Makati the proper venue?

Answering the question in the positive, the SC

**Held:** Makati is the proper venue because it is where the principal office of the plaintiff is located.

It is basic that the venue of an action depends on whether it is a real or a personal action. The determinants of whether an action is of a real or a personal nature have been fixed by the *Rules of Court* and relevant jurisprudence. According to Section 1, Rule 4 of the *Rules of Court*, a real action is one that affects title to or possession of real property, or an interest therein. Thus, an action for partition or condemnation of, or foreclosure of mortgage on, real property is a real action. The real action is to be commenced and tried in the proper court having jurisdiction over the area wherein the real property involved, or a portion thereof, is situated, which explains why the action is also referred to as a local action. In contrast, the *Rules of Court* declares *all other actions* as personal actions. Such actions may include those brought for the recovery of personal property, or for the enforcement of some contract or recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property. The venue of a personal action is the place where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff, for which reason the action is considered a transitory one.

Based on the distinctions between real and personal actions, an action to recover the deficiency after the extrajudicial foreclosure of the real property mortgage is a personal action, for it does not affect title to or possession of real property, or any interest therein.

It is true that the Court has said in *Caltex Philippines, Inc. v. Intermediate Appellate Court*, that “a suit for the recovery of the deficiency after the foreclosure of a mortgage is in the nature of a mortgage action because its purpose is precisely to enforce the mortgage contract.” However, the CA erred in holding, upon the authority of *Caltex Philippines, Inc.*, that the venue of Civil Case No. 03-450 must necessarily be Manila, the same venue as that of the extrajudicial foreclosure of mortgage. An examination of *Caltex Philippines, Inc.* reveals that the Court was thereby only interpreting the prescriptive period within which to bring the suit for the recovery of the deficiency after the foreclosure of the mortgage, and was not at all ruling therein on the venue of such suit or on the nature of such suit being either a real or a personal action.

**Venue is procedural.**

In civil proceedings, venue is procedural, not jurisdictional, and may be waived by the defendant if not seasonably raised either in a motion to dismiss or in the answer. Section 1, Rule 9 of the *Rules of Court* thus expressly stipulates that defenses and objections not pleaded either
in a motion to dismiss or in the answer are deemed waived. As it relates to the place of trial, indeed, venue is meant to provide convenience to the parties, rather than to restrict their access to the courts. In other words, unless the defendant seasonably objects, any action may be tried by a court despite its being the improper venue.

RULE 8 – MANNER OF ALLEGATIONS IN THE PLEADINGS

Mere statement “specifically deny” allegations, not sufficient.

In Go Tong Electrical Supply Co., Inc., et al. v. BPI Family Savings Bank, Inc., G.R. No. 187487, June 29, 2015, Perlas-Bernabe, J, a complaint for sum of money was filed based on a promissory note. When the obligation became due and demandable, there was no payment despite demands. Answering the complaint, the defendants alleged that they “specifically deny” the allegations in the complaint that they executed the loan agreement, the PN “for being self-serving and pure conclusion intended to suit the respondent’s purposes.” Judgment was rendered against defendants which was sustained by the CA on appeal saying that there was admission of the genuineness and due execution of the loan documents. The SC on appeal affirmed the CA’s judgment and

Held: The mere statement that they “specifically deny” the pertinent allegations of the Complaint “for being self-serving and pure conclusions intended to suit plaintiff’s purposes,” does not constitute an effective specific denial as contemplated by law. Verily, a denial is not specific simply because it is so qualified by the defendant. Stated otherwise, a general denial does not become specific by the use of the word “specifically. Neither does it become so by the simple expedient of coupling the same with a broad conclusion of law that the allegations contested are “self-serving” or are intended “to suit plaintiff’s purposes.”

In Permanent Savings & Loan Bank v. Velarde (Permanent Savings & Loan Bank), citing the earlier case of Songco v. Sellner, the Court expounded on how to deny the genuineness and due execution of an actionable document, viz.:

This means that the defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either.
To add, Section 8, Rule 8 of the Rules further requires that the defendant “sets forth what he claims to be the facts,” which requirement, likewise, remains absent from the Answer in this case.

Thus, with said pleading failing to comply with the “specific denial under oath” requirement under Section 8, Rule 8 of the Rules, the proper conclusion, is that petitioners had impliedly admitted the due execution and genuineness of the documents evidencing their loan obligation to respondent.

Case law enlightens that “[t]he admission of the genuineness and due execution of a document means that the party whose signature it bears admits that he voluntarily signed the document or it was signed by another for him and with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formalities required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Also, it effectively eliminated any defense relating to the authenticity and due execution of the document, e.g., that the document was spurious, counterfeit, or of different import on its face as the one executed by the parties; or that the signatures appearing thereon were forgeries; or that the signatures were unauthorized.”

Accordingly, with petitioners’ admission of the genuineness and due execution of the loan documents, the competence of respondent’s witness to testify in order to authenticate the same is therefore of no moment. As the Court similarly pointed out in Permanent Savings & Loan Bank, “[w]hile Section [20],51 Rule 132 of the [Rules] requires that private documents be proved of their due execution and authenticity before they can be received in evidence, i.e., presentation and examination of witnesses to testify on this fact; in the present case, there is no need for proof of execution and authenticity with respect to the loan documents because of respondent’s implied admission thereof.”

Defendant can present evidence of non-liability.

The Court clarified that while the “[f]ailure to deny the genuineness and due execution of an actionable document does not preclude a party from arguing against it by evidence of fraud, mistake, compromise, payment, statute of limitations, estoppel and want of consideration [nor] bar a party from raising the defense in his answer or reply and prove at the trial that there is a mistake or imperfection in the writing, or that it does not express the true agreement of the parties, or that the agreement is invalid or that there is an intrinsic ambiguity in the writing,”

RULE 9 – EFFECT OF FAILURE TO PLEAD
Defense not raised in the pleading is waived.

In *Phil. Trust Co. v. Sps. Roxas*, G.R. No. 171897, October 14, 2015, Jardeleza, J, a contract of loan was procured by Spouses Roxas to finance a real estate business from PTC. It was superseded by another contract, this time Dominguez substituting the construction company as the contractor. Spouses Roxas did not finish the housing project due to financial difficulties resulting in non-payment of the loans. In the meantime, Dominguez sued PTC for breach of contract. Spouses Roxas likewise filed a complaint against Dominguez and the insurance company. Sps. Roxas filed an answer to Dominguez complaint with cross-claim against PTC. PTC filed an answer with a counterclaim against Sps. Roxas for unpaid loan obligation. Judgment was rendered against Sps. Roxas but denied PTC’s counterclaim for insufficiency of evidence without prejudice to the filing of a complaint against Sps. Roxas. PTC in the meantime filed a foreclosure proceeding against Sps. Roxas who filed a Petition for Injunction to restrain the foreclosure which was granted. This prompted Sps. Roxas to file a motion for execution to enforce the judgment against PTC as the judgment in the case filed against Roxas and the latter’s cross-claim has become final and executory. PTC interposed for the first time the defense of compensation to offset the judgment debt due to the Spouses Roxas. Finding the invocation of compensation to be too late, the SC

**Held:** PTC should have raised the argument of compensation at the trial stage. Sec. 2, Rule 9 of the Rules of Court provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action.

Although legal compensation takes place by operation of law, it must be alleged and proved as a defense by the debtor who claims its benefits. Only after it is proved will its effects retroact to the moment when all the requisites under Article 1279 of the Civil Code have concurred.

PTC's contention that it could not have raised legal compensation as a defense because it was not yet a debtor of the Spouses Roxas when it filed its answer is unconvincing. Under Rule 8, Section 2 of the 1964 Rules of Court, "[a] party may set forth two or more statements of a claim or defense *alternatively or hypothetically*, either in one cause of action or defense or in separate causes of action or defenses." Thus, the defense of compensation would have been proper and allowed under the rules even if PTC disclaimed any liability at the time it filed its answer. In *Marquez v. Valencia*, 99 Phil. 740 [1956], cited in Arreza v. Diaz, Jr., G.R. No.
13343, August 30, 2001, 364 SCRA 88, 97, it was held that when a defendant failed to set up such alternative defenses and chosen or elected to rely on one only, the overruling thereof was a complete determination of the controversy between the parties, which bars a subsequent action based upon an unpleaded defense. Unmistakably, the rationale behind this is the proscription against the splitting of causes of action.

In any case, even if PTC were excused from pleading compensation as a defense in its answer, PTC still failed to raise this defense in its motion for reconsideration of the Bataan R TC decision and in its subsequent appeal. Hence, there can be no other conclusion than that PTC is already estopped from raising the issue of legal compensation.

**Effect of wrong choice of defense; doctrine of election of remedy.**

It is fairly clear that the reason why PTC did not raise legal compensation as a defense in the Main Case is because it was banking on a favorable ruling on its counterclaim in the other case. It was presumably an informed choice arrived at by PTC and its counsel, with full knowledge of the consequences of its failure to plead this specific claim/defense in the Main Case. Unfortunately for PTC, its counterclaim in the other case was disallowed. Having adopted the wrong legal strategy, PTC cannot now expediently change its theory of the case or its defense at the execution stage of the Main Case. Following the doctrine of election of remedies, *(D.M. Consunji, Inc. v. Court of Appeals, Ci.R. No. 137873, April 20, 2001, 357 SCRA 249, 266.*

"When a party having knowledge of the facts makes an election between inconsistent remedies, the election is final and bars any action, suit, or proceeding inconsistent with the elected remedy, in the absence of fraud by the other party. The first act or election acts as a bar." PTC's choice of setting up the Spouses Roxas' unpaid loan obligation as a counterclaim, which has gone to judgment on the merits but is pending appeal, precludes it from raising compensation of the same loan obligation for the purpose of opposing the writ of execution in the Main Case. Equitable in nature, the doctrine of election of remedies is designed to mitigate possible unfairness to both parties. It rests on the moral premise that it is fair to hold people responsible for their choices. The purpose of the doctrine is not to prevent any recourse to any remedy, but to prevent a double redress for a single wrong.

**Compensation not waived, but not applicable.**

Even on the assumption that legal compensation was not waived and was otherwise timely raised, not all requisites of legal compensation are present, hence, it is not proper as a defense. Under Article 1279, in order for legal compensation to take place, the following
requisites must concur: (a) that each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other; (b) that both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; (c) that the two debts be due; (d) that they be liquidated and demandable; and (e) that over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

Here, the fourth requisite is absent. A debt is liquidated when its existence and amount are determined. (First United Constructors Corporation. v. Bayaniha11 Automotive Co11Joration, G.R. No. 164985, January 15, 2014, 713 SCRA 354, 367). Compensation can only take place between certain and liquidated debts; it cannot extend to unliquidated, disputed claims. (Sil ah is Marketing Corp. v. Intermediate Appellate Court, G.R. No. 74027, December 7, 1989, 180 SCRA 21, 25). Since the loan obligation, including its amount and demandability, is still being disputed, PTC's credit cannot be considered liquidated as of yet. Consequently, no legal compensation could have taken place between PTC's loan credit and the Spouses Roxas' judgment credit.

**RULE 10 – AMENDED PLEDING**

**Substantial amendment in pleadings.**

In *Citystate Savings Bank, Inc. v. Aguinaldo*, G.R. No. 200018, April 6, 2015, Reyes, J, Aguinaldo claimed to be the owner of a parcel of land covered by a title. He discovered that Mojica fraudulently obtained a title over said parcel of land, hence, he filed a complaint for nullification of the title. However before he discovered the title of Mojica, the latter had already mortgaged the same to Citystate and for his failure to pay the obligation, Citystate foreclosed the mortgage and became the highest bidder and consolidated its title. Aguinaldo filed a complaint to annul the title. After both parties presented evidence, Aguinaldo filed a Motion to Amend the complaint alleging that during the pendency of the case, Citystate was able to secure a writ of possession; Aguinaldo was evicted and that Citystate sold the property to Syndica. In the amended complaint, he impleaded Syndica asserting the foregoing facts and that the amendments were necessary to afford complete relief to the parties. The trial court denied the Motion on the ground that the amendments substantially altered the cause of action and would only delay the resolution of the case. The CA reversed the order and admitted the amended pleading. Affirming the CA’s resolution, the SC
Held: Substantial amendments may be made only upon leave of court, but such leave of court may be refused if it appears to the court that the motion was made for delay. (Sec. 3, Rule 10, Rules of Court). This is a departure from the old rule which prohibited substantial amendments.

In *Spouses Valenzuela v. CA*, 416 Phil. 289 [2001], the Court explained the wisdom behind the departure from the old provision of Section 3 of Rule 10 under the 1964 Rules of Court, thus:

Interestingly, Section 3, Rule 10 of the 1997 Rules of Civil Procedure amended the former rule in such manner that the phrase “or that the cause of action or defense is substantially altered” was stricken-off and not retained in the new rules. The clear import of such amendment in Section 3, Rule 10 is that under the new rules, “the amendment may (now) substantially alter the cause of action or defense.” This should only be true, however, when despite a substantial change or alteration in the cause of action or defense, the amendments sought to be made shall serve the higher interests of substantial justice, and prevent delay and equally promote the laudable objective of the rules which is to secure a “just, speedy and inexpensive disposition of every action and proceeding.”

Thus, granting *arguendo* that the amendment of the complaint in would substantially alter or change the cause of action or defense in said controversy, this Court nonetheless holds that in the higher interest of substantial justice, the introduction of amendments to the complaint is *apropos* at this particular instance to forestall further delay in the resolution of the actual merits of the parties’ respective claims and defenses. To reiterate, the Rules of Court seek to eliminate undue reliance on technical rules and to make litigation as inexpensive, as practicable and as convenient as can be done. Rules of procedure, after all, are but tools designed to facilitate the attainment of justice, such that when rigid application of the rules tends to frustrate rather than promote substantial justice, the Supreme Court is empowered to suspend their operation. This Court will not hesitate to set aside technicalities in favor of what is fair and just.

Consistent with the foregoing disquisition, the Court, in *Limbauan v. Acosta*, 579 Phil. 99 [2008] held that:

It is well-settled that amendment of pleadings is favored and should be liberally allowed in the furtherance of justice in order to determine every case as far as possible on its merits without regard to technicalities. This principle is generally recognized in order that the real controversies between the parties
are presented, their rights determined and the case decided on the merits without unnecessary delay to prevent circuity of action and needless expense.

Verily, the business of the courts is not just merely to dispose of cases seen as clutters in their dockets. Courts are in place to adjudicate controversies with the end in view of rendering a definitive settlement, and this can only be done by going into the very core and to the full extent of the controversy in order to afford complete relief to all the parties involved.

The amendments were merely supplements to the inadequate allegations of cause of action stated in the original pleading. It merely strengthened the original cause of action. The prayer for damages did not alter the cause of action. These are merely remedies which he is entitled as a result of supervening events which rendered the relief sought in the original pleading inadequate. The inclusion of Syndica as additional defendant is necessary for the effective and complete resolution of the case and in order to accord the parties the benefit of due process and fair play in just one proceeding. It is also intended to forestall any further need to institute other actions or proceedings.

In any case, a substantial alteration in the cause of action or defense is not a bar to amend the original complaint so long as the amendment is no meant for delay. It is also quite absurd that the party who filed the main case would himself resort to dilatory tactics to prolong the disposition of his case. It is undoubtedly to Aguinaldo's interest that this case be decided with dispatch, more so that they have already been evicted from the property.

RULE 14 – SUMMONS

Summons upon a domestic corporation thru an officer; jurisdiction acquired.

In CCC Insurance Corp. v. Kawasaki Steel Corp., et al., G.R. No. 156162, June 23, 2015, Leonardo-de Castro, J, service of summons on FFMCCI at its principal address at #86 West Avenue, Quezon City failed because FFMCCI had already vacated said premises without notifying anyone as to where it transferred. For this reason, the RTC, upon the motion of CCCIC, issued an Order directing the issuance and service of Alias summons to the individual directors of FFMCCI. Eventually, the Alias Summons was personally served upon FFMCCI director Vicente Concepcion. Ruling that there was proper service of summons upon the corporation, the SC

Held: Rule 14, Section 13 of the 1964 Rules of Court, which was then in force, allowed the service of summons upon a director of a private domestic corporation:
Sec. 13. **Service upon private domestic corporation or partnership.** – If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors.

The aforementioned rule does not require that service on the private domestic corporation be served at its principal office in order for the court to acquire jurisdiction over the same. The Court, in *Talsan Enterprises, Inc. vs. Baliwag Transit, Inc.*, 369 Phil. 409, 419-420 [1999] citing *Baltazar v. Court of Appeals*, 250 Phil. 349, 360-361 [1988] affirmed that:

>[S]ervice on respondent’s bus terminal at the address stated in the summons and not in its main office in Baliwag do not render the service of summons invalid. In *Artemio Baltazar v. Court of Appeals*, we held:

>“The regular mode, in other words, of serving summons upon a private Philippine Corporation is by personal service upon one of the officers of such corporation identified in Section 13. Ordinarily, such personal service may be expected to be made at the principal office of the corporation. **Section 13, does not, however, impose such requirement, and so personal service upon the corporation may be effected through service upon, for instance, the president of the corporation at his office or residential address.” x x x.

In fine, the service of summons upon respondent Baliwag Transit is proper. Consequently, the trial court validly acquired jurisdiction over respondent Baliwag.

Hence, the personal service of the Alias Summons on an FFMCCI director was sufficient for the RTC to acquire jurisdiction over FFMCCI itself.

**Substituted service of summons; requisites.**

In *Ong v. Co*, G.R. No. 206653, February 25, 2015, Mendoza, J, it was contended that the court did not acquire jurisdiction over the person of the defendant in an action to declare their marriage void. The return stated that he served the summons at her address thru substituted service after several futile attempts to serve the same personally.
Petitioner argued that there was an invalid substituted service of summons. The process server’s return only contained a general statement that substituted service was resorted to “after several futile attempts to serve the same personally,” without stating the dates and reasons of the failed attempts hence, there was invalid substituted service of summons.

Respondent contended that the server’s return satisfactorily stated the reason for the resort to a substituted service of summons on August 1, 2002; and it was improbable that petitioner failed to receive the summons because it was sent to the same address which she declared in this present petition.

The trial court rendered a judgment declaring the marriage void. A petition for annulment of judgment was filed before the CA which rendered a decision dismissing the petition as no evidence was presented to establish that respondent employed fraud to insure the non-participation of petitioner.

Relying on Robinson v. Miralles, 540 Phil. 1 [2006], the CA ruled that the substituted service of summons was valid. It found that there was a customary practice in petitioner’s townhouse that the security guard would first entertain any visitors and receive any communication in behalf of the homeowners. With this set-up, it was obviously impossible for the process server to personally serve the summons upon petitioner. It also declared that the process server’s return carries with it the presumption of regularity in the discharge of a public officer’s duties and functions.

Finding merit to the petition, the SC

**Held:** Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Rule 47 of the 1997 Rules of Civil Procedure, as amended, governs actions for annulment of judgments or final orders and resolutions, and Section 2 thereof explicitly provides only two grounds for annulment of judgment, that is, extrinsic fraud and lack of jurisdiction. (Antonio v. Register of Deeds of Makati City, G.R. No. 185663, June 20, 2012, 674 SCRA 227, 236, citing Ramos v. Judge Combong, Jr., 510 Phil. 277, 281-282 (2005)). Annulment of judgment is an equitable principle not because it allows a party-litigant another opportunity to reopen a judgment that has long lapsed into finality but because it enables him to be discharged from the burden of being bound to a judgment that is an absolute nullity to begin with. (Barco v. CA, 465 Phil. 39, 64 (2004)).

Petitioner raised two grounds to support her claim for annulment of judgment: (1) extrinsic fraud and (2) lack of jurisdiction. Her contention on the existence of extrinsic fraud, however, is too unsubstantial to warrant consideration. The discussion shall then focus on the ground of lack of jurisdiction.
Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other processes on the petitioner. (Pinausukan Seafood House v. Far East Bank & Trust Company, G.R. No. 159926, January 20, 2014, 714 SCRA 226, 244).

In the present case, petitioner contended that there was lack of jurisdiction over her person because there was an invalid substituted service of summons. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. (Ellice Agro-Industrial Corp. v. Young, G.R. No. 174077, November 21, 2012, 686 SCRA 51, 61). If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

Sec. 6. Service in person on defendant. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Sec. 7. Substituted Service. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

The landmark case of Manotoc v. CA (Manotoc), 530 Phil. 454, 469-470 [2006], thoroughly discussed the rigorous requirements of a substituted service of summons, to wit: xxx

(1) Impossibility of Prompt Personal Service

xxx

For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one month which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably
on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

(2) Specific Details in the Return

The sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service. The efforts made to find the defendant and the reasons behind the failure must be clearly narrated in detail in the Return. The date and time of the attempts on personal service, the inquiries made to locate the defendant, the name/s of the occupants of the alleged residence or house of defendant and all other acts done, though futile, to serve the summons on defendant must be specified in the Return to justify substituted service.

(3) A Person of Suitable Age and Discretion

Xxx

The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

The pronouncements of the Court in Manotoc have been applied to several succeeding cases. In Pascual v. Pascual, 606 Phil. 451 [2009], the return of summons did not show or indicate the actual exertion or positive steps taken by the officer or process server in serving the summons personally to the defendant. Similarly, in Spouses Afdal v. Carlos, 651 Phil. 104 [2010], the process server’s indorsements therein failed to state that the personal service on the defendants was rendered impossible and that efforts were made to find them personally. In both those cases, the Court ruled that the meticulous requirements for substituted service of summons were not met. There are cases, however, in which Manotoc was applied, but, nevertheless, it was ruled that there was no lack of jurisdiction over the person of the defendant. In Sagana v. Francisco, 617 Phil. 287 [2009], the diligent efforts exerted by the sheriff to locate the respondent were determined, not only based on the sheriff's return, but also on the process server's notation and case records. In the case of Wong v. Factor-Koyama, 616 Phil. 239 [2009], on the other hand, even if the sheriff performed an invalid substituted service of summons, jurisdiction over the person of defendant was obtained because the latter had actively participated in trial, amounting to a voluntary appearance under Section 20 of Rule 14.
In the case at bench, the summons was issued on July 29, 2002. In his server’s return, the process server resorted to substituted service of summons on August 1, 2002. Surprisingly, the process server immediately opted for substituted service of summons after only two (2) days from the issuance of the summons. The server’s return stated that after several futile attempts to serve the same personally he served the summons on Mr. Roly Espinosa of sufficient age and discretion, the Security Officer thereat.

The server’s return utterly lacks sufficient detail of the attempts undertaken by the process server to personally serve the summons on petitioner. The server simply made a general statement that summons was effected after several futile attempts to serve the same personally. The server did not state the specific number of attempts made to perform the personal service of summons; the dates and the corresponding time the attempts were made; and the underlying reason for each unsuccessful service. He did not explain either if there were inquiries made to locate the petitioner, who was the defendant in the case. These important acts to serve the summons on petitioner, though futile, must be specified in the return to justify substituted service.

The server’s return did not describe in detail the person who received the summons, on behalf of petitioner. It simply stated that the summons was received “by Mr. Roly Espinosa of sufficient age and discretion, the Security Officer thereat.” It did not expound on the competence of the security officer to receive the summons.

Also, aside from the server’s return, respondent failed to indicate any portion of the records which would describe the specific attempts to personally serve the summons. Respondent did not even claim that petitioner made any voluntary appearance and actively participated in Civil Case No. 02-0306.

The case of Robinson v. Miralles, is not applicable. In that case, the return described in thorough detail how the security guard refused the sheriff’s entry despite several attempts. The defendant in the said case specifically instructed the guard to prevent anybody to proceed to her residence. In the present case, the attempts made by the process server were stated in a broad and ambiguous statement.

The CA likewise erred in ruling that the presumption of regularity in the performance of official duty could be applied in the case at bench. This presumption of regularity, however, was never intended to be applied even in cases where there are no showing of substantial compliance with the requirements of the rules of procedure. Such presumption does not apply where it is patent that the sheriff's or server's return is defective. (Bank of the Philippine Islands v. Spouses Evangelista, 441 Phil. 445, 453 [2002]). As earlier explained, the server's return did not comply with the stringent requirements of substituted service of summons.
Given that the meticulous requirements in *Manotoc* were not met, the Court is not inclined to uphold the CA's denial of the petition for annulment of judgment for lack of jurisdiction over the person of petitioner because there was an invalid substituted service of summons. Accordingly, the decision must be declared null and void.

The stricter rule in substituted service of summons was meant to address "[t]he numerous claims of irregularities in substituted service which have spawned the filing of a great number of unnecessary special civil actions of certiorari and appeals to higher courts, resulting in prolonged litigation and wasteful legal expenses."

**RULE 16 – MOTION TO DISMISS**

**Dismissal on ground of litis pendentia; no evidence of dismissal with finality of other action.**

In *Marilag v. Martinez*, G.R. No. 201892, June 22, 2015, Perlas-Bernabe, J, a loan was contracted in the amount of P160,000.00 secured by a mortgage with interest at 5% per month. When the obligation became due and demandable, no payment was made hence, a complaint for judicial foreclosure of the mortgage was filed where the trial court rendered a judgment in the amount of P229,000.00 with interest of 12% per annum. Before notice of judgment, the debtor agreed to pay the creditor the amount of P689,000.00 and the daughter executed a PN after paying P400,000.00 binding himself to pay the balance. As there was no payment, the creditor sued him, but the debtor refused to pay contending that he has already paid more than the amount. The trial court ruled that there was already extinguishment of the obligation because of payment. However, upon a motion for reconsideration, the court recalled its original decision and ruled that causes of action in the foreclosure and collection are separate and distinct. The CA reversed the aforesaid decision and ruled that there was *res judicata*, hence, appeal was filed with the SC raising the issue of whether the CA erred in dismissing the collection case. In dismissing the petition, the SC

**Held:** The dismissal is correct because of *litis pendentia* and not *res judicata* because there was no evidence that the judgment in the collection case already attained finality.

The prosecution of the collection case was barred, instead, by the principle of *litis pendentia* in view of the substantial identity of parties and singularity of the causes of action in the foreclosure and collection cases, such that the prior foreclosure case barred petitioner's recourse to the subsequent collection case.
Litis pendentia, as a ground for the dismissal of a civil action, refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For the bar of *litis pendentia* to be invoked, the following requisites must concur: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other. The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits. Consequently, a party will not be permitted to split up a single cause of action and make it a basis for several suits as the whole cause must be determined in one action.33 To be sure, splitting a cause of action is a mode of forum shopping by filing multiple cases based on the same cause of action, but with different prayers, where the ground of dismissal is *litis pendentia* (or *res judicata*, as the case may be).

The question of whether a cause of action is single and entire or separate is not always easy to determine and the same must often be resolved, not by the general rules, but by reference to the facts and circumstances of the particular case. The true rule, therefore, is whether the entire amount arises from one and the same act or contract which must, thus, be sued for in one action, or the several parts arise from distinct and different acts or contracts, for which a party may maintain separate suits.

In loan contracts secured by a real estate mortgage, the rule is that the creditor-mortgagee has a single cause of action against the debtor-mortgagor, *i.e.*, to recover the debt, through the filing of a personal action for collection of sum of money or the institution of a real action to foreclose on the mortgage security. The two remedies are alternative, not cumulative or successive, and each remedy is complete by itself. Thus, if the creditor-mortgagee opts to foreclose the real estate mortgage, he waives the action for the collection of the unpaid debt, except only for the recovery of whatever deficiency may remain in the outstanding obligation of the debtor-mortgagor after deducting the bid price in the public auction sale of the mortgaged properties. Accordingly, a deficiency judgment shall only issue after it is established that the mortgaged property was sold at public auction for an amount less than the outstanding obligation.

Novation; effect of execution of the PN.
While the ensuing collection case was anchored on the promissory note executed by respondent who was not the original debtor, the same does not constitute a separate and distinct contract of loan which would have given rise to a separate cause of action upon breach. Notably, records are bereft of any indication that respondent's agreement to pay Rafael's loan obligation and the execution of the subject PN extinguished by novation the contract of loan between Rafael and petitioner, in the absence of express agreement or any act of equal import. Well-settled is the rule that novation is never presumed, but must be clearly and unequivocally shown. Thus, in order for a new agreement to supersede the old one, the parties to a contract must expressly agree that they are abrogating their old contract in favor of a new one, which was not shown here.

On the contrary, it is significant to point out that: (a) the consideration for the subject PN was the same consideration that supported the original loan obligation of Rafael; (b) respondent merely assumed to pay Rafael's remaining unpaid balance in the latter's behalf, i.e., as Rafael's agent or representative; and (c) the subject PN was executed after respondent had assumed to pay Rafael's obligation and made several payments thereon. Case law states that the fact that the creditor accepts payments from a third person, who has assumed the obligation, will result merely in the addition of debtors, not novation, and the creditor may enforce the obligation against both debtors.

Petitioner's contention that the judicial foreclosure and collection cases enforce independent rights must, therefore, fail because the Deed of Real Estate Mortgage and the subject PN both refer to one and the same obligation, i.e., Rafael's loan obligation. As such, there exists only one cause of action for a single breach of that obligation. Petitioner cannot split her cause of action on Rafael's unpaid loan obligation by filing a petition for the judicial foreclosure of the real estate mortgage covering the said loan, and, thereafter, a personal action for the collection of the unpaid balance of said obligation not comprising a deficiency arising from foreclosure, without violating the proscription against splitting a single cause of action, where the ground for dismissal is either res judicata or litis pendentia, as in this case.

As elucidated by this Court in the landmark case of Bachrach Motor Co., Inc. v. Icarangal, 68 Phil. 287, 293-294 (1939):

For non-payment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the non-payment of the debt, and, for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. Plaintiff,
then, by applying the rule above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor.

Defenses not raised in MTD deemed waived.

Once again, in Ernesto Oppen, Inc. v. Compas, et al., G.R. No. 203969, October 21, 2015, Mendoza, J, the SC ruled on the effect of failure to plead grounds for Motion to Dismiss. The first motion alleged improper failure to state a cause of action which was denied. The second motion cannot allege improper venue anymore because it was deemed waived.

Citing Spouses de Guzman v. Spouses Ochoa, 664 Phil. 107 [2011], a second motion to dismiss on the ground of defective verification was denied pursuant to the Omnibus Motion Rule. The Court held:

Section 8, Rule 15 of the Rules of Court defines an omnibus motion as a motion attacking a pleading, judgment or pleading. A motion to dismiss is an omnibus motion because it attacks a pleading that is the complaint. For this reason, a motion to dismiss, like any other omnibus motion, must raise and include all objections available at the time of the filing of the motion because under Section 8, "all objections not so included shall be deemed waived." As inferred from the provision, only the following defenses Under Section 1, Rule 9, are excepted from its application: [a] lack of jurisdiction over the subject matter; [b] there is another action pending between the same parties for the same cause (litis pendentia); [c] the action is barred by prior judgment (res judicata); and [d] the action is barred by the statute of limitations or prescription.

In the case at bench, the petitioners raised the ground of defective verification and certification of forum shopping only when they filed their second motion to dismiss, despite the fact that this ground was existent and available at the time of the filing of their first motion to dismiss. Absent any justifiable reason to explain this fatal omission, the ground of defective verification and certification of forum shopping was deemed waived and could no longer be questioned by the petitioners in their second motion to dismiss.
Duty of Clerk of Court to set case for pre-trial conference.

This case of BPI v. Sps. Genuino, G.R. No. 208792, July 22, 2015, Leonen, J, happened before A.M. No. 03-1-09-SC or the new Guidelines To Be Observed By Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures. The trial court dismissed the case for failure of the plaintiff to set the case for pre-trial after the issues were joined. Pursuant to said Guidelines, which took effect on August 16, 2004, aims to abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-trial guidelines laid down in Administrative Circular No. 3-99 dated January 15, 1999. A.M. No. 03-1-09-SC states that: “Within five (5) days from date of filing of the reply, the plaintiff must promptly move ex parte that the case be set for pre-trial conference. If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial.” As such, the clerk of court of Branch 17 of the Regional Trial Court of Malolos should issue a notice of pre-trial to the parties and set the case for pre-trial.

Although Section 1, Rule 14 of the Rules imposes upon the clerk of court the duty to serve summons, this does not relieve the petitioner of her own duty as the plaintiff in a civil case to prosecute the case diligently, and if the clerk had been negligent, it was petitioner’s duty to call the court’s attention to that fact.” A plaintiff’s failure to vigilantly pursue his or her case also affects respondent’s right to speedy trial.

Effect of failure to appear at the pre-trial conference.

In Daaco v. Rosaldo, G.R. No. 183398, June 22, 2015, Peralta, J, the case filed by the plaintiff was dismiss due to her failure to appear at the pre-trial. She contended for the first time in the SC that she was improperly notified considering that the notice of pre-trial conference was raised for the first time in the SC, not the trial court. In brushing aside the contention, the SC

Held: It is settled that points of law, theories, to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at the late stage.

Accordingly, the trial court cannot be said to have whimsically or capriciously dismissed the case for it was merely implementing the letter of the law. As the trial court observed, the court was just 20 minutes away from petitioner’s residence. Prudence and diligence in complying
with the rules and orders of the court would have prompted petitioner to have at least notified the court of her predicament. This way, she could have been appointed with counsel or granted an extension of time to prepare for pretrial. Unfortunately for petitioner, she not only failed to attend the scheduled conference, she also failed to inform the court the reasons for her absence. Indeed, while a 15-hour notice may be quite impulsive, this fact, standing alone, fails to excuse petitioner’s absence. The fact remains that notice was received by petitioner before the date of the pre-trial, in compliance with the notice requirement mandated by the Rules.

In The Philippine American Life & General Insurance Company v. Enario, it has been held that pre-trial cannot be taken for granted. It is more than a simple marking of evidence. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation. Hence, it should not be ignored or neglected, as petitioner had.

Section 3, Rule 18 of the 1997 Rules of Civil Procedure requires that notice of pre-trial conference be served on counsel. The counsel served with notice is charged with the duty of notifying the party he represents. However, when a party has no counsel, the notice of pre-trial is required to be served personally on him. In view of the fact that petitioner was, and still is, not represented by counsel, and that as petitioner herself admitted, notice of the pre-trial conference was served on her, the mandate of the law was sufficiently complied with. Thus, the fact that the trial court mistakenly referred to her counsel when no such counsel exists is immaterial. For as long as notice was duly served on petitioner, in accordance with the rules, the trial court’s order of dismissal cannot be invalidated due to statements referring to her counsel, for the same have no bearing on the validity of the notice of pre-trial.

In view of the foregoing, the SC found no reason to warrant a liberal construction of the rules. Considering that the petitioner failed to offer sufficient justification for her failure to appear at the pre-trial conference, this Court finds no compelling reason to disturb the findings of the trial court. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to at least promptly explain its failure to comply with the rules. Indeed, technical rules of procedure are not designed to frustrate the ends of justice. These are provided to effect the prompt, proper and orderly disposition of cases and thus effectively prevent the clogging of court dockets. Utter disregard of these rules cannot justly be rationalized by harking on the policy of liberal construction.

RULE 36 – JUDGMENTS
Doctrine of immutability of judgment; reason for the rule.

In *Jimmy T. Go v. Bureau of Immigration & Deportation, et al.*, G.R. No. 191810, June 22, 2015, Peralta, J, a petition for deportation was filed against petitioner where after hearing by the Board of Deportation, judgment was rendered ordering the deportation of petitioner. After his Motion for Reconsideration was denied, he filed a Second Motion for Reconsideration, hence, he cannot be deported until final resolution of the same, as he presumed that the judgment has not yet become final and executory. Ruling that he was mistaken, the SC

**Held:** As a general rule, a second motion for reconsideration cannot be entertained. Section 2 of Rule 52 of the Rules of Court is unequivocal. A second motion for reconsideration is a prohibited pleading, and only for extraordinarily persuasive reasons and after an express leave has been first obtained may such motion be entertained. The restrictive policy against a second motion for reconsideration is emphasized in A.M. No. 10-4-20-SC, as amended (Internal Rules of the Supreme Court). Section 3, Rule 15 of which states:

> SEC. 3. Second motion for reconsideration. – The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

The Court has the power and prerogative to suspend its own rules and to exempt a case from their operation if and when justice requires it. In the exercise of sound discretion, the SC may determine issues which are of transcendental importance. This case is definitely not an exception, hence, the judgment became final and executory.

Based on the principle of immutability of judgment, a decision must become final and executory at some point in time; all litigations must necessarily come to an end.

> A definitive final judgment, however erroneous, is no longer subject to change or revision.

**A decision that has acquired finality becomes immutable and unalterable.** This quality of immutability precludes the modification of a final
judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.

Subject to certain recognized exceptions such as (1) the correction of clerical errors; (2) the so-called nunc pro tunc entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable, which are not present in this case, the principle of immutability leaves the judgment undisturbed as nothing further can be done except to execute it.

Administrative Law.

The Bureau of Immigration is the agency that can best determine whether petitioner Go violated certain provisions of C.A. No. 613, as amended. In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.

RULE 39 – EXECUTION OF JUDGMENT

Execution pending appeal; financial distress of defendant, a ground.
In *Pulumbarit v. CA, et al.*, G.R. No. 153745-46; *Pascual, et al. v. Pulumbarit*, G.R. No. 166573, October 14, 2015, Jardeleza, J, there was contract of sale on installment basis over a Memorial Park but due to violations of the terms and conditions of the contract a complaint for rescission with damages was filed. It was alleged that there was a contract of management with option to buy the Park. The defendant contended that there was a contract of sale of the subscribed capital stocks of the corporations. The defendant took possession of the Park. After trial, judgment was rendered in favor of the plaintiffs nullifying the contract as it was falsified and rescinding the contract. A motion for execution pending appeal was filed and granted by the trial court. The CA reversed the order ruling that even assuming that the trial court erred in allowing execution pending appeal, the plaintiffs still had the right to apply for a similar writ before the appellate court and that the issues became moot and academic by the filing of the motion for execution pending appeal. The SC disagreed and

**Held:** Any action on a motion for execution pending appeal is only *provisional* in nature. The grant or denial of such a motion is always *without prejudice to the court's final disposition of the case* and the issues raised therein. In fact, Section 3, Rule 39 of the Rules of Court allows the party against whom the execution of a decision pending appeal is directed to stay the execution by posting a *supersedeas* bond. 64 Section 5 of the same rule also provides that where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

For these reasons, the grant by the CA of a motion for execution pending appeal, being provisional in nature, could therefore not have rendered the pending case moot and academic.

**Reasons cited are insufficient to justify grant of execution pending appeal.**

Section 2, Rule 30 of the Rules of Court provides, in part, that discretionary execution (or execution pending appeal) may only issue "upon good reasons to be stated in a special order after due hearing."

Good reason must consist of superior or exceptional circumstances of such urgency as to outweigh the injury or damage that the losing party may suffer, should the appealed judgment be reversed later.

Our ruling in *Diesel Construction Company, Inc. (DCCI) v. Jollibee Foods Corporation (JFC)*, G.R. no. 136805, January 28, 2000, 323 SCRA 844 is particularly instructive. Citing possible financial distress to be caused by a "protracted delay in the reimbursement" of the costs prayed for, DCCI moved for the discretionary execution of the trial court's decision awarding escalated construction costs in its favor. The CA, however, allowed a stay of execution upon the
JFC's posting of a *supersedeas* bond. When the matter was brought before the Court for resolution, it ruled against said discretionary execution, thus:

> The financial distress of a juridical entity is not comparable to a case involving a natural person - such as a very old and sickly one without any means of livelihood, an heir seeking an order for support and monthly allowance for subsistence, or one who dies.

> Indeed, the alleged financial distress of a corporation does not outweigh the long standing general policy of enforcing only final and executory judgments. Certainly, a juridical entity like petitioner corporation, has other than extraordinary execution, alternative remedies like loans advances, internal cash generation and the like to address its precarious financial condition.

In this case, the grant by the CA of plaintiff's motion for discretionary/extraordinary execution was founded on the following reasons: (I) to stop Pulumbarit from continuing to receive money from the sale of the lots and (2) to save the property from distraint and public auction. It was found the foregoing reasons insufficient to justify the execution of the trial court's *Decision* pending final resolution of Pulumbarit's appeal.

For one, there is no urgent and pressing need for the immediate execution of the *Decision* considering that, defendant Pulumbarit had been in possession of the subject Memorial Park for the past twenty years. Assuming the affirmance of the trial court's *Decision* in Pascual *et al.*'s favor, Pulumbarit would still have to surrender possession of the Park and account for all of its finances.

Secondly, and as in the case of *DCCI v. JFC*, there are alternative remedies (*i.e.* re-application for receivership, loans and redemption, among others) available to Pascual *et al.* that may more appropriately address their concerns arising from the possible distraint and auction of the Memorial Park. The existence of these remedies, in our view, negates the claim of urgency necessary to justify execution of the trial court's *Decision* pending final resolution of Pulumbarit's appeal.

**Nature of order granting receivership.**

Since receivership may be resorted to either as a principal action or an ancillary remedy, it is imperative to first determine the nature of the application for receivership. If, for example, it is found that Pascual *et al.* filed a *separate action for receivership*, the findings of fact made by the court therein may be held to be conclusive as to the "true" nature of the patties' agreement in the action for rescission of contract, damages and accounting. If, on the other hand, the
application was made ancillary to the principal action for rescission, a finding made in the course of the resolution of said application would not bar the same court, after an exhaustive litigation of the main issues before it, from later on arriving at a different finding of fact. The doctrine of res judicata does not apply.

Supervening event may stop execution of judgment.

In Remington Industrial Sales Corp. v. Maricalum Mining Corp., G.R. No. 193945, June 22, 2015, Reyes, J, a complaint for sum of money was filed by petitioner against Mrinduque Mining and Industrial Corp. praying for the payment of the principal amount and 18% interest per annum. PNB & DBP were impleaded because of their foreclosure of the mortgage of MMIC’s properties. Maricalum was likewise impleaded because of its being a transferee of the MMCI’s properties. Judgment was rendered against the defendants. All defendants appealed. Maricalum filed a Motion for Extension of Time to File Petition for Review, but it was denied, hence, the judgment against it became final and executory. A motion for execution was filed and it was granted by the trial court, hence, its deposits were garnished and eventually delivered to Remington. The CA however reversed the order and ordered the restitution and return of the garnished amounts. Remington contended on appeal that restitution cannot be made because the judgment has long become final and executory. It contended that the doctrine of supervening events is not applicable as an exception to the doctrine of immutability of judgment as the term “supervening events” are not supervening but actually succeeding events since the writ of execution had already been implemented. The supervening events referred to are the dismissal of the cases against PNB & DBP. It contended that the SC’s decision annulling the RTC’s order of execution is not correct because to rule otherwise, would constitute undue deprivation of its property rights. In denying the petition, the SC

Held: The final and executory nature of the RTC Decision as against Maricalum is undisputed. Said RTC decision was, in fact, the source of the orders of execution issued by the RTC. Indeed, the well-settled principle of immutability of final judgments demands that once a judgment has become final, the winning party should not, through a mere subterfuge, be deprived of the fruits of the verdict. There are, however, recognized exceptions to the execution as a matter of right of a final and immutable judgment, one of which is the existence of a supervening event. “A supervening event is a fact which transpires or a new circumstance which develops after a judgment has become final and executory. This includes matters which the parties were unaware of prior to or during trial because they were not yet in existence at that time.” To be sufficient to stay or stop the execution, a supervening event must create a substantial change in the rights or relations of the parties which would render execution of a final judgment unjust, impossible or inequitable making it imperative to stay immediate execution in the interest of justice.
The dismissal of the cases against DBP & PNB holding that Remington had no cause of action against them due to their foreclosure of the mortgages against MMIC was done in good faith constitutes supervening events which blotted out the decision holding Maricalum liable. No vested right accrued from said RTC decision in its favor. No ministerial duty impelled the CA to execute the judgment.

Certainly, the subsequent issuance of the Court’s judgment in Maricalum created a substantial change in the rights of Remington as against Maricalum, and rendered the prior execution of the RTC decision unjust and inequitable. Restitution, therefore, must be made as a matter of course, for to rule otherwise would make the Court’s rulings in DBP, PNB and Maricalum hollow, leaving Maricalum holding the proverbial “empty bag.”

**Restitution; its effect.**

Restitution is sanctioned by the rules. Section 5, Rule 39 of the Rules of Court specifically provides that:

SEC. 5. Effect of reversal of executed judgment. Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances.

The Rules of Court provides for restitution according to equity, in case the executed judgment is reversed on appeal. When the executed decision is reversed, the premature execution is considered to have lost its legal bases. The situation necessarily requires equitable restitution to the party prejudiced thereby. The phrase “on appeal or otherwise” in Section 5 of Rule 39 specifically permits the application of restitution or reparation in cases where a judgment is reversed or annulled, not only on appeal but also through some other appropriate action filed for that purpose.

Nevertheless, it was stressed in Po Pauco v. Tan Junco, that in a restitution case, a party who received by means of a judgment cannot be treated as a wrong-doer for causing execution to issue.

The judgment protects him while it remains in force. It may seem a hardship to the claimant in such a judgment that under it, his property may be sold for greatly less than its value, and his right of restitution be limited to what came into the hands of the defendant. But such hardship, when it occurs, will generally, if not always, be the result of his own acts. If, by failing to appeal, or to obtain a supersedeas on an appeal, he permits the judgment to remain in force and enforceable, he can hardly complain that the other party proceeds to enforce it.
Judgment based on compromise; violated; execution matter of right.

In *The Plaza, Inc. v. Ayala Land, Inc.*, G.R. No. 209537, April 20, 2015, Perlas-Bernabe, J, the parties entered into a contract of lease over a parcel of land owned by Ayala where the lessee constructed a building known as The Plaza Building. Ayala later on transferred its real estate operations to Ayala Land, Inc. which embarked on the redevelopment of the Greenbelt area. It resulted in the hampering of the operations of The Plaza, hence, it filed a complaint for damages with prayer to stop the construction. The parties entered into a Compromise which provide that the lease would expire on December 31, 2005 without any renewal and the premises shall be surrendered to ALI, subject to the right to demolish the building. The Compromise was approved and judgment was rendered based thereon, but there was no Compliance with the terms and conditions. Hence, the SC once again had the occasion to rule on the remedies of a party in case there is failure to comply with the terms of the judgment based on compromise and

**Held:** A party may file a **motion for execution of judgment**. Execution is a matter of right on final judgments. Section 1, Rule 39 of the Rules of Court provides that execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

If a party refuses to comply with the terms of the judgment or resists the enforcement of a lawful writ issued, **an action for indirect contempt** may be filed in accordance with Rule 71 of the Rules of Court:

**Section 3. Indirect contempt to be punished after charge and hearing.** — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;

x x x
(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto.

Since a judgment on compromise agreement is effectively a judgment on the case, proper remedies against ordinary judgments may be used against judgments on a compromise agreement. **Provided these are availed on time and the appropriate grounds exist, remedies may include the following:** a) motion for reconsideration; b) motion for new trial; c) appeal; d) petition for relief from judgment; e) petition for *certiorari*; and f) petition for annulment of judgment.

Moreover, in *Genova v. De Castro*, the Court stated that a party’s violation of a compromise agreement may give rise to a new cause of action, which may be pursued in a separate action as it is not barred by *res judicata*:

>[P]etitioner’s violation of the terms of the compromise judgment gave rise to a new cause of action on the part of respondent, *i.e.*, the right to enforce the terms thereof. When she failed to obtain this by mere motion filed with the trial court, she was constrained to institute the proper suit for ejectment. The filing of a separate case based on a cause of action that arises from the application or violation of a compromise agreement is not barred by *res judicata* in the first action.

Noticeably, Plaza’s Motion for Restitution is not one of the remedies that can be availed against ALI’s purported violation of the Compromise Agreement. On the contrary, the same is a new cause of action arising therefrom.

**There is no res judicata if one case was dismissed on the ground of forum shopping.**

In *Dy, et al. v. Yu, et al.*, G.R. No. 202622, July 8, 2015, Perlas-Bernabe, J, an action for reconveyance of a real property was dismissed on the ground of forum shopping. The other action was for annulment and/or Rescission of Deed of Donation. The defendants contended that
there was res judicata since there was dismissal of the first. The CA ruled otherwise which the SC affirmed and

Held: The dismissal of the first did not constitute res judicata since it was merely based on the finding of forum shopping and hence, it cannot be said that there was judgment on the merits of the case where the rights and liabilities of the parties are determined based on the facts irrespective of formal, technical and dilatory objections. In fact there was no trial in the Reconveyance case, hence, it cannot bar the Annulment case.

*Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment."

"For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must concur: (a) the former judgment or order must be final; (b) the judgment or order must be on the merits; (c) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (d) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action. When there is no identity of causes of action, but only an identity of issues, there exists *res judicata* in the concept of conclusiveness of judgment. Although it does not have the same effect as *res judicata* in the form of bar by former judgment which prohibits the prosecution of a second action upon the same claim, demand, or cause of action, the rule on 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."

Material to this discourse is the doctrine's second element, which evokes that the *res judicata* doctrine applies only when a judgment on the merits is finally rendered on the first complaint. The term "merits" has been defined as a matter of substance in law, as distinguished from matter of form; it refers to the real or substantial grounds of action or defense as contrasted with some technical or collateral matter raised in the course of the suit. Thus, a judgment on the merits presupposes that trial has been conducted, evidence presented, and issues sufficiently heard and passed upon. It is a judgment rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal technical point. Stated differently, a judgment is "on the merits" when it amounts to a legal declaration of the respective rights and duties of the parties, based upon the disclosed facts and upon which the right of recovery depends, irrespective of formal, technical or dilatory objectives or contentions.

Forum shopping is the act of a litigant who repetitively availed of several judicial remedies in different courts, *simultaneously* or *successively*, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues, either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.
To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the element of *litis pendentia* is present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. If a situation of *litis pendentia* or *res judicata* arises by virtue of a party's commencement of a judicial remedy identical to one which already exists (either pending or already resolved), then a forum shopping infraction is committed.

As opposed to *res judicata* which was already hereinabove explained, *litis pendentia* refers to a situation where two actions are pending between the same parties for the same cause of action, so that one of them becomes unnecessary and vexatious. It is based on the policy against multiplicity of suits. The requirements of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

**Identity of parties; when it exists.**

There exists an identity of parties in both the Reconveyance and Annulment cases; this, despite the fact that Chloe and the Dy children were not impleaded in the former case as contrarily claimed. It is well-settled that only substantial, and not absolute, identity of parties is required for *litis pendentia* to lie.95 Thus, in *Chu v. Cunanan*, it was ruled that:

> There is identity of parties when the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action litigating for the same thing and under the same title and in the same capacity.

**When there is identity of rights.**

There exists an identity of rights asserted and reliefs prayed for in the two cases since the reliefs sought for are founded on the same facts. It bears emphasizing that the true test to determine the identity of causes of action is to ascertain whether the same evidence will sustain both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. As aptly pointed out in the case of *Benedicto v. Lacson*:
The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.

Along the same vein, the SC had the occasion to rule on the rationale in dismissing a case on the ground of res judicata in *Degayo v. Magbanua-Dinglasan, et al.*, G.R. No. 173148, April 6, 2015, Brion, J, where it was held that:

*Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

This judicially created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquillity. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would be endless.

This principle cannot be overemphasized in light of our clogged dockets. As this Court has aptly observed in *Salud v. Court of Appeals*:

“...The interest of the judicial system in preventing relitigation of the same dispute recognizes that judicial resources are finite and the number of cases that can be heard by the court is limited. Every dispute that is reheard means that another will be delayed. In modern times when court dockets are filled to overflowing, this concern is of critical importance. *Res judicata* thus conserves scarce judicial resources and promotes efficiency in the interest of the public at large.

Once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment. Parties come to the courts in order to
resolve controversies; a judgment would be of little use in resolving disputes if the parties were free to ignore it and to litigate the same claims again and again. Although judicial determinations are not infallible, judicial error should be corrected through appeals procedures, not through repeated suits on the same claim. Further, to allow relitigation creates the risk of inconsistent results and presents the embarrassing problem of determining which of two conflicting decisions is to be preferred. Since there is no reason to suppose that the second or third determination of a claim necessarily is more accurate than the first, the first should be left undisturbed.

In some cases the public at large also has an interest in seeing that rights and liabilities once established remain fixed. If a court quiets title to land, for example, everyone should be able to rely on the finality of that determination. Otherwise, many business transactions would be clouded by uncertainty. Thus, the most important purpose of *res judicata* is to provide repose for both the party litigants and the public. As the Supreme Court has observed, "*res judicata* thus encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes."

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, which in its relevant part reads:

Sec. 47. Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x x

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

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.
This provision comprehends two distinct concepts of res judicata: (1) bar by former judgment and (2) conclusiveness of judgment.

The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. In traditional terminology, this aspect is known as merger or bar; in modern terminology, it is called claim preclusion.

The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause of action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion.

Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of parties and issues are required for the operation of the principle of conclusiveness of judgment.

While conclusiveness of judgment does not have the same barring effect as that of a bar by former judgment that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes conclusive and continues to be binding between the same parties, their privies and successors-in-interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re-litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.

**APPEAL**

Mode of appeal from RTC to CA, etc.
In *Heirs of Arturo Garcia I v. Mun. of Iba, Zambales*, G.R. No. 162217, July 22, 2015, Bersamin, J, the SC once again had the occasion to say that appeals from the RTC to the CA in the exercise of the RTC’s original jurisdiction pursuant to Secs. 3 and 4 of Rule 41 of the Rules of Court, the petitioners file a notice of appeal in the RTC within the period of 15 days from their notice of the judgment of the RTC, and within the same period should have paid to the clerk of the RTC the full amount of the appellate court docket and other lawful fees. The filing of the notice of appeal within the period allowed by Section 3 sets in motion the remedy of ordinary appeal because the appeal is deemed perfected as to the appealing party upon his timely filing of the notice of appeal. It is upon the perfection of the appeal filed in due time, and the expiration of the time to appeal of the other parties that the RTC shall lose jurisdiction over the case. On the other hand, the non-payment of the appellate court docket fee within the reglementary period as required by Section 4, is both mandatory and jurisdictional, the non-compliance with which is fatal to the appeal, and is a ground to dismiss the appeal under Section 1, 14 (c), Rule 50 of the *Rules of Court*. The compliance with these requirements was the only way by which they could have perfected their appeal from the adverse judgment of the RTC.

In contrast, an appeal filed under Rule 42 is deemed perfected as to the petitioner upon the timely filing of the petition for review before the CA, while the RTC shall lose jurisdiction upon perfection thereof and the expiration of the time to appeal of the other parties.

The distinctions between the various modes of appeal cannot be taken for granted, or easily dismissed, or lightly treated. The appeal by notice of appeal under Rule 41 is a matter of right, but the appeal by petition for review under Rule 42 is a matter of discretion. An appeal as a matter of right, which refers to the right to seek the review by a superior court of the judgment rendered by the trial court, exists after the trial in the first instance. In contrast, the discretionary appeal, which is taken from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction, may be disallowed by the superior court in its discretion. Verily, the CA has the discretion whether to due course to the petition for review or not.

The procedure taken after the perfection of an appeal under Rule 41 also significantly differs from that taken under Rule 42. Under Section 10 of Rule 41, the clerk of court of the RTC is burdened to immediately undertake the transmittal of the records by verifying the correctness and completeness of the records of the case; the transmittal to the CA must be made within 30 days from the perfection of the appeal. This requirement of transmittal of the records does not arise under Rule 42, except upon order of the CA when deemed necessary.

The plea for liberality is unworthy of any sympathy from the Court. The Court has always looked at appeal as not a matter of right but a mere statutory privilege. As the parties invoking the privilege, the petitioners should have faithfully complied with the requirements of
the *Rules of Court*. Their failure to do so forfeited their privilege to appeal. Indeed, any liberality in the application of the rules of procedure may be properly invoked only in cases of some excusable formal deficiency or error in a pleading, but definitely not in cases like now where a liberal application would directly subvert the essence of the proceedings or results in the utter disregard of the *Rules of Court*.

**Neypes principle does not apply to administrative cases.**

The Supreme Court, pursuant to its rule-making power has the authority to lay down rules. Sometimes such rules even depart from the literal provisions of the Rules of Court. In fact, it is continuing power conferred upon it by the Constitution. The purpose of such rules is speedy disposition of cases and to afford the parties all opportunities to have their cases decided on the merits and not through technicalities.

One such rule is *Domingo Neypes, et al. v. Court of Appeals, et al.*, 469 SCRA 633 providing for a fresh 15-day period to appeal from the time a party is furnished with a copy of the resolution denying a Motion for Reconsideration. Before such rule, a party had only the balance of the period of appeal from the time he received a copy of the order denying the Motion for Reconsideration.

The question however, is whether the “fresh 15-day period is applicable in administrative cases.” In *San Lorenzo Ruiz Builders & Dev. Corp., Inc., et al. v. Maria Cristina Banya*, G.R. No. 194702, April 20, 2015, the Supreme Court said, No.

It is settled that the “fresh period rule” in *Neypes* applies only to judicial appeals and not to administrative appeals.

In *Panolino v. Tajala*, G.R. No. 183616, June 29, 2010, the Court was confronted with a similar issue of whether the “fresh period rule” applies to an appeal filed from the decision or order of the DENR regional office to the DENR Secretary, an appeal which is administrative in nature. It was held that the “fresh period rule” only covers judicial proceedings under the 1997 Rules of Civil Procedure:

The “fresh period rule” in *Neypes* declares:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
Henceforth, this “fresh period rule” shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals; and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

As reflected in the above-quoted portion of the decision in Neypes, the “fresh period rule” shall apply to Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the Court of Appeals or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the Court of Appeals); Rule 43 (appeals from quasi-judicial agencies to the Court of Appeals); and Rule 45 (appeals by certiorari to the Supreme Court). Obviously, these Rules cover judicial proceedings under the 1997 Rules of Civil Procedure.

Petitioner’s present case is administrative in nature involving an appeal from the decision or order of the DENR regional office to the DENR Secretary. Such appeal is indeed governed by Section 1 of Administrative Order No. 87, Series of 1990. As earlier quoted, Section 1 clearly provides that if the motion for reconsideration is denied, the movant shall perfect his appeal “during the remainder of the period of appeal, reckoned from receipt of the resolution of denial;” whereas if the decision is reversed, the adverse party has a fresh 15-day period to perfect his appeal.

In this case, the subject appeal, i.e., appeal from a decision of the HLURB Board of Commissioners to the OP, is not judicial but administrative in nature; thus, the "fresh period rule" in Neypes does not apply.

The rules and regulations governing appeals from decisions of the HLURB Board of Commissioners to the OP are Section 2, Rule XXI of HLURB Resolution No. 765, series of 2004, in relation to Paragraph 2, Section 1 of Administrative Order No. 18, series of 1987 which provides that the pendency of the motion for reconsideration shall suspend the running of the period of appeal to the office of the President.

Corollary thereto, paragraph 2, Section 1 of Administrative Order No. 18, series of 1987, provides that in case the aggrieved party files a motion for reconsideration from an adverse
decision of any agency/office, the said party has the only remaining balance of the prescriptive period within which to appeal, reckoned from receipt of notice of the decision denying his/her motion for reconsideration.

Thus, in applying the above-mentioned rules to the present case, it was found that the CA correctly affirmed the OP in dismissing the petitioners' appeal for having been filed out of time.

**RULE 57 – MANDAMUS**

Discharge of attachment; meaning of the words “deposit” and “amount.”

In *Luzon Dev. Bank, et al. v. Erlinda Krishman*, G.R. No. 203530, April 13, 2015, Peralta, J, the SC once more had the occasion to rule on the ways of discharging attachment on properties of a defendant. Petitioner Bank contended that it has the option to deposit real property in lieu of cash or a counter-bond to secure any contingent claim over its property in the event the plaintiff would prevail. It was argued that Sec. 2 of Rule 57 only mentions the term deposit, thus, it cannot only be confined or construed to refer to cash. The SC disagree and

**Held:** Section 2, Rule 57 of the Rules of Court explicitly states that “[a]n order of attachment may be issued either *ex parte* or upon motion with notice and hearing by the court in which the action is pending, or by the Court of Appeals or the Supreme Court, and must require the sheriff of the court to attach so much of the property in the Philippines of the party against whom it is issued, not exempt from execution, as may be sufficient to satisfy the applicant's demand, unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant's demand or the value of the property to be attached as stated by the applicant, exclusive of costs.”

Section 5 of the same Rule likewise states that “[t]he sheriff enforcing the writ shall without delay and with all reasonable diligence attach, to await judgment and execution in the action, only so much of the property in the Philippines of the party against whom the writ is issued, not exempt from execution, as may be sufficient to satisfy the applicant’s demand, unless the former makes a deposit with the court from which the writ is issued, or gives a counter-bond executed to the applicant, in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached, exclusive of costs.”

Once the writ of attachment has been issued, the only remedy of the petitioners in lifting the
same is through a cash deposit or the filing of the counter-bond. Petitioner’s argument that it has the option to deposit real property instead of depositing cash or filing a counter-bond to discharge the attachment or stay the implementation thereof is unmeritorious.

In fact, in *Security Pacific Assurance Corporation v. Tria-Infante*, it was held that one of the ways to secure the discharge of an attachment is for the party whose property has been attached or a person appearing on his behalf, to post a counterbond or make the requisite cash deposit in an amount equal to that fixed by the court in the order of attachment.

*Apropos*, the trial court aptly ruled that while it is true that the word deposit cannot only be confined or construed to refer to cash, a broader interpretation thereof is not justified in the present case for the reason that a party seeking a stay of the attachment under Section 5 is required to make a deposit in an amount equal to the bond fixed by the court in the order of attachment or to the value of the property to be attached. The proximate relation of the word "deposit" and "amount" is unmistakable in Section 5 of Rule 57. Plainly, in construing said words, it can be safely concluded that Section 5 requires the deposit of money as the word "amount" commonly refers to or is regularly associated with a sum of money.

In *Alcazar v. Arante*, it was held that in construing words and phrases used in a statute, the general rule is that, in the absence of legislative intent to the contrary, they should be given their plain, ordinary and common usage meaning. The words should be read and considered in their natural, ordinary, commonly-accepted and most obvious signification, according to good and approved usage and without resorting to forced or subtle construction. Words are presumed to have been employed by the lawmaker in their ordinary and common use and acceptation. Thus, petitioners should not give a special or technical interpretation to a word which is otherwise construed in its ordinary sense by the law and broaden the signification of the term "deposit" to include that of real properties.

**Mandamus is not the remedy to compel restoration of a cadet’s rights.**

In a case, the question that confronted the SC was:

May a petition for mandamus be issued to compel the PMA to restore Cadet Cudia’s rights and entitlements as a full-pledged graduating cadet? In answering the question in the Negative, the SC

**Held:** Suffice it to say that these matters are within the ambit of or encompassed by the right of academic freedom; therefore, beyond the province of the Court to decide. (*University of the Philippines Board of Regents v. Ligot-Telan*, G.R. No. 110280, October 21, 1993, 227 SCRA 342, 356). The powers to confer degrees at the PMA, grant awards, and commission officers in the military service are discretionary acts on the part of the President as the AFP Commander-in-
Chief. Borrowing the words of *Garcia*, the SC said that there are standards that must be met. There are policies to be pursued. Discretion appears to be of the essence. In terms of Hohfeld's terminology,

what a student in the position of petitioner possesses is a privilege rather than a right. She [in this case, Cadet 1CL Cudia] cannot therefore satisfy the prime and indispensable requisite of a *mandamus* proceeding. (Garcia v. The Faculty Admission Committee, Loyola School of Theology, supra note 59, at 942).

Certainly, mandamus is never issued in doubtful cases. It cannot be availed against an official or government agency whose duty requires the exercise of discretion or judgment. (University of the Philippines Board of Regents v. Ligot-Telan, supra note 64, at 361-362). For a writ to issue, petitioners should have a clear legal right to the thing demanded, and there should be an imperative duty on the part of respondents to perform the act sought to be mandated. (Isabelo, Jr. v. Perpetual Help College of Rizal, Inc., G.R. No. 103142, November 8, 1993, 227 SCRA 591, 597; Cudia, et al. v. The Superintendent of the PMA, et al., G.R. No. 211362, February 24, 2015, Peralta, J).

**Mandamus is the remedy to compel performance of ministerial duty.**

In *Edmund Sia v. Arcena, et al.*, G.R. No. 209672-74, January 14, 2015, Perlas-Bernabe, J, a petition for mandamus was filed seeking to compel the City Treasurer of Roxas City to issue a Final Bill of Sale over a parcel of land in favor of petitioner pursuant to its mandate under Sec. 262, RA 7160, known as the Local Government Code. Petitioner purchased said lot in an auction sale, but the Treasurer obstinately refused to issue the same. In granting the petition, the SC

**Held:** As case law defines, a writ of *mandamus* is a “command issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to an inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. It is employed to compel the performance, when refused, of a ministerial duty, which, as opposed to a discretionary one, is that which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his or its own judgment upon the propriety or impropriety of the act done.”(National Home Mortgage Finance Corporation v. Abayari, 617 Phil. 446, 458 (2009)).

**Nature of the judgment.**
The judgment primarily compels the City Treasurer to issue the Final Bill of Sale covering the subject lots in favor of petitioner pursuant to Section 262 of the LGC, a ministerial duty, which said officer unduly refused to perform. Thus, it may be properly deemed as a judgment ordering the issuance of a writ of *mandamus* against the City Treasurer.

Given that the judgment ordered the issuance of a writ of *mandamus* compelling the performance of a ministerial duty, and not the payment of money or the sale or delivery of real or personal property, the same is in the nature of a special judgment (National Home Mortgage Finance Corporation v. Abayari, 617 Phil. 446, 458 [2009] – that is which a judgment directs the performance of a specific act requiring the party or person to personally do because of his personal qualifications and circumstances. (Sandico, Sr. v. Piguing, 149 Phil. 422, 431 [1971]). As such, execution of the said judgment should be governed by Section 11, Rule 39 of the Rules of Court, which provides:

SEC. 11. Execution of special judgments. – When a judgment requires the performance of any act other than those mentioned in [Sections 9 and 10, Rule 39 of the Rules of Court], a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment.

This is in consonance with the rule on service and enforcement of orders or judgments concerning, among others, the special civil action of *mandamus* under Section 9, Rule 65 of the Rules of Court, which states:

SEC. 9. Service and enforcement of order or judgment. – A certified copy of the judgment rendered in accordance with the last preceding section shall be served upon the court, quasi-judicial agency, tribunal, corporation, board, officer or person concerned in such manner as the court may direct, and disobedience thereto shall be punished as contempt. An execution may issue for any damages or costs awarded in accordance with Section 1 of Rule 39.

The rule therefore is that the service and execution of a special judgment, such as a favorable judgment in *mandamus* – should be deemed to be limited to directing compliance with the judgment, and in case of disobedience, to have the disobedient person required by law to obey such judgment punished with contempt.
Contempt.

It is undisputed that the City Treasurer obstinately refused to issue the Final Bill of Sale in petitioner’s favor, despite the finality of the judgment, as well as the issuance and service of the Writ of Execution commanding him to do so. In view of such refusal, the RTC Br. 15 should have cited the City Treasurer in contempt in order to enforce obedience to the said judgment. However, instead of simply doing so, it granted petitioner’s numerous motions, resulting in, among others, the issuance of a writ of possession. A writ of possession is defined as a “writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give its possession to the person entitled under the judgment.” (Metropolitan Bank & Trust Company v. Abad Santos, G.R. No. 157867, December 15, 2009, 608 SCRA 222, 232, citing Black’s Law Dictionary, 5th Ed., 1979, p. 1444). It may be issued under the following instances: (a) land registration proceedings under Section 1751 of Act No. 496,52 otherwise known as “The Land Registration Act;” (b) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (c) extrajudicial foreclosure of a real estate mortgage under Section 753 of Act No. 3135,54 as amended by Act No. 49 “Under Section 9 [now Section 11, Rule 39 of the Rules of Court], the court may resort to proceedings for contempt in order to enforce obedience to a judgment which requires the personal performance of a specific act other than the payment of money, or the sale or delivery of real or personal property.” No. 4118,55 and (d) in execution sales.56 Proceeding therefrom, the issuance of a writ of possession is only proper in order to execute judgments ordering the delivery of specific properties to a litigant, in accordance with Section 10, Rule 39,57 of the Rules of Court.

Writ of execution may not vary the terms of the judgment.

The judgment sought to be enforced in the case at bar only declared valid the auction sale where petitioner bought the subject lots, and accordingly ordered the City Treasurer to issue a Final Bill of Sale to petitioner. Since the said judgment did not order that the possession of the subject lots be vested unto petitioner, the RTC Br. 15 substantially varied the terms of the aforesaid judgment – and thus, exceeded its authority in enforcing the same – when it issued the corresponding writs of possession and demolition to vest unto petitioner the possession of the subject lots. It is well-settled that orders pertaining to execution of judgments must substantially conform to the dispositive portion of the decision sought to be executed. As such, it may not
vary, or go beyond, the terms of the judgment it seeks to enforce. (Lao v. King, 532 Phil. 305, 312 (2006), citing Dev’t. Bank of the Phils. v. Union Bank of the Phils., 464 Phil. 161, 168 (2004)). Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has no validity. (Greater Metropolitan Manila Solid Waste Management Committee v. Jancom Environmental orporation, 526 Phil. 761, 779 (2006), citing Equatorial Realty Dev’t., Inc. v. Mayfair Theater, Inc., 387 Phil. 885, 895 (2000)). Had the petitioner pursued an action for ejectment or reconveyance, the issuance of writs of possession and demolition would have been proper; but not in a special civil action for mandamus.

**RULE 70/JURISDICTION**

**No trial de novo in appeals from MTC decision to RTC; ordering resurvey relocation is equivalent to trial de novo.**

In Manalang, et al. v. Bacani, G.R. No. 156995, January 12, 2015, Bersamin, J, after the relocation survey of certain properties adjacent to one another, encroachment by one on the other parcel of land was discovered. Demands were made to vacate but to no avail, hence, a complaint before the barangay was filed. No settlement having been entered into, a complaint for ejectment was filed, but the MTC dismissed the case due to lack of jurisdiction. On appeal, the RTC ordered the conduct of the relocation and verification survey in aid of its appellate jurisdiction and decided the case on the basis of the result as there was really encroachment. Was the act of the RTC correct? Why?

**Held:** No. The RTC, in an appeal of the judgment in an ejectment case, shall not conduct a rehearing or trial de novo. (Abellera v. Court of Appeals, G.R. No. 127480, February 28, 2000, 326 SCRA 485, 491). In this connection, Section 18, Rule 70 of the Rules of Court clearly provides:

> Section 18. Judgment conclusive only on possession; not conclusive in actions involving title or ownership.

x x x

The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court.
Hence, the RTC violated the foregoing rule by ordering the conduct of the relocation and verification survey “in aid of its appellate jurisdiction” and by hearing the testimony of the surveyor, for its doing so was tantamount to its holding of a trial de novo. The violation was accented by the fact that the RTC ultimately decided the appeal based on the survey and the surveyor’s testimony instead of the record of the proceedings had in the court of origin.

Unlawful detainer is within the MTC’s exclusive jurisdiction; boundary dispute is without the jurisdiction of the RTC.

An ejectment case within the original and exclusive jurisdiction of the MTC, decisive are the allegations of the complaint. But the allegations do not make out a case for unlawful detainer, but an action reinvindicatoria.

Hence, the case should be dismissed without prejudice to the filing of a non-summary action like accion reivindicatoria. A boundary dispute must be resolved in the context of accion reivindicatoria, not an ejectment case. The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiff’s property. A boundary dispute cannot be settled summarily under Rule 70 of the Rules of Court, the proceedings under which are limited to unlawful detainer and forcible entry. In unlawful detainer, the defendant unlawfully withholds the possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant’s possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession de facto.

Dismissal was correct.

The MTC dismissed the action because it did not have jurisdiction over the case. The dismissal was correct. It is fundamental that the allegations of the complaint and the character of the relief sought by the complaint determine the nature of the action and the court that has jurisdiction over the action. To be clear, unlawful detainer is an action filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. To vest in the MTC the jurisdiction to effect the ejectment from the land of the respondents as the occupants in unlawful detainer, therefore, the complaint should embody such a statement of facts clearly showing the attributes of unlawful detainer. However, the allegations
of the petitioners' complaint did not show that they had permitted or tolerated the occupation of the portion of their property by the respondents; or how the respondents' entry had been effected, or how and when the dispossession by the respondents had started. All that the petitioners alleged was the respondents' "illegal use and occupation" of the property. As such, the action was not unlawful detainer.

**HABEAS CORPUS**

**Appeal in habeas corpus.**

In a case, the SC once again said that an application for a writ of habeas corpus may be made through a petition filed before this court or any of its members, the Court of Appeals or any of its members in instances authorized by law, or the Regional Trial Court or any of its presiding judges. The court or judge grants the writ and requires the officer or person having custody of the person allegedly restrained of liberty to file a return of the writ. A hearing on the return of the writ is then conducted.

The return of the writ may be heard by a court apart from that which issued the writ. Should the court issuing the writ designate a lower court to which the writ is made returnable, the lower court shall proceed to decide the petition of habeas corpus. By virtue of the designation, the lower court “acquire[s] the power and authority to determine the merits of the [petition for habeas corpus.]” Therefore, the decision on the petition is a decision appealable to the court that has appellate jurisdiction over decisions of the lower court. (In Re: Petition for Habeas Corpus of Datu Marklang SAlibo v. Warden, QC. Jail Annex, et al., G.R. No. 197597, April 8, 2015, Leonen, J).

In *Saulo v. Brig. Gen. Cruz*, it was argued that the Court of First Instance heard the Petition for Habeas Corpus “not by virtue of its original jurisdiction but merely delegation[.]” Consequently, “this Court should have the final say regarding the issues raised in the petition, and only [this court’s decision] . . . should be regarded as operative.”

The court rejected Saulo’s argument and stated that his “logic is more pparent than real.” It ruled that when a superior court issues a writ of habeas corpus, the superior court only resolves whether the respondent should be ordered to show cause why the petitioner or the person in whose behalf the petition was filed was being detained or deprived of his or her liberty. However, once the superior court makes the writ returnable to a lower court as allowed by the Rules of Court, the lower court designated “does not thereby become merely a recommendatory body, whose findings and conclusion[s] are devoid of effect.” The decision on the petition for habeas corpus is a decision of the lower court, not of the superior court.
Nature and purpose of the Writ of Habeas Corpus.

Called the “great writ of liberty[.]” the writ of habeas corpus “was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.” The remedy of habeas corpus is extraordinary and summary in nature, consistent with the law’s “zealous regard for personal liberty.”

Under Rule 102, Section 1 of the Rules of Court, the writ of habeas corpus “shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.” The primary purpose of the writ “is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal.” “Any restraint which will preclude freedom of action is sufficient.”

The nature of the restraint of liberty need not be related to any offense so as to entitle a person to the efficient remedy of habeas corpus. It may be availed of as a post-conviction remedy or when there is an alleged violation of the liberty of abode. In other words, habeas corpus effectively substantiates the implied autonomy of citizens constitutionally protected in the right to liberty in Article III, Section 1 of the Constitution. Habeas corpus being a remedy for a constitutional right, courts must apply a conscientious and deliberate level of scrutiny so that the substantive right to liberty will not be further curtailed in the labyrinth of other processes.

In Rubi v. Provincial Board of Mindoro, the Provincial Board of Mindoro issued Resolution No. 25, Series of 1917. The Resolution ordered the Mangyans removed from their native habitat and compelled them to permanently settle in an 800-hectare reservation in Tigbao. Under the Resolution, Mangyans who refused to establish themselves in the Tigbao reservation were imprisoned.

An application for habeas corpus was filed before this court on behalf of Rubi and all the other Mangyans being held in the reservation. Since the application questioned the legality of deprivation of liberty of Rubi and the other Mangyans, this court issued a Writ of Habeas Corpus and ordered the Provincial Board of Mindoro to make a Return of the Writ.

A Writ of Habeas Corpus was likewise issued in Villavicencio v. Lukban. “[T]o exterminate vice,” Mayor Justo Lukban of Manila ordered the brothels in Manila closed. The female sex workers previously employed by these brothels were rounded up and placed in ships bound for Davao. The women were expelled from Manila and deported to Davao without their consent.

As to the legality of his acts, this court ruled that Mayor Justo Lukban illegally deprived the women he had deported to Davao of their liberty, specifically, of their privilege of domicile.
It said that the women, “despite their being in a sense lepers of society[,] are nevertheless not chattels but Philippine citizens protected by the same constitutional guaranties as are other citizens[.]” The women had the right “to change their domicile from Manila to another locality.”

Writ distinguished from decision on petition.

The writ of habeas corpus is different from the final decision on the petition for the issuance of the writ. It is the writ that commands the production of the body of the person allegedly restrained of his or her liberty. On the other hand, it is in the final decision where a court determines the legality of the restraint.

Between the issuance of the writ and the final decision on the petition for its issuance, it is the issuance of the writ that is essential. The issuance of the writ sets in motion the speedy judicial inquiry on the legality of any deprivation of liberty. Courts shall liberally issue writs of habeas corpus even if the petition for its issuance “on [its] face [is] devoid of merit[.]” Although the privilege of the writ of habeas corpus may be suspended in cases of invasion, rebellion, or when the public safety requires it, the writ itself may not be suspended.

In this case, petitioner Salibo was not arrested by virtue of any warrant charging him of an offense. He was not restrained under a lawful process or an order of a court. He was illegally deprived of his liberty, and, therefore, correctly availed himself of a Petition for Habeas Corpus.

The Information and Alias Warrant of Arrest issued by the Regional Trial Court, Branch 221, Quezon City in People of the Philippines v. Datu Andal Ampatuan, Jr., et al. charged and accused Butukan S. Malang, not Datukan Malang Salibo, of 57 counts of murder in connection with the Maguindanao Massacre. Furthermore, petitioner Salibo was not validly arrested without a warrant. Rule 113, Section 5 of the Rules of Court enumerates the instances when a warrantless arrest may be made:

SEC. 5. Arrest without warrant; when lawful.—A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112. It is undisputed that petitioner Salibo presented himself before the Datu Hofer Police Station to clear his name and to prove that he is not the accused Butukan S. Malang. When petitioner Salibo was in the presence of the police officers of Datu Hofer Police Station, he was neither committing nor attempting to commit an offense. The police officers had no personal knowledge of any offense that he might have committed. Petitioner Salibo was also not an escapee prisoner.

The police officers, therefore, had no probable cause to arrest petitioner Salibo without a warrant. They deprived him of his right to liberty without due process of law, for which a petition for habeas corpus may be issued.

Petitioner Salibo’s proper remedy is not a Motion to Quash Information and/or Warrant of Arrest. None of the grounds for filing a Motion to Quash Information apply to him. Even if petitioner Salibo filed a Motion to Quash, the defect he alleged could not have been cured by mere amendment of the Information and/or Warrant of Arrest. Changing the name of the accused appearing in the Information and/or Warrant of Arrest from “Butukan S. Malang” to “Datukan Malang Salibo” will not cure the lack of preliminary investigation in this case.

A motion for reinvestigation will not cure the defect of lack of preliminary investigation. The Information and Alias Warrant of Arrest were issued on the premise that Butukan S. Malang and Datukan Malang Salibo are the same person. There is evidence, however, that the person detained by virtue of these processes is not Butukan S. Malang but another person named Datukan Malang Salibo.

In ordering petitioner Salibo’s release, the Court was not prejudging neither his guilt nor his innocence. However, between a citizen who has shown that he was illegally deprived of his liberty without due process of law and the government that has all the “manpower and the resources at [its] command” to properly indict a citizen but failed to do so, it was ruled in favor of the citizen.

CRIMINAL PROCEDURE

RULE 110 – PROSECUTION OF ACTIONS

Aggravating circumstances not alleged; it proven, cannot make rape qualified.
In People v. Lapore, G.R. No. 191197, June 22, 2015, Perez, J, accused was charged with the crime of rape of a 13-year old girl without alleging aggravating circumstances. During the trial, the aggravating circumstances were proven, hence, accused was convicted. Affirming the conviction, the SC

**Held:** Although the prosecution has duly proved the presence of abuse of confidence and obvious ungratefulness, minority, and use of a deadly weapon, they may not be appreciated to qualify the crime from simple rape to qualified rape.

Sections 8 and 9 of Rule 110 of the Rules on Criminal Procedure provide that for qualifying and aggravating circumstances to be appreciated, it must be alleged in the complaint of information. This is in line with the constitutional right of an accused to be informed of the nature and cause of the accusation against him. Even if the prosecution has duly proven the presence of the circumstances, the Court cannot appreciate the same if they were not alleged in the Information.

**RULE 115 –**

**Provisional dismissal of case; can be revived; no double jeopardy.**

In Saldariega v. Hon. Elvie Panganiban, et al., G.R. No. 211933 & 211960, April 15, 2015, Peralta, J, accused was charged with violation of the Dangerous Drugs Act (RA 9165), but during the trial, the witness of the prosecution failed to appear, thus, the court issued an order dismissing the information provisionally with the express consent of the accused. There was a motion to re-open the case explaining that the reason for the witness’ failure to appear was due to the sudden death of his father-in-law which was granted. Accused questioned the order contending that the provisional dismissal amounted to his acquittal. The SC disagreed and

**Held:** When a criminal case is provisionally dismissed with the express consent of the accused, the case may be revived by the State within the period provided under the 2nd paragraph of Section 8, Rule 117 of the Rules of Criminal Procedure.

A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party. In no uncertain terms the dismissal of the case was provisional, i.e., the case could be revived at some future time. If petitioner believed that the case against her should be dismissed with prejudice, she should not have agreed to a provisional dismissal. She should have moved for a dismissal with prejudice so that the court would have no alternative but to require the prosecution to present its evidence. There was nothing in the records showing the accused’s opposition to the provisional dismissal nor was there any after the Order of provisional dismissal was issued. She cannot claim now that the dismissal was with
prejudice. Thus, if a criminal case is provisionally dismissed with the express consent of the accused, the case may be revived by the State within the periods provided under the 2nd paragraph of Section 8, Rule 117 of the Rules of Criminal Procedure. There is no violation of due process as long as the revival of a provisionally dismissed complaint was made within the time-bar provided under the law.

Generally, the prosecutor should have been the one who filed the motion to revive because it is the prosecutor who controls the trial. But in this particular case, the defect, if there was any, was cured when the public prosecutor later actively participated in the denial of the accused’s motion for reconsideration when she filed her Comment/Objection thereto.

**Allegations in the information controlling; caption, no.**

Accused is entitled to be informed of the nature of the accusation against him. The allegations in the information shall control in determining the nature of the offense. In *Canaran v. People*, G.R. No. 206442, July 1, 2015, Mendoza, J, the accused was charged with “Frustrated Theft” but with an allegation “thus, performing all the acts of execution which would produce the crime of theft as a consequence but, nevertheless, did not produce it by reason of some cause independent of accused’s will.”

Ruling that accused can only be convicted of the crime of attempted theft, the SC **Held:** No less that the Constitution guarantees the right of every person accused in a criminal prosecution to be informed of the nature and cause of accusation against him. It is fundamental that every element of which the offense is composed must be alleged in the complaint or information. The main purpose of requiring the various elements of a crime to be set out in the information is to enable the accused to suitably prepare his defense. He is presumed to have no independent knowledge of the facts that constitute the offense.

“[A]n accused cannot be convicted of a higher offense than that with which he was charged in the complaint or information and on which he was tried. It matters not how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted in the courts of any offense, unless it is charged in the complaint or information on which he is tried, or necessarily included therein. He has a right to be informed as to the nature of the offense with which he is charged before he is put on trial, and to convict him of an offense higher than that charged in the complaint or information on which he is tried would be an unauthorized denial of that right. “

**Test to determine when offenses necessarily included.**
Indeed, an accused cannot be convicted of a crime, even if duly proven, unless it is alleged or necessarily included in the information filed against him. An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter.

The crime of theft in its consummated stage undoubtedly includes the crime in its attempted stage. In this case, although the evidence presented during the trial prove the crime of consummated Theft, he could be convicted of Attempted Theft only. Regardless of the overwhelming evidence to convict him for consummated Theft, because the Information did not charge him with consummated Theft, the Court cannot do so as the same would violate his right to be informed of the nature and cause of the allegations against him, as he so protests.

The rule that “the real nature of the criminal charge is determined, not from the caption or preamble of the information nor from the specification of the law alleged to have been violated – these being conclusions of law – but by the actual recital of facts in the complaint or information.” In the case of Domingo v. Rayala, it was written:

**What is controlling is** not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, these being *mere conclusions of law* made by the prosecutor, but **the description of the crime charged and the particular facts therein recited.** The acts or omissions complained of must be alleged in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment. No information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. Every element of the offense must be stated in the information. What facts and circumstances are necessary to be included therein must be determined by reference to the definitions and essentials of the specified crimes. The requirement of alleging the elements of a crime in the information is to inform the accused of the nature of the accusation against him so as to enable him to suitably prepare his defense.

In the subject information, the designation of the prosecutor of the offense, which was “Frustrated Theft,” may be just his conclusion. Nevertheless, the fact remains that the charge was qualified by the additional allegation, “*but, nevertheless, did not produce it by reason of some cause independent of accused’s will, that is, they were discovered by the employees of Ororama Mega Center who prevented them from further carrying away said 14 cartons of Ponds White Beauty Cream, x x x.*” This averment, which could also be deemed by some as a mere conclusion, rendered the charge
nebulous. There being an uncertainty, the Court resolves the doubt in favor of the accused, Canceran, and holds that he was not properly informed that the charge against him was consummated theft.

RULE 111 – PROSECUTION OF ACTIONS

Civil action for nullity of meetings, etc. of the Board; prejudicial question in a case of qualified theft.

In *JM Dominguez Agronomic Co., Inc., et al. v. Liclican, et al.*, G.R. No. 208587, July 28, 2015, Velasco, J, there was a meeting of the Board where Patrick and Kenneth Pacis were not allowed to vote because they were not registered stockholders, hence, a complaint to nullify the meetings, election and acts of the directors and officers, injunction and other reliefs. There was mediation but there was failure to settle. In the meantime, petitioner stockholders took hold of the corporate properties. Pacis filed a complaint for qualified theft against Liclican and Isip, alleging that without authority, they withdrew money from the accounts of the corporation which was eventually filed with the court. The trial court found probable cause to issue a warrant of arrest. The basic question raised in the SC is whether the civil case is a prejudicial question or not considering that the court issued a warrant of arrest against the accused. Holding that it is a prejudicial question and in issuing the warrant, the court committed grave abuse of discretion amounting to lack or excess of jurisdiction, the SC

**Held:** A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be pre-emptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The rationale behind the principle is to avoid two conflicting decisions, and its existence rests on the concurrence of two essential elements: (i) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (ii) the resolution of such issue determines whether or not the criminal action may proceed.

The intra-corporate dispute, posed a prejudicial question to the criminal cases. To be sure, the civil case involves the same parties herein, and is for nullification of the meetings, election and acts of its directors and officers, among others. Court intervention was sought to ascertain who between the two contesting group of officers should rightfully be seated at the company’s helm. Without the resolution on the civil case, petitioner’s authority to commence and prosecute the criminal cases against respondents for qualified theft in JMD’s behalf remained questionable, warranting the suspension of the criminal proceedings.
The judge cannot deny knowledge of the pendency of the civil case as the judge presiding over its JDR. As correctly held by the CA.

Verily, the RTC ought to have suspended the proceedings, instead of issuing the challenged Orders, issued by the RTC. The subsequent resolution of the prejudicial question did not cure the defect.

RULE 112 – PRELIMINARY INVESTIGATION

Dismissal without prejudice of a criminal case; motion to revive is sufficient; no need for another preliminary investigation.

In Ceson v. Ma. Mereditas Gutierrez, in her capacity as Ombudsman, et al., G.R. No. 194339-41, April 20, 2015, Perlas-Bernabe, J, the basic issue is how a criminal case which was dismissed without prejudice may be revived. The SC said the filing of a motion to revive the information is sufficient to revive such case. This is distinguished from the revival of a civil case which has been dismissed without prejudice where there is a new complaint to be filed if there is revival. In the criminal case, there is no need for a new preliminary investigation.

An order dismissing a case without prejudice is a final order if no motion for reconsideration or appeal therefrom is timely filed.

Criminal cases which have been dismissed without prejudice may be reinstated by motion before the order of dismissal become final, or thereafter, by filing a new information for the offense. The view that a new complaint for preliminary investigation had to be filed before the charges against her could be revived is not correct.

On the argument that a new preliminary investigation must be conducted, it is settled that the same is only required in order to accord the accused the right to submit counter-affidavits and evidence only in the following instances: (a) where the original witnesses of the prosecution or some of them may have recanted their testimonies or may have died or may no longer be available and new witnesses for the State have emerged; (b) where aside from the original accused, other persons are charged under a new criminal complaint for the same offense or necessarily included therein; (c) if under a new criminal complaint, the original charge has been upgraded; or (d) if under a new criminal complaint, the criminal liability of the accused is upgraded from being an accessory to that of a principal. Since none of the foregoing instances obtain in this case, there is no need to conduct another preliminary investigation.
Bail granted due to humanitarian reasons.

The highly publicized decision of the Supreme Court granting bail to Senator Juan Ponce Enrile once again put the Court in the limelight. This is especially so because a Justice of the Supreme Court went out of his way to say that such a decision is unprecedented. To some, it may be true that it is unprecedented. To those who might have gone through previous decisions of the Court, it is not because there have been decisions in the past when the Supreme Court ordered the granting of bail due to humanitarian considerations. In fairness to the ponente of the decision and especially the Supreme Court, let us consider the facts and the rationale behind the granting of bail to the Senator.

Senator Enrile was charged with the crime of plunder before the Sandiganbayan in relation to the purported involvement in the diversion and misuse of appropriations under the Priority Development Assistance Fund (PDAF). After the Warrant of Arrest was issued, he voluntarily surrendered. He filed a petition to fix bail alleging as one of the grounds his age of over 70 and physical condition which must be seriously considered. The Sandiganbayan denied the petition, hence, he filed a petition for certiorari before the Supreme Court questioning the denial of his petition. His state of health was never raised in the Supreme Court in the petition for certiorari. At the Sandiganbayan, however, Dr. Jose C. Gonzales, the Director of the Philippine General Hospital (PGH) classified Enrile as a geriatric patient who was found to be suffering from some sickness whose condition, singly or collectively, could pose significant risks to his life and considering his advanced age and ill health, required special medical attention. His confinement, the doctor said was not recommended because of the limitations in the medical support at that hospital.

The Sandiganbayan did not recognize the testimony of the doctor when it denied the petition to fix bail, hence, the Supreme Court, in reversing the SB’s decision denying him bail

Held: Bail for the provisional liberty of the accused, regardless of the crime charged, should be allowed independently of the merits of the charge, provided his continued incarceration is clearly shown to be injurious to his health or to endanger his life. Indeed, denying him bail despite imperiling his health and life would not serve the true objective of preventive incarceration during the trial.

Granting bail to Enrile on the foregoing reasons is not unprecedented. The Court has already held in Dela Rama v. The People’s Court:
“This court, in disposing of the first petition for certiorari, held the following:

“x x x Unless allowance of bail is forbidden by law in the particular case, the illness of the prisoner, independently of the merits of the case, is a circumstance, and the humanity of the law makes it a consideration which should, regardless of the charge and the stage of the proceeding, influence the court to exercise its discretion to admit the prisoner to bail; x x x (77 Phil. 461 [October 2, 1946] (in which the pending criminal case against the petitioner was for treason).”

Considering the report of the Medical Director of the Quezon Institute to the effect that the petitioner “is actually suffering from minimal, early, unstable type of pulmonary tuberculosis, and chronic, granular pharyngitis,” and that in said institute they “have seen similar cases, later progressing into advance stages when the treatment and medicine are no longer of any avail;” taking into consideration that the petitioner’s previous petition for bail was denied by the People’s Court on the ground that the petitioner was suffering from quiescent and not active tuberculosis, and the implied purpose of the People’s Court in sending the petitioner to the Quezon Institute for clinical examination and diagnosis of the actual condition of his lungs, was evidently to verify whether the petitioner is suffering from active tuberculosis, in order to act accordingly in deciding his petition for bail; and considering further that the said People’s Court has adopted and applied the well-established doctrine cited in our above-quoted resolution, in several cases, among them, the cases against Pio Duran (case No. 3324) and Benigno Aquino (case No. 3527), in which the said defendants were released on bail on the ground that they were ill and their continued confinement in New Bilibid Prison would be injurious to their health or endanger their life; it is evident and we consequently hold that the People’s Court acted with grave abuse of discretion in refusing to release the petitioner on bail.

It is relevant to observe that granting provisional liberty to Enrile will then enable him to have his medical condition be properly addressed and better attended to by competent physicians in the hospitals of his choice. This will not only aid in his adequate preparation of his defense but, more importantly, will guarantee his appearance in court for the trial.

On the other hand, to mark time in order to wait for the trial to finish before a meaningful consideration of the application for bail can be had is to defeat the objective of bail, which is
entitle the accuse to provisional liberty pending the trial. There may be circumstances decisive of the issue of bail – whose existence is either admitted by the Prosecution, or is properly the subject of judicial notice – that the courts can already consider in resolving the application for bail without awaiting the trial to finish. (Bravo, Jr. v. Borja, No. L-65228, February 18, 1985, 134 SCRA 466, where the Court observed: To allow bail on the basis of the penalty to be actually imposed would require a consideration not only of the evidence of the commission of the crime but also evidence of the aggravating and mitigating circumstances. There would then be a need for a complete trial, after which the judge would be just about ready to render a decision in the case. Such procedure would defeat the purpose of bail, which is to entitle the accused to provisional liberty pending trial. The Court thus balances the scales of justice by protecting the interest of the People through ensuring his personal appearance at the trial, and at the same time realizing for him the guarantees of due process as well as to be presumed innocent until proven guilty. (Angara v. Fedman Development Corporation, G.R. No. 156822, October 18, 2004, 440 SCRA 467, 478; Duero v. Court of Appeals, G.R. No. 131282, January 4, 2002, 373 SCRA 11, 17; Juan Ponce Enrile v. Sandiganbayan and People, G.R. No. 213847, August 18, 2015, Bersamin, J).

Enrile’s poor health justifies his admission to bail.

Enrile alleged that he was over 70 years old at the time of the alleged commission of the offense. He further alleged his fragile state of health as reason for the granting of bail. Justifying the grant of bail, the Supreme Court

Held: The principal purpose of bail is to guarantee the appearance of the accused at the trial or whenever so required by the court. There is likewise the Philippines’ responsibility in the international community arising from the national commitment under the Universal Declaration of Human Rights to:

x x x uphold the fundamental rights as well as value the worth and dignity of every person. This commitment is enshrined in Section II, Article II of our Constitution which provides: “The State values the dignity of every human person and guarantees full respect for human rights.” The Philippines, therefore, has the responsibility of protecting and promoting the right of every person to liberty and due process, ensuring that those detained or arrested can participate in the proceedings before a court, to enable it to decide without delay on the legality of the detention and order their release if justified. In other words, the Philippines authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be
admitted to bail. (Government of Hong Kong Special Administrative Region v. Olalia, Jr., G.R. No. 153675, April 19, 2007, 521 SCRA 470, 482).

This national commitment to uphold the fundamental human rights as well as value the worth and dignity of every person has authorized the grant of bail not only to those charged in criminal proceedings but also to extradites upon a clear and convincing showing: (1) that the detainee will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian and compelling circumstances. (Rodriguez v. Presiding Judge, RTC, Manila, Br. 17, G.R. No. 157977, February 27, 2006, 483 SCRA 290, 298).

Enrile not a flight risk.

In our view, his social and political standing and his having immediately surrendered to the authorities upon his being charged in court indicate that the risk of his flight or escape from this jurisdiction is highly unlikely. His personal disposition from the onset of his indictment for plunder, formal or otherwise, has demonstrated his utter respect for the legal processes of this country. We also do not ignore that at an earlier time many years ago when he had been charged with rebellion with murder and multiple frustrated murder, he already evinced a similar personal disposition of respect for the legal processes, and was granted bail during the pendency of his trial because he was not seen as a flight risk. With his solid reputation in both his public and his private lives, his long years of public service, and history’s judgment of him being at stake, he should be granted bail.

RULE 115 – RIGHTS OF THE ACCUSED

Dismissal by the prosecutor on preliminary investigation; no double jeopardy.

Once again in Jamaca v. People, G.R. No. 183681, July 27, 2015, Peralta, the SC had the occasion to say that the dismissal of a case during its preliminary investigation does not constitute double jeopardy since preliminary investigation is not part of the trial and is not the occasion for the full and exhaustive display of the parties’ evidence but only such as may engender a well-grounded belief that an offense has been committed and accused is probably guilty thereof. For this reason, it cannot be considered equivalent to a judicial pronouncement of acquittal. The foregoing ruling was reiterated in Trinidad v. Office of the Ombudsman, where the Court has categorically ruled that since the preliminary investigation stage is not part of the trial, the dismissal of a case during preliminary investigation would not put the accused in danger of
double jeopardy in the event of a re-investigation or the filing of a similar case. An investigating body is not bound by the findings or resolution of another such office, tribunal or agency which may have had before it a different or incomplete set of evidence than what had been presented during the previous investigation. Therefore, petitioner’s indictment pursuant to the findings of the Office of the City Prosecutor, and his eventual conviction for the crime of grave threats, has not placed him in double jeopardy.

As to petitioner’s argument that the information filed by the Office of the City Prosecutor is null and void for lack of jurisdiction as the Office of the Deputy Ombudsman for the Military had already dismissed the case, the same is likewise tenuous. In *Flore v. Montemayor*, the Court clarified that the Ombudsman’s jurisdiction to investigation public officers and employees as defined under Section 15 of R.A. No. 6770 is not exclusive, and explained, thus:

This power of investigation granted to the Ombudsman by the 1987 Constitution and the Ombudsman Act is not exclusive but is shared with other similarly authorized government agencies, such as the PCGG and judges of municipal trial courts and municipal circuit trial courts. The power to conduct preliminary investigation on charges against public employees and officials is likewise concurrently shared with the Department of Justice. Despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with the Office of the President and the local *Sanggunians* to investigate complaints against local elective officials.

**RULE 116 – BILL OF PARTICULARS**

**Bill of particulars in a criminal case; purpose.**

The basic question in a case involving Senator Juan Ponce Enrile is whether an accused in a criminal case may file a Motion for Bill of Particulars. This is so because to some, it is only in a civil case that such motion may be resorted to. The 1964 Rules did not provide for a remedy of bill of particulars in criminal cases. It was merely incorporated in Section 10 Rule 116 of the Rules of Court under the 1985 Rules and Sec. 9 of Rule 116 of the Revised Rules of Criminal Procedure. Previous rulings of the SC did not rely on the Rules of Court to provide. Hence, in *U.S. v. Schneer*, 7 Phil. 523 [1907]; *U.S. v. Cernias*, 10 Phil. 682 [1908]; *People v. Abad Santos*, 76 Phil. 746 [1946], the SC ruled specifically that there was no rule on bill of particulars until finally the SC in the exercise of its rule-making power put into the Rules the remedy of bill of particulars which is the further specification of the charges or claims in an action which an accused may avail of by motion before arraignment, to enable him to properly plead and prepare for trial.
In *Juan Ponce Enrile v. People, et al.*, G.R. No. 213455, August 11, 2015, Brion, J, petitioner was charged with the crime of plunder. He filed a motion for bill of particulars but the Sandiganbayan denied the motion on the ground that the details sought are evidentiary in nature and are best ventilated during trial, hence, he filed a petition for certiorari with the SC contending that despite the ambiguity and insufficiency of the information filed against him, the SB denied his motion. He contended that there was a serious violation of his constitutional right to be informed of the nature and cause of the accusation against him. He was left to speculate on what his specific participations in the crime of plunder. He contended that the information should have stated the details of the particular acts that constituted the imputed series or combination of overt acts that led to the charge of plunder. Paragraph (1) of the Information alleged that he repeatedly received from Napoles and her representatives, kickbacks and other commissions before, during and/or after project identification of projects funded by his PDAF. What Enrile wanted to be made particular are put into the following questions:

**What are the particular overt acts which constitute the “combination”?**

**What are the particular overt acts which constitute the “series”?**

**Who committed those acts?**

The SC ruled that Enrile is entitled to a bill of particulars.

Plunder is the crime committed by public officers when they amass wealth involving at least P50 million by means of a combination or series of overt acts. Under these terms, it is not sufficient to simply allege that the amount of ill-gotten wealth amassed amounted to at least P50 million; the manner of amassing the ill-gotten wealth – whether *through a combination or series of overt acts under Section 1(d) of R.A. No. 7080* – is an important element that must be alleged.

When the Plunder Law speaks of “combination,” it refers to at least two (2) acts falling under different categories listed in Section 1, paragraph (d) of R.A. No. 7080 [*for example, raids on the public treasury under Section 1, paragraph (d), subparagraph (1), and fraudulent conveyance of assets belonging to the National Government under Section 1, paragraph (d), subparagraph (3)].

On the other hand, to constitute a “series” there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Section 1, paragraph (d) [*for example, misappropriation, malversation and raids on the public treasury, all of which fall under Section 1, paragraph (d), subparagraph (1)] (Estrada v. Sandiganbayan, 421 Phil. 290, 351 [2001]).
The prosecution employed a generalized or **shotgun approach** in alleging the criminal overt acts allegedly committed by Enrile. This approach rendered the allegations of the paragraph uncertain to the point of ambiguity for purposes of enabling Enrile to respond and prepare for his defense.

The heart of the Plunder Law lies in the phrase “combination or series of overt or criminal acts.” Hence, **even if the accumulated ill-gotten wealth amounts to at least P50 million, a person cannot be prosecuted for the crime of plunder if this resulted from a single criminal act.** This interpretation of the Plunder Law is very clear from the congressional deliberations.

Considering that without a number of overt or criminal acts, there can be no crime of plunder, the various overt acts that constitute the “combination” and “series” the Information alleged, are material facts that should not only be alleged, but must be stated with sufficient definiteness so that the accused would know what he is specifically charged with and why he stands charged, so that he could properly defend himself against the charges.

Thus, the **several** (i.e., at least 2) acts which are indicative of the overall scheme or conspiracy must not be generally stated; they should be stated with enough particularity for Enrile (and his co-accused) to be able to prepare the corresponding refuting evidence to meet these alleged overt acts.

It is insufficient, too, merely allege that a set of acts had been repeatedly done (although this may constitute a series if averred with sufficient definiteness), and aver that these acts resulted in the accumulation or acquisition of ill-gotten wealth amounting to at least P172,834,500.00. The Information should reflect with particularity the predicate acts that underlie the crime of plunder, based on the enumeration in Section 1(d) of R.A. No. 7080.

A reading of the Information filed against Enrile shows that the prosecution made little or no effort to particularize the transactions that would constitute the required series or combination of overt acts.

In fact, it clustered under paragraph (a) of the Information its recital of the manner Enrile and his co-accused allegedly operated, thus describing its general view of the series or combination of overt criminal acts that constituted the crime of plunder.

Without any specification of the basic transactions where kickbacks or commissions amounting to at least P172,834,500.00 had been allegedly received, Enrile’s preparation for trial is obviously hampered. This defect is not cured by mere reference to the prosecution’s attachment, as Enrile already stated in his Reply that the “desired details” could not be found in the bundle of documents marked by the prosecution, which documents are not integral parts of the Information. Hence, the prosecution does not discharge its burden of informing Enrile what these overt acts were by simply pointing to these documents.
In providing the particulars of the overt acts that constitute the “combination” or “series” of transactions constituting plunder, it stands to reason that the amounts involved, or at their ball park figures, should be stated; these transactions are not necessarily uniform in amount, and cannot simply collectively be described as amounting to P172,834,500.00 without hampering Enrile’s right to respond after receiving the right information.

To stress, this final sum is not a general ball park figure but a very specific sum based on a number of different acts and hence must have a breakdown. Providing this breakdown reinforces the required specificity in describing the different overt acts.

Negatively stated, unless Enrile is given the particulars and is later given the chance to object unalleged details, he stands to be surprised at the trial at the same time that the prosecution is given the opportunity to play fast and loose with its evidence to satisfy the more than P50 Million requirement of law.

Approximate Dates of Commission or Kickbacks

Enrile should likewise know the approximate dates, at least, of the receipt of the kickbacks and commissions, so that he could prepare the necessary pieces of evidence, documentary or otherwise, to disprove the allegations against him. The period covered by the indictment extends from “2004 to 2010 or thereabout,” of which, the different overt acts constituting of the elements of plunder took place during this period.

Undoubtedly, the length of time involved – six years – will pose difficulties to Enrile in the preparation of his defense and will render him susceptible to surprises. Enrile should not be left guessing and speculating which one/s from among the numerous transactions involving his discretionary PDAF funds from 2004 to 2010, are covered by the indictment.

The Projects Funded and NGOs Involved

Enrile is also entitled to particulars specifying the projects that Enrile allegedly funded coupled with the name of Napoles’ NGO (e.g., Pangkabuhayan Foundation, Inc.), to sufficiently inform Enrile of the particular transactions referred to.

Be it remembered that the core of the indictment is:

1. the funding of nonexisting projects using Enrile’s PDAF;
2. Enrile’s endorsement of Napoles’ NGOs to the government agencies to implement these projects; and
3. Enrile’s receipt of kickbacks or commissions in exchange for his endorsement.
Under the elaborate scheme alleged to have been committed by Enrile and his co-accused, the project identification was what started the totality of acts constituting plunder: only after a project has been identified could Enrile have endorsed Napoles’ NGO to the appropriate government agency that, in turn, would implement the supposed project using Enrile’s PDAF. Note that without the project identification, no justification existed to release Enrile’s PDAF to Napoles’ allegedly bogus NGO.

In these lights, the “identified project” and “Napoles’ NGO” are material facts that should be clearly and definitely stated in the Information to allow Enrile to adequately prepare his defense evidence on the specific transaction pointed to. The omission of these details will necessarily leave Enrile guessing on what transaction/s he will have to defend against, since he may have funded other projects with his PDAF. Specification will also allow him to object to evidence not referred to or covered by the Information’s ultimate facts.

The Government Agencies Serving as Conduits

The government agencies to whom Enrile endorsed Napoles’ NGOs are also material facts that must be specified, since they served a necessary role in the crime charged – the alleged conduits between Enrile and Napoles’ NGOs. They were indispensable participants in the elaborate scheme alleged to have been committed.

The particular person/s in each government agency who facilitated the transactions, need not anymore be named in the Information, as these are already evidentiary matters. The identification of the particular agency vis-à-vis Napoles’ NGO and the identified project, will already inform Enrile of the transaction referred to.

In Tantuico v. Republic, G.R. No. 89114, December 2, 1991, 204 SCRA 428, the Republic filed a case for reconveyance, reversion, accounting, restitution, and damages before the Sandiganbayan against former President Ferdinand Marcos, Imelda Marcos, Benjamin Romualdez, and Francisco Tantuico, Jr. Tantuico filed a motion for bill of particulars essentially alleging that the complaint was couched in general terms and did not have the particulars that would inform him of the alleged factual and legal bases. The Sandiganbayan denied his motion on the ground that the particulars sought are evidentiary in nature. Tantuico moved to reconsider this decision, but the Sandiganbayan again denied his motion.

The Court overturned the Sandiganbayan’s ruling and directed the prosecution to prepare and file a bill of particulars. Significantly, the Court held that the particulars prayed for, such as: names of persons, names of corporations, dates, amounts involved, a specification of property for identification purposes, the particular transactions involving withdrawals and disbursements, and a statement of other material facts as would support the conclusions and inferences in the complaint, are not evidentiary in nature. The Court explained that those
particulars are material facts that should be clearly and definitely averred in the complaint so that the defendant may be fairly informed of the claims made against him and be prepared to meet the issues at the trial.

To be sure, the differences between ultimate and evidentiary matters are not easy to distinguish. While Tantuico was a civil case and did not involve the crime of plunder, the Court’s ruling nonetheless serves as a useful guide in the determination of what matters are indispensable and what matters may be omitted in the Information, in relation with the constitutional right of an accused to be informed of the nature and cause of the accusation against him.

In the present case, the particulars on the:

(1) projects involved;
(2) Napoles’ participating NGOs; and
(3) the government agency involved in each transaction

will undoubtedly provide Enrile with sufficient data to know the specific transactions involved, and thus enable him to prepare adequately and intelligently whatever defense or defenses he may have.

**Basic purpose of Bill of Particulars.**

The purpose of a bill of particular is to clarify allegations in the Information that are indefinite, vague, or are conclusions of law to enable the accused to properly plead and prepare for trial, not simply to inform him of the crime of which he stands accused. Verily, an accused cannot intelligently respond to the charge laid if the allegations are incomplete or are unclear to him.

In a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Section 4 of R.A. No. 7080, for purposes of establishing the crime of plunder, it is "sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth. (Garcia v. Sandiganbayan, G.R. No. 170122, October 12, 2009, 603 SCRA 349, 361).

The term “overall unlawful scheme” indicates a general plan of action or method that the principal accused and public officer and others conniving with him follow to achieve their common criminal goal. In the alternative, if no overall scheme can be found or where the schemes or methods used by the multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common criminal goal.
Lest Section 4 be misunderstood as allowing the prosecution to allege that a set of acts has been *repeatedly* done (thereby showing a ‘pattern’ of overt criminal acts), as has been done in the present case, this section does not dispense with the requirement of stating the essential or material facts of each component or predicate act of plunder; *it merely prescribes a rule of procedure for the prosecution of plunder*.

In *Estrada v. Sandiganbayan*, 421 Phil. 290 [2001] this procedural rule was construed to mean that [w]hat the prosecution needed to prove beyond reasonable doubt was only the number of acts sufficient to form a combination or series that would constitute a pattern involving an amount of at least P50,000,000.00. There was no need to prove each and every other act alleged in the Information to have been committed by the accused in furtherance of the overall unlawful scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth.

If, for example, the accused is charged in the Information of malversing public funds on twenty different (20) occasions, the prosecution does not need to prove all 20 transactions; it suffices if a number of these acts of malversation can be proven with moral certainty, provided only that the series or combination of transaction would amount to at least P50,000,000.00. Nonetheless, *each of the twenty transactions should be averred with particularity, more so if the circumstances surrounding each transaction are not the same*. This is the only way that the accused can properly prepare for his defense during trial.

**Paragraph (b) of the Information**

As his last requested point, Enrile wants the prosecution to provide the details of the allegation under paragraph (b) of the Information (*i.e.*, *x x x by taking undue advantage, on several occasions, of their official position, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines*) in the following manner:

Provide the details of *how* Enrile took undue advantage, on several occasions, of his official positions, authority, relationships, connections, and influence to unjustly enrich himself at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines. Was this because he *received* any *money* from the government? *From whom* and *for what* reason did he receive any money or property from the government through which he “unjustly enriched himself”? State the details from whom each *amount* was received, the *place* and the *time*.
The ruling on Enrile’s desired details – specifically, the particular overt act/s alleged to constitute the “combination” and “series” charged in the Information; a breakdown of the amounts of the kickbacks and commissions allegedly received, stating how the amount of P172,834,500.00 was arrived at; a brief description of the ‘identified’ projects where kickbacks and commissions were received; the approximate dates of receipt of the alleged kickbacks and commissions from the identified projects; the name of Napoles’ non-government organizations (NGOs) which were the alleged “recipients and/or target implementors of Enrile’s PDAF projects;” and the government agencies to whom Enrile allegedly endorsed Napoles’ NGOs – renders it unnecessary to require the prosecution to submit further particulars on the allegations contained under paragraph (b) of the Information.

Simply put, the particular overt acts alleged to constitute the combination or series required by the crime of plunder, coupled with a specification of the other non-evidentiary details stated above, already answer the question of how Enrile took undue advantage of his position, authority, relationships, connections and influence as Senator to unjustly enrich himself.

The PDAF is a discretionary fund intended solely for public purposes. Since the Information stated that Enrile, as “Philippine Senator,” committed the offense “in relation to his office,” by “repeatedly receiving kickbacks or commissions” from Napoles and/or her representatives through projects funded by his (Enrile’s) PDAF, then it already alleged how undue advantage had been taken and how the Filipino people and the Republic had been prejudiced. These points are fairly deducible from the allegations in the Information as supplemented by the required particulars.

The Grave Abuse of Discretion

In the light of all these considerations, the Sandiganbayan’s denial of the petitioner’s motion for a bill of particulars, on the ground that the details sought to be itemized or specified are all evidentiary – without any explanation supporting this conclusion – constitutes grave abuse of discretion.

Some of the desired details are material facts that must be alleged to enable the petitioner to properly plead and prepare his defense. The Sandiganbayan should have diligently sifted through each detail sought to be specified, and made the necessary determination of whether each detail was an ultimate or evidentiary fact, particularly after Enrile stated in his Reply that the “desired details” could not be found in the bundle of documents marked by the prosecution. We cannot insist or speculate that he is feigning ignorance of the presence of these desired details; neither can we put on him the burden of unearthing from these voluminous documents what the desired details are. The remedy of a bill of particulars is precisely made available by the Rules to enable an accused to positively respond and make an intelligent defense.
Moreover, a resolution arising from a preliminary investigation does not amount to nor does it serve the purpose of a bill of particulars.

A bill of particulars guards against the taking of an accused by surprise by restricting the scope of the proof; (Berger v. State, 179 Md. 410; hunter v. State, 193 Md. 596) it limits the evidence to be presented by the parties to the matters alleged in the Information as supplemented by the bill. It is for this reason that the failure of an accused to move for a bill of particulars deprives him of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms which sufficiently charges the defendants with a definite crime.

The record on preliminary investigation, in comparison, serves as the written account of the inquisitorial process when the fiscal determined the existence of prima facie evidence to indict a person for a particular crime. The record of the preliminary investigation, as a general rule, does not even form part of the records of the case. (Section 7(b), Rule 112, Revised Rules of Criminal Procedure). These features of the record of investigation are significantly different from the bill of particulars that serves as basis, together with the Information, in specifying the overt acts constituting the offense that the accused pleaded to during arraignment.

Notably, plunder is a crime composed of several predicate criminal acts. To prove plunder, the prosecution must weave a web out of the six ways of illegally amassing wealth and show how the various acts reveal a combination or series of means or schemes that reveals a pattern of criminality. The interrelationship of the separate acts must be shown and be established as a scheme to accumulate ill-gotten wealth amounting to at least P50 million.

Plunder thus involves intricate predicate criminal acts and numerous transactions and schemes that span a period of time. Naturally, in its prosecution, the State possesses an “effective flexibility” of proving a predicate criminal act or transaction, not originally contemplated in the Information, but is otherwise included in the broad statutory definition, in light of subsequently discovered evidence. The unwarranted use of the flexibility is what the bill of particulars guards against.

It was argued that the ponencia transformed the nature of an action from an accusation in writing charging a person with an offense to an initiatory pleading alleging a cause of action.

There is nothing wrong with such treatment, for a motion for a bill of particulars in criminal cases is designed to achieve the same purpose as the motion for a bill of particulars in civil cases. In fact, certainty, to a reasonable extent, is an essential attribute of all pleadings, both civil and criminal, and is more especially needed in the latter where conviction is followed by penal consequences. (State v. Canova, 278 Md. 483, 498-99, 365 A.2d 988, 997-98 [1976]).
Thus, even if the Information employs the statutory words does not mean that it is unnecessary to allege such facts in connection with the commission of the offense as will certainly put the accused on full notice of what he is called upon to defend, and establish such a record as will effectually bar a subsequent prosecution for that identical offense. (State v. Lassotovitch, 162 Md. 147, 156, 159 A. 362, 366 [1932]).

Notably, conviction for plunder carries with it the penalty of capital punishment; for this reason, more process is due, not less. When a person’s life interest – protected by the life, liberty, and property language recognized in the due process clause – is at stake in the proceeding, all measures must be taken to ensure the protection of those fundamental rights.

It was emphasized in Republic v. Sandiganbayan, 565 Phil. 172 [2007], “the administration of justice is not a matter of guesswork. The name of the game is fair play, not foul play. We cannot allow a legal skirmish where, from the start, one of the protagonists enters the arena with one arm tied to his back.”

That Enrile’s cited grounds are reiterations of the grounds previously raised

Enrile did not deny that the arguments he raised in his supplemental opposition to issuance of a warrant of arrest and for dismissal of information and in his motion for bill of particulars were identical. He argues, however, that the mere reiteration of these grounds should not be a ground for the denial of his motion for bill of particulars, since “the context in which those questions were raised was entirely different.”

While both the motion to dismiss the Information and the motion for bill of particulars involved the right of an accused to due process, the enumeration of the details desired in Enrile’s supplemental opposition to issuance of a warrant of arrest and for dismissal of information and in his motion for bill of particulars are different viewed particularly from the prism of their respective objectives.

In the former, Enrile took the position that the Information did not state a crime for which he can be convicted; thus, the Information is void; he alleged a defect of substance. In the latter, he already impliedly admitted that the Information sufficiently alleged a crime but is unclear and lacking in details that would allow him to properly plead and prepare his defense; he essentially alleged here a defect of form.

Note that in the former, the purpose is to dismiss the Information for its failure to state the nature and cause of the accusation against Enrile; while the details desired in the latter (the
motion for bill of particulars) are required to be specified in sufficient detail because the
allegations in the Information are vague, indefinite, or in the form of conclusions and will not
allow Enrile to adequately prepare his defense unless specifications are made.

That every element constituting the offense had been alleged in the Information does
not preclude the accused from requesting for more specific details of the various acts or
omissions he is alleged to have committed. The request for details is precisely the function of a
bill of particulars.

Hence, while the information may be sufficient for purposes of stating the cause and the
crime an accused is charged, the allegations may still be inadequate for purposes of enabling him
to properly plead and prepare for trial.

There is no complete congruence between the grounds invoked and the details sought by
Enrile in his motion for bill of particulars, and the grounds invoked in opposing the warrant for
his arrest issued, so that the Sandiganbayan’s action in one would bar Enrile from essentially
invoking the same grounds.

The judicial determination of probable cause is one made by the judge to ascertain
whether a warrant of arrest should be issued against the accused. The judge must satisfy himself
that based on the evidence submitted, there is necessity for placing the accused under custody in
order not to frustrate the ends of justice. (See Alfredo C. Mendoza v. People of the Philippines
and Juno Cars, Inc., G.R. No. 197293, April 21, 2014, 722 SCRA 647). Simply put, the judge
determines whether the necessity exists to place the accused under immediate custody to avoid
frustrating the ends of justice.

On the other hand, the Revised Rules of Criminal Procedure grants the accused the
remedy of a bill of particulars to better inform himself of the specifics or particulars concerning
facts or matters that had not been averred in the Information with the necessary clarity for
purposes of his defense.

Its purpose is to better acquaint the accused of the specific acts and/or omissions in
relation with the crime charged, to limit the matters and the evidence that the prosecution may
otherwise be allowed to use against him under a more or less general averment, and to meet the
charges head on and timely object to evidence whose inadmissibility may otherwise be deemed
waived.

Based on these considerations, the question of whether there is probable cause to issue a
warrant of arrest against an accused, is separate and distinct from the issue of whether the
allegations in the Information have been worded with sufficient definiteness to enable the
accused to properly plead and prepare his defense. While the grounds cited for each may
seemingly be the same, they are submitted for different purposes and should be appreciated from
different perspectives, so that the insufficiency of these grounds for one does not necessarily
translate to insufficiency for the other. Thus, the resolution of the issue of probable cause should not bar Enrile from seeking a more detailed averment of the allegations in the Information.

The Sandiganbayan grossly missed these legal points and thus gravely abused its discretion: it used wrong and completely inapplicable considerations to support its conclusion.

RULE 119 – JUDGMENT

Demurrer to Evidence

Demurrer to evidence; dismissal on the ground of lack of jurisdiction; effect.

Once more, in Asistio v. People, et al., G.R. No. 200465, April 20, 2015, Peralta, J, the SC had the occasion to say that if there is demurrer to evidence in a criminal case and it is granted on the ground of lack of jurisdiction, the same does not amount to acquittal.

In Gutib v. Court of Appeals, it was stressed that demurrer to the evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The Court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

In People v. Sandiganbayan, it was explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

The demurrer to evidence in criminal cases, such as the one at bar, is "filed after the prosecution had rested its case," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a dismissal of the case on the merits, tantamount to an acquittal of the accused." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.

The accused-appellee was of a mistaken view that the dismissal of the case against her is an acquittal. It should be emphasized that “acquittal is always based on the merits, that is, the
defendant is acquitted because the evidence does not show that the defendant's guilt is beyond reasonable doubt; but dismissal does not decide the case on the merits or that the defendant is not guilty. Dismissal terminates the proceeding, either because the court is not a court of competent jurisdiction, or the evidence does not show that the offense was committed within the territorial jurisdiction of the court, or the complaint or information is not valid or sufficient in form and substance, etc.”

**Remand for re-trial; no double jeopardy.**

The accused-appellee cannot contend that she will be placed in double jeopardy upon this appeal. It must be stressed that the dismissal of the case against her was premised upon her filing of a demurrer to evidence, and the finding, albeit erroneous, of the trial court that it is bereft of jurisdiction.

The requisites that must be present for double jeopardy to attach are: (a) a valid complaint or information; (b) a court of competent jurisdiction; (c) the accused has pleaded to the charge; and (d) the accused has been convicted or acquitted or the case dismissed or terminated without the express consent of the accused.

Definitely, there is no double jeopardy in this case as the dismissal was with the accused-appellee's consent, that is, by moving for the dismissal of the case through a demurrer to evidence. Where the dismissal was ordered upon or with express assent of the accused, he is deemed to have waived his protection against doubly jeopardy. In this case at bar, the dismissal was granted upon motion of petitioners. Double jeopardy, thus, did not attach.

The Court also finds no merit in petitioner's new argument that the prosecution of her case before the RTC for violation of Section 46 of RA 6938 in Criminal Case No. 07-197750 is barred by *res judicata* because the MeTC of Manila, Branch 22, in a Resolution dated August 13, 2012, granted her demurrer to evidence and acquitted her in a criminal case for falsification of private document in Criminal Case No. 370119-20-CR. In support of her flawed argument, petitioner points out that the private complainants [officers and directors of the Cooperative] and the subject matter [unreported sales profits of Coca-Cola products] of both cases are the same, and that the case for violation of Section 46 of RA 6938 is actually and necessarily included in the case for falsification of private documents.

At the outset, *res judicata* is a doctrine of civil law and thus has no bearing on criminal proceedings. At any rate, petitioner's argument is incidentally related to double jeopardy which embraces a prohibition against being tried for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.
Section 7 of Rule 117 lays down the requisites in order that the defense of double jeopardy may prosper. There is double jeopardy when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. As to the first requisite, the first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.

In this case, there is no dispute that the first and second requisites of double jeopardy are present in view of the MeTC Resolution dated August 13, 2012 which granted petitioner's demurrer to evidence and acquitted her in a criminal case for falsification of private document in Criminal Case No. 370119-20-CR. Petitioner's argument dwells on whether the third requisite of double jeopardy — a second jeopardy is for the same offense as in the first — is present. Such question of identity or lack of identity of offenses is addressed by examining the essential elements of each of the two offenses charged, as such elements are set out in the respective legislative definitions of the offense involved.

Thus, the remaining question to be resolved is whether the offense charged in the information for Section 46 of RA 6938 necessarily includes or is necessarily included in a crime for falsification of private document under Article 172 of the Revised Penal Code, as amended (RPC). The test to determine whether an offense necessarily includes or is necessarily included in the other is provided under Section 5, Rule 120 of the Rules of Court: An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

After a careful examination of the Informations filed against petitioner for falsification of private document in Criminal Case No. 370119-20-CR and for violation of Section 46, RA 6938 in Criminal Case No. 01-197750, the Court holds that the first offense for which petitioner was acquitted does not necessarily include and is not necessarily included in the second offense.

The Information for falsification of private document, on the one hand, alleged that petitioner, being then the Chairperson and Managing Director of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, as part of her duty to prepare financial reports, falsified such report for the School Year 1999-2000, in relation to the sales profits of Coca-Cola products in violation of Article 172 (2)35 of the RPC. The elements of falsification of private document under Article 172, paragraph 2 of the RPC are: (1) that the offender committed any of the acts of falsification, except those in paragraph 7, Article 171;36 (2) that the falsification was committed in any private document; and (3) that the falsification caused damage to a third party or at least the falsification was committed with intent to cause such damage.
The Information for violation of Section 46 of RA 6938 alleged, on the other hand, that being then such officer and director of the Cooperative, petitioner willfully acquired personal interest or equity adverse to it, in violation of her duty and of the confidence reposed upon her, by entering into a contract with Coca-Cola in her own personal capacity, knowing fully well that the sales profits of such products should have accrued to the Cooperative. The essential elements of violation of Section 46 of RA 6938 are (1) that the offender is a director, officer or committee member; and (2) that the offender willfully and knowingly (a) votes for or assents to patently unlawful acts; (b) is guilty of gross negligence or bad faith in directing the affairs of the cooperative; or (c) acquires any personal or pecuniary interest in conflict with their duty as such directors, officers or committee member.

Verily, there is nothing common or similar between the essential elements of the crimes of falsification of private document under Article 172 (2) of the RPC and that of violation of Section 46 of RA 6938, as alleged in the Informations filed against petitioner. As neither of the said crimes can be said to necessarily include or is necessarily included in the other, the third requisite for double jeopardy to attach—a second jeopardy is for the same offense as in the first—is, therefore, absent. Not only are their elements different, they also have a distinct nature, i.e., the former is malum in se, a what makes it a felony is criminal intent on the part of the offender, while the latter is malum prohibitum, as what makes it a crime is the special law enacting it.

Moreover, in People v. Doriguez,37 the Court held: It is a cardinal rule that the protection against double jeopardy may be invoked only for the same offense or identical offenses. A simple act may offend against two (or more) entirely distinct and unrelated provisions of law, and if one provision requires proof of an additional fact or element which the other does not, an acquittal or conviction or a dismissal of the information under one does not bar prosecution under the other. Phrased elsewise, where two different laws (or articles of the same code) defines two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same fact, if each crime involves some important act which is not an essential element of the other.

Since the Informations filed against petitioner were for separate and distinct offenses as discussed above—the first against Article 172 (2) of the Revised Penal Code and the second against Section 46 of the Cooperative Code (RA 6938)—one cannot be pleaded as a bar to the other under the rule on double jeopardy. Besides, it is basic in criminal procedure that an accused may be charged with as many crimes as defined in our penal laws even if these arose from one incident. Thus, where a single act is directed against one person but said act constitutes a violation of two or more entirely distinct and unrelated provisions of law, or by a special law and the Revised Penal Code, as in this case, the prosecution against one is not an obstacle to the prosecution of the other.
Demurrer to evidence, its purpose; effect of its grant; remedy.

Once again, the SC in *People v. Sandiganbayan* et al., G.R. No. 197953, August 5, 2015, Brion, J, had the occasion to rule on the purpose of a demurrer to evidence.

Section 23, Rule 119 of the Revised Rules of Criminal Procedure provides:

“After the prosecution rests its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused with prior leave of court.”

A demurrer to evidence is an objection by one of the parties in an action to the effect that the evidence which has adversary produced is insufficient in point of law to make out a case or sustain the issue. The party filing the demurrer challenges the sufficiency of the prosecution’s evidence. The Court’s task is to ascertain if there is competent or sufficient evidence to establish a prima facie case to sustain the indictment or support a verdict of guilt. (Nicolas v. Sandiganbayan, 568 Phil. 297 [2008]).

In criminal case, the grant of a demurrer amounts to an acquittal, and the dismissal order may not be appealed as this would place the accused in double jeopardy. (People v. Sandiganbayan, 661 Phil. 350 [2011], citing Dayap v. Sendiong, G.R. No. 177690, January 29, 2009, 577 SCRA 134, 147). Although the dismissal order is not subject to appeal, it may be reviewed through certiorari under Rule 65.

For the writ to issue, the trial court must be shown to have acted with grave abuse of discretion amount to lack or excess of jurisdiction such as where the prosecution was denied the opportunity to present its case or where the trial was a sham thus rendering the assailed judgment void. (Sanvicente v. People, 441 Phil. 139, 147-148 [2002]).

Certiorari shall lie only when the respondent court gravely abuse its discretion such as when it blatantly ignores facts or denies a party due process. Certiorari does not correct errors of judgment.

Thus, even if the Sandiganbayan erred in weighing the sufficiency of the prosecution’s evidence, such error does not necessarily amount to grave abuse of discretion. It is merely an error of judgment which may no longer be appealed because it would place the respondents in double jeopardy.

**APPEAL (CRIMINAL CASES)**
Promulgation of judgment; effect if accused fails to appear; loses right to appeal.

Once again, in *Salvador v. Chua*, G.R. No. 212865, July 15, 2015, Bersamin, J, the SC had the occasion to rule that if accused failed to appear at the promulgation of the judgment, he loses his right to appeal his conviction.

Section 6, Rule 120 of the Rules of Criminal Procedure pertinently states:

“The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

x x x x

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

As the rule expressly indicates, the promulgation of the judgment of conviction may be done *in absentia*. The accused in such case is allowed a period of 15 days from notice of the judgment to him or his counsel within which to appeal, otherwise, the decision becomes final. The accused who fails to appear at the promulgation of the judgment of conviction loses the remedies available under the Rules of Court against the judgment, specifically: (a) the filing of a motion for new trial or for reconsideration (Rule 121), and (b) an appeal from the judgment of conviction (Rule 122). However, the Rules of Court permits him to regain his standing in court in order to avail himself of these remedies within 15 days from the date of promulgation of the judgment conditioned upon: (a) his surrender; and (b) his filing of a motion for leave of court to avail himself of the remedies, stating therein the reason for his absence. Should the trial court
find that his absence justified and allowing him the available remedies from the judgment of conviction.

Under Section 6, supra., the personal presence of the petitioner at the promulgation of the judgment is mandatory because the offense of this he was found guilty was not a light felony or offense. He was charged with and actually found guilty of estafa, and meted the indeterminate sentence of four years and two months of prision correccional, as minimum, to 20 years of reclusion temporal, as maximum.

In the attempt to regain his right to avail himself of the remedies under the Rules of Court, the petitioner filed a Motion for Leave to File a Notice of Appeal, and attached thereto the medical certificate issued by a doctor. Yet, he did not thereby establish that his absence had been for a justifiable cause because the purported issuer himself. A directly impugned the credibility of this certificate by denying to have issued the certificate, and to have examined the petitioner.

Even assuming that he had suffered hypertension, which could have validly excused his absence from the promulgation, the petitioner did not fulfill the other requirement of Section 6, supra., to surrender himself to the trial court. The term surrender used in the rule visibly necessitated his physical and voluntary submission to the jurisdiction of the court to suffer any consequence of the verdict against him.

His failure to fulfill the requirements rendered the conviction final and immutable. He ought to be reminded that the right to appeal, being neither a natural right nor a part of due process, is a merely statutory privilege that should be exercised in the manner and in accordance with the provisions of the law establishing the right, otherwise, it is lost.

EVIDENCE

Judicial admissions; effect.

In Eastern Shipping Lines, Inc. v. BPI/MS Insurance Corp., et al., G.R. No. 182864, January 12, 2015, Perez, J, the SC once again had the occasion to rule on the effect of admission of a party in court. For, in this case, a party litigant contended that what was admitted and written on the pre-trial order was only the existence of the first shipment invoice but its contents and due execution. It invoked admission of existence but renounced any knowledge of the contents written on it. Ruling on such contention, the SC

Held: The admission having been made in a stipulation of facts at pre-trial by the parties, it must be treated as a judicial admission. Under Section 4, of Rule 129 of the Rules of Court, a judicial
admission requires no proof. (SCC Chemicals Corporation v. Court of Appeals, 405 Phil. 514, 522-523 [2001].

It is inconceivable that a shipping company with maritime experience and resource like the ESLI will admit the existence of a maritime document like an invoice even if it has no knowledge of its contents or without having any copy thereof.

Judicial admissions are legally binding on the party making the admissions. Pre-trial admission in civil cases is one of the instances of judicial admissions explicitly provided for under Section 7, Rule 18 of the Rules of Court, which mandates that the contents of the pre-trial order shall control the subsequent course of the action, thereby, defining and limiting the issues to be tried. In Bayas v. Sandiganbayan, 520 Phil. 982 [2006], it was emphasized that:

“Once the stipulation are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally, it must assume the consequences of the disadvantage.”

Moreover, in Alfelor v. Halasan, 440 Phil. 54 [2002], it was likewise ruled that:

“A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.

Parol evidence, when admissible.

In Sps. Paras v. Kimwa Const. & Dev. Corp., G.R. No. 171601, April 8, 2015, Leonen, J, a contract was entered into for the supply of 40,000 cubic meters of aggregate but the respondent hauled only 10,000 cubic meters and later on stopped. Claiming that it violated its contract, the petitioners filed a complaint for breach of contract. The defendant Kimwa contended that it never committed to obtain 40,000 cubic meters of aggregates as the said volume represented merely the upper limit or maximum quantity that it could haul. It further alleged that May 15, 1995 was
never set as a deadline. The RTC held Kimwa liable, but the CA reversed the decision and faulted the RTC for basing its findings on evidence presented which were supposedly in violation of the Parol Evidence Rule. In holding the defendant liable for reason that spoken words could be notoriously unreliable, the SC

**Held:** When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.

However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:

(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
(c) The validity of the written agreement; or
(d) The existence of other terms agreed to by the parties or their successor in interest after the execution of the written agreement.

The term “agreement” includes wills, (Sec. 9, Rule 130). Per this rule, reduction to written form, regardless of the formalities observed, “forbids any addition to, or contradiction of, the terms of a written agreement by testimony or other evidence purporting to show that different terms were agreed upon by the parties, varying the purport of the written contract.”

This rule is animated by a perceived wisdom in deferring to the contracting parties’ articulated intent. In choosing to reduce their agreement into writing, they are deemed to have done so meticulously and carefully, employing specific – frequently, even technical – language as are appropriate to their context. From an evidentiary standpoint, this is also because “oral testimony … coming from a party who has an interest in the outcome of the case, depending exclusively on human memory, is not a reliable as written or a written contract which speaks of a uniform language.” As illustrated in Abella v. Court of Appeals:

“Without any doubt, oral testimony as to a certain fact, depending as it does evidence as it does exclusively on human memory, is not as reliable as written or documentary evidence. “I would sooner trust the smallest slip of paper for truth,” said Judge Limpkin of Georgia, “than the strongest and most retentive memory ever bestowed on mortal man.” This is especially true in this case where such oral testimony is given by a party to the case who has an interest in its outcome, and by a witness who claimed to have received a commission from the petitioner.
This however, is merely a general rule. Provided that a party puts in issue in its pleading any of the four (4) items enumerated in the second paragraph of Rule 130, Section 9, “a party may present evidence to modify, explain or add to the terms of the agreement.” Raising any of these items as an issue in a pleading such that it falls under the exception is not limited to the party initiating an action. In Philippine National Railways v. Court of First Instance of Albay, the Court noted that “if the defendant set up the affirmative defense that the contract mentioned in the complaint does not express the true agreement of the parties, then parol evidence is admissible to prove the true agreement of the parties.” Moreover, as with all possible objections to the admission of evidence, a party’s failure to timely object is deemed a waiver, and parol evidence may then be entertained.

Apart from pleading these exceptions, it is equally imperative that the parol evidence sought to be introduced points to the conclusion proposed by the party presenting it. That is, it must be relevant, tending to “induce belief in the existence” of the flaw, true intent, or subsequent extraneous terms averred by the party seeking to introduced parol evidence.

In sum, two (2) things must be established for parol evidence to be admitted: first, that the existence of any of the four (4) exceptions has been put in issue in a party’s pleading or has not been objected to by the adverse party; and second, that the parol evidence sought to be presented serves to form the basis of the conclusion proposed by the presenting party.

**Witness is a child; cannot be sole reason for disqualification.**

In People v. Esugon, G.R. No. 195244, June 22, 2015, Bersamin, J, the credibility of a 5-year old witness was at issue, his testimony pointing to the accused as the perpetrator of the crime of homicide where his mother was killed. The SC ruled that: the mere fact that the witness is a child cannot be the sole reason for disqualification.

The disqualification of a person to testify rests on the ability to relate to others the acts and events witnessed. Towards that end, Rule 130 of the Rules of Court makes clear who may and may not be witnesses in judicial proceedings, to wit:

“Section 20. Witnesses; their qualifications. – Except as provided in the next succeeding section, all person who can perceive, and perceiving, can make known their perceptual to others, may be witnesses.

Religious or political belief, interest in the outcome of the case, or conviction of a crime unless otherwise provided by law, shall not be a ground for disqualification.

Section 21. Disqualification by reason of mental incapacity or immaturity.
– The following persons cannot be witnesses:
(a) Those whose mental condition, at the time of their production for
examination, is such that they are incapable of intelligently making
known their perception to others.
(b) Children whose mental maturity is such as to render them incapable of
perceiving the facts respecting which they are examined and of
relating them truthfully.

As the rules show, anyone who is sensible and aware of a relevant event or incident, and
can communicate such awareness, experience, or observation to others can be witness. Age,
religion, ethnicity, gender, educational attainment, or social status are not necessary to qualify a
person to be a witness, so long as he does not possess any of the disqualifications as listed the
rules. The generosity with which the Rules of Court allows people to testify is apparent, for
religious beliefs, interest in the outcome of a case, and conviction of a crime unless otherwise
provided by law are not grounds for disqualifications.

That the witness is a child cannot be the sole reason for disqualification. The
dissimissiveness with which the testimonies of child witnesses were treated in the past has long
been erased. Under the Rule on Examination of Child Witness (A.M. No. 004-07-SC 15
December 2000), every child is now presumed qualified to be a witness. To rebut this
presumption, the burden of substantial doubt exists regarding the ability of the child to perceive,
remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth
in court will the court, motu proprio or on motion of a party, conduct a competency examination
of a child.

The assessment of the credibility of witnesses is within the province of the trial court. All
questions bearing on the credibility of witnesses are best addressed by the trial court by virtue of
its unique position to observe the crucial and often incommunicable evidence of the witnesses’
deportment while testifying, something which is denied to the appellate court because of the
nature and function of its office. The trial judge has the unique advantage of actually examining
the real and testimonial evidence, particularly the demeanor of the witnesses. Hence, the trial
judge’s assessment of the witnesses’ testimonies and findings of fact are accorded great respect
on appeal. In the absence of any substantial reason to justify the reversal of the trial court’s
assessment and conclusion, like when no significant facts and circumstances are shown to have
been overlooked or disregarded, the reviewing court is generally bound by the former’s findings.
The rule is even more stringently applied if the appellate court has concurred with the trial court.

The appellant did not object child’s competency as a witness. He did not attempt to
adduce evidence to challenge such competency by showing that the child was incapable of
perceiving events and of communicating his perceptions, or that he did not possess the basic
qualifications of a competent witness. After the Prosecution terminated its direct examination of
the child, the appellant extensively tested his direct testimony on cross-examination. All that the
defense did was to attempt to discredit the testimony of the child, but not for once did the defense challenge his capacity to distinguish right from wrong, or to perceive, or to communicate his perception to the trial court. Consequently, the trial judge favorably determined the competency of the child to testify against the appellant.

Circumstantial evidence is resorted to in complex crime of rape with homicide.

If there is no direct evidence to prove a crime, circumstantial evidence may be presented especially in cases of rape with homicide. Hence, in *People v. Brioniola*, G.R. No. 211027, June 29, 2015, Villarama, J, the SC once again said that it is settled that in the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt. In this regard, it was held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, as here, resort to circumstantial evidence is usually unavoidable. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of conviction, viz:

Sec. 4. *Circumstantial evidence, when sufficient*. – Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.

DYING DECLARATION

Dying declaration, reasons for admissibility.
In *People v. Palanas*, G.R. No. 214453, June 17, 2015, Perlas-Bernabe, J, after a shooting incident, the victim was brought to the hospital and on their way to the hospital, the victim told the witness that it was Abe, a neighbor who shot him. He repeated the same to his wife, but he died. The accused interposed the defense of alibi, but the trial court gave credence to the testimony of the witness, admitting the same as dying declaration which the CA affirmed. In affirming the judgment of conviction, the SC said the statement can be admitted as dying declaration and as part of the *res gestae*.

For dying declaration to constitute an exception to the hearsay evidence rule, four (4) conditions must concur: (a) the declaration must concern the cause and surrounding circumstances of the declarant’s death; (b) that at the time the declaration was made, the declarant is conscious of his impending death; (c) the declarant was competent as a witness; and (d) the declaration is offered in a criminal case for Homicide, Murder, or Parricide where the form part of *res gestae*, and thus, constitute another exception to the rule on hearsay evidence, requires the concurrence of the following requisites: (a) the principal act, the *res gestae*, is a startling occurrence; (b) the statements were made before the declarant had time to contrive or devise; and (c) the statements must concern the occurrence in question and its immediately attending circumstances.

The statements constitute a dying declaration, given that they pertained to the cause and circumstances of his death and taking into consideration the number and severity of his wounds, it may be reasonably presumed that he uttered the same under a fixed belief that his own death was already imminent. This declaration is considered evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation. Verily, because the declaration was made in extremity, when the party is at the point of death and when every motive of falsehood is silenced and the mind is induced by the most powerful considerations to speak the truth, the law deems this as a situation so solemn and awful as creating an obligation equal to that which is imposed by an oath administered in court.

In the same vein, the witness’ statements may likewise be deemed to form part of the *res gestae*. “*Res gestae* refers to the circumstances, facts, and declarations that grow out of the main fact and serve to illustrate its character and are so spontaneous and contemporaneous with the main fact as to exclude the idea of deliberation and fabrication. The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it clearly negates any premeditation or purpose to manufacture testimony.” In this case, his statements refer to a startling occurrence, *i.e.*, him being shot by the accused and his companion. While on his way to the hospital, he had no time to contrive the identification of his assailants. Hence, his utterance was made in spontaneity and only in reaction to the startling occurrence. Definitely, such
statement is relevant because it identified the accused as one of the authors of the crime. Therefore, the killing of victim, perpetrated by accused, is adequately proven by the prosecution.

Dying declaration; effect if a relative testifies on the dying declaration of deceased.

In People v. Villarez, G.R. No. 211160, September 2, 2015, Carpio, J, accused was charged with the crime of murder. Immediately after the shooting incident, the daughter of the deceased ran towards her father and saw the accused waving a gun. She held her father’s head and asked the identity of the person who shot him. At the brink of death and with a voice she could hardly hear, her father uttered the name “Toti.” She saw the accused and his brothers pointing guns to the people who were scampering away. Her testimony was questioned as inadmissible because of her relationship with the deceased. Brushing aside such contention, the SC

Held: The assertion of the accused that the witnesses were biased since they were related to the victim deserves scant consideration. Mere relationship of a witness to the victim does not impair the witness’ credibility. On the contrary, a witness’ relationship to a victim of a crime would even make his or her testimony more credible, as it would be unnatural for a relative who is interested in vindicating the crime, to accuse somebody other than the real culprit. Further, the accused’s defense of denial failed to cast doubt on the positive identification made by the prosecution witnesses and this defense, being inherently weak, cannot prevail over such positive identification of the accused as the perpetrator of the crime.

Admissibility of dying declaration.

Accused’s allegation that the dying declaration made by the victim should be held inadmissible deserves scant consideration. All the requisites necessary to admit Enrique’s dying declaration to his own daughter were all present. The relevant portions state:

Statements identifying the assailant, if uttered by a victim on the verge of death, are entitled to the highest degree of credence and respect. Persons aware of an impending death have been known to be genuinely truthful in their words and extremely scrupulous in their accusations. The dying declaration is given credence on the premise that no one who knows of one’s impending death will make a careless and false accusation. Hence, not infrequently, pronouncements of guilt have been allowed to rest solely on the dying declaration of the deceased victim.

For a dying declaration to be admissible in evidence, the following requisites must concur: (1) the dying declaration must concern the cause and
surrounding circumstances of the declarant’s death; (2) at the time of making his declaration, the declarant was under a consciousness of impending death; (3) the declarant must have been competent to testify as a witness; and (4) the declaration was offered in a criminal case for homicide, murder or parricide in which the declarant was the victim.

These requisites are all present in the case at bar.

Evidence must be offered; effect if not; exceptions.

In Mabrobang, et al. v. Mabrobang, et al., G.R. No. 182805, April 22, 2015, Peralta, J, there was an action for judicial partition of a property claiming that the same became the subject of co-ownership after their predecessor-in-interest passed away. The defendants however claimed that the father of the plaintiffs could have already gotten his share from their predecessors-in-interest. No evidence however was presented to support such claim. No documentary or testimonial has been offered to substantial the contention. The appellate court ruled that the plaintiffs are entitled to their share which the SC upheld and

**Held:** Section 34, Rule 132 of the Rules of Court provides that “the court shall consider no evidence which has not been formally offered.” This is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. Also, it allows opposing parties to examine the evidence and object to its admissibility. A formal offer is necessary because judges are mandated to rest their findings of facts and judgment strictly and only upon the evidence offered by the parties at trial. Consequently, review by the appellate court is facilitated for it will not be required to review documents not previously scrutinized by the trial court. (Heirs of Pasag, et. al. v. Spouses Lorenzo, et. al., 550 Phil. 571, 579 (2007), citing Parel v. Prudencio, 521 Phil. 533, 545 (2006); Katigbak v. Sandiganbayan, 453 Phil. 515, 542 (2003); Ong v. Court of Appeals, 361 Phil. 338, 350 (1999); People of the Philippines v. Alicante, 388 Phil. 233, 260 (200), 21 Id. at 581-582). Hence, strict adherence to this basic procedural rule is required, lest evidence cannot be assigned any evidentiary weight or value:

Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as
an exhibit does not mean that it has already been offered as part of the evidence.

It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.

In certain instances, however, the Court has relaxed the procedural rule and allowed the trial court to consider evidence not formally offered on the condition that the following requisites are present: (1) the evidence must have been duly identified by testimony duly recorded; and (2) the same must have been incorporated in the records of the case. None of the conditions are present in this case.
PRESIDENT Benigno S. C. Aquino III has signed into law a measure amending the Probation Law of 1976. The following are the salient provisions amended by R.A. 10707:

<table>
<thead>
<tr>
<th>PRESIDENTIAL DECREE No. 968</th>
<th>REPUBLIC ACT No. 10707</th>
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<tr>
<td>July 24, 1976</td>
<td>November 26, 2015</td>
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**Section 4. Grant of Probation.**

Subject to the provisions of this Decree, the court may, after it shall have convicted and sentenced a defendant and upon application at any time of said defendant, suspend the execution of said sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court, with notice to the appellate court if an appeal has been taken from the sentence of conviction. The filing of the application shall be deemed a waiver of the right to appeal, or the automatic withdrawal of a pending appeal.

An order granting or denying probation shall not

**Section 4. Grant of Probation.**

Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction: Provided, That when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final. The application for probation...
be appealable.

based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

The trial court shall, upon receipt of the application filed, suspend the execution of the sentence imposed in the judgment.

This notwithstanding, the accused shall lose the benefit of probation should he seek a review of the modified decision which already imposes a probationable penalty.

Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.

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<tr>
<th>Section 9. Disqualified Offenders.</th>
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<td>The benefits of this Decree shall not be extended to those:</td>
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<td>(a) sentenced to serve a maximum term of imprisonment of more than six years;</td>
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<td>(b) convicted of any offense against the security of the State;</td>
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<td>(c) who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a</td>
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<td>(c) who have previously been convicted by final judgment of an offense punished by imprisonment of more than six (6) months and</td>
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<td>After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case is deemed terminated.</td>
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<td>The final discharge of the probationer shall operate to restore to him all civil rights lost or suspend as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.</td>
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<td>The probationer and the probation officer shall each be furnished with a copy of such order.</td>
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<tr>
<th>Section 24. Miscellaneous Powers of Provincial and City Probation Officers.</th>
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<td>Provincial or City Probation Officers shall have the authority within their territorial jurisdiction to administer oaths and acknowledgments and to take depositions in connection with their duties and functions under this Decree. They shall also have, with respect to probationers under their</td>
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care, the powers of police officer. They shall also have, with respect to probationers under their care, the powers of a police officer. They shall be considered as persons in authority.

**Section 27. Field Assistants, Subordinate Personnel.** Provincial or City Probation Officers shall be assisted by such field assistants and subordinate personnel as may be necessary to enable them to carry out their duties effectively.

**Section 28. Probation Aides.**

To assist the Provincial or City Probation Officers in the supervision of probationers, the Probation Administrator may appoint citizens of good repute and probity to act as probation aides. Probation Aides shall not receive any regular compensation for services except for reasonable travel allowance. They shall hold office for such period as may be determined by the Probation Administrator. Their qualifications and maximum caseloads shall be provided in the rules promulgated pursuant to this Decree.

**Section 27. Field Assistants, Subordinate Personnel.**

Regional, Provincial or City Probation Officers shall be assisted by such field assistants and subordinate personnel as may be necessary to enable them to carry out their duties effectively.

**Section 28. Volunteer Probation Assistants (VPAs)**

To assist the Chief Probation and Parole Officers in the supervised treatment program of the probationers, the Probation Administrator may appoint citizens of good repute and probity, who have the willingness, aptitude and capability to act as VPAs. VPAs shall not receive any regular compensation except for reasonable transportation and meal allowances, as may be determined by the Probation Administrator for services rendered as VPAs. They shall hold office for a two (2) year term which may be renewed or recalled anytime for a just cause. Their functions, qualifications, continuance in office and maximum caseloads shall be further prescribed under the implementing rules and regulations of this Act.
| There shall be a reasonable number of VPAs in every regional, provincial, and city probation office. In order to strengthen the functional relationship of VPAs and the Probation Administrator, the latter shall encourage and support the former to organize themselves in the national, regional, provincial and city levels for effective utilization, coordination and sustainability of the volunteer program. |
On 13 March 2015, President Benigno Aquino III signed into law Republic Act No. 10655, which repealed Article 351 of the Revised Penal Code. The act of “premature marriage” has been decriminalized without prejudice to the provisions of the Family Code on paternity and filiation. Section 1 of R.A. No. 10655 provides:

**Section 1.** Without prejudice to the provisions of the Family Code on paternity and filiation, Article 351 of Act No. 3815, otherwise known as the Revised Penal Code, punishing the crime of premature marriage committed by a woman is hereby repealed.

Article 351 of the RPC which is to prevent doubtful paternity of a child is already addressed under the 1987 Family Code of the Philippines (FCP). Article 168 of the FCP provides for the rule to determine paternity and filiation of a child born by a woman who contracted another marriage within 300 days from the termination of the previous marriage. On the other hand, Articles 170 and 171 provide remedies by which the legitimacy of a child born under such circumstances may be questioned, while Articles 103 and 130 address concerns about property relations. Moreover, advances in science and technology like DNA testing to determine paternity is now available.

The author of RA 10655 also explained that the law on premature marriages under Article 351 of the RPC “is discriminatory for it curtails the right of a woman to marry under the stated circumstances when no such penalty is imposed on the man who does the same. Similarly, the effect of the provision is an enforced mourning period on the part of the woman although none is imposed on the man.”  

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90 http://jlp-law.com/blog/premature-marriage-no-longer-a-crime/
UPDATE IN REMEDIAL LAW

THE 2016 REVISED RULES OF PROCEDURE

FOR SMALL CLAIMS CASES

A.M. No. 08-8-7-SC
November 21, 2000

Section 2. Scope. - This Rule shall govern the procedure in actions before the Metropolitan trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts for payment of money where the value of the claim does not exceed One Hundred Thousand Pesos (P100,000.00) exclusive of interest and costs.

A.M. No. 08-8-7-SC
The 2016 Revised Rules of Procedure
For Small Claims Cases
Effective February 1, 2016

Section 2. Scope.— These Rules shall govern the procedure in actions before the Metropolitan Trial Courts (MeTCs), Municipal Trial Courts in Cities (MTCCs), Municipal Trial Courts (MTCs) and Municipal Circuit Trial Courts (MCTCs) for payment of money where the value of the claim does not exceed Two Hundred Thousand Pesos (P200,000.00) exclusive of interest and costs.

SEC. 3. Objectives
(a) To protect and advance the constitutional right of persons to a speedy disposition of their cases;
(b) To provide a simplified and inexpensive procedure for the disposition of small claims cases; and,
(c) To introduce innovations and best practices for the benefit of the underprivileged.

*new provision
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<tr>
<th>Section 4. Applicability -</th>
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<td>(b) For damages arising from any of the following;</td>
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<td>1. Fault or negligence;</td>
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<td>2. Quasi-contract; or</td>
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<tr>
<td>3. Contract;</td>
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<tr>
<th>Section 6. Joinder of Claims</th>
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<tr>
<td>Plaintiff may join in a single statement of claim one or more separate small claims against a defendant provided that the total amount claimed, exclusive of interest and costs, does not exceed P100,000.00.</td>
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<th>Section 7. Venue -</th>
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<td>The regular rules on venue shall apply. However, if the plaintiff is engaged in the business of lending, banking and similar activities, and has a branch within the municipality or city where the defendant resides, the Statement of Claim/s shall be filed where that branch is located.</td>
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*new provision*

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<td>Should the defendant fail to file his response within the required period, the court by itself shall render judgement as may be warranted by the facts alleged in the Statement of claim limited to what is prayed for. The court however, may, in its discretion, reduce the amount of damages for being excessive or unconscionable.</td>
<td>Should the defendant fail to file his/her/its Response within the required period, and likewise fail to appear on the date set for hearing, the court shall render judgment on the same day, as may be warranted by the facts alleged in the Statement of Claim/s.</td>
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<td>Section 16. Appearance. –</td>
<td>Section 18. Appearance.—</td>
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<td>The parties shall appear at the designated date of hearing personally or through a representative authorized under a Special Power of Attorney (Form 5-SCC) to enter into an amicable settlement, to submit of Judicial Dispute Resolution (JDR) and to enter into stipulations or admissions of facts and of documentary exhibits.</td>
<td>The parties shall personally appear on the designated date of hearing. Appearance through a representative must be for a valid cause. The representative of an individual-party must not be a lawyer, and must be related to or next-of-kin of the individual-party. Juridical entities shall not be represented by a lawyer in any capacity. The representative must be authorized under a Special Power of Attorney (Form 7-SCC) to enter into an amicable settlement of the dispute and to enter into stipulations or admissions of facts and of documentary exhibits.</td>
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Should the defendant fail to file his/her/its Response within the required period but appears on the date set for hearing, the court shall ascertain what defense he/she/it has to offer which shall constitute his/her/its Response, and proceed to hear or adjudicate the case on the same day as if a Response has been filed.
Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Section 3 of Presidential Decree No. 1606, as amended, is hereby further amended to read as follows:

"SEC. 3. Constitution of the Divisions; Quorum. – The Sandiganbayan shall sit in seven (7) divisions of three (3) members each.

"Two (2) members shall constitute a quorum for sessions in divisions: Provided, That when the required quorum for the particular division cannot be had due to the legal disqualification or temporary incapacity of a member or a vacancy therein, the Presiding Justice may designate a member of another division to be determined by strict rotation on the basis of the reverse order of precedence, to sit as a special member of said division with all the rights and prerogatives of a regular member of said division in the trial and determination of a case or cases assigned thereto."

Section 2. Section 4 of the same decree, as amended, is hereby further amended to read as follows:

"SEC. 4. Jurisdiction. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
"a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

"(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade ’27’ and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

"(a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads:

"(b) City mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

"(c) Officials of the diplomatic service occupying the position of consul and higher;

"(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

"(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent and higher;

"(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

"(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

"(2) Members of Congress and officials thereof classified as Grade ’27’ and higher under the Compensation and Position Classification Act of 1989;

"(3) Members of the judiciary without prejudice to the provisions of the Constitution;

"(4) Chairmen and members of the Constitutional Commissions, without prejudice to the provisions of the Constitution; and

"(5) All other national and local officials classified as Grade ’27’ and higher under the Compensation and Position Classification Act of 1989.
"b. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a. of this section in relation to their office.

c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

"Provided, That the Regional Trial Court shall have exclusive original jurisdiction where the information: (a) does not allege any damage to the government or any bribery; or (b) alleges damage to the government or bribery arising from the same or closely related transactions or acts in an amount not exceeding One million pesos (P1,000,000.00).

"Subject to the rules promulgated by the Supreme Court, the cases falling under the jurisdiction of the Regional Trial Court under this section shall be tried in a judicial region other than where the official holds office.

"In cases where none of the accused are occupying positions corresponding to Salary Grade ’27’ or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officers mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

"The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

"The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

"The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may hereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.
"In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

"Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall at all times be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned."

Section 3. Section 5 of the same decree is hereby amended to read as follows:

"SEC. 5. Proceedings, How Conducted; Decision by Majority Vote. – All three (3) members of a division shall deliberate on all matters submitted for judgment, decision, final order, or resolution.

"The concurrence of a majority of the members of a division shall be necessary to render a judgment, decision, or final order, or to resolve interlocutory or incidental motions."

Section 4. Funding and Appropriations. – The amount necessary to carry out the implementation of this Act shall be charged against the current appropriations of the Sandiganbayan. Thereafter, such sums as may be needed for its full implementation shall be included in the annual General Appropriations Act.

Section 5. Transitory Provision. – This Act shall apply to all cases pending in the Sandiganbayan over which trial has not begun: Provided, That: (a) Section 2, amending Section 4 of Presidential Decree No. 1606, as amended, on "Jurisdiction"; and (b) Section 3, amending Section 5 of Presidential Decree No. 1606, as amended, on "Proceedings, How Conducted; Decision by Majority Vote" shall apply to cases arising from offenses committed after the effectivity of this Act.

Section 6. Separability Clause. – Should any provision of this Act or part hereof be declared unconstitutional, the other provisions or parts not affected thereby shall remain valid and effective.
Section 7. Repealing Clause. – All laws, decrees, orders, and issuances, or portions thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended or modified accordingly.

Section 8. Effectivity. – This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in two (2) newspapers of general circulation.

Approved: April 16, 2015