IBP JOURNAL

APRIL 2011 VOL. 36 NO. 1

The IBP Journal

INTEGRATED BAR OF THE PHILIPPINES

Board of Editors

VOLUME 36 NUMBER 1 (APRIL 2011)

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The IBP Journal (ISSN 0118-9247) is an official publication of the Integrated Bar of the Philippines

Subscription Rates (inclusive of postage):
Php1,000.00 (local), US $20.00 (Foreign Individual), US $25.00 (Foreign Institution)

Editorial Office
Integrated Bar of the Philippines
15 J. Vargas Avenue, Ortigas Center, Pasig City 1600
Telephone: (632) 631-3014/18
Fax: (632) 634-4697
Website: www.ibp.ph Email: journal@ibp.ph

The IBP Journal accepts papers dealing with legal issues and developments as well as socio-economic and political issues with legal dimensions. Only manuscripts accompanied by a soft copy (diskette, CD, e-mail, etc.), including an abstract and the curriculum vitae of the author, shall be accepted.

All papers to be submitted must be signed. The articles published in the IBP Journal do not necessarily represent the views of the Board of Editors. Only the authors are responsible for the views expressed therein.

SYNOPSIS
(The Articles in this Issue)

For this issue, the IBP Journal presents an eclectic selection of articles that presents both traditional and non-traditional analyses of important legal and constitutional issues.

Romeo Raymond C. Santos discusses the nature, basis and utilization of the Internal Revenue Allotment (IRA), which springs from the grant of local autonomy to local government units (LGUs), in "The Internal Revenue Allotment: A Review of Legislative, Executive and Judicial Decisions." He argues that "without the IRA, most local government units would be unable to function adequately. x x x The IRA is also a significant item in the national budget, accounting for 15-20% of expenditures. It is second only to debt servicing in proportion to the national budget." Santos then dissects numerous Supreme Court decisions relating to the IRA.

Florin T. Hilbay engages in the heated reproductive health debate with his piece *"Reproductive Health and Democracy: Some Thoughts on the Struggle for a Secular Republic."* He concludes his presentation by commenting, "The Philippines begins the 21st century with a remarkable opportunity to continue the unfinished revolution of the *Ilustrados* by passing the RH bill. Beyond promoting the rights of women, children and partners, the passage of the bill rekindles the attempts of the early Filipinos to draw a line of separation between faith and reason, public and private, individual conscience and public ethics. This by itself is revolutionary, given the stronghold of illiberalism and dogmatism in Philippine politics and culture. Whether the fires of reason, once rekindled, will finally burn the dead wood of superstition is matter best left to speculation."

In *"The Freedom of Speech "Straitjacket" in Industrial Relations Disputes: Reflections on NUWHRAIN v. Court of Appeals,"* **Pablo R. Cruz** offers an alternative view to one of the articles written by Florin T. Hilbay on a labor case decided by the Supreme Court involving a five-star hotel and its employees. Cruz states that "wittingly or unwittingly, the application of the constitutional rules and standards of free speech castrates the inherent management prerogative of prescribing reasonable rules and regulations for the government of their employees and requiring compliance thereto. That there is a brewing or full-blown industrial dispute or, in the extreme a strike, will not militate against the right of the Hotel to enforce the reasonable rules and regulations it prescribed."

Celeste Marie R. Cruz offers mediation as a viable solution to easing the possible travails faced by married couples in *"Marriage Settlement as Providing for the Process of Mediation (Anticipation and Resolution of Marital Disputes Through Marriage Settlement and Mediation)."* She posits that the combined use of these two legal mechanisms is an efficient policy geared towards the noble goal of bringing about better marital relations.

Clarence Paul V. Oaminal briefly expounds on the must-dos for law enforcement officers in the proper handling of drug-related activities in *"Four Cardinal Principles in Determining Compliance with Prescribed Procedures on the Seizure and Custody of Dangerous Drugs."*

In *"Survey of 2009 Supreme Court Decisions on Property and Land Registration,"* **Eduardo A. Labitag** outlines new decided cases on an important field of law – property.

Lastly, **Carmelo V. Sison** updates us with jurisprudence on tort law in his *"Survey of 2009 Supreme Court Decisions in Human Relations, Torts and Damages."*

The Internal Revenue Allotment: A Review of Legislative, Executive and Judicial Decisions

*Romeo Raymond C. Santos**

The internal revenue allotment (IRA) is a crucial component of local autonomy as envisioned in the 1987 Constitution and Republic Act No. 7160 (the Local Government Code of 1991). Local governments are equipped with additional funds to craft their respective budgets, and implement the programs and projects provided in said budgets. Without the IRA, most local government units would be unable to function adequately; many lack sufficient locally-generated revenues. The IRA is also a significant item in the national budget, accounting for 15-20% of expenditures.[1] It is second only to debt servicing in proportion to the total budget.

Since the effectivity of the Local Government Code in 1992, a sizable corpus of legislative, executive and judicial decisions has accumulated; it reveals the current state of the policy on the IRA.

This paper attempts to present the current state of the law on the IRA.

I. The Nature of the IRA

The IRA or the share of local government units (LGUs) in the internal revenues collected by the national government, is a form of intergovernmental transfer or intergovernmental fiscal transfer, i.e. resources and funds emanating from a higher level of government to a lower level which are intended to supply fiscal inadequacies of the recipient and thereby enable it to deliver mandated services and enhance development.[2] It is a bloc grant, or an all-purpose general allotment to which local government units are entitled. No condition or requirement is attached for the release of a bloc grant.

The IRA is not the only type of intergovernmental transfer to LGUs. Others include shares of LGUs in the proceeds of the national wealth, specific allotments to

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* Ll. B., University of the Philippines College of Law; Researcher, Associate Justices Oscar M. Herrera, Gloria Conti Paras and Celia Lipana Reyes of the Court of Appeals (1994-1997); Legal Officer, Land Bank of the Philippines (1997-1999), Senior Associate, Chato Vinzons-Chato and Eleazar (1999-2004); Chief Political Affairs Officer, Office of Rep. Hermilando I. Mandanas (2005-2010); Completed his thesis for Master of Public Administration, University of the Philippines, specializing on public finance, 2011.

1 See General Appropriations Acts 2001-2010.

2 Asian Development Bank, *Intergovernmental Transfers in Asia: Current Practices and Challenges for the Future,* Paul Smoke and Yun-Hwan Kim (eds.), Asian Development Bank (2002), 21-22.

Virginia tobacco-producing provinces and the calamity fund, which are special purpose grants.[3]

Other countries distinguish between general grants, which serve as equalization funds across one level of local government, and specific grants to less developed local units with low levels of revenue generation.[4]

II. Constitutional Basis of the IRA

The 1987 Constitution contains an entire article on Local Government (Article X), which represents an expansion of local autonomy under the 1973 Constitution.[5] This is borne out by the underlying principles of Article X, namely (1) local autonomy, including both fiscal autonomy and administrative autonomy; and (2) decentralization.

Section 2, Article X grants LGUs the right of local autonomy, providing that: "The territorial and political subdivisions shall enjoy local autonomy." Section 3 lays the basis for a decentralized local government structure, as follows:

"The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative and referendum, allocate among the different local government units their powers, responsibilities and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units."

Fiscal autonomy, a component of local autonomy, is recognized under Section 5 which empowers LGUs to generate their own sources of revenues, and to levy taxes, fees and charges, subject only to such limitations as Congress may provide. This is followed immediately by the provision on the IRA, to wit:

"Local government units shall have a **just share,** as determined by law, **in the national taxes** which shall be **automatically** released to them." (Emphasis supplied)

Inclusion of the IRA in the Constitution suggests that it was intended to bolster the policies of local autonomy and decentralization. Article X begins with

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3 See Title XXXVI, General Appropriations Acts.

4 See Asian Development Bank, *supra:* Indonesia has both revenue-sharing and grant instruments; Regions in India base grants to local governments on specified taxes; they also have income-based formulas for determination of grants. See also Nuria Bosch and Marta Espasa, *Local Government Finance in the European Union* (EU-15), Department of Political Economy and Public Finance, Barcelona Institute of Economics, University of Barcelona (2001). Britain, France, Italy, Spain and Germany all distinguish between general, all-purpose and equalization grants, and formula and data-based, specific grants based on local needs.

5 Significant provisions include Sections 2, 3, 5, 6 and 14, Article X of the 1987 Constitution.

the adoption of said general policies and delves into specifics as it unfolds. There is no reason to include the IRA under Article X unless it was in furtherance of said general policies. This is supported by the structure of Article X. The provision on the IRA follows immediately Section 5 which empowers LGUs to create their own sources of revenues and levy taxes. Such revenues shall accrue exclusively to the local governments.

The tenor of the provision clarifies that the IRA is a demandable and enforceable right on the part of LGUs. The national government must automatically release IRA in full as a matter of obligation without any deduction or holdback. LGUs may properly compel observance of that right by any person or entity in the event of non-observance. Since the IRA emanates from the national government, the provision implies that LGUs may properly sue the national government, through its agents (such as the Executive Secretary on behalf of the President, the Secretary of Budget & Management, and the Secretary of Finance) for the release of IRA. The Supreme Court is enjoined to protect such entitlement.

LGUs enjoy the prerogative to use the IRA pursuant to their autonomy. The national government cannot supersede the authority of LGUs to determine utilization of the IRA.[6] The only exception to this rule is the requirement that at least twenty percent (20%) of IRA should be allocated for local development programs identified under Section 17 of the LGC.

The usage just share may be interpreted in various ways. It was left for Congress to determine the standard for determining compliance with the constitutional mandate of just share. The matter would be more competently addressed by Congress.

III. Legal Basis of the IRA

The principles of decentralization, local administrative and fiscal autonomy, and devolution were adopted in the Local Government Code (LGC), which was enacted pursuant to Section 3, Article X of the 1987 Constitution.[7] The policy of the state or is provided in Section 2 thereof.[8] The LGC, echoing the Constitution, provides that LGUs shall be entitled to a share in the national taxes, also known as the IRA.

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6 The only exception is provided under Section 287 of the Local Government Code, requiring that 20% of IRA be appropriated in the annual local budget for development.

7 Previous legislation on local government include the Local Autonomy Act (RA 2264, providing for a limited measure of local autonomy), the Barrio Charter Act (RA 2379, conferring upon barrios the legal status of quasi-municipal corporations), the Decentralization Act of 1967 (RA 5185, which empowered governors and mayors to appoint local government officers) and the Local Government Code of 1983 (Batas Pambansa Bilang 337), the immediate precursor to the LGC of 1991.

8 Sec. 2. Declaration of Policy. – (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization, whereby local government units shall be given more powers, authority, responsibilities and resources.

Basic Policy

The LGC underscores the value of the IRA as follows:

> "Sec. 18. Power to Generate and Apply Resources. Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenue and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a **just share in national taxes which shall be automatically and directly released to them without need of further action.**" (Emphasis supplied)

Definition and Share of the IRA in National Internal Revenues

Section 284 of the LGC defines the IRA as the shares of local government units in the national internal revenue taxes, as follows:

> "Sec. 284. Allotment of Internal Revenue Taxes. – **Local government units shall have a share in the national internal revenue taxes** based on the collection of the third fiscal year preceding the current fiscal year as follows:
>
> (a) On the first year of the effectivity of the Code, thirty percent (30%);
> (b) On the second year, thirty-five percent (35%); and
> (c) On the third year and thereafter, forty percent (40%).
>
> "Provided, That in the event that the national government incurs an unmanageable public sector deficit, the President of the Philippines is hereby authorized, upon the recommendation of the Secretary of Finance, Secretary of Interior and Local Government and Secretary of Budget and Management, and subject to consultation with the presiding officers of both Houses of Congress and the presidents of the *liga* to make the necessary adjustments in the internal revenue allotment of local government units but in no case shall the allotment be less than thirty percent (30%) of the collection of national internal revenue taxes of the third year preceding the current fiscal year. Provided further, that in the first year of the effectivity of this Code, the local government units shall, in addition to the thirty percent (30%)

> internal revenue allotment which shall include the cost of devolved functions for essential public services, be entitled to receive the amount equivalent to the cost of devolved personal services." (Emphasis supplied)

The share of LGUs in the national taxes collected stands currently at forty percent (40%) thereof. The exception is the existence of an unmanageable public sector deficit in which the President may adjust that proportion upon concurrence of certain requirements. In such case, the IRA may be reduced to 30% of national taxes collected.

The provision also clarifies that the IRA is based on national taxes collected, and not on the total national budget for a fiscal year. Of course, the national budget as provided in the appropriations law is larger than total national internal revenues: the budget takes into account not just national internal revenues but other sources of funding such as external revenues (customs duties, tariffs, etc.), remittances from government corporations, and internal and external borrowing, among others.

Basis of Computation of the IRA

Section 284 is clear that the IRA is based on the tax collections on the third fiscal year preceding the current year. Thus, increased collections for the current year do not translate to increased IRA immediately. A probable reason for the time lag is the need for the national government to make projections in the preparation of the budget: the clearer the pattern of tax collections, the more accurate the computation of IRA. Another is to lessen the burden on a national government that is constrained by a perennial lack of financial resources. Various needs and priorities make conflicting demands on a government that is fiscally ill-equipped to address all of them.

Rationale of the IRA

The IRA plays an important role in local autonomy. Local governments have the right to receive IRA as a means to help defray the costs of their new responsibilities under the Local Government Code.[9] Indeed, Section 3 thereof provides:

> "Section 3. Operative Principles of Decentralization. - The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:
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> XXX XXX XXX

9 Dante B. Gatmaytan, *Cost and Effect: The Impact and Irony of the Internal Revenue Allotment,* 75 Philippine Law Journal 630, 633-634.

> (d) The vesting of duty, responsibility, and accountability in local government units shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions: hence, they shall have the power to create and broaden their own sources of revenue and the right to a just share in national taxes and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas; X X X"

Adjustments in the Internal Revenue Allotment Share

Section 284 provides that the IRA shall be pegged at forty percent (40%) of the national internal revenues; the same rule provides that in the event of an unmanageable public sector deficit, the President may adjust said share, subject to the following requirements:

a. Recommendation of the Secretary of Finance;
b Recommendation of the Secretary of the Interior & Local Government;
c. Recommendation of the Secretary of Budget & Management;
d. Consultations with the Senate President and Speaker of the House of Representatives;
e. Consultations with the Presidents of the various liga of provinces, cities, municipalities and *barangays*;
f. That any adjustments on IRA shall not be less than thirty percent (30%).

The Rules and Regulations Implementing the Local Government Code includes another requirement: that any such adjustment shall be effected only after a corresponding reduction of the national government expenditures including cash and non-cash budgetary aids to government-owned and controlled corporations, government financial institutions, the Oil Price Stabilization Fund, and the *Bangko Sentral ng Pilipinas*.[10] This is a requirement not specifically provided in Section 284 of the LGC.

Allocation to Local Government Units

Section 285 of the LGC provides that provinces shall receive twenty-three percent (23%) of total IRA; cities twenty-three percent (23%); municipalities thirty-four percent (34%); and barangays twenty percent (20%). The share of each province, city and municipality shall be based on a formula of fifty percent (50%) for population, twenty-five percent (25%) for land area, and twenty-five percent (25%) for equal sharing. The formula for barangays is sixty percent (60%) for population, and forty percent (40%) equal sharing.

10 Article 379, Part One, Rule XXXII.

Automatic Release of IRA

Section 286 of the LGC provides how the just share of LGUs in the national taxes shall be released, as follows:

> "Sec. 286. Automatic Release of Shares. – (a) The share of each local government unit shall be released, **without need of any further action,** directly to the provincial, city, municipal or *barangay* treasurer, as the case may be, on a quarterly basis within five (5) days after the end of each quarter, and which shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose. (Emphasis supplied)

This provision echoes Section 6, Article X of the 1987 Constitution, which provides that the just share of LGUs in the national taxes shall be automatically released to them. However, it introduces a few notable qualifications:

a. It qualifies automatic as without need of further action;
b. The share shall be released directly to the provincial, city, municipal or barangay treasurer within five (5) days after the end of each quarter;
c. The share shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose.

In furtherance of Section 286, Section 288 provides that:

> "Section 288. Rules and Regulations. - The Secretary of Finance, in consultation with the Secretary of Budget and Management, shall promulgate the necessary rules and regulations for a simplified disbursement scheme designed for the speedy and effective enforcement of the provisions of this Chapter."

Utilization of the IRA

Section 287 requires LGUs to appropriate in their annual budget at least 20% of IRA for local development projects, as follows:

> "Section 287. Local Development Projects. - Each local government unit shall appropriate in its annual budget no less than twenty percent (20%) of its annual internal revenue allotment for development projects. Copies of the development plans of local government units shall be furnished the Department of Interior and Local Government."

The provision therefore provides an exception to the general rule that LGUs enjoy the prerogative to use their IRA as they see fit.

Disposition of the IRA

Until the enactment of the LGC of 1991, laws on IRA were incorporated into the tax statutes, such as CA 466 and PD No. 144. One attempt at codifying tax laws was PD No. 1158 (1977), otherwise known as the National Internal Revenue Code (NIRC). The NIRC of 1977 incorporated the allotments provided in PD No. 144. This law would be later amended by PD No. 1994 and Executive Order No. 273 (1988). Later amendments were the Comprehensive Tax Reform Act of 1997 (RA No. 8424) and the rate increases in value-added tax in 2005 and 2006.

> "Sec. 283. Disposition of National Internal Revenue. – National internal revenue collected and not applied as herein above provided or otherwise specially disposed of by law shall accrue to the National Treasury and shall be available for the general purposes of the Government, with the exception of the amounts set apart by way of allotment as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.
>
> "In addition to the internal revenue allotment as provided for in the preceding paragraph, fifty percent (50%) of the national taxes collected under Sections 106,[11] 108[12] and 116[13] of this Code in excess of the increase in collections for the immediately preceding year shall be distributed as follows:
>
> "(a) Twenty percent (20%) shall accrue to the city of municipality where such taxes are collected and shall be allocated in accordance with Section 150 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991;[14] 14 and
>
> "(b) Eighty percent (80%) shall accrue to the national government."

In addition to the IRA, cities and municipalities are entitled to receive an additional amount of the increase in collections in various forms of Value-Added Tax (VAT) of the immediately preceding year.

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11 The Value-Added Tax (VAT) on sales of goods and properties.

12 The VAT on sales of services, and use or lease of properties.

13 VAT on persons exempt from VAT.

14 Section 150 defines the situs of local taxes.

iv. Comments on the LGC Provisions on the IRA

Section 6, Article X of the Constitution is reproduced substantially as Section 286 of the LGC, with the additions above discussed. Said additions serve to emphasize that release of the IRA is not discretionary on the part of the national government. Hence, release of IRA is automatic and requires no further action on the part of LGUs. The provision does not contemplate the usual budgetary, fiscal, administrative and legal requirements. In such cases, agencies of the national government, such as the DBM, the DILG or the DOF may require local governments to submit documentary requirements prior to actual release of the IRA.

Section 284 provides the proportion of the national internal revenues to which LGUs are entitled. After the third year of the effectivity of the LGC, LGUs shall be entitled to forty percent (40%) of such revenues. Neither the text of Section 284 nor the Constitution indicates the gauge or standard used in determining this proportion. As above discussed, about the only measure provided under the Constitution is the standard of just share in the national taxes. Whether this was empirically warranted or whether this proportion is in fact in accord with the standard of justice lay within legislative prerogatives.

What standards could be used in determining a certain proportion of national internal revenues for the IRA is in fact, just? The proceedings during the deliberation on the IRA provisions on the proposed draft of the LGC show that Congress came up with the figure arbitrarily, and without any attempt to justify that 40% of national internal revenues is in accord with justice.[15]

Section 284 provides an exception to the rule that IRA may not be diminished, namely, when the national government incurs an unmanageable public sector deficit. In such case, the President may make the necessary adjustments in the IRA subject to the concurrence of: (1) the recommendations of the Secretaries of Finance, Interior & Local Government and Budget & Management, as agents of Congress;[16] (2) consultation with the Senate President and the Speaker of the House of Representatives; and (3) consultation with the presidents of the LGU groups (the *liga*).

Recommendation in Section 284 signifies the factual finding by the concerned Secretaries of the existence of an unmanageable public sector deficit. The significance of consultations lies in the political necessity of prior notice and arriving at a political consensus, and negotiations on such matters as the extent of reduction and duration thereof. Seen also in light of Philippine political history, i.e. Congress enacted the Code roughly six years since restoration of democracy, it would safeguard against capricious exercise of executive prerogative.

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15 House of Representatives, Minutes of the Hearings and Deliberations on the Proposed Local Government Code, 17 May 1990, 17, 24 & 30 January 1991.

16 See *Abakada Guro Party List vs. Ermita, infra.*

Before the 40% share of IRA is computed, the national government deducts from total internal revenues collections amounts mandated under various laws.[17] There have been discrepancies between the 40% share of IRA as computed by the BIR and the DBM, and strict adherence to Section 284 of the LGC. Flores[18] reports that from 1992-1999, the DBM's computation is roughly P5 billion less than the BIR's. The conflicting figures result from what constitutes basic income as defined by the BIR and used as the basis for computation of the IRA.[19] The BIR defined basic income as "the sum of all internal revenue tax collections only during the base year less the amount released during the same year for tax refunds, payments for informer's reward, and any portion of internal revenue tax collections which are presently set aside, or hereafter earmarked under special laws for payment to third persons, such as the amount intended for payment to the Commission on Audit, insurance benefits, etc." Base year refers to the third preceding fiscal year preceding the current fiscal year.[20]

Section 284 may not necessarily provide immediate fiscal relief. The first reason is that the reckoning period is based on the collections of the third fiscal year preceding the allocation for IRA. The base period might be favorable for tax collections yet wholesale application even of a 30% IRA thereon for a budget for enactment three years later might be fiscally inconvenient and burdensome. The second reason is that while the President may declare the existence of an unmanageable public sector deficit, such act could make creditors extremely wary of extending loans to the Philippine government, and might even provoke them into declaring due and demandable all previous obligations owed by the Philippine government. This suggests that the drafters of the Code intended to make it extremely difficult for a President to diminish the IRA.

The absence of a definition of what constitutes an unmanageable public sector deficit is intended to address conflicting needs of the national government and LGUs in extreme cases. The national government may be faced in a situation of balancing conflicting fiscal demands of national and LGUs, in which case, the interests of the national collectivity are deemed superior to local necessities.

In fact, in *Pimentel vs. Aguirre,* the Supreme Court stated that:

"[Under] the Philippine concept of local autonomy, the national government has not completely relinquished all its powers over local governments, including

17 See Title XXXVI, 2010 GAA, and titles of past GAAs under the heading Allocations to Local Government Units. Article 378 of the Implementing Rules and Regulations (IRR) of the LGC mandates the BIR to certify the amount of internal revenue taxes actually realized during the appropriate base year, and DBM to determine the share of LGUs (the IRA) that will be incorporated in the GAA.

18 Atty. Florecita Flores, *A Study of Legal Deductions on the Internal Revenue Allotment for Local Government Units,* unpublished report to the United States Agency for International Development (USAID), Ateneo de Manila University, and Economic Policy Reform and Advocacy (2007). citing Raul G. Bito-on, *A Study on the Legality of Deducting Certain Taxes and Special Levies Before Determining the IRA Shares of the LGU.*

19 Flores, *supra,* p. 6 citing Memorandum dated 14 September 1993, Commissioner Liwayway Vinzons-Chato.

20 *Id.*

autonomous regions. Only administrative powers over local affairs are delegated to political subdivisions. The purpose of the delegation is to make governance more directly responsive and effective at the local levels. In turn, economic, political and social development at the smaller political units is expected to propel social and economic growth and development. But to enable the country to develop as a whole, the programs and policies effected locally must be integrated . . . towards a common national goal."

These statements clarify the bounds of local autonomy: while LGUs enjoy this privilege, they remain alter egos of the national government. In the event of conflict between the broader national interests and localized needs, the former will still prevail.[21]

The minutes of the Bicameral Conference Committee[22] show that Senator Aquilino Q. Pimentel was the original proponent of the measure. He felt that it would *"give some flexibility to the national government to address certain . . . movements in the matter of deficits that we might not be able to foresee at the present."* Some members of the Committee, especially Senators Pimentel, Emilio R. Osmeña, and Rene A.V. Saguisag were insistent on the inclusion of a standard as basis for determining the existence of an unmanageable public sector deficit. In the end, the panel agreed with Rep. Exequiel Javier that using a standard would be difficult: what could be manageable at present might not be manageable in the future. The panel resolved to omit any reference which would allow for greater flexibility for the national government.[23] The same minutes also do not reflect the complicated recommendations and consultations except for the recommendation of the DOF which Sen. Pimentel originally proposed. There had been no disputes or issues raised on the constitutionality of the measure since no President had never attempted to reduce the IRA under Section 284.

The Constitution does not specifically provide for a set formula and allocation. As with the share of the IRA in national taxes, these were left for Congress to decide. However, the minutes of the proceedings in Congress show that the formula was a carry-over from Presidential Decree No. 144, which identified the same criteria, population, land area, and equal sharing although at different proportions. The minutes of the proceedings also do not show that Congress took into account the very purposes of IRA, namely, to achieve local fiscal autonomy and to equalize development. Congress did not employ empirical criteria in the deliberations; neither did Congress compare the existing policy in other countries that could have improved the distribution and formula under PD No. 144. The silence of the Constitution on a formula and allocation of the IRA indicates that Congress may in the future supplant the IRA with some other grant to LGUs without depriving LGUs of their rightful

21 See also Magtajas vs. Pryce, GR No. 111097, 20 July 1994; Laguna Lake Development Authority vs. Court of Appeals, GR No. 120865-71, 7 December 1995.

22 28 May 1991, pp. 1-15.

23 The LGC was enacted during the administration of President Corazon C. Aquino in 1991: the EDSA Revolution had taken place just more than five years before approval of the LGC.

share in the national taxes and without violating this basic provision.

Section 286 requires predictable and timely release of the IRA. If seen in relation to Section 284 i.e., tax collections in the third preceding fiscal year, the requirement for predictability becomes clear.

Section 287 requires LGUs to appropriate in their annual budget (not the IRA itself) at least 20% of the IRA for local development projects, with a listing in Section 17 of the LGC. The so-called 20% development fund is actually a carryover from PD No. 144, rather clumsily worded as: "Each province, city and municipality shall appropriate in its annual general fund budget no less than twenty per centum (20%) of its annual allotment for development projects."[24] The essential difference between the Section 287 of the LGC and PD No. 144 is the inclusion of barangays in the former, with the all-inclusive clause "[E]ach local government unit." Legislative deliberations do not show that the provision was tackled. This suggests that Congress felt that the 20% figure sufficiently addresses the developmental needs of LGUs and copied, as with other IRA provisions, previous legislation.

The formula for distributing the IRA among LGUs under Section 285 is based on land area, population and equal sharing among a class of LGUs. This assumes that LGUs with large areas and populations might need larger financial assistance from the national government. Hence, the formula is biased in favor of provinces with relatively large territories, and those with large populations. It is also biased against provinces small in both land area and population. Unfortunately, the smaller provinces tend to have less capacity for generating their own revenues and higher incidences of poverty. There have been proposals to reexamine the formula based on population density, income class and incidence of poverty as a way to ensure equitability.[25] On the other hand, using income class and poverty incidence as factors might provide a disincentive for LGUs to be fiscally self-sufficient.

Further, entitling cities to 23% of the entire IRA as against 34% for municipalities shows a clear bias in favor of cities. The number of municipalities stands at over 1,500, with cities at 137. Obviously, apportioning the respective shares of cities and municipalities in the IRA would yield higher proportions for each city. Some municipalities therefore sought conversion into cities.

Aside from the formula and the bias of the LGC in favor of cities, other policy issues continue to haunt the IRA. Despite the legislative intent to enhance local autonomy through the IRA, LGUs remain dependent on the IRA.[26] This suggests

24 Paragraph 6, PD No. 144.

25 See Ebinezer Florano, *Towards an Equitable Distribution of the IRA: A Policy Analysis* (1995).

26 For instance, Sulu, Kalinga, Eastern Samar and Davao Oriental derived more than 90% of their revenues from the IRA in 2008 (Bureau of Local Government Finance). More affluent provinces such as Cebu and Tarlac derived 57% of revenues from the IRA. The share of the IRA in total revenues in the cities of Sipalay, San Carlos (Pangasinan), Gingoog and Puerto Princesa for the same year exceeded 80%. In contrast, the proportion of IRA to total revenues in Pasay and Pasig was less than 12%. The IRA of Makati accounted for only 5% of total revenues.

that LGUs failed to exploit the revenue generating measures provided in the LGC and that the IRA as a bloc grant has had a disincentive effect of local revenue generation and tax administration. Dependence can make LGUs vulnerable to executive manipulation. Dependence on the IRA is most apparent in the number of municipalities that have sought conversion into cities.[27] Conversion suggests that the IRA has been used to augment local revenues rather than improving tax administration. Hence, the number of cities rose from 61 in 1977 to 137 prior to the latest ruling of the Supreme Court in the *League of Cities* case.[28] None of the sixteen new cities in that case would have qualified for conversion under RA No. 9009. Their respective charters exempted the new cities from the income requirement of RA No. 9009.

Senator Aquilino Q. Pimentel disclosed that the original requirement on income for municipalities seeking conversion into cities, namely, P20 million in 1991[29] should be based on locally generated funds, i.e., without adding on to it the incoming funds allocated by the Code as their internal revenue share.[30] He pinned the blame on the executive department and LGUs which both interpret the income requirement as inclusive of the IRA.[31] Yet from a statist point of view, the fact remains that the Supreme Court in Alvarez vs. Guingona[32] had ruled that the IRA should be included in the computation of income for purposes of conversion into cities. To counteract the increase in the number of cities, Senator Pimentel proposed the enactment of a law increasing the income requirement in the conversion of cities from P20 million to P100 million. The outcome was the re-enactment of RA No. 9009 in 2001. Yet the second decision of the Supreme Court in the *League of Cities* case strongly suggested that more exceptions to the general rule under RA No. 9009 would be allowed.

v. Legislative and Executive Decisions on the IRA

The Constitution mandates provision for the IRA which is actualized through the Local Government Code and funded through appropriations laws. The LGC and the General Appropriations Acts (GAAs) are enactments and decisions of Congress. The executive department allocates and distributes the IRA, an item in

27 See Rosario G. Manasan *IRA Design Issues and Challenges, Philippine Institute for Development Studies,* Policy Notes, No. 2007-09, December 2007; Gilberto M. Llanto, *Fiscal Decentralization and Local Finance Reforms in the Philippines,* Discussion Paper Series No. 2009-10, Philippine Institute of Development Studies.

28 National Statistical Coordination Board, at http://www.nscb.gov.ph/factsheet/pdf07/FS-200712-PP2-01.asp, which noted the conversion into cities of Tayabas, Quezon; Carcar and Naga, Cebu; Guihulngan, Negros Oriental and Cabadbaran, Agusan del Norte. The other new cities are the eleven others in the *League of Cities* case.

29 Privilege Speech, 6 September 2006: Senator Pimentel said 1991 was the year when the LGC took effect. In truth, it took effect on 1 January 1992.

30 This should also include shares in the national wealth.

31 Sen. Pimentel did not make reference to *Alvarez vs. Guingona, infra,* where the Supreme Court held that the IRA should be included in the computation of income for purposes of conversion into cities because the IRA is a recurring income. If there was collusion between the executive and the LGUs, the Supreme Court merely gave its imprimatur. If there was none, LGUs can take comfort in the fact that the Supreme Court gave jurisprudential basis for their aspirations to cityhood.

32 GR No. 118303, 31 January 1996.

the budget, by disbursing it, and exercises some supervision over LGUs relative to utilization of the IRA.

The GAA and the Reenacted GAA

Former President Joseph Ejercito Estrada submitted the NEP to Congress for Fiscal Year 2000. He proposed therein an IRA in the amount of P121.778 billion. Estrada later approved the GAA for 2000, with an IRA therein of only P111.778 or P10 billion less than that of the NEP. In another part of the GAA under the heading Unprogrammed Fund, P10 billion was identified for use to fund the IRA, which amount would be released only when the original revenue targets submitted by the President to Congress can be realized based on a quarterly assessment to be conducted by the Senate Committee on Finance, the House Committee on Appropriations and the Development Budget Coordinating Committee (DBCC). The Supreme Court would later invalidate segregation of said P10 billion from the rest of the IRA as unconstitutional in *ACORD vs. Zamora.*[33]

Approval of the budget is vulnerable to political tensions between or among the President, the Senate and the House of Representatives. In anticipation of the possible failure of Congress to approve the budget bill and the President to sign it into law, the Constitution provides a built-in guarantee for the normal flow of the operations of government: the reenacted budget. Section 25(7), Article VI provides that "(i)f by the end of any fiscal year, the Congress shall have failed to pass the general appropriations law for the ensuing fiscal year, the general appropriations law for the preceding fiscal year shall be deemed reenacted and shall remain in force and effect until the general appropriations bill is passed by the Congress." This provision is incorporated into the GAA, thereby authorizing reenactment.

Reenactment poses an issue insofar as budgeting for the IRA is concerned. Since national internal revenue collections vary yearly, and since the IRA is based on tax collections on the third preceding fiscal year, the IRA under the reenacted budget may not correspond to the proportion provided under Section 284 of the LGC. In the past decade, the budget was reenacted three times, resulting in a shortfall of the IRA in the amount of P20 billion.[34] President Gloria Macapagal Arroyo sought to address this by issuing Executive Order No. 494 on 18 January 2006. Congress later inserted a provision in the 2007 GAA addressing this variance.

Congress sought to address the problem by approving the Supplemental Budget of 2006. Congress denominated the differential as Allocation to Local Government Units (ALGU-IRA), providing that *"[ALGU-IRA] is considered automatically appropriated. Future local government share (sic) in the national internal revenue taxes or IRA shall henceforth be automatically appropriated."* This provision removes the IRA from congressional discussion as is the case of debt repayments or servicing, thereby facilitating approval

33 GR No. 144256, 8 June 2005.

34 See Manasan (2007); GAAs 1998-2005.

of the budget. However, it failed to lay the basis for the computation of the IRA. It is also not clear whether a supplemental budget could lawfully bind general appropriations acts in the future. It may also be construed as preventing Congress from fully exercising its appropriations and oversight powers over executive agencies involved in the computation, release, and distribution of the IRA. Whether the computation for the IRA is correct, and whether the national government might diminish the IRA through the use of administrative techniques or subject its release to conditions, could now be interpreted as beyond debate. Hence, the clause might be interpreted as collusion between Congress and the executive. Previously, Congress illegally permitted the diminution of the IRA by including a portion in the unprogrammed fund.[35]

Executive Action and Executive-Legislative Collaboration on the IRA

The national government has not always been transparent in computing the IRA. The following discussion tackles suspect measures of the national government.

1. Withholding Part of the IRA

President Fidel V. Ramos attempted to stave off the effects of the Asian financial crisis of 1997 by issuing Administrative Order No. 372 in December 1997, requiring LGUs to limit expenditures of the IRA. Ramos was motivated by the goal to match expenditures with available resources, which were presumably depleted at the time due to economic difficulties brought about by the depreciation of the peso.

AO No. 372 provided that: (1) all government agencies, state universities and colleges, government-owned and controlled corporations, and local government units to reduce total expenditures by at least twenty-five percent (25%); and (2) the national government withhold ten percent (10%) of the IRA of LGUs pending assessment and evaluation by the DBCC of the emerging fiscal situation. Some P10 billion in IRA was withheld from LGUs. Estrada would later issue AO No. 43 in December 1998, lowering to five percent (5%) the amount to be withheld from the IRA. The Supreme Court would later invalidate the two orders as unconstitutional in the case of Pimentel vs. Aguirre.[36]

2. Administrative Measures to Reduce the IRA

In December 1998, President Estrada issued Executive Order No. 48 establishing a program for devolution adjustment and equalization through a fund to be sourced from availing savings of the national government for 1998. The fund was to be administered by an ad hoc administrative entity known as the Oversight Committee on Devolution (OCD). The required amount was to be incorporated in the 1999 GAA and succeeding years. The 1999 GAA renamed the above fund as the

35 See *Batangas vs. Romulo* and *ACORD vs. Zamora.*

36 GR No. 132988, 19 July 2000.

Local Government Service Equalization Fund (LGSEF) amounting to P5 billion, which was taken from the total IRA share of LGUs. Release was subject to rules issued by OCD, which accordingly issued resolutions providing for a tranche-by-tranche release of LGSEF following the prorated share of each LGU under the Local Government Code. The OCD required LGUs to submit project proposals which it would approve.

LGUs did not receive their shares in the P1 billion LGSEF; neither the Executive Secretary nor the President were clear how the remaining P2.5 billion in 2000 would be distributed and released. The constitutionality of the above provision of the 1999 GAA was later challenged before the Supreme Court, which invalidated it in *Province of Batangas vs. Romulo.*[37]

This experience was not isolated. From 1994-1997, Congress approved de facto revisions in the IRA through the GAA. In 1994, fifty percent (50%) of the actual Cost of Devolved Functions (CODEF) and the cost of city-funded hospitals existing as of 31 December 1992 were deducted from the IRA. Only upon deduction of CODEF was the IRA allocated and distributed to LGUs. The same tactic was used in 1995, (100% of CODEF), 1996 (50%), and 1997 (100%).[38]

3. Installment Payment of Unreleased IRA

In order to comply with the Supreme Court's decision in the ACORD case, President Arroyo issued on 18 January 2006, EO No. 494 (*Release of Unprogrammed Internal Revenue Allotment (IRA) in CY 2000 and 2001 Amounting to P17.5 Billion*). Under EO No. 494, the President recognized the Court's ruling declaring that placing portions of the IRA totaling P20 billion under Unprogrammed Funds in the GAAs for 2000 and 2001 was unconstitutional. EO No. 494 states that of the P20 billion, only P2.5 billion had been released, leaving an unreleased balance of P17.5 billion: *"in accordance with the constitutional mandate, the President has agreed to release to local government units the IRA balance of 17.5 billion* (sic)."

The perambulatory clauses of EO No. 494 state:

> "WHEREAS, Section 6 of Article X of the Constitution guarantees that local government units (LGUs) shall have a just share, as determined by law, in the national taxes which shall be automatically released to them;
>
> "WHEREAS, portions of the IRA appropriated for CYs 2000 and 2001 totaling P20 Billion were set apart and placed under Unprogrammed Fund;

37 GR No. 152774, 27 May 2004.

38 GAAs of the referenced years.

"WHEREAS, in the case of Alternative Center for Organizational Reforms, et al. vs. Hon. Ronaldo Zamora, et al (GR No. 144256), the Supreme Court held that setting apart portions of the IRA to form part of Unprogrammed Fund was unconstitutional;

"WHEREAS, of the said P20 Billion IRA that was placed under Unprogrammed Fund, only P2.5 Billion has so far been released to local government units leaving an unreleased balance of P17.5 Billion;

"WHEREAS, the Secretary of Justice has issued Opinion No. 50, Series of 2005, clarifying that in view of the Supreme Court declaration of the unconstitutionality of the withholding of the IRA balance of P17.5 Billion, such funds should now be released to the local government units;

"WHEREAS, in accordance with the constitutional mandate, the President has agreed to release to local government units the IRA balance of P17.5 Billion without disrupting the fiscal targets of the country to manage the budget deficit and maintain macroeconomic stability.

EO No. 494 provided that:

a. The DOF, DBM and DILG shall take necessary steps to ensure that LGUs receive their respective shares from the P17.5 billion Unprogrammed IRA in 2000 and 2001 on installment basis for a period of seven (7) years from 2007 to 2013, or avail in advance their respective shares from the unreleased IRA through a monetization program thereunder;[39]

b. Under said monetization program, as initiated by the various Leagues,[40] LGUs have the option to collect in advance from the trustee bank their shares from the unreleased IRA at a discounted value, net of interest and other charges;[41]

c. The DBM shall determine the share of each LGU in the unpaid IRA on the basis of the IRA formula under the LGC and issue the corresponding notice of payment schedule to inform LGUs of their share and the schedule of payment;[42]

d. The DOF shall confirm that the P17.5 billion is an obligation of the Republic of the Philippines; that it shall process and implement the monetization program;[43]

39 Section 1.

40 The Leagues of Provinces, Cities and Municipalities, and the Liga ng mga Barangay.

41 Section 2.

42 Section 3.

43 *Id.*

e. The DILG shall provide assistance to the LGUs opting to monetize the fund, and inform DBM which LGUs will avail of the program.[44]

Some P2 billion of the amount was included in the 2007 GAA and P2.5 billion in the 2008 GAA.[45]

The measure is dubious on several counts. First, the President failed to identify the source of funding for the disbursement and release of the IRA. There is no basis in the national budget for its release, and neither did Congress authorize its release from the national treasury at the time of its issuance. If EO No. 494 suggests that the President is empowered to release funds from the national treasury, it would be unconstitutional. Second, the executive order said nothing of unearned interest from the time of withholding the IRA until actual receipt by LGUs of the amount due them. Third, the release of the IRA is subjected to the monetization scheme that not only diminishes the IRA but also subjects it to installment payments over a seven-year period: this is contrary to the automatic release under the LGC and the Constitution. Last, the lawfulness of using other government funds for the purpose of complying with the decision of the Supreme Court in the ACORD case is doubtful: existing funds even in trustee banks may only be used for the purpose for which they are intended. The President carefully withheld identifying which particular funds shall be used for the purpose thereby skirting any responsibility and instead, passing it on to subordinates. No party seems to have disputed the validity of EO No. 494.

At any rate, Congress has included payment of the P17.5 billion in IRA arrears in the budget since 2007. No one has disputed the validity of this provision of the GAAs.

Conversion of Municipalities into Cities and Attempts to Limit Further Conversion

The number of cities in the Philippines has risen steadily through the years: from 61 in 1977, it has grown to 137. The trend accelerated in the 1990s with the conversion of more than fifty municipalities.[46] Most are classified as component cities. The exception to the trend is Dasmariñas, whose 2007 population exceeded 500,000, larger than many existing cities such as Olongapo and Baguio. It was converted into a city only in 2009 notwithstanding its qualification for conversion way before that year. Conversion ensures larger revenues for the LGU in view of the allocation system in Section 285 of the LGC.

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44 *Id.*

45 See Title XXXVII of 2007 and 2008 GAAs.

46 The status of Vigan as a chartered city was recognized in RA No. 8988 entitled *An Act Validating and Recognizing the Creation of the City of Vigan by the Royal Decree of September 7, 1757, Issued by Fernando VI, King of Spain.*

Until 2001, the statutory basis of creation of cities was as follows:

> "SEC. 450. Requisites for Creation. - (a) A municipality or a cluster of barangays may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least Twenty million pesos (P20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisites: (i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Lands Management Bureau; or, (ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office: Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein. X X X "

The number of cities rose soon after the enactment of the LGC. During the 11th Congress (1998-2001) alone, Congress enacted into law thirty-three (33) bills converting municipalities into cities including Sipalay, Valencia (Bukidnon), Cauayan, Muñoz, and Bayawan. This was fortified by the Supreme Court's ruling in Alvarez vs. Guingona that the IRA should be counted for the income requirement for purposes of conversion.

Sen. Pimentel would later state that when the LGC took effect in 1992, few municipalities had income of at least P20 million.[47] If a 5% inflation rate per annum is assumed, the present equivalent of P20 million in 1992 would be almost P100 million. Pimentel said that the original intent was that the income requirement would constitute only locally-sourced revenues, and blamed the executive and LGUs for interpreting income as inclusive of the IRA. The minutes do not show any reason for the adoption of the P20 million income requirement. If Pimentel's statements are true, there was a conscious effort in Congress to limit the number of cities that could weaken distribution of the IRA.

The situation held until 2001 with the approval of RA No. 9009 amending Section 450 of the LGC; the new law eliminated the ambiguity. Section 1 thereof provides:

> SEC. 1. Sec. 450 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, is hereby amended to read as follows:

47 Privilege Speech, *We Must Adopt a Non-Partisan Policy on the Creation of Cities,* 11 September 2006.

> "SEC. 450. Requisites for Creation. – (a) A municipality or a cluster of barangays may be converted into a component city if it has a locally generated average annual income, as certified by the Department of Finance, of at least One hundred million pesos (P100,000,000.00) for the last two (2) consecutive years based on 2000 constant prices, and if it has either of the following requisites: (i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or (ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.
>
> "The creation thereof shall not reduce the land area, population and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.
>
> "(b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two or more islands.
>
> "(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income."

RA No. 9009 made it clear that for purposes of conversion of a municipality into a city, the IRA would no longer be included in the computation of its total revenues. The municipality must have locally generated revenues based on 2000 constant prices that are at least P100 million. The municipality must have a contiguous land area of at least 100 square kilometers, although this requirement would not apply if the territory is composed of one or more islands. Its population must be at least 150,000 as certified by the NSO.

In the meantime, Congress created 33 new cities during the 11th Congress but did not act on bills converting 24 other municipalities. During the 12th Congress (2001-2004), Congress enacted RA No. 9009, which took effect on 30 June 2001. The lower house of the 12th Congress adopted Joint Resolution (JR) No. 29, exempting from the P100 million income requirement in RA No. 9009 the 24 municipalities whose conversions were not approved during the 11th Congress. The 12th Congress ended without the Senate's approval of JR No. 29.

During the 13th Congress, the lower house readopted JR No. 29 which the Senate failed to approve. Upon advice by Sen. Pimentel, sponsors of the 16 municipalities filed individual bills with common provisions for exemption from the minimum income under RA No. 9009. The bills lapsed into law without the President's signature.[48] Eventually, the constitutionality of these laws was disputed in the Supreme Court after existing cities saw large cuts in their IRA: this was the League of Cities case discussed below.

Congress passed RA No. 9009 in an attempt to limit the number of cities, even if it ignored socio-economic and governance indicators in the equation that could have served as a prelude in reforming the mindset of LGUs. However, Congress approved the conversion of sixteen municipalities by way of exception from the requirements of that law.[49] When the sixteen cityhood laws were enacted, there was as yet no judicial precedent to weigh the validity of the exemption of the municipalities from income requirement under RA No. 9009.

Analysis

Legislative and executive decisions on the IRA have not always been consistent with the mandate of the Constitution to promote decentralization and local autonomy. One way through which the two political departments of government disregard the rights of LGUs to the automatic release of the IRA in their legally mandated share has been its diminution.

The chronic budget deficit of the national government partly accounts for the legislative-executive manipulation of the IRA.[50] This suggests that the national government finds it convenient to impair the IRA one way or the other to suit its own fiscal needs. Political expedience is also involved in creation of new cities. The simplistic requirements for conversion into a city say nothing about local tax collection efforts, quality of governance and improvement in socio-economic indicators. Thus, despite the constitutional intent that the IRA be used as a tool to foster local autonomy and development, the IRA had been viewed as the cure-all for local fiscal problems. The IRA, due to its nature as a bloc grant, bred a dole-out mentality, totally in opposition to the notion of local autonomy.[51] In fact, the vast majority of

48 The municipalities converted into cities were (1) Baybay, Leyte; (2) Bogo, Cebu; (3) Catbalogan, Western Samar; (4) Tandag, Surigao del Sur; (5) Borongan, Eastern Samar; (6) Tayabas, Quezon; (7) Lamitan, Basilan; (8) Tabuk, Kalinga; (9) Bayugan, Agusan del Sur; (10) Batac, Ilocos Norte; (11) Mati, Davao Oriental; (12) Guihulngan, Negros Oriental; (13) Cabadbaran, Agusan del Norte; (14) Carcar, Cebu; (15) El Salvador, Misamis Oriental; and (16) Naga, Cebu.

49 Nine municipalities, including Imus, Cabuyao, Marilao and Biñan were qualified for conversion in 2008 yet remain municipalities. San Juan in Metro Manila, lacked the land area and population required for conversion yet Congress approved its conversion in 2007 (RA No. 9388).

50 See Diokno, *infra*. See also Congressional Planning and Budget Department, House of Representatives, Policy Advisory 2009-02, *Public Sector Governance and Decentralization in the Philippines,* by Romulo Miral, Jr. (2009).

51 See J. Prospero E. De Vera, *In Defense of the Pork Barrel,* Actions for Economic Reforms, at http://www.aer.ph/index.php?option=com_content&task=view&id=22&Itemid=43 (2001). The IRA may be compared to pork barrel in this context.

LGUs remain dependent on the IRA.[52] While ostensibly intended to promote local autonomy, the IRA also promoted a symbiotic and dependent relationship between national and local governments.[53]

VI. Jurisprudence on the IRA

There have been six decided cases relevant to the IRA that spawned eight decisions from the Supreme Court. Three of these decisions involved the policy on local fiscal autonomy, and the intent to keep the IRA intact and available: (1) *Sen. Aquilino Q. Pimentel vs. Executive Secretary Alexander Aguirre, et al;*[54] (2) *Province of Batangas vs. Executive Secretary Alberto Romulo, et al.*[55] and (3) *Alternative Center for Organizational Reforms, Inc. (ACORD), et al. vs. Executive Secretary Ronaldo Zamora, et al.*[56]

Two cases involved the conversion of municipalities into cities, an act that only Congress may approve. Conversion into a city requires compliance with a minimum income requirement; any law should take this into account. Because conversion into cities translates to larger IRA shares, LGUs have fought vigorously to maintain their new status. In the case of *Sen. Heherson T. Alvarez vs. Hon. Teofisto Guingona, et al.,*[57] the Supreme Court ruled that the IRA should be included in the income requirement as it is a recurring source of income and as such, may be susceptible to accurate forecasting. In its third decision in League of Cities of the Philippines vs. Commission on Elections, the Supreme Court held that Congress cannot validly exempt certain municipalities from the income requirement under the LGC as amended by RA No. 9009, since the latter law does not make any exception from the income requirement for purposes of conversion into cities.[58] Said third decision was actually a reversal of the controversial second decision, where the Supreme Court held that Congress could validly exempt certain municipalities from the income requirement under the LGC as amended.[59] The first or original decision, was in effect, affirmed in the third decision.[60]

A sixth case, *Hon. RTC Judges Mercedes G. Dadole, et al. vs. Commission on Audit,*[61] involved the constitutionality of a ruling of the respondent agency disallowing the grant to judges of allowances sourced from the IRA. The Supreme Court held that the Constitution does not prohibit the grant of such allowances.

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52 Newsbreak Magazine, IRA Formula Makes Local Governments Complacent, 27 September 2007, accessed on 30 June 2008. http://www.newsbreak.com.ph/democracyandgovernance/lgu_iraformula.htm

53 See Gatmaytan at footnote 11.

54 GR No. 132988, 19 July 2000.

55 55 GR No. 152774, 27 May 2004.

56 GR No. 144256, 8 June 2005.

57 GR No. 118303, 31 January 1996.

58 GR No. 176951, 24 August 2010.

59 GR No. 176951, 21 December 2009.

60 GR No. 176951, 18 November 2008.

61 GR No. 125350, 3 December 2002.

A. The Constitutional Intent

At the heart of the IRA is local autonomy. Automatic release of the IRA was intended to guarantee and promote local autonomy, as evident in the proceedings of the 1986 Constitutional Commission, with Jose N. Nolledo and Regalado M. Maambong discussing the point, quoted in Batangas.

> "MR. MAAMBONG. X X X [U]nder Article 2, Section 10 of the 1973 Constitution, we have a provision which (sic) states:
>
> "The State shall guarantee and promote the autonomy of local government units, especially the barrio, to insure their fullest development as self-reliant communities.
>
> X X X
>
> "Also, this provision on "automatic release of national tax share" points to more local autonomy. Is this the intention?
>
> "MR. NOLLEDO. Yes, the Commissioner is perfectly right. The concept of local autonomy was explained [by the Supreme Court] in Ganzon v. Court of Appeals in this wise:
>
> > "As the Constitution itself declares, local autonomy "means a more responsive and accountable local government structure instituted through a system of decentralization. The Constitution . . . . 'liberate[s] the local governments from the imperialism of Manila.' Autonomy, however, is not meant to end the relation of partnership and interdependence between the central administration and local government units, or otherwise, to usher in a regime of federalism.
> >
> > X X X
> >
> > "Under existing law, local government units, in addition to having administrative autonomy . . . enjoy fiscal autonomy as well. Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities. It extends to the preparation of their budgets . . . They are not formulated at the national level and imposed on local governments, whether they are relevant to local needs and resources or not . . .
> >
> > "Further, a basic feature of local fiscal autonomy is . . . automatic release of the shares of LGUs in the national internal revenue."

The logical ordering of the governance principles therefore, is decentralization, local autonomy, local administrative autonomy, local fiscal autonomy, the IRA and its automatic release. Local autonomy can be actualized through automatic release of the IRA to LGUs: political, monetary, and social ties do not matter. The Supreme

Court in *ACORD vs. Zamora* laid down the basis for local autonomy: national officials should comply with the constitutional provisions on local autonomy and appreciate the spirit and liberty upon which these provisions are based.

If Congress imposes additional requirements on LGUs to claim their IRA, this would violate the Constitution. If the executive employs informal norms or bureaucratic wrangling to deprive LGUs of their IRA, it would also transgress the constitutional intent. Congress cannot pass laws that prevent the executive from releasing the IRA automatically. Otherwise, the President may disregard the Constitution since he must execute the law; this would make the Constitution amendable by law.[62]

If the framers intended to make the release of IRA conditional instead of automatic, Section 6, Article X would have been worded differently. It would have read:

> Local government units shall have a just share, as determined by law, in the national taxes which shall be [automatically] released to them as provided by law, or,
>
> Local government units shall have a just share in the national taxes which shall be [automatically] released to them as provided by law, or
>
> Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them subject to exceptions Congress may provide.[63]

Under Section 6, Article X, only the just share of LGUs is qualified by the words as determined by law and not its release. It means that Congress is not authorized to impede the automatic release of the IRA. The provision does not mean that only the executive branch is obliged to release the IRA automatically such that Congress can enact laws withholding IRA. Even if other statutes or implementing rules assist in the correct interpretation of the LGC, courts may ignore them and resort to a plain interpretation of the LGC and to the constitutional animus.[64] In *Tañada v. Cuenco,*[65] cited in *ACORD,* the Court held:

> "[W]here the meaning of a constitutional provision is clear, a contemporaneous or practical . . . executive interpretation thereof is entitled to no weight . . . The reason is that "the application of the doctrine of contemporaneous construction is more restricted as applied to the interpretation of constitutional provisions than when applied to statutory

62 *Batangas, supra.*

63 *Id.*

64 *ACORD vs. Zamora, supra.*

65 103 Phil. 1051, 1075-1076 (1957).

> provisions," and that "except as to matters committed by the constitution itself to the discretion of some other department, contemporaneous or practical construction is not necessarily binding upon the courts, even in a doubtful case." Hence, "if in the judgment of the court, such construction is erroneous and its further application is not made imperative by any paramount considerations of public policy, it may be rejected."

The Limits of Presidential Power

The Supreme Court defined the extent and limits of the President's power in *Sen. Aquilino Q. Pimentel, Jr. vs. Hon. Alexander Aguirre and Hon. Emilia Boncodin (Roberto Pagdanganan, Intervenor)*.[66]

To recall, President Fidel V. Ramos issued AO No. 372 providing for adoption of economy measures in government for fiscal year 1998. Section 1 advised all departments and agencies of government, and LGUs to implement measures reducing total expenditures for the year by 25% of authorized regular appropriations for non-personal services for the coming year. Section 4 withheld 10% of the IRA of LGUs pending assessment and evaluation by the DBCC. Subsequently, President Joseph E. Estrada issued AO No. 43, amending Section 4 of AO No. 372, reducing to 5% the amount of IRA to be withheld.

Sen. Pimentel assailed the validity of Sections 1 and 4 (as amended) of AO No. 372, claiming that the order was issued in grave abuse of discretion: the President sought to control LGUs rather than exercise mere supervision, which was unconstitutional. Further, diminishing the IRA and subjecting its release to DBCC's discretion was violative of the Constitution.

The Supreme Court held that Section 1 was merely advisory: it does not impose any authority on the President to take legal action against LGUs that do not comply therewith. It would be desirable if LGUs heed the President's call for unity, solidarity, and teamwork to help avert or alleviate the crisis. The Court delved into the constitutional intent behind the statute, and identified that a basic feature of local fiscal autonomy is the automatic release of the IRA. The LGC specifies further that the release shall be made directly to the LGU concerned within five days after every quarter of the year and shall not be subject to any lien or holdback that may be imposed by the national government for whatever purpose. As a rule, the term "shall" is a word of command: the provision is therefore imperative.[67] The Court therefore sustained its validity.

Section 4 of AO 372 however, orders the withholding of 10% of the LGUs' IRA pending the assessment and evaluation by the Development Budget Coordinating Committee of the emerging fiscal situation. This violates the Constitution and the

66 GR No. 132988, 19 July 2000.

67 *Pimentel vs. Aguirre, supra.*

law. Although temporary, it is equivalent to a holdback. The temporary nature of the retention did not matter; any retention is prohibited. It also amounts to control over LGUs because the President interferes with local budgeting processes. The President's power over LGUs is supervision ensuring that they comply with the laws but never to impose control.[68]

The ruling clarifies that:

a. LGUs may demand automatic release of the IRA is a matter of right.
b. The IRA shall not be subject to any lien or holdback; it cannot be diminished by the President or his departments and offices or retained for whatever purpose.
c. Release of the IRA cannot be subject to the approval of the President, Congress, much less of the DBCC, or similar executive body, nor subject it to any condition, in which case, release would no longer be automatic.
d. The President's power of supervision over LGUs does not include the power to interfere in the formulation of the local budget which is the power to control. The President may only correct the errors of LGUs and require them to be undone for purposes of complying with the law.

The Limits of Congressional Power

If *Pimentel* defined the limits of Presidential power, *Batangas* and *ACORD* clarified Congress' appropriations power over IRA.

1. **Batangas vs. Romulo:** The case involved the validity of Executive Order (EO) No. 48, which, through the GAAs lopped off P5 billion in IRAs by renaming a portion thereof as the Local Government Service Equalization Fund (LGSEF). The issue was whether the provisions of the 1999, 2000 and 2001 GAAs on LGSEF and the disputed resolutions of the Oversight Committee on Devolution (OCD) are valid. The Court, even if supervening events rendered the petition moot and academic, decided to issue a ruling: the acts complained of are "capable of repetition yet avoiding review." The GAAs in the coming years may contain provisos similar to those sought to be voided.

The Supreme Court was guided by the declaration of policy (Section 2 of the LGC) and the Constitution's mandate on automatic release of the IRA to LGUs in resolving the issue:

68 See Tiffany Mae Guiza, *Examining the Constitutionality of AO No. 372: Keeping Fiscal Autonomy of Local Governments in Check,* Juris Doctor Dissertation, School of Law, Ateneo de Manila University (1999). She anticipated the constitutional issue: she argued that AO No. 372 was unconstitutional as it gave the President the power to reduce and withhold the IRA.

a. The LGSEF could not be released to the LGUs without the OCD's approval. With respect to the portion of the LGSEF allocated for various projects of the LGUs (P1 billion for 1999; P1.5 billion for 2000 and P2 billion for 2001), the OCD laid down guidelines for compliance by LGUs before availing funds from this portion of the LGSEF. The guidelines required LGUs to (1) identify the projects eligible for funding based on the OCD's criteria; (2) submit their project proposals to the DILG for appraisal and approval; (3) submit said project proposals to the OCD for review, evaluation, and approval. Only upon its approval could the OCD direct the DBM to release the funds for the projects.

   The Court ruled that distribution and release of the LGSEF is unconstitutional: LGSEF is part of the IRA. Subjecting distribution and release to the OCD's unilateral guidelines under the assailed provisos in the GAAs of 1999-2001 and the OCD resolutions, makes the release not automatic. LGUs are placed at the mercy of the OCD. The LGC does not even state that the IRA must pass through the OCD, itself an ad hoc body, which cannot lawfully exercise control over LGUs.

b. The only exception to the automatic release of the IRA is when national tax collections are less than 40% of the preceding third fiscal year: the fund release shall be the proportionate amount of the collections for the current fiscal year. There is no allegation that said tax collections in 1999-2001 have fallen compared to the preceding three fiscal years. Hence, the provision cannot be lawfully invoked.

c. Respondents argued that this modification is allowed since the Constitution does not specify that the just share of the LGUs shall only be determined by the Local Government Code of 1991: Congress may enact other laws, including the GAAs to increase or decrease the IRA. The Court found this untenable: the LGC is a substantive law. Amendment thereof cannot be done through a GAA but through a separate law. Modifying the IRA of LGUs or amending their percentage sharing, which are fixed in the LGC, are matters of general and substantive law. Otherwise, Congress could undertake amendments to the LGC through GAAs every year.

Thus: (1) the OCD resolutions show discretion and control over the distribution and release of a portion of the IRA in violation of local autonomy: LGUs were placed under the control of the OCD, which has no constitutional power to do so; (2) the GAA cannot amend substantive law under the LGC. It merely incorporates the appropriations for the just share of LGUs in the national taxes, already defined in the LGC. Otherwise, Congress would have the unconstitutional authority to violate

local autonomy; and (3) both the legislative and executive branches are enjoined from withholding or diminishing the IRA. The President cannot issue orders diminishing or withholding the IRA or part of it, and neither can Congress effect the same through the GAA.

2. **ACORD vs. Zamora:** The case involved the diminution of the IRA by P10 billion despite provision in the NEP as to the full amount of the IRA. Congress classified the amount as an Unprogrammed Fund in the General Appropriations Bill (GAB), which President Estrada approved.

In August 2000, some non-governmental organizations (NGOs) and three barangay officials filed with the Supreme Court a petition against Executive Secretary Ronaldo Zamora, DBM Secretary Benjamin Diokno, National Treasurer Leonor M. Briones, and the COA, challenging the constitutionality of above-quoted provision of Allocations to Local Government Units and Unprogrammed Fund Special Provisions 1 and 4 of the GAA. Eventually, Gov. Hermilando I. Mandanas for Batangas, and Gov. Tomas N. Joson III for Nueva Ecija, filed motions for intervention, which the Supreme Court granted.

Respondents disputed the petitioners' *locus standi* to file but with the intervention of Batangas and Nueva Ecija, the Court allowed the petition. Despite the lapse of five years since the petition was filed, the Court, using the precedent in the *Batangas* case, resolved to rule on the petition: if there was a violation of the Constitution, its ruling in the case could guide the public. The issue may well be repeated in the future.

The issue is whether inclusion of P10 billion (a portion of the IRA) in the Unprogrammed Fund of the GAA is constitutional. The Court recalled Section 6, Article X mandating the automatic release of LGUs' just share in the national taxes. Petitioners argued that the GAA violated this provision by making release of the IRA contingent on whether collections meet the President's revenue targets rather than making it automatic.

Respondents used the argument of their counterparts in the *Batangas* case that said constitutional provision is addressed not to the legislature but to the executive, hence, the same does not prevent Congress from imposing conditions upon the release of the IRA, and quoted the minutes of the proceedings of the Constitutional Convention of 1986.[69] Respondents inferred that the subject constitutional provision prevents the executive branch of the government (with the usage of Budget Officer) from unilaterally withholding the IRA, but not the legislature, from authorizing the executive branch to withhold the same. The Court dismissed the argument: the Constitution lays upon the executive the duty to automatically release the just share of LGUs in national taxes but it enjoins Congress not to pass laws that might prevent the executive from performing this duty. If not, the executive branch may disregard

69 *ACORD vs. Zamora, supra,* quoting III RECORD 479-480.

constitutional provisions by citing congressional acts. However, this would make the Constitution amendable by statute which is absurd.

The validity of the legislative acts should be assessed in light of Section 6, Article X. The same would have to be assessed in terms of the automatic release of the IRA. The Court found that because the GAA withholds release pending an uncertain event, the GAA is a violation of the above provision, which rules out conditional release.

ACORD affirms, therefore, the dicta in *Batangas*. Unfortunately, the rulings came too late: it had been five years since the 2000 GAA, which was reenacted once, in 2001. The consequence was a suspended implementation of the full release of the IRA. That left the national government owing P20 billion in unpaid IRA to LGUs.

Conversion into Cities

Alvarez centered on the issue of income for purposes of conversion, while *League of Cities* involved a question of the validity of congressional charters exempting municipalities from the income requirement in Section 450 of the LGC as amended. *League of Cities* rendered inutile the rulings in *Alvarez*. RA No. 9009, which increased the income requirement for conversion from P20 million to P100 million based only on locally-sourced funds, has also rendered *Alvarez* stale.

1. **Alvarez vs. Guingona:** Sen. Heherson T. Alvarez sought to declare the unconstitutionality of RA No. 7720 creating the city of Santiago, Isabela. Alvarez claimed that Santiago's average annual income for the last two (2) consecutive years based on 1991 constant prices fell below the required annual income of P20 million under the Section 450 of the LGC.

The Supreme Court held that the IRA forms part of the income of LGUs, reasoning that the issue must be seen in light of contextual explanations of the meaning of IRA vis-à-vis the notion of income of an LGU and the principles of local autonomy and decentralization. The IRA accrues to the LGU's general fund; it is an item of income, accruing regularly and automatically to the local treasury without need of further action by the LGU. It should be included in the average annual income of a municipality to qualify as a city. RA No. 7720 was therefore valid.

2. **League of Cities vs. COMELEC:** The case occasioned two decisions and two resolutions from the Supreme Court: the first was, upon motion for reconsideration of the sixteen cities, reversed in en banc decision. The second decision was reversed in the third. The fourth decision reverted to the rulings in the second decision.

2.1. **Decision of 18 November 2008:** Congress approved conversion of sixteen municipalities into cities through corresponding charters which contained

an exemption clause from the income requirement under RA No. 9009. The charters directed the Commission on Elections (COMELEC) to hold plebiscites to determine the electorate's will.

Before COMELEC could act, the League of Cities of the Philippines (LCP) filed a petition with the Supreme Court to declare the charters unconstitutional for violation of Section 10, Article X, and for violation of the equal protection clause. LCP also claimed that said conversion of municipalities will reduce the IRA share of existing cities: more cities will share the same amount of IRA set aside for all cities under Section 285, LGC, thereby preventing its just and equitable distribution.

The issues for resolution were as follows: (1) whether the charters violate Section 10, Article X; and (2) whether the charters violate the equal protection clause. The Court agreed with the petitioners and held the sixteen charters unconstitutional.

The Court recalled Section 10, Article X of the Constitution providing that creation of LGUs should be in accordance with the criteria established in the local government code. The creation of LGUs must follow the criteria established in the LGC and not elsewhere. Congress cannot write such criteria in any other law: the intent of the Constitution is to insure that creation of cities follows the same uniform, non-discriminatory criteria found in the LGC. Any deviation from said criteria violates Section 10, Article X. Section 450 as amended by RA No. 9009, does not contain any exemption from this income requirement: the exemption granted under the charters violates Section 10, Article X.

Uniform and non-discriminatory criteria in the LGC are essential to implement a fair and equitable distribution of the IRA to all LGUs, consistent with Section 6, Article X. A city with an annual income of only P20 million should not receive the same share in the IRA as a city with an annual income of P100 million or more. The criteria as prescribed in Section 450 must be strictly followed: they are material in determining the just share of LGUs in national taxes. The cityhood laws do not follow the new income criterion and prevent the just distribution of the IRA and are therefore unconstitutional.

If Section 450, LGC as amended by RA No. 9009 contained an exemption to the P100 million annual income requirement, the criteria for such exemption could be scrutinized for possible violation of the equal protection clause. Thus, the criteria for the exemption, if found in the LGC, could be assailed on the ground of absence of a valid classification. Section 450 as amended does not contain any exemption; the exemption is found in the disputed charters, which are unconstitutional because such exemption must be prescribed in the LGC. The exemption under the charters is based on the fact that the 16 units had bills pending in the 11th Congress when RA No. 9009 was enacted. The Court held that this is not a valid classification between those entitled and those not entitled to exemption.

2.2. Decision of 21 December 2009: The antecedents leading to a reconsideration of the case show how subjective individual Justices can be, particularly in hard cases such as this where conflicting arguments are overlaid by politics: it shows how political the IRA has become.

The Antecedent Circumstances: Respondents filed a prohibited second motion for reconsideration, which the Court denied the motion per Resolution dated 28 April 2009, absent a majority vote. They later filed a motion to amend said Resolution and to admit the second motion for reconsideration. The Court, led by Associate Justices Teresita L. De Castro and Lucas Bersamin later voted to grant this motion. The Court proceeded to hear the case anew, waiving its own procedural laws. By a vote of 6-4, the Supreme Court granted the respondent LGUs' motion for reconsideration and other motions.

The Rulings: The Supreme Court identified the two pivotal issues as follows: (1) whether the cityhood laws violate Section 10, Article X of the Constitution regarding the creation of cities; and (2) whether the cityhood laws violate the equal protection clause.

The Court looked into the speech of Pimentel for the bill that would eventually be approved as RA No. 9009:

> Senator Pimentel. . . [I]t is a fact that there is a mad rush of municipalities wanting to be converted into cities. . . [W]when the [LGC] was approved, there were only 60 cities, today the number has increased to 85 cities, with 41 more municipalities applying for conversion x x x. At the rate we are going, **I am apprehensive that before long this nation will be a nation of all cities and no municipalities.**
>
> It is for that reason . . . that we are proposing . . . that the financial requirement . . . be raised to P100 million to enable a municipality to have the right to be converted into a city, and the P100 million should be sourced from locally generated funds. (Emphasis supplied)

Congress knew that RA No. 9009 was being approved and that the subject cityhood bills were pending. At that time, the sixteen units met the income requirement under Section 450, LGC.[70] Pimentel hinted that those with pending conversion bills would not be affected:

> THE PRESIDENT. This is just on the point of the pending bills in the Senate which propose the conversion of a number of municipalities into cities and which qualify under the present standard. . . . Assuming that this bill becomes a law, will the Chamber apply the standard as proposed in this bill to those bills which are pending for consideration?

70 As clarified in *Alvarez vs. Guingona,* the income for purposes of conversion was inclusive of the IRA and not restricted to locally-generated revenues.

> SENATOR PIMENTEL, Mr. President, it might not be fair to make this bill x x x [if] approved, retroact to the bills that are pending in the Senate for conversion . . .
>
> THE PRESIDENT. Will there be an appropriate language crafted to reflect that view? Or does it not become a policy of the Chamber x x x that it will apply to those bills which are already approved by the House under the old version of the [LGC] and are now pending in the Senate?
> x x x Or is that a policy that the Chamber will adopt?
>
> SENATOR PIMENTEL. Mr. President, personally, I do not think it is necessary to put that provision because what we are saying here will form part of the interpretation of this bill. Besides, if there is no retroactivity clause, I do not think that the bill would have any retroactive effect.
>
> THE PRESIDENT. So the understanding is that those bills which are already pending in the Chamber will not be affected.
>
> SENATOR PIMENTEL. These will not be affected, Mr. President. (Emphasis supplied.)[71]

Accordingly, the cityhood laws do not violate Section 10, Article X; the author of RA No. 9009 had sought exemption of cityhood bills.

The Court further held that the equal protection clause applies where deprivation of property results through the enactment of the charters. The reduction of IRA of LCP's member-cities cannot suffice: IRA is not their property because it has yet to be allocated. The conversion into a city only affects status as a political unit but not property rights.

The Court en banc reversed itself, with a dissent from the original ponente, Justice Antonio Carpio. While Section 6, Article X provides that no LGU shall be created except in accordance with the criteria established in the LGC, it underscores the fact that Congress alone has the power to create new LGUs. The legislative intent in RA No. 9009 also reveals the intent from the author not to affect the pending cityhood bills. The Senate also had a clear intent to exempt the new cities through Resolutions No. 29 and No. 1.

2.3. **Resolution of 24 August 2010:** The LCP filed a motion to annul the decision of 21 December 2009. The Court observed that after the finality of the 18 November 2008 decision and without any exceptional and compelling reason, the Court en banc reversed the 18 November 2008 decision by upholding the

71 Senator Pimentel himself stated in a privilege speech on 11 September 2006 that he sought exemption of the cityhood bills of Bogo, Cebu; Bayugan, Agusan del Sur and Carcar, Cebu, from RA No. 9009.

constitutionality of the cityhood laws in the decision of 21 December 2009. The Court granted the motions and reinstated the original decision and its reasoning; it declared the cityhood laws unconstitutional.

2.4. Resolution of 15 February 2011: The sixteen new cities moved to reconsider the resolution of 24 August 2010 which the LCP opposed. By a vote of 7-6 with two abstentions, the Supreme Court upheld the constitutionality of the sixteen cityhood laws, granted the new cities' motion for reconsideration, and reversed and set aside said resolution.

The Supreme Court used the familiar grounds in the second decision: (1) that Congress was fully aware of the pendency of the bills converting the sixteen municipalities into cities (and that the provision on their exemption from the income requirement in RA No. 9009 was merely pursuant to the apparent intention of some legislators approving it);[72] (2) the cityhood laws do not violate the equal protection clause: there are substantial distinctions between the sixteen new cities and municipalities without pending cityhood bills at the time of the approval of RA No. 9009, namely, the pendency of the bills and the declared intention of some members of Congress to exempt them from the income requirement of RA No. 9009. The Court went further in bolstering this argument: the income requirement in RA No. 9009 was arbitrary. More than fifty existing cities do not meet this threshold, and RA No. 9009 incongruously places component cities on higher footing than highly urbanized cities.[73] Besides, the Court reasoned that the intention of Congress was to *"recognize the capacity and viability of respondent municipalities to become the State's partners in accelerating economic growth and development in the provincial regions, which is the very thrust of the LGC,"* citing Section 2 of the LGC. Using data supplied by the DBM, the Supreme Court debunked the claim of petitioners that existing cities experienced a reduction in their shares of the IRA: invoking Section 6, Article X was baseless. It also noted that the sixteen new cities had already entered into contracts with new employees and undertaken new projects. Lastly, the Court appealed to the interests of substantial justice waiving thereby rules of procedure, especially if there are doubts on the constitutionality of statutes: to doubt is to sustain their constitutionality.

E. Utilization of the IRA

Dadole vs. Commission on Audit[74] stemmed from the grant in 1986 by the *Sangguniang Panlungsod* of Mandaue City of monthly allowance amounting to P1,260 each to judges of the Regional and Municipal Trial Courts. The *Sanggunian* increased

72 The Supreme Court even tried to bolster its reasoning by citing the explanatory notes of the cityhood bills to the effect that the sixteen are centers of trade, commerce, and transportation services. Notably, the references do not reflect locally-generated revenues in the last two years prior to the filing of the bills.

73 "Section 452. *Highly Urbanized Cities.* – (a) Cities with a minimum population of two hundred thousand (200,000) inhabitants, as certified by the National Statistics Office, and with the latest annual income of at least Fifty Million Pesos (₱50,000,000.00) based on 1991 constant prices, as certified by the city treasurer, shall be classified as highly urbanized cities. (b) Cities which do not meet above requirements shall be considered component cities of the province in which they are geographically located." The income requirement for component cities is therefore higher than that for highly urbanized cities.

74 *Supra.*

the allowance to P1,500 in 1991. In March 1994, the DBM issued Local Budget Circular (LBC) No. 55, which provided that additional allowances to national government officials and employees assigned in the locality shall not exceed P1,000.00 in provinces and cities, and P700.00 in municipalities.

The City Auditor disapproved the additional allowance in excess of P1,000 under LBC No. 55. The judges, who were ordered to reimburse the amount they received in excess of P1,000, protested. The City Auditor endorsed the protest to COA Regional Office, which recommended denial of the protest to the head office. COA head office denied the protest, ruling that appropriation ordinances of LGUs are subject to the policies of budgetary authorities; there is no basis to grant additional allowance in excess of P1,000.

The issues were as follows: (1) whether LBC 55 of the DBM is void for exceeding the supervisory powers of the President; and (2) whether Mandaue's yearly appropriation ordinance on additional allowances to judges contravenes the GAA.

The exercise of local autonomy is subject to Congress' power of control and to supervision of the President. The President and the executive departments can only interfere in the LGU's affairs and activities if the LGU acted illegally but not if it acts within legal bounds. A directive by the President or his alter egos that alters the wisdom of a law-conforming judgment on an LGU's local affairs is void: it violates local autonomy and the separation of powers of the executive and legislative departments in governing LGUs. Section 458, paragraph (a)(1)(xi), of the LGC, the supposed legal basis of LBC No. 55, allows the grant of additional allowances to judges "when the finances of the city government allow." However, it does not authorize setting a maximum limit to the judges' allowances. Thus, LBC No. 55 is void: it went beyond the law.

The COA contended that the ordinances granting additional allowances to judges are void: the IRA cannot be used for such purpose. The COA claimed that Mandaue's funds consisted of locally generated revenues and the IRA. Since the city's yearly expenditures exceeded locally generated revenues, the IRA enabled Mandaue to incur a surplus. Thus, Mandaue had used its IRA for said additional allowances contrary to the GAAs which do not allow the IRA to be used for that purpose.

The Court disagreed: the COA failed to prove that Mandaue used its IRA for judges' additional allowances. Just because Mandaue's locally generated revenues were not enough to cover expenditures did not mean that the additional allowances of petitioner judges were actually taken from the IRA. The Court also faulted the DBM for failure to conduct a formal review and to order disapproval of the appropriation ordinances under Sections 326 and 327, LGC which imposed said duties. Absent such review and disapproval by the DBM, the local ordinances' provisions for additional allowances should be deemed valid.

Analysis of Decisions

With the exception of the *League of Cities,* the decisions required little deviation from the plain text of either the Constitution or the LGC. The Supreme Court only made a simple application of the law as far as its substantive aspects are concerned. For greater clarity and credence, the Court situated the circumstances in the context of constitution, decentralization, and fiscal autonomy.

However, the context of the decisions shows that the Supreme Court delayed resolution in *Batangas* and *ACORD* which involved large funds that had already been expended. By the Court's own admission, the value of its statements lies in guiding future decisions of Congress and the executive branch but not for the parties in the case. The delay left the national government indebted to LGUs, and the latter, with budget shortfalls. It was not due to the difficulty of the issues as the Court as shown by voting patterns: in *Batangas* and *ACORD,* all of the voting justices voted favorably, and there was no dissent or minority opinion. This delay indicates some difficulty that is not doctrinal in nature. Whatever the reason, the Court failed to appreciate the importance of a timely decision.

The third case, *League of Cities,* shows the Supreme Court vacillating. The first decision was a 6-4 vote which was subsequently abandoned in favor of a majority decision with one dissent in the second. The en banc third decision was a 7-5 vote. The reasoning in the second decision as discussed below suggests that political or extra-legal considerations were also involved, which to the mind of some members of the Court were superior to the law and the Court's reputation.

The case of *Pimentel vs. Aguirre* is the first under the regime of the LGC that involved a controversy between the executive department and the LGUs.[75] It coincided with the Asian financial crisis in 1997, when the government embarked on a fiscal austerity program aimed at limiting expenditures. The term expenditure reveals the focus of the austerity measures in AO No. 372. The IRA and debt servicing make up two of the largest expenditures in any budget year.[76] The government will impair debt servicing during a time of crisis: the IRA became a target for the austerity program. The Ramos government's recourse would have been the reduction of IRA up to 30% as provided in Section 284, LGC: in the event of an unmanageable public sector deficit, which would have exacerbated the fiscal situation, or provoke an implosion.

The Supreme Court sustained the contentions of the petitioner. It was unnecessary to discuss at length the environmental setting of the IRA and local

75 Gov. Roberto Pagdanganan of Bulacan, President of the League of Provinces and of the League of Leagues of Local Governments, intervened on behalf of the LGUs.

76 See Benjamin E. Diokno, *The Philippines: Fiscal Behavior in Recent History,* Discussion Paper No. 0804, June 2008, School of Economics for comparison of fiscal behavior from the Marcos era to the present Arroyo administration or in the last twenty-seven (27) years; and Leonor M. Briones, *The Fiscal Crisis: A Matter of Life and Debt,* Presentation (2004).

autonomy because the text of the LGC is clear enough. It used the novelty of the case to make pronouncements on the nature of the IRA in that context. The Pimentel case would later serve as a precedent for future cases; it will remain a classic.

In *Batangas* and *ACORD,* Congress and the President colluded into reducing the IRA. *Batangas* originated from President Estrada's issuance concerning a devolution fund to be sourced from available savings. The proposed budget funded the devolution fund (and renamed as LGSEF) not from available savings but from the IRA. The effect was a reduction of the IRA. Government could claim that it was assisting LGUs when in fact, it was deceiving LGUs. Congress abetted this and approved it, later reiterated in two subsequent budgets. The effort was deliberate as circumstances show. It is difficult to believe that the proviso in the original issuance would have been ignored by the DBM and the Office of the President: it was obvious on the face of the President's issuance. The executive devoted the amount diminished from the IRA for some other purpose: LGUs had to finance the budget gap. It was also inconceivable that Congress failed to exercise due diligence in the conduct of the budget process. Congress and the President allowed the devolution fund to be deducted from IRA and written as a separate expenditure.

ACORD was occasioned by discrepancies in the GAAs for three consecutive years as Congress was unable to approve the budget due to the political turbulence of 2000-2001. At that time, Congress' attention was focused on the impeachment of President Estrada and later, the installation of Gloria M. Arroyo as President. Eventually, LGUs and civil society organizations discovered the budget discrepancies. Respondent officials argued that the Constitution and LGC compel the executive but not the legislature to release the IRA automatically: Congress is free to impose conditions for the release of the IRA through the GAA. It may be recalled that in this case, although the executive determined the amount of the IRA for the coming budget year, Congress reduced it by P10 billion, which was placed under the Unprogrammed Fund, an expense conditioned on the availability of funds. It would have justified the diminution of the IRA in future GAAs: neither the Constitution nor the LGC are clear which branch of government is obliged to respect the IRA's true value.

The Supreme Court could have simply adverted to Section 284 of the LGC which pegs the IRA at 40% of internal taxes collected in the third preceding fiscal year, and to Section 285, which does not authorize any holdback or deduction. It held that Congress is obligated not to enact laws that prevent the executive from releasing the IRA automatically. If not, Congress could unilaterally abrogate the exercise of popular sovereignty to amend the Constitution. The automatic release of the IRA therefore, binds Congress and the executive department.

ACORD was instituted by NGOs interested in the proper functioning of government. Respondents disputed the legal standing of petitioners to file the petition, claiming that only LGUs may do so. The Court however noted the timely intervention

of the Provinces of Batangas and Nueva Ecija. The contention that ACORD and other organizations may not have the legal standing is probably correct if they failed to allege themselves taxpayers. A taxpayers' suit would have prospered because the IRA involves expenditures of public funds. Still, the suit by NGOs is the sort of action that enables key actors in the budget process to participate in a meaningful way in government expenditures. It should be encouraged in order to compel the national government to observe the standards of the Constitution. Only Batangas and Nueva Ecija among Philippine provinces and LGUs intervened in the case; it does not appear from the decision itself that other LGUs participated in the case. The Court proceeded to hear *Batangas* and *ACORD* even if the issues had become moot.

In *Dadole,* the petitioning judges – also actors and parties in interest in the local budget of Mandaue – brought suit to demand for their rights. The Court did not fault them: their personality to institute the suit is beyond dispute.

League of Cities was instituted by the *liga* on behalf of all existing cities. Individual cities also joined in the petition, understandably because they stand to suffer the most in the event that the cityhood laws' validity is upheld. As early as the congressional debates, existing cities had made their opposition felt, again an indication that participation is crucial. The cityhood laws were enacted despite their vigorous opposition at legislative forums.

The local government context of the judicial decisions is based on the need for the IRA. However, the non-participation of most LGUs in the judicial cases may be attributed to the political environment. Thus, concern of LGUs for the quality of governance is likely less of a factor than financial and political considerations. The participation of NGOs in *ACORD* indicates that they are more concerned about governance than LGUs.

A flaw in *Batangas* and *ACORD* is the Supreme Court's slowness: the Court promulgated the decisions years after the President and Congress distorted the budget process. It took three years to decide *Batangas* and five for *ACORD*. There are various reasons, including procedural intricacies, for the delay. The Supreme Court may not have appreciated the value of a timely decision in a case involving constitutionality of government acts involving billions of pesos, and hence basic services to struggling LGUs. If possible violations of the Constitution are in issue, the Court should step in forthwith to make a decision. The proper functioning of the system of government and of the Constitution itself, should have been given due importance.

Predictability is crucial in the IRA: along with the rule of law, it forms the crux of jurisprudence of the IRA. Thus:

a. The IRA should be released in an amount equivalent to 40% of internal revenues collected in the third preceding fiscal year;
b. The IRA must follow the allocation among levels of LGUs under the LGC;
c. The IRA should be determined based on the formula under the LGC;
d. The IRA should be released automatically, without need of further action by the LGU by DBM, and not subject to any condition or approval by any government agency except as regards the 20% development fund required by the LGC;
e. Congress and the President cannot reduce the amount of IRA as computed by BIR: there should be no variance between said computation and the GAA;
f. The IRA should be released at fixed intervals;
g. Consistent application of the rules and requirements for the conversion of municipalities to cities should enable existing cities to make sound, accurate, and balanced projections of income and expenditures.[77]

Predictability eliminates or lessens caprice, abuse, negligence, and inaction by the executive department and Congress. Anent conversion of cities, both Congress and the Supreme Court should be bound by the standard of predictability: the consequences of a politicized and polarizing government are held in check.

Batangas and *ACORD* highlight the requirement of predictability: Congress and the President cannot make use of executive issuances or the GAA to reduce IRA capriciously. The amount of the IRA is fixed and determinable and may only be reduced in the manner and in such proportion as the LGC provides. Pimentel shows that the President cannot withhold a portion of the IRA. LGUs have the unqualified right to expect its full and timely release.

Until the third decision on 24 August 2010, *League of Cities* was the exception in the consistent rulings of the Supreme Court. Section 450, LGC, as amended by RA No. 9009, ensured predictability in the conversion of cities. The Court had insinuated in its second decision that Congress now has free rein to grant city charters to undeserving municipalities in seeming defiance of Section 10, Article X. It would have been increasingly difficult for older, IRA-dependent cities to predict their revenues and expenditures as their respective IRA diminishes. Projections would have been rendered useless and subject to a volatile congressional will. The Supreme Court acquitted itself through its third decision. Congress may not defy RA No. 9009; litigants may have a basis to question undeserved conversion.

Related to predictability is rule of law, which compels observance by Congress

77 The DBM recomputes the IRA due LGUs; in Local Budget Memorandum 59 (2009), the DBM based the finality of IRA allocation on the outcome of the *League of Cities* case, *Sema vs. Commission on Elections* (GR No. 178628, 16 July 2008) which involved the constitutionality of the creation of the province of Shariff Kabunsuan, and the results of the 2007 census.

and the President of judicial decisions and the statutes concerning the IRA, as to ensure predictability in funding, release, appropriation and utilization. It would approximate a ministerial function for the legislative and the executive to appropriate and release the IRA. This is evident in the treatment of the IRA in *Batangas, ACORD* and *Pimentel*.

a. Provision for the IRA in the Constitution indicates that it is a major feature of governance and government operations, similar to democratic and republican principles, such as separation of powers, the bill of rights, etc. The IRA is both a matter of principle and policy; violation of said provision would be unconstitutional.
b. The Constitution also compelled Congress to enact a local government code containing provisions on the IRA.
c. The IRA strengthens local autonomy and decentralization.
d. The IRA is a legally demandable and enforceable right of LGUs. The national government must automatically release the IRA as a matter of obligation. LGUs may compel respect and observance of that right by the national government through the courts. The Supreme Court in turn, guarantees that right of LGUs.
e. That IRA shall be released automatically is a safeguard against its use as a tool to extract political allegiance and support.
f. The rule of law ordains the IRA as a tool that actualizes the fiscal autonomy of LGUs: it cannot be subject to any lien or holdback that the national government may impose. This implicitly acknowledges the role of the IRA in local autonomy.
g. The IRA is immune from executive caprice: it cannot be reduced by the executive except in the event of an unmanageable public sector deficit, and only in the manner provided under the LGC.

One aspect of the rule of law is local autonomy. If the government abuses its power to appropriate the IRA in the GAA and attaches administrative conditions for its release or resorts to political influence to affect the outcome of IRA, local autonomy would not be achieved: the government will make a mockery of the Constitution. LGUs will remain in an infantile state, dependent on the political moods of Congress and the President. The rule of law also demands a correlative obligation upon LGUs to assert their right to IRA and demand faithful compliance with the policy on IRA. The failure, inability or negligence of LGUs to do so would embolden national government to abuse its powers, and terrorize them into submission. Assertion of that demandable right is correlative: the burden of good governance does not fall upon the shoulders of the national government alone. All actors in the polity should participate in the governance of the nation. But the weight of that correlative obligation falls squarely on LGUs because they stand to lose in a tangible way if national government abuses its powers. The Supreme Court recognized the right of LGUs to assert their rights in *Batangas, ACORD* and *League of Cities*.

The decision in *Dadole vs. COA* is based on a technical ground: that COA failed to prove that Mandaue City used its IRA to fund judges' allowances, an item of expenditure not allowed under the LGC. Even if locally generated revenues are not sufficient to cover expenditures, this does not mean that Mandaue actually funded the allowances from the IRA. This is consistent with the common fund doctrine; once funds from various sources are lumped together, it would be impossible to determine the source of expenditures, i.e., whether from the IRA or locally generated revenues. If COA succeeded in proving that Mandaue used its IRA to fund the allowances, the Court's decision suggests that these might be illegal expenditures. This is virtually impossible: accounting and nomenclature of expenses allow LGUs and national government much leeway to justify expenditures. However, the Supreme Court implicitly sustained COA: the IRA cannot be used to fund judges' allowances.

The two cases involving creation of new cities *(Alvarez, League of Cities)* are controversial because of their complex political nature, and the tangible consequence of lower IRAs that existing cities will experience if the Supreme Court makes a definitive decision, or of higher IRAs for new, IRA-dependent cities despite lack of qualification or a static local tax administration.[78] Alvarez provided the judicial basis for the culture of dependence. In the years after 1992, the number of cities rose.

The sixteen units that figured in the League of Cities case may represent the last of the new cities under the old requirement: they wanted to remain cities with large IRAs with the approval of the court despite non-compliance with RA No. 9009. Congress could not explicitly state that the newly-created city shall be exempted from the income requirement prescribed under Section 450 of the LGC as amended by RA No. 9009: that would amount to a violation of Section 10, Article X. Congress' attempt under the charters, therefore, to exempt the new cities from compliance with the new income requirement[79] was a disguised attempt to circumvent Section 10, Article X. The members of the Court led by Justices Bersamin and De Castro would have to find some basis under the law to justify reversal of the first decision. They also had to find a good reason to review the first decision even after entry of judgment, and despite the prohibited second motion for reconsideration.

The dissent of Associate Justice Carpio, which focused on technical matters, is the more convincing treatment of the final judgment of the 2008 decision and the second motion for reconsideration. Once a case has attained finality, entry of judgment having been made, a case can no longer be disturbed. Litigations must end and terminate at some point. In the present cases, that point must be reckoned after the lapse of 15 days from the date of receipt by respondents' counsel of the 28 April

78 The League of Cities of the Philippines reports that existing cities stood to lose more than P4 billion in IRA in 2008. Losses of some cities in 2008 were as follows: Makati, P130 million; Davao, P125 million; Puerto Princesa, P79 million; and Zamboanga, P63 million. There are contrary figures (at least for some cities) in the second resolution in *League of Cities, infra.*

79 For instance, Section 62, RA No. 9393 (Converting the Municipality of Lamitan in the Province of Basilan into a Component City to be Known as the City of Lamitan) provides: "Exemption from Republic Act No. 9009. - The City of Lamitan shall be exempted from the income requirement prescribed under Republic Act No. 9009."

2009 Resolution denying the second motion for reconsideration or on 21 May 2009, as certified by the Deputy Clerk of Court and Chief of the Judicial Records Office. Whether respondents understood, or simply refuse to understand, the meaning of this statement, there is no other meaning than to consider the case finally closed and terminated on 21 May 2009. A decision that has acquired finality should be immutable and unalterable, no longer subject to attack and cannot be modified directly or indirectly and the court which rendered it, including the Supreme Court, had lost jurisdiction to modify it.

But this was not the first time that the Supreme Court assumed jurisdiction even after it had ordered entry of judgment.[80]

The Court reversed the first decision in *League of Cities*: the cityhood laws do not violate Section 10, Article X. It held that the local government code mentioned in this provision refers to a law to be enacted by Congress. It can only mean that Congress has the power to impose criteria for creating LGUs. Congress, whether through the provisions of the local government code or some other piece of legislation, could provide for the criteria for creating LGUs. If the Constitution intended that the only requirements for creating LGUs should be based on a local government code, it was in reference to the law in place at the time, namely the Local Government Code of 1983.

The substantive grounds for reversal of the first decision are not convincing. The Court's reasoning is a strained reading of the Constitution, and is open to dispute.[81]

a. Congress had the duty to enact a local government code: the current LGC. Thus, the requirements of the present LGC must apply in creating new cities.

b. If the Court reasoned that BPB 337 should have been incorporated in the text of Section 10, Article X, it would have realized that this law had been superseded by the LGC of 1991. Even if the old law had been referenced, the fact remains that the LGC is the newer law: creation of LGUs would still have made reference to the LGC.

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80 In *Manotok vs. Heirs of Barque* (GR No. 162335, 18 December 2008, as brought up by Prof. Pangalangan, *infra*), the Supreme Court reopened the case three years after Associate Justice Consuelo Yñares Santiago (by then retired) penned her decision in favor of the Barque family. Two years after the Supreme Court promulgated the decision, Associate Justice Santiago was accused by a columnist for allegedly having received bribes in the case, which involved valuable real properties in Quezon City (see 90447/SC_to_investigate_bribery_allegations_vs_one_of_its_justices). For putative technical reasons, the Supreme Court, in a decision written by Associate Justice Dante O. Tinga, reversed itself and remanded the case to the Court of Appeals for further proceedings. Perhaps it was a turn for the better, if it was indeed true that Justice Santiago received bribes. Whatever the outcome in Manotok, the second decision in League of Cities is unconvincing on several counts. http://newsinfo.inquirer.net/breakingnews/nation/view/20070924-

81 Interview, Prof. Dante B. Gatmaytan, 5 February 2010.

c. If Congress could define the criteria for creating LGUs, this ignores Section 10, Article X: LGUs can only be created by meeting the requirements in the LGC. The cityhood laws cannot be considered the LGC or parts thereof.

d. The Supreme Court perceived a conflict between the power of Congress to legislate and the limitation imposed by Section 10, Article X. Article VI defines the extent of Congress' power to enact laws but also restricts it, e.g., the equal protection clause and prohibition of ex post facto laws. Article X is a further limit to legislative power: the intent in Article X is to prevent abuse of power through the creation of LGUs by imposing upon Congress the duty to enact a local government code. If Section 10, Article X is a restriction of Congress' power, the Court should have considered that Congress enacted the LGC. If Congress felt that it could exempt municipalities from the requirements therein, it should have included such it in the LGC. Congress did not: it rightfully bound itself to observe Section 10, Article X.

e. Delving into the deliberations of RA No. 9009 is unnecessary: there is no ambiguity in relevant provisions of the law. Dissecting Sen. Pimentel's statements in the deliberations of RA No. 9009 only proves that the author himself sought exemption of municipalities with pending bills. Congress placed no such proviso in the text of RA No. 9009; hence, the Court should have simply applied that law.

The case recalls the case of *Torralba vs. Sibagat,*[82] which is directly applicable to League of Cities. In that case, petitioners challenged the creation of the Municipality of Sibagat, Agusan del Sur under BPB 56. Section 3, Article XI of the 1973 Constitution, then in effect at the time of approval of said law in 1980, provided:

> No province, city, municipality, or barrio may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the Local Government Code, and subject to the approval by a majority of the votes cast in a plebiscite in the unit or units affected.

Petitioners argued that the LGC must first be enacted to set the criteria for the creation, division, etc. of an LGU, or substantial alteration of its boundaries; that since no such code had as yet been enacted as of the date BPB 56 was passed, that statute could not have possibly complied with any criteria when Sibagat was created, hence, it is void.

82 GR No. L-59180, 29 January 1987.

The Supreme Court saw no merit in this argument, and held:

> It is a fact that the Local Government Code came into being only on 10 February 1983 so that when BP 56 was enacted, the code was not yet in existence. The evidence likewise discloses that a plebiscite had been conducted among the people of the unit/units affected by the creation of the new Municipality, who expressed approval thereof; x x x
>
> We find no trace of invalidity of BP 56. The absence of the Local Government Code at the time of its enactment did not curtail nor was it intended to cripple legislative competence to create municipal corporations. **Section 3, Article XI of the 1973 Constitution does not proscribe nor prohibit the modification of territorial and political subdivisions before the enactment of the Local Government Code. It contains no requirement that the Local Government Code is a condition sine qua non for the creation of a municipality, in much the same way that the creation of a new municipality does not preclude the enactment of a Local Government Code. What the Constitutional provision means is that once said Code is enacted, the creation, modification or dissolution of local government units should conform with the criteria thus laid down.** In the interregnum before the enactment of such Code, the legislative power remains plenary except that the creation of the new local government unit should be approved by the people concerned in a plebiscite called for the purpose. (Emphasis supplied)

The sentences in bold require that laws creating LGUs should meet the criteria under the LGC. If the charters were enacted during the regime of the LGC of 1991, they should comply with its requirements. Since it does not contain any exemption from the income requirement, the exemptions under the charters were void. In the first decision, the Court's concern was the intent of the Constitution: "[t]he clear intent of the Constitution is to insure that the creation of cities and other political units must follow the same uniform, non-discriminatory criteria found solely in the Local Government Code. Any derogation or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution."

Any departure from these standards must be justified under our equal protection jurisprudence.[83] However, the charters did not lay the basis in exempting the new cities from the income requirement: had they been passed, they would have violated the equal protection clause: the Court completely ignored *Torralba.*

Further comments on the second decision in *League of Cities:*

a. The Court ignored the nature of the IRA as ruled in *Alvarez:* it is a

83 Prof. Gatmaytan, *supra.*

recurring source of income of LGUs, regularly appropriated. There will never be a point in time under the Constitution and during the effectivity of the LGC, when the government will not release it. Regular appropriation and release of the IRA are enough to vest existing cities with proprietary basis to complain.

b. It is misleading to say that the sixteen municipalities cannot be faulted for non-approval of the cityhood bills: they are not parties in legislation. The fault may lie with their representatives or with Congress itself in failing to insert an exempting clause in RA No. 9009; but the Court cannot look into the failures of members of Congress. Therefore, no substantial distinction exists between the sixteen municipalities and the other municipalities: *ubi lex non distinguit, nec non distinguere debemus.*

c. The Court ignored the fact that many cities attained cityhood through their effort to comply stringently with the provisions of the LGC on income. A substantial distinction exists between them and the sixteen LGUs.

d. The sixteen LGUs belatedly sought conversion after RA No. 9009 was enacted when they had plenty of opportunities before that. The Court failed to delve into this matter: until then, municipalities followed the LGC, aided by the ruling in *Alvarez.* The Court should have realized this in its second decision.

The third decision was based on the discomfort of the majority[84] with the circumstances that led to the second decision. It was difficult for members of the Court to explain away whatever led it to reopen the case despite the filing of a prohibited second motion for reconsideration. The majority was uncomfortable that the second decision would lead to a precedent which threatened to damage the credibility of the Court. The amount involved billions of pesos in IRA not just for a given budget year but perhaps for decades to come; it stresses the importance of this influence and of the case itself. Even if there were cogent grounds to justify the outcome in the second decision, the majority seemed to have studied the wider impact of the Supreme Court's decisions[85] on the socio-political environment and invoked the simplicity of the applicable issuances. As Associate Justice Carpio[86] warned:

> "Any ruling of this Court that a tie-vote on a motion for reconsideration reverses a prior majority vote on the main decision would wreak havoc on well-settled jurisprudence of this Court. Such an

84 Associate Justice Antonio T. Carpio, joined by Associate Justices Conchita C. Morales, Arturo D. Brion, Diosdado M. Peralta, Martin S. Villarama, Jr., Jose C. Mendoza and Maria Lourdes A. Sereno. Two Justices, Antonio B. Nachura and Mariano C. Del Castillo took no part.

85 The Supreme Court used the phrase *"set a dangerous precedent."*

86 *League of Cities, supra.*

> unprecedented ruling would resurrect contentious political issues long ago settled, such as the PIRMA initiative in Santiago and the people's initiative in Lambino. Countless other decisions of this Court would come back to haunt it, long after such decisions have become final and executory following the tie-votes on the motions for reconsideration which resulted in the denial of the motions. Such a ruling would destabilize not only this Court, but also the Executive and Legislative Branches of Government. Business transactions made pursuant to final decisions of this Court would also unravel for another round of litigation, dragging along innocent third parties who had relied on such prior final decisions of this Court. This Court cannot afford to unleash such a catastrophe on the nation."

The implications of the second and third decisions in this case merit further discussion in view of their effects in judicial decision-making and legislative decisions creating new cities. The legislative and administrative implications of the second decision in *League of Cities* may be seen in its possible consequences, not all of which are desirable:

a. If Congress can exempt municipalities from the income requirement, nothing prevents further exemptions. This renders useless the enactment of RA No. 9009, and for that matter, Section 450 of the LGC.[87] A fifth class municipality with an annual income of less than P5 million could be converted into a city.

b. If Congress can exempt municipalities from the income requirement, there is nothing either to hinder it from exempting them from the requirements on land area and population. A municipality with a population of 5,000 could therefore be converted into a city.

c. Congress is given the prerogative to amend Section 10, Article X by invoking its plenary power to legislate. Congress will capitalize on the decision to explore further avenues to affect the allocation and distribution of the IRA.

d. In the scenario of more new cities, existing cities may receive less and less of the IRA through the years, making it more difficult for them, especially those that are heavily dependent on the IRA, to anticipate revenues and expenditures. Full releases of the IRA from the DBM would be subject to the approval of pending cityhood bills. The quality of services in existing cities is bound to suffer.

87 Prof. Gatmaytan is of the same view: "[T]he plenary power extends even beyond the enactment of a code. The implication of this new ruling is that there is nothing in the Code that can bind Congress. What is to prevent Congress from disregarding the land area or population requirements in the future? Could we make a city out of Barangay Krus na Ligas? What is to prevent Congress from lavishing specific local government officials with more powers than others?"

e. This should make the need for a more efficient tax administration more acute in the coming years for cities. Ironically, the desire for a larger IRA that was the prime consideration in their conversion could probably be matched inversely by the desire to fund the shortfall through taxes and other means.

f. Cities and municipalities aspiring for conversion into cities will experience conflict in the future. It will be most felt in provinces with existing cities and municipalities that seek conversion, especially if the local leaders in both are political enemies. It will be exacerbated by the declaration of the status of highly urbanized city in provinces that seek to rein in politically that city.

g. Fragmentation of political units will be exacerbated by the drive toward cityhood, as leading cities will take the lead in segregating themselves from provinces by gobbling up surrounding municipalities. Provinces will suffer.

h. The second decision of the Supreme Court, in effect, eradicates the binding effect of the LGC, as Congress could eventually resist compliance with its provisions.

The second decision also had judicial implications. It gives rise to speculations that the decision was motivated by politics, a charge easily made but difficult to prove.[88] If some Justices sympathized with the cause of the sixteen, politics played a crucial part in the reversal. The implication is the same: members of the Court could be swayed to decide a case in favor of a litigant, if indeed, politics figured in the equation.

It does not help that the procedural and substantive grounds for reversal of the first decision were unconvincing. It was necessary for the Supreme Court to delve into the equal protection clause in an attempt to justify the behavior of Congress: it was the only way to give constitutional protection to the act of Congress.[89]

The Supreme Court eventually reinstated the original decision. The third decision addressed squarely the flaws of the second decision discussed above. The majority looked back at the first decision, and affirmed the simplicity of the language in RA No. 9009. It also explored the notion that Congress may amend the LGC through a separate legislation.

Amendment of portions of the LGC, such as Section 450 may validly be made. Hence, future legislation – including those creating new cities – must conform to the LGC, including amendments thereto such as RA No. 9009. Beyond the rules of

88 Prof. Gatmaytan, *supra.*

89 Interview with Dr. Raul C. Pangalangan, 9 February 2010.

statutory construction, the Supreme Court justified the reversion to the first decision by looking at the equal protection clause. There was no valid distinction between the municipalities exempted from the income requirement with pending cityhood bills during the 11th Congress and those municipalities that had no such bills. Any distinction was imaginary.

However, the Supreme Court flip-flopped for the third time, which is probably unique in the history of jurisprudence. The second resolution reversed the first resolution, and in effect, reverting to the second decision. The Court made a valid observation on the incongruity of component cities having a higher income requirement than highly urbanized cities. The rest of the decision however is a reiteration of the unconvincing grounds in the second decision. To reiterate, if Congress had the intention to exempt pending cityhood bills from the ambit of RA No. 9009, it should have included the appropriate clause in the text. The second resolution might prove to be a Pandora's box in the future, as litigants exploit the nuances of disturbing the finality of a decision, and as Congress abuses its power to create new cities: it might set a very dangerous precedent.

Nonetheless, *League of Cities* may be interpreted in a different way. As *Alvarez* provided the jurisprudential basis for the disproportionate increase in the number of cities, *League of Cities* may provide basis to arrest further conversion - if the Supreme Court restrains the application of this decision to the sixteen new cities only. Meanwhile, municipalities with aspirations to the status of a city will have to craft a legal basis to supplant RA No. 9009. Any battle in the future will be difficult, as politicians with conflicting demands on the political system will try to use their influence in the three departments of government. Ultimately, the fiscal situation of the country and the budgetary needs of existing cities will condition any legislative effort to abrogate RA No. 9009.

The Supreme Court gauged its decisions from the standards of the Constitution and the LGC, as well as the legislative intent in these statutes. This is the reason why the jurisprudence on the IRA is basically consistent. The only departure from this concordance was the second decision in *League of Cities* with the Court's strained interpretation of the Constitution. In *Alvarez,* the Court was correct in interpreting the income requirement for conversion into a city as inclusive of the IRA because of the failure of the text of the law to adhere to the legislative intent to include only locally generated revenues. Whatever undesirable consequences or effects in its decisions, particularly in *Batangas, Pimentel* and *ACORD,* is beyond the Court's powers. This question of policy is due largely to the nature of the IRA as a general purpose allotment without any qualification or condition for allocation and distribution.

To sum up, the Supreme Court's decisions are consistent with the Constitution where cases call for unambiguous interpretation of statutes. Said decisions are efforts at promoting local autonomy and the right of LGUs to the IRA which had been much abused by Congress and the executive department. The national government

will find it increasingly difficult to manipulate LGUs and their IRA. The trend will likely apply where the cases are free from any taint of politics. *League of Cities* (as it stands now) defies this trend: it is fiscally significant with far-reaching, tangible consequences through time for national government and LGUs: lobbying may have been intense as hinted by Justice Carpio.

The adverse effects on local autonomy, the IRA process and the good governance setting in that decision stresses why the Supreme Court should strive to uphold the Constitution and its spirit in making decisions. If the legislative and executive departments have shown the proclivity to manipulate the IRA (with LGUs acquiescing to it), and IRA-dependent LGUs quarrel over the IRA, the Supreme Court's role in governance would be crucial. These difficulties could only be resolved credibly by an independent-minded Supreme Court. Only then would local autonomy and good governance be achieved.

CONCLUSION

Despite the intention under the Constitution and the Local Government Code of 1991 to liberate the IRA from legislative and executive manipulations, both Congress and the President have devised ways to reduce and withhold the IRA. The Supreme Court has tended to uphold the Constitution and the LGC provisions on the IRA, thereby sustaining the principle of local autonomy of LGUs. The controversies over the IRA largely involved the national and local governments. Local governments clashed for the first time in the highly charged case of *League of Cities.* The second decision of the Supreme Court in that case is the exception to the trend. The same case also suggests that contrary to the purpose of promoting local autonomy, the IRA has also proven to perpetuate a dependence of LGUs on the national government as municipalities have sought conversion into cities. *League of Cities* also highlights the discincentive effect of IRA on local revenue generation for some municipalities.

The decisions and actions of Congress, the President, and LGUs suggest that the current law on the IRA, a general, all-purpose grant, is prone to abuse. Policy-makers may have to craft alternatives such as special allotments to deserving LGUs based on statistical and empirical socio-economic data to supplant the IRA (not otherwise in violation of the Constitution) or supplemental forms of allotments in addition to the IRA or a reduced proportion of IRA to internal revenues. Such measures may be more consistent with the constitutional intent to promote genuine local autonomy.

Reproductive Health and Democracy Some Thoughts on the Struggle for a Secular Republic

*Florin T. Hilbay**

Early this year, President Benigno Aquino III outlined his legislative agenda, which includes the Reproductive Health (RH) bill[1] now pending in both houses of Congress, as part of a set of priority measures that he wants the legislature to pass.[2] This apparently meant that he intended to certify the proposed legislation as urgent, which under the Constitution would have triggered an expedited process for its passage.[3] A few weeks later, however, he made a stunning turnaround and decided to drop the RH bill from his list of favored legislation[4] even as the Catholic Church seemed resigned to resigned over the likely passage of the bill[5] which, though controversial, has remained popular.[6]

Notwithstanding this disappointment, supporters of the bill are still quite optimistic, considering that this early it has already reached second reading in the House of Representatives, a feat in itself given the frustrating history of the proposal during the previous sessions of Congress. This development is potentially a momentous event in the history of Philippine politics, one that requires an analysis beyond the clear implications of the provisions of the bill, and a reflection on what

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* Enrique O. Chan Professor of Law, University of the Philippines, College of Law. A.B. (U.P.), Ll.B (U.P), Ll.M (Yale).

1 There were six bills filed in both houses of Congress, with similar aims and near-identical provisions. The current RH bills in the 15th Congress, as well as the various RH bills during its previous sessions, are available at http://www.likhaan.org/content/rh-bill-philippines-full-text-reproductive-health-and-related-measures, last visited 31 January 2011. The bills pending in the House have recently been approved and consolidated by the House Committee on Population and Family Relations, copy of which is available at http://www.gmanews.tv/story/212021/the-consolidated-rh-bill-in-the-15th-congress, last visited 4 February 2011.

2 See *RH One of Aquino's 12 Priority Bills For Congress' Approval*, available at http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20110120-315485/RH-one-of-Aquinos-12-priority-bills-for-Congress-approval, last visited 31 January 2011.

3 See Art.VI, §26 (2). No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to its Members three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the *yeas* and *nays* entered in the Journal.

See also, *Tolentino v. Secretary of Finance,* G.R. No. 115455, 30 October 1995.

4 See *Palace–RH Bill No Longer A Priority,* available at http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20110208-319082/Palace-RH-bill-no-longer-a-priority, last visited 22 February 2011.

5 See *Cardinal Rosales on RH Bill: Morality Cannot be Legislated,* available at http://politics.inquirer.net/politics/view/20110122-315991/Cardinal-Rosales-on-RH-bill-morality-cannot-be-legislated, last visited 31 January 2011.

6 See *69% of Filipinos Agree with RH bill According to Survey,* available at http://www.allvoices.com/contributed-news/7485333, last visited 31 January 2011.

it means for Philippine society at this stage in its history to be able to legislate such a set of norms.

This piece is a commentary on the larger implications of the RH bill in relation to the continuing struggle of the country to promote secularism as a core value of its constitutional practice and as a vital ingredient of its democracy. While it is true that the surface features of the bill are important for, say, feminists or population control advocates, there is a deeper level at which the bill may be analyzed, which requires us to tie it to the constitutional rights that are implicated by its possible enactment into law, the colonial and post-colonial history of the Islands, and the challenge of simultaneously enhancing the public sphere in Philippine society while promoting the use of reason in public conversations, particularly those where the powers of the State in relation to the liberties of its citizens are at stake.

Not About New Rights

Many of those who have a passing knowledge about the RH bill, and even some of those who consider themselves advocates, consider the proposal as primarily being about rights. This may be true to the extent that the bill is *about* the reproductive health rights of couples and individuals, particularly those of women who physically take the brunt of pregnancy. I suggest, however, that instead of simply couching the debate in terms of rights, which might mislead people, as I suspect it has, into thinking that the legislature is creating an entirely new set of substantive rights, advocates should start speaking of the bill as a "rights enhancement" measure or as a welfare legislation that helps the disempowered exercise existing rights more effectively. This is not a semantic distinction; it is a label that can potentially clarify some constitutional issues that have been raised against the RH bill.

It is imperative to note that there is nothing that the government intends to provide individuals and couples in the RH bill that is not already legally available in the market for those who can afford them. All of the bills now under consideration in Congress converge on two general welfare provisions—access to information on reproductive health and access to contraceptive materials or devices. Anyone who has the money and the interest to space pregnancies, learn more about one's body, enhance one's life prospects while participating in the circle of life, or just avoid pregnancies altogether can go to a doctor and seek medical advice, or get oneself informed by scouring the internet and buying materials online or in bookstores. At the same time, access to condoms may be had in the neighborhood seven-eleven store and IUDs may be secured without difficulty.[7] This fact is the key insight against the so-called pro-lifers' constitutional objections against the passage of the bill.

7 Proponents of the RH bill, whether out of pragmatism or principle, have emphatically insisted that the proposals do not lead to a regime of abortion and that the RH bill, if passed, would even lessen the incidence of intentional abortions. It is, of course, a fact that whether proponents of the RH bill like it or not, the passage of the bill provides space for those open to legalized abortions (abortions do in fact occur, only that they are illegal) to put the debate on the map. This is because fundamentally the nature of the so-called pro-lifers' objection to the RH bill and abortion is the same: that these terminate life that has, in the dogma of the Catholic Church, already begun. See *RH bill Supporters Reject Proposal to Decriminalize Abortion,* available at http://www.philstar.com/Article.aspx?articleId=600474&publicationSubCategoryId=63, last visited 31 January 2011.

The main constitutional argument of those against the RH bill is that it goes against the state policy of "equally protecting the life of the mother and the life of the unborn from conception."[8] These oppositors, believing that the policy creates a full or near equivalence between the mother and the unborn, argue that the mother is therefore prohibited by the Constitution from sacrificing the "life" of the unborn to avoid unwanted pregnancies, or the burden on her body, or the expenses associated with child-bearing.[9] Given this interpretation, they believe it is now easy for them to argue that the RH bill, by licensing the government to provide contraceptives to the public, contravenes the constitutional policy.

This position is powerfully convenient as it allows the so-called pro-lifers to raise the level of debate from a purely religious to an apparently legal—even constitutional—question, giving them the opportunity to mask dogma with the flavor of principle by hiding behind a constitutional policy. Also implied in this position is a possible constitutional challenge before the courts, making it even harder for RH supporters to implement the bill, assuming it survives the legislative process. Experience with the courts tells us that the speed-bump a constitutional litigation could create may last a long time, and the prospect of nullification by a conservative Supreme Court is not entirely unthinkable.

This perspective is possible only if one assumes that the RH bill seeks to create a new right, statutorily grounded, which must now contend with the Constitution and hurdle the oppositors' challenge. Considering the hierarchy of laws we have come to accept as canonical and implicit in the separation of powers doctrine, proponents of the RH bill are now placed in the difficult position of squaring the circle, as it were, by looking for an interpretation of the statute that does not

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8 Const., Art.II, §12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

9 See Joaquin Bernas, *The 1987 Constitution of the Republic of the Philippines, A Commentary* (1996), at 77-78. Bernas' position, while denying a full equivalence, makes exactly the same claim—

> The formula that is found in the second sentence of Section 12 is the product of much debate. It is first of all important to understand what it does not assert. It does not say that the unborn is a legal person; nor does it deny, however, that the state under certain conditions might regard the unborn as a person. It does not assert that the life of the unborn is placed on exactly the same level as the life of the mother. It recognizes that, when necessary to save the life of the mother, it may be necessary and legitimate to sacrifice the life of the unborn. It, however, denies that the life of the unborn may be sacrificed merely to save the mother from emotional suffering or to spare the child from a life of poverty. The emotional trauma of a mother as well as the welfare of the child after birth can be attended to through other means such as availing of the resources of welfare agencies. The provision, in fact, is intended primarily to prevent the state from adopting the doctrine in the United States Supreme Court decision in *Roe v. Wade* which liberalized abortion laws up to the sixth month of pregnancy by allowing abortion at the discretion of the mother any time during the first six months when it can be done without the danger to the mother.
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> The unborn's entitlement to protection begins "from conception," that is, from the moment of conception. The intention is to protect life from its beginning, and the assumption that human life begins at conception and that conception takes place at fertilization. There is, however, no attempt to pinpoint the exact moment when conception takes place. But while the provision does not assert with certainty when human life precisely begins, it reflects the view that, in dealing with the protection of life, it is necessary to take the safer approach.
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> For a critique of this view, See Florin T. Hilbay, *The Establishment Clause: An Anti-Establishment View,* 82 Phil. L. J.24 (2008).

violate the fundamental law. The task is made even more difficult as the "anti-choice crowd," as a colleague puts it, is apparently supported by Jesuit priest Joaquin Bernas, a member of the Constitutional Commission that drafted the 1987 Constitution, and former Chief Justice Artemio Panganiban, a devout Catholic. Fortunately, the interpretive platform they adopt is not the exclusive way to read the Constitution. It also does not help their cause when their interpretation conflicts with reality and common sense.

Objectors to the bill focus on the text of the Constitution and argue that because it uses the phrase "equally protect" in referring to the lives of the mother and the unborn, Philippine society is thereby held constitutionally hostage by the phrase and we can do nothing about it except via the amendments or revisions process under the Constitution. This is not really the case, for the following reasons—

First. At the textual level, the purported absolute equality between women and the unborn that they carry is not as strong as it might appear to some. To "equally protect" can be argued to mean that the life of the mother and of the born are *both* entitled to protection, though in varying degrees depending on society's assessment of the weight we should afford either. The modifier *equally* can be construed to refer to both the mother's and the unborn's legal entitlement to the fact of protection, not that such protection should be granted in the same manner and in the same degree. We can say that if the meaning sought to be conveyed by the Constitution was to create an absolute equality between the woman and the unborn, then this could have been achieved by a different phraseology, that is, instead of the phrase "equally protect," the words used could have been "protect equally," which word sequence provides a clearer indicator of the supposed intention grounded purely on constitutional text.

Second. This textual reading that differentiates the phrases "equally protect" and "protect equally" is not only logically sound; it is also supported by the kind of interpretation constitutionalists have long given to the equal protection clause in Article III.[10] The equality jurisprudence in the Philippines and in the United States, which incorporated the clause into our colonial charters, has always been interpreted to be about rational equality, one that recognizes equality at an abstract level, but allows for differential application of the rule whenever we are able to account for real differences, instead of a mechanical reading that blindly imposes formal equality in the face of substantive differences. Indeed, the guaranty of equal protection applies only to those that are equally situated.[11] How we categorize people and things

10 Const., Art.III, §1. Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

11 The doctrinal formulation of the equal protection test uses four prongs to determine substantive equality between the subjects beings compared. (See *People v. Vera,* G.R. No. 45685, 16 November 1937, the Court held that a "classification, however, to be reasonable must be based on substantial distinctions which make for real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only, and must apply equally to each member of the class.") The test is flexible enough to allow courts to find differentiating characteristics that can justify a disparate treatment between the mother, a human being, and the unborn, a potential human being.

according to their situation rests, in turn, on our understanding of the moral worth or value we attach to people and things.

Third. The difficulty in the so-called pro-lifers' position unravels when we look beyond their demand for a rigidly formal equality and into the moral worth of the interests of the woman who seeks to control her body by obtaining access to contraception, on one hand, and, on the other, of the unborn at the moment of conception, assuming conception can be defined. Can we truly rationalize an absolute parity between the interests of the unborn and the woman to such an extent that we will be willing to allow the latter to impose, by default, a veto on the freedom of the latter to make decisions not only about her body but, more importantly, about her life?

The just-been-conceived-unborn is a multi-cellular mass that does not even rise to the level of a creature; it is without memory, without capacity for happiness or pain or meaning, and incapable even of dreaming or any sentient activity, or even any activity we normally consider physical—no heartbeat, no organs, no silent screams. Once we discount from our consideration the notion that this type of an unborn, which is very different from a fully developed fetus, has a soul, there is no other rational conclusion than that we cannot justify treating the interests of the woman as entirely or even nearly equal with that of the unborn. The reason why the so-called pro-lifers adamantly stick to the textual position is because, once we scratch away whatever merit there is to such position and begin to talk about the relative moral worth of the woman and the unborn, we shall soon realize that there is just no comparing the interests of either, and that the moment we do we shall immediately see that the woman's concerns numerically and substantially far outweigh those of the unborn.

Fourth. It is best to view the kind of protection given by the State to the unborn under the Constitution as a process that begins, and varies in degree, at conception and ends with birth, at which time a different set of protective rules is applied by the State, particularly those found under the Civil Code with respect to the acquisition of juridical personality.[12] This interpretation rationalizes both the need to give some protection to the unborn without necessarily equating such protection with the interests of the woman, especially when they compete with each other. This makes sense even if we take into consideration the phraseology of the Constitution protecting "the life of the unborn from conception."

That the Constitution protects the unborn does not bind us to the position that we should protect it with a singular policy of preservation at all costs, and nothing more, during the entire period of pregnancy. We could very well imagine a regime of protection that considers the varying interests of the unborn and the woman during the different stages of pregnancy. This can be done once we drop the

12 See Civil Code, Book I, Title I, Chs.1 & 2.

belief that the soul enters the unborn at some stage during pregnancy and that therefore, we should err on the side of caution to make sure we are able to preserve life.

Exactly when life begins is not a question of fact, but one of value. The landmark decision in *Roe v. Wade*[13] acknowledges this.[14] What science can do is describe how pregnancy unravels in the womb by describing events after sexual intercourse that may result in the birth of a human being. But it cannot, without entering the realm of politics, adjudicate the question of when life has begun by pinpointing a moment in the entire process that allows it to separate the living and the non-living categories of existence. The question when life begins is a question of politics, not of science, because the term *life* is both value-laden and open-textured.

We can define life in terms of certain events in the process that leads to the formation of the fetus and move forwards and backwards within a timeline that spans between the moment after the union of the egg and sperm cells and the development of the organs, in particular the heart and the brain of the fetus. We can also define life as the moment of viability, as *Roe v. Wade* tried—and failed—to do, or even the moment of birth, as the Civil Code does. Lastly, we can define life in terms of the capacity to engage in a list of acts that we think distinctively make us human—the ability (or even potential) to feel pain or experience happiness, to remember, to create meaning. We need not agree as to a single definition, the point merely being that the choices I have mentioned, which do not necessarily exhaust all the reasonable choices, are acceptable given certain rational assumptions about what kind of existence we wish the State to extend its protection. This existence of multiple rational solutions—and therefore acceptable secular public policy responses—makes the problem of defining life's beginning a matter of politics, not simply an affair of the sciences.

RH and the Social Information Infrastructure

One very helpful way of looking at the impact of the RH bill is by considering the proposal in terms of its effect on the information infrastructure of Philippine society. This strategy of analyzing the bill allows us to discount the religious aspect of the debate that has latched on to the question of the beginning of life, and which has only served to emotionally charge the conversation as to what the bill intends to accomplish. Once we see that the bill only seeks to democratize information by reducing the transaction cost associated with learning more about one's body and that it enhances the capacity to make informed choices about reproduction, we might be able to appreciate more its simultaneously revolutionary and non-revolutionary features.

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13 410 U.S. 113 (1973).

14 *Supra,* at 160: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."

We can begin again with the fact that the bill does not have the effect of legalizing what was heretofore illegal. It is not as if, under current rules, it is illegal to pay one's doctor to obtain information about family planning or reproductive health, in the same way that it is not illegal to purchase condoms and secure IUDs. Given this fact and the high incidence of poverty in the country, information that will allow women, couples, and families all over the archipelago to make informed choices on child-bearing is effectively barred by the market from being disseminated to such persons. These people therefore live their lives suffering from the kind of information deficiency that substantially affects their ability to plan their lives and take care of their bodies. This problem of information deficiency is a matter of public concern and should rightly be the target of policy considering that its effects are felt by the population at large. Just as important, it stops many of our citizens from even just considering choice-enhancing information, otherwise available to those who can afford them, in their decision-making processes.

It must be emphasized that the goal of the bill is not to stop reproduction *per se*; it is to help people, through the dissemination of crucial information, attain a less imperfect level of knowledge about the whole plethora of considerations that they have to make when deciding whether or not to have (or have more) children. Put otherwise, the goal of the bill is to empower citizens with information that will broaden their options and enhance their ability to make rational decisions.

One can analogize what the State would end up doing, once the bill becomes law, with government policy on copyright. The rules on copyright operate as a public incentive mechanism for private creativity, allowing authors to extract value out of their creations by protecting their output over a period of time. This allows authors to put their creations in a market where human beings can purchase the information. We can crudely think of the whole gamut of information about reproductive health many citizens are not able to access because of poverty, among other causes, as copyrighted material that will cost the user to obtain. Reproductive health information to be provided by public health centers, sex education courses to be taught in public schools, and contraceptives to be provided by hospitals, which will be subsidized by the government, are information and technology that will become, as it were, part of the public domain and accessible to most people. It is as if the copyright on these types of information were allowed by the government to expire and thus became public property for costless acquisition.

The transformation, through government subsidy, of these types of information into free items for consumption could very well be justified. *First,* population, women's health, and children's welfare are legitimate matters for government intervention, especially considering the Constitution's special regard for women, children, and the quality of family life; *second,* the policy can stand as a measure to equalize access to information on reproductive health by both the poor and the financially capable, thus providing greater bite to the social justice provisions of the Constitution and

recognizing the normative desire to reduce structural inequalities in our society[15]; *third,* the cost borne by the government can be argued as efficient given the immense public goods produced by the bill in terms of a more informed population, healthier citizens, and quality children, all which can contribute to the reduction of stresses on the environment and the public coffers.

RH as Welfare Entitlements

We can also use constitutional theory and political philosophy to provide some practical grounding for what the legislature is trying to do by passing the RH bill, and this is by analyzing the types of norms involved and why, insofar as the RH bill is concerned, it makes sense for the government to step in and intervene. I shall follow the classic distinction between negative and positive rights made by Isaiah Berlin[16] and apply it to the debate over the RH bill.

Rights found in the bill of rights are traditionally referred to as negative rights because the language of the rules is couched in prohibitory terms, thus the opening phrases "no law shall be passed," "no person shall be deprived," or "no search warrant or warrant of arrest shall issue," all of which signal to the government that all it has to do to observe the rights of its citizens in the situations contemplated in the bill of rights is simply to refrain from doing anything and leave people free to speak and write, pursue happiness and acquire property, and be secure in their homes and in themselves.

These rights coincide with the conception of a liberal constitutional society or a community where people are assumed to be simultaneously free, rational, and self-interested. Following the assumptions of this regime is the belief in small governments and private enterprise, with a serious concern against misuse of government funds and tyranny whenever the powers of the State are used for regulatory purposes.[17] This type of rights regime finds its classic formulation in the contractarian doctrine which holds that the bill of rights is a set of constraints upon government power in exchange for the people's decision to give up some of their inherent rights in order to set up a constitutional society.

The second half of the 20th century saw the emergence of a new set of rights that was not envisioned by classical liberal thinkers as part of their scheme of social organization. This reconceptualization of rights was meant actually to save liberalism and its economic base, capitalism, from the onslaught of leftism. In the United States, for example, Franklin Roosevelt began talk of a second bill of rights to complement the traditional liberal rights found in the U.S. Constitution in the wake of a devastating

15 See Const, art. XIII, §1. The Congress 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 iniquities by equitably diffusing wealth and political power for the common good.

16 See Four Essays on Liberty (Oxford, 1996).

17 For a fuller explanation of a mainstream strand of libertarianism, See Robert Nozick, Anarchy, State, & Utopia (Basic, 1974).

economic depression that saw many turn away from liberalism and embrace socialism or communism.[18] In constitutional jurisprudence, the U.S. Supreme Court, continuing the critique of the inadequacy of negative rights in protecting citizens from the ravages of capitalism and chance, broke down the distinction between rights and privileges in interpreting the due process clause, effectively empowering citizens to litigate cases involving positive rights.[19] In political theory, John Rawls published *A Theory of Justice* which sought to theorize structural justice for a liberal welfare state. In essence, the Rawlsian paradigm sought to rationalize the existence, if not the necessity, of a concern for society's least fortunate, even if people were self-and not other-regarding.[20] In the Philippines, Enrique Fernando was writing paeans to the liberal state by noting the demise of the traditional conception of government that distinguished between constituent and ministrant functions.[21]

I highlight these theoretical developments because they serve to situate the debate over the RH bill in terms of the broader philosophical debate over the proper functions of a government in the 21st century, given the peculiarities of Philippine history, the current demands of public policy, and the structure of the Philippine Constitution.

One of the distinguishing features of the Philippine Constitution, especially when compared with its U.S, counterpart, is the profusion of norms that are couched in positive terms. It is not an exaggeration to declare that the Constitution even goes beyond the liberal democratic framework by providing a strong underpinning

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18 See Cass Sunstein, The Second Bill Of Rights: FDR's Unfinished Revolution And Why We Need It More Than Ever (Basic, 2004).

19 See *Goldberg v. Kelly,* 397 U.S. 254 (1970).

20 John Rawls, A Theory Of Justice (1999), at 12-13:

> One feature of justice as fairness is to think of the parties in the initial situation as rational and mutually disinterested. This does not mean that the parties are egoists, that is, individuals with only certain kinds of interests, say in wealth, prestige, and domination. But they are conceived as not taking an interest in one another's interests.
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> I shall maintain instead that the person in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.

21 See *ACCFA v. CUGCO,* G.R. No. L-21484, 29 November 1969. Fernando, concurring:

> The influence exerted by American constitutional doctrines unavoidable when the Philippines was still under American rule notwithstanding, an influence that has not altogether vanished even after independence, the *laissez-faire* principle never found full acceptance in this jurisdiction, even during the period of its full flowering in the United States. Moreover, to erase any doubts, the Constitutional Convention saw to it that our fundamental law embodies a policy of the responsibility thrust on government to cope with social and economic problems and an earnest and sincere commitment to the promotion of the general welfare through state action. It would thus follow that the force of any legal objection to regulatory measures adversely affecting property rights or to statutes organizing public corporations that may engage in competition with private enterprise has been blunted. Unless there be a clear showing of any invasion of rights guaranteed by the Constitution, their validity is a foregone conclusion. No fear need be entertained that thereby spheres hitherto deemed outside government domain have been encroached upon. With our explicit disavowal of the "constituent-ministrant" test, the ghost of the *laissez-faire* concept no longer stalks the juridical stage.

for socialist policy targets such as property,[22] labor,[23] land rights,[24] and natural resources.[25] But even if we did not classify the Constitution within the socialist basket, it would still fall far closer to the welfare state than to the liberal state. Indeed, our Constitution should be a good candidate for Rawl's model constitution for a liberal welfare State.

With specific reference to women, children, and family life, the Constitution is an immense source of norms that fit precisely the type of regulation that the RH bill is advocating.[26] The Constitution provides sufficient grounds, if not a strong directive, to establish a welfare scheme that enhances women's and children's life chances—

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. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.[27]

The focus on the welfare of women is justified because women, more than men, bear most of the burden of pregnancy and child-rearing; the similar focus on children is equally justified on the ground that society owes it to children that they be born into this world as a consequence of an informed and deliberate decision on the part of its parents to have them, and not because of ignorance or sheer helplessness of many women against the urges of their husbands or partners.

It is appropriate to look at welfare or positive rights as government responses to market imperfections. Take for example the case of minimum wages, which are floors set by government regulators to prevent a race to the bottom, resulting in slave wages, in cases where there is an oversupply of labor and where a shift to another employment or the development of a new set of skills would take time, or be too expensive, or even culturally inappropriate. The decision to set a minimum wage is essentially a policy declaration that there is more to life than efficiency, or that human beings should not become objects for the creation of value but subjects whose labor should allow them to eke out a meaningful existence.

To some extent, this is the situation of many poor women and couples in the Philippines. The current government policy with respect to reproductive health and family planning is essentially couched in negative terms, that is, women and couples are left alone by the State in matters involving reproduction. This is the kind of misleading rhetoric the Arroyo administration deployed in order not to displease

22 See Const., Art. XII, §6.

23 See Const., Art. XIII, §3.

24 See Const., Art. XIII, §4.

25 See Const., Art. XIII, §2.

26 See Const., Art. II, §§11-15.

27 Const., Art., XIII, §11.

the Catholic Church and risk its wrath during her consistently troubled presidency. This is also why the RH bill got nowhere during her administration. But a let alone policy—a liberal regime—for reproductive health is exactly the kind of policy that simply entrenches the effects of poverty and lack of education.

Without the government stepping in to provide information, women, especially those that are in poor households, are essentially powerless against their husbands in decisions involving the timing and frequency of sexual intercourse.[28] Their situation is analogous to that of workers who are left with little or no choice but to "agree" to stipulations in their contracts. In the same manner, single women who are sexually active are left to wonder about the consequences of the sexual act, instead of being armed with information that can allow them to prevent unintended pregnancies. These are tragedies that occur daily in massive numbers because of the government's *laissez faire* policy on the issue of reproductive health. More important, these tragedies are bound to continue because poverty in the Philippines will not be solved soon enough—the time when the Philippines will have a sizable middle class population that is educated, empowered, and gainfully employed is not a forecast but a speculation, if not wishful thinking.

In the light of this reality, and considering our constitutional design that is favorable to the creation of a welfare regime, we should see the RH bill as a form of government intervention meant to establish a welfare system that seeks to provide a minimum amount of information sufficient to counter the effects of poverty, remedy the inequality between women and men in matters of sex, and reduce the problem of pregnancy as a contingency resulting from sex.

RH and the Public Sphere

Perhaps the deepest implication of the possible passage of the RH bill is that it begins the functional secularization of Philippine society. The text of the Constitution embodies those traditional structural guarantees of secularism, though it also incorporates some rules that would raise problems for secularists.[29] But most church-state problems in the Philippines arise from the practice and culture of politics, with the constitutional text as a basic and porous venue that sparks almost never-ending debates.

The passage of the RH bill is an important crossroad for Philippine politics because it will be the first clear victory for secularism in the 21st century and an important triumph of the politics of principle powered by reason over the power of the kind of irrationalism deeply embedded in Philippine history. This victory is crucial because of its potential effect on the quality of justifications that may be legitimately

28 For a tragic example of how religious dogma is transformed into policy, See *Imposing Misery: The Impact of Manila's Contraception Ban on Women and Families,* available at http://reproductiverights.org/en/document/imposing-misery-the-impact-of-manilas-contraception-ban-on-women-and-families, last visited 31 January 2011.

29 See Hilbay, *supra* note 10.

offered for the creation, implementation, and revision of policies; in other words, the success of the RH bill would indicate the privileging of reason in the public sphere. This success is not limited to the substance of public norms that are legitimized as legal items but extends to the processes by which substantive norms are considered, debated, legitimized, and rendered effective. In a secular democracy that is composed of communities with varying interests and perspectives, it is just as important to have rational public norms that are fairly imposed as to have rational processes for the legitimization of such substantive values.

It is no secret that the true basis of organized and institutional objection against the RH bill has little to do with rational justification, and everything to do with religious dogma. The ultimate moral objections of the Catholic Church and its supporters are founded on their belief that *first,* sexual activity should only be within the bounds of marriage and should be procreative, and *second,* contraceptives destroy the process of ensoulment. The first objection is based on a biblical interpretation of the function of marital life and sexual activity. It is addressed only to the subscribers of their faith, and a rhetoric that should appeal only to the faithful. It is a matter between the believer and her god. The second objection has no basis in reality. Both of these objections are religious in nature and have no place in our conversations in the public sphere.

We live today in a society that can barely distinguish between the public sphere and the private realm, the consequence of which is that citizens find it equally hard to separate public morality from private virtue. This reality is reflected heavily in the course of long and continuing debates over the RH bill. The fact that the Catholic Church and its adherents have the gall to come out aggressively in public with their purely religious objections, that they even threaten legislators who support the RH bill with a negative campaign, and that President Aquino would even create a committee to sit down with the CBCP to discuss ways to find common grounds are surely signs of the failure of our democracy to develop a robust public sphere that values reason over unreason.

The Catholic Church and its supporters will never accept the argument that their opposition to the RH bill is a matter of private virtue and thus should be consigned to the individual conscience of the believer. As an institution that caters to Catholics, it already surely has the means to reach out to its adherents and convince them that it is immoral to have sex outside of marriage or engage in sex for pleasure (even as it has become a common item in the news to hear about priests pleasing themselves at the expense of minors) or to use contraceptives. This they can do as part of the ritual between and among believers, whether in church or at home. But their opposition has no place in conversations in the public sphere because that arena of debate is driven by reason and facts, not beliefs in holy books or deities. Dogma, especially religious dogma, when exposed for its superciliousness and irrationality, is generally ousted of its place in public debate because opinions tainted by dogma are immune to reason. Conversations with people who are so sure of their

views about the world because of their religious beliefs can only lead to polarization.

The passage of the RH bill packs the potential to pave the way for a powerful precedent, a documented instance of the rejection of a purely religious objection to secular legislation. The Catholic Church is aware of this, which is why it has pulled out all the stops to ensure the non-passage of the bill. The Philippines is a crucial battleground for the Catholic Church which has seen its influence in the governments of many countries wane over time as a consequence of industrialization, enhanced education, and secularization even as it has maintained its formal hold on citizens, many of whom are cultural adherents to the faith who see their connection with Catholicism as a way to establish community with their parents and friends, not dogmatic warriors for the cause of Rome.

Conclusion

The struggle to establish secularism as part of the normative structure of a given social system has taken on many faces depending on the material conditions existing at the time of transition. The fight for the right to print, the establishment of non-sectarian public schools, the rejection of the "divine right of kings," the prohibition against the use of either the burqa in public places or the veil in universities, the creation of a secular marital institution, the protection of the rights of apostates and atheists, the recognition of the free speech rights of critics of religion—these, and many more, are the manifestations of a centuries-old movement begun by the enlightenment thinkers. The movement reached our shores at the tail-end of Spanish colonialism through the activities of the *Ilustrados*, a group of Filipinos who saw reason as a powerful platform for launching a critique of the old colonial establishment.

The Philippines begins the 21st century with a remarkable opportunity to continue the unfinished revolution of the *Ilustrados* by passing the RH bill. Beyond promoting the rights of women, children, and partners, the passage of the bill rekindles the attempts of the early Filipinos to draw a line of separation between faith and reason, public and private, individual conscience and public ethics. This by itself is revolutionary, given the stronghold of illiberalism and dogmatism in Philippine politics and culture. Whether the fires of reason, once rekindled, will finally burn the dead wood of superstition is a matter best left to speculation.

The Freedom of Speech "Straitjacket" in Industrial Relations Disputes: Reflections on Nuwhrain v. Court of Appeals

Pablo R. Cruz[*]

In the spirit of free debate, we, as counsel of record for Philippine Hoteliers, Inc., reply to the article entitled "Symbolic Speech in the Workplace: Comments on *NUWHRAIN v. Court of Appeals*" written by Atty. Florin T. Hilbay which appeared in the August 2010 (Vol. 35, No. 1) issue of the IBP Journal.[1] We are presenting, in this Reply, our impressions of the Supreme Court's ruling and what, in our opinion, is the bigger picture and/or proper setting of the case. We also hope to be able to provide the Bar and the Public the opportunity to also look at the case from the Hotel's perspective. To our mind, all these will contribute to the understanding of the context of the case which we believe will, in no small measure, help in the better appreciation of the Court's ruling.

Atty. Hilbay's article is a critique of the Honorable Supreme Court's decision in the consolidated cases of *National Union of Workers in the Hotel Restaurant and Allied Industries (NUWHRAIN-APL-IUF) Dusit Hotel Nikko Chapter v. Court of Appeals* (G.R. No. 163942, November 11, 2008) and *NUWHRAIN-Dusit Hotel Nikko Chapter v. Secretary of Labor and Employment* (G.R. No. 166295, November 11, 2008)[2] [hereinafter, "the NUWHRAIN case"] on two fronts: (a) the internal/doctrinal flaw of the decision; and (b) the external/policy discussion on the right of unionists in general, and the members of the NUWHRAIN – Dusit Hotel Nikko Chapter, in particular, to free speech in the context of a labor dispute. This replies to both the internal and external critique of the NUWHRAIN case, including Atty. Hilbay's recommendation/ suggestion on the use of constitutional standards to test the validity of actions of an enterprise that supposedly suppressed free speech incidental to a labor relations dispute.

To better appreciate the NUWHRAIN case, the pertinent facts as found by the Supreme Court are as follows:

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[*] Labor Relations Consultant, Law Practitioner, Professor of Labor Law, Univesity of Sto. Tomas (1989, 1993-2001; 2003), One of the Examiners, 2009 Bar Examinations in Labor Law; Counsel of Record for Philippine Hoteliers, Inc. in *NUWHRAIN v. Court of Appeals*, *infra*, at note 3.

[1] *IBP Journal*, August 2010, Vol. 35 No. 1, pp. 63-80.

[2] 570 SCRA 598.

With a bargaining deadlock as backdrop, the following antecedents transpired:

> ... in the afternoon of January 17, 2002, the Union held a general assembly at its office located in the Hotel's basement, where some members sported closely cropped hair or cleanly shaven heads. The next day, or on January 18, 2002, more male Union members came to work sporting the same hair style. The Hotel prevented these workers from entering the premises claiming that they violated the Hotel's Grooming Standards.
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> In view of the Hotel's action, the Union staged a picket outside the Hotel premises. Later, other workers were also prevented from entering the Hotel causing them to join the picket. For this reason the Hotel experienced a severe lack of manpower which forced them to temporarily cease operations in three restaurants.[3]

The Union's and the Hotel's Position on Strike:

> The Union maintains that the mass picket conducted by its officers and members did not constitute a strike and was merely an expression of their grievance resulting from the lockout effected by the Hotel management. On the other hand, the Hotel argues that the Union's deliberate defiance of the company rules and regulations was a concerted effort to paralyze the operations of the Hotel, as the Union officers and members knew pretty well that they would not be allowed to work in their bald or cropped hair style. For this reason, the Hotel argues that the Union committed an illegal strike on January 18, 2002 and on January 26, 2002.[4]

The Court's Ruling: **There was a strike.**

> *First*, the Union's violation of the Hotel's Grooming Standards was clearly a deliberate and concerted action to undermine the authority of and to embarrass the Hotel and was, therefore, not a protected action. The appearances of the Hotel employees directly reflect the character and well-being of the Hotel, being a five-star hotel that provides service to top-notch clients. Being bald or having cropped hair per se does not evoke negative or unpleasant feelings. The reality that a substantial number of employees assigned to the food and beverage outlets of the Hotel with full heads of hair suddenly decided to come to work bald-headed or with cropped hair, however, suggests that something is amiss and insinuates a sense that something out of the ordinary is afoot. Obviously, the Hotel does not need to advertise its labor problems with its clients. It can be gleaned from the records before us that the Union officers and members deliberately and in apparent concert shaved their heads

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3 *Id*, p. 604.

4 *Id*, pp. 611-612.

or cropped their hair. This was shown by the fact that after coming to work on January 18, 2002, some Union members even had their heads shaved or their hair cropped at the Union office in the Hotel's basement. Clearly, the decision to violate the company rule on grooming was designed and calculated to place the Hotel management on its heels and to force it to agree to the Union's proposals.

In view of the Union's collaborative effort to violate the Hotel's Grooming Standards, it succeeded in forcing the Hotel to choose between allowing its inappropriately hair styled employees to continue working, to the detriment of its reputation, or to refuse them work, even if it had to cease operations in affected departments or service units, which in either way would disrupt the operations of the Hotel. This Court is of the opinion, therefore, that the act of the Union was not merely an expression of their grievance or displeasure but, indeed, a calibrated and calculated act designed to inflict serious damage to the Hotel's finances or its reputation. Thus, we hold that the Union's concerted violation of the Hotel's Grooming Standards which resulted in the temporary cessation and disruption of the Hotel's operations is an unprotected act and should be considered as an illegal strike.[5]

As stated above, Atty. Hilbay posed a two-dimensional challenge on the Supreme Court's conclusions.

I. The Doctrinal Challenge: The Dangerous Equivalence – Judicial Legislation

Atty. Hilbay alluded to a doctrinal problem – the creation of the dangerous equivalence between concerted action that is not stoppage of work and striking as traditionally understood. This takes off from the following:

(a) the legal definition of a strike – any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute;[6] and

(b) the material consequences thereof – that a trade union is held to a higher standard of accountability in strike action, *i.e.*, the loss of employment of: i. trade union officers who engaged in an illegal strike; and ii. trade union members who participated in illegal/prohibited activities during a valid strike.

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[5] *Id*, pp. 613-614.

[6] Article 212 (o) of the Labor Code provides:

Article 212. Definitions.

...

(o) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

...

It is claimed that in the NUWHRAIN case, the trade union officers and members did not stop working until they are prevented by the Hotel from entering the workplace; this happened because the unionists showed up for work either bald-headed or with cropped hairstyle. Parenthetically, this is a clear violation of the Hotel's grooming standards. Atty. Hilbay asserts that there was no disturbance in the business of the Hotel as a consequence of the employees' appearing for work wearing hairstyles different from what they had before; nor was there any insinuation that the employees performed at sub-par levels such that the revenue of the hotel was affected, even if slightly. He thus posed the following question: whether, in the absence of any material and calculable damage to the hotel, as shown in the evidence, the act of the unionists in expressing themselves through their hairstyle while performing the functions for which they were hired can justifiably constitute a strike within the meaning of the statute. In finding that there was a strike, the Court allegedly had to interpret the action of the unionists and rule that it amounted to something beyond the common meaning attributable to strikes, **by stretching the language and legislating a new standard of action** – the Court "considered" the unionists to have engaged in a strike. Atty. Hilbay disagrees with the Court's conclusion and approach, and asserts that any collective action by the employees, other than a strike, that burdens or damages the employer is subject to rules other than the law on strikes.

The Court purportedly expanded the meaning/definition of a strike to now mean any concerted action that purportedly damages the employer in the course of an economic dispute; refusal to work is no longer an element so long as damage to the employer as a consequence of the action may be inferred. This, claims Atty. Hilbay, represents a momentous shift in the balance of power between labor and capital, as it places the potential for greater punishment for collective activity not involving temporary work stoppage. In the NUWHRAIN case, he states, the cost of this judicial expansion was the decimation of the core of officers of the union, as it sanctioned the dismissal of twenty-nine (29) union leaders.

Because of the potential dangers of legislating into the law an equivalence of this nature, the Supreme Court, he claims, should have been more cautious and could have erected standards to ensure the reasonableness of the judicial legislation. In this case, the Court only noted that: (a) *the appearances of the Hotel employees directly reflect the character and well-being of the Hotel, being a five-star hotel that provides service to top-notch clients* ... (and) *the reality that a substantial number of employees assigned to the food and beverage outlets of the Hotel with full heads of hair suddenly decided to come to work bald-headed or with cropped hair ... suggests that something is amiss and insinuates a sense that something out of the ordinary is afoot*; and (b) *obviously, the Hotel does not need to advertise its labor problems with its clients.* To Atty. Hilbay, this is not enough for there was no evidence: (a) that indeed something was amiss; (b) of the negative reactions of the Hotel's customers; and (c) of the damage to the Hotel, whether reputational or otherwise – in the absence of material damage, the equivalence fails and the Court cannot consider the employees to have engaged in a strike.

II. The Policy Issue: Hair Cropping as Symbolic Speech; the Application of the O'brien Test

The next critique involves a constitutional angle or dimension – the free speech implications of hair cropping as a sign of protest to the prevailing labor situation (the bargaining deadlock) in the NUWHRAIN case. Atty. Hilbay proposes to apply constitutional standards to the realm of labor/industrial relations – that the validity of how an enterprise deals with the expressive conduct of trade unionists should be gauged on compliance with settled constitutional standards like the O'brien test (from *United States v. O'brien*, 391 U.S. 367 [1968]). The central premise for the approach is the increasingly disappearing distinctions between the public and the private – the now extinct or inexistent dichotomy between public discourse and private discourse. He alluded to the public nature of labor law and asserts that workers have an analogous right to engage in certain types of protected speech, with the correlative insight that any form of regulation to sanction such expression should be subjected to some higher standard of scrutiny.

Borrowing a public law type analysis in private law, he claims, will hopefully expand the parochialism of purely doctrinal critique and at the same time establish the link between policy and doctrine. His approach, he further claims, is also doctrinal – constitutional law as applied to labor law – for, constitutional law is more openly embracive of resorts to policy than labor law. To justify the approach of applying by analogy the concept of symbolic speech and the test that comes with it in the field of labor relations, Atty. Hilbay cited the following three basic reasons: (a) the special consideration given by the Constitution to labor – labor law has been a specific target of constitutional norm building; (b) the regulatory history of the Philippines – strike is a highly regulated area of labor law; and (c) the close relationship between striking and speaking – the grant of the right to strike is not limited to the power to stop working and impair employer's business but also the power to publicize certain aspects of the relationship between the employees and the outfit they serve. He claims that if the citizens are allowed to express themselves in symbols and are protected by the Constitution through the O'brien test ... then the Court should be able to apply the same test insofar as the evaluation of the employer's ability to sanction employees for their symbolic speech is concerned. The analogous situation provides the Court with a better template for regulating the relationship between the employer and employees in this area of concern, especially given the strong normative concern of the Constitution towards labor.

Atty. Hilbay remodeled the O'brien Test[7] as follows:

Corporate regulation of employee's conduct is reasonable:

[7] When a regulation prohibits conduct that combines speech and nonspeech elements, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms. The regulation must 1) be within the constitutional power of the government to enact, 2) further an important or substantial government interest, 3) that interest must be unrelated to the suppression of speech (or "content neutral", as later cases have phrased it), and 4) prohibit no more speech than is essential to further that interest.

(a) if it is within the corporate powers of the business;
(b) it furthers an important or substantial business interest;
(c) if the regulation is unrelated to the suppression of free expression; and
(d) if the incidental restriction on alleged freedoms of the employees is no greater than is essential to the furtherance of that interest.

Atty. Hilbay applied these tests in the NUWHRAIN case and found that the third and fourth requirements were not satisfied. As regards the third test, he asserts that the grooming standards, as applied to the collective action of the unionists, are related to their expression. The free expression relates to the right of the employees to legitimately air their grievances in a manner that does not amount to stoppage of work and does not result in damage to the employer – the fact that they are employees does not, by itself, impair their right to speak. The sole basis of the sanction therefore is to suppress the expressive activity of the unionists and the employer must be held to a higher standard of justification for imposing the sanction. The content-based regulation, as applied, must be justified on the ground that there is evidence of damage on the part of the hotel as a consequence of the expression being communicated, if at all it was so conveyed.

The Hotel, he claims, must thus establish the following evidence: (a) that the employees engaged in collective action; (b) that the intention was to impair the reputation of the hotel; (c) that such intention was communicated to the guests of the hotel; (d) that, as a consequence of the communication, the guests adversely reacted; and (e) the hotel suffered materially from this adverse reaction in terms of impaired goodwill and reputation or reduced sales. He asserts that compared with these standards, the Court casually treated the rights of the employees to air their grievances in nonviolent form based on the following crucial, ungrounded assumption: (a) that the intention of the members of the union was to impair the business of the hotel by sporting short haircut; (b) that such intention was so communicated to the clients of the hotel; and (c) that damage to the hotel's reputation or finances ensued as a consequence of the collective action.

On the fourth requisite, Atty. Hilbay believed that the incidental restriction on alleged freedoms of the employees is greater than is essential to the furtherance of the Hotel's interest. The restriction amounts to a severe penalty in the form of expulsion or suspension from one's employment which in effect is an injunction against expression, producing the greatest possible chilling effect on the right of unionists, especially their leaders, to bring to bear the power of nonviolent expression into the negotiating table.

The application of re-modeled O'brien test, he claims, shows how potent the test is in terms of its ability to articulate the details of similar cases in relation to the larger policy questions involved – it forces the Court to weigh the competing claims of the parties not at a speculative level but at a factual level.

Atty. Hilbay concluded by posing the following policy question: how should the courts draw the line between protected and unprotected speech in the workplace in the context of a contentious collective bargaining negotiation? To him, demarcating this line serves to notify both employers and employees of the rules of the game of economic resource management in the context of the desire of employees to attain dignity while serving the interest of capital. The critique is about the fundamental assumptions by the NUWHRAIN Court in the context of the analogously constitutional dimensions of the facts of the case – the Court played it loose by simultaneously equating the actions of the employees with temporary stoppage of work – strike – and turning a blind eye to the non-violent expressive content of such actions. Thus, he proposes the use of the O'brien Test in similar cases in order to provide a more detailed justification for sanctioning or penalizing expression by organized labor.

The Hotel's Reply

I. From the Point of View of Doctrine

Atty. Hilbay faults the Supreme Court for its supposed unwarranted departure from the traditional and doctrinal understanding of a strike as the term is defined by law. He asserts that as defined work stoppage is a necessary element for any collective action to be considered a strike. In this case, at least he claims, the Union members did report for work; they were in fact willing to work but could not because the Hotel prevented them from doing so as a reaction to their violation of the Hotel's grooming standards. Stated otherwise, the work stoppage was brought about by the Hotel's refusal to accept the unionists and allow them to work as usual after they sported hairstyles that violate the Hotel's grooming standards. Thus, the element of work stoppage is absent.

Based on its definition under the Labor Code, a strike has three basic requisites: (a) it is a temporary stoppage of work; (b) by concerted action of employees; (c) as a result of an industrial or labor dispute. Doctrinally, the term "strike" shall comprise not only concerted work stoppages but also slowdowns, mass leaves, sit-downs, attempts to damage, destroy, or sabotage plant equipment and facilities, and similar activities.[8] **The possibilities and variations of strike action are therefore limitless; the only limitation is human ingenuity and imagination**. The critical underlying consideration in any case however is the context of all these collective actions – they were undertaken under a labor relations dispute situation. the collective conscious adoption by the employees of means and methods to achieve or realize their demands by withholding their services in the context of an industrial or labor dispute.[9]

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[8] *Samahang Manggagawa sa Sulpicio Lines, Inc. – NAFLU v. Sulpicio Lines, Inc.*, G.R. No. 140992, March 25, 2004, 426 SCRA 319, citing Section 2, PD No. 823, as amended by PD Bo. 849.

[9] *See Bangalisan v. Court of Appeals*, G.R. No. 124678, July 31, 1997, 276 SCRA 619.

One of these possibilities is any collective action by the employees that is calculated to lead to a work stoppage and which actually led thereto. The substantive law reason for this is that the three requisites of a strike are still present. This would however require the determination of two important factors: (a) the true intention of the employees – to be sure, there must be proof of this intention to support a finding that there was indeed a strike; and (b) if the intention has been fully established, the next question is one of causality or whether the workers' collective action is the proximate cause of the work stoppage.

Proximate cause is defined as any cause that produces injury in a natural and continuous sequence, unbroken by any efficient intervening cause, such that the result would not have occurred otherwise. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.[10] This concept has found universal acceptance and application in criminal law and civil law.[11] Thus, there is no reason why it cannot be applied in labor law.

Significantly, a requirement that is not readily apparent from the definition of a strike but which is definitely a necessary consequence thereof is injury or damage to the employer. The end or purpose of a strike action, after all, as an economic weapon available to the workers is to inflict damage on the employer in the hope that the damage may cause the employer to capitulate. As stated above, Atty. Hilbay placed heavy reliance on the inceptive lack of this element of a strike action to support his theory that there was no strike when the unionists showed up for work bald headed or with cropped hair.

These considerations are particularly helpful in determining the contentious issue of whether there was a strike in the NUWHRAIN case.

The Court properly considered the collective action of the workers in the NUWHRAIN case a strike, as the basic requisites therefor are present. The Court found the employees' collective decision to violate the Hotel's grooming standards (*en masse*) the proximate cause of the work stoppage and on this basis conclude that there was a strike. While not expressly articulated, this can be drawn from what the Court said and we quote: "*clearly, the decision to violate the company rule on grooming was designed and calculated to place the Hotel management on its heels and to force it to agree to the*

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[10] *Ramos v. C.O.L. Realty Corporation,* G.R. No. 184905, August 28, 2009.

[11] *Ibid.* for civil cases; See *Gaid v. People of the Philippines*, G.R. No. 171636, April 7, 2009 for criminal cases.

Union's proposals." This conclusion of course is not without factual support as the collective action was not an impulsive or a spur of the moment occurrence – the "new union hairstyle" came to be after reflection and after the lapse of two (2) days (17 and 18 January). There was evidence too that hair cutting/cropping was done in the Union's Hotel office. **This reveals the collective intention of the workers to violate the grooming standards and to effectively render themselves ineligible to perform their Hotel tasks and/or assignments**. Additionally, what could be more eloquent of the Union's intent to resort to a strike action than the fact that the Union previously filed a notice of strike.

As a practical matter too, the Court cannot be blamed for approaching the issue of the case on the basis of causality; it would be unfair and unjust to blame the Hotel for the work stoppage and perforce consider it to have resorted to a lock out. As the Hotel's grooming standard is based on standard industry requirements, the Hotel was left with no choice or alternative but to refuse entry to the workers who are either bald headed or with cropped hair; and to not admit them to work. As is already mentioned above, this resulted in the disruption of the operations of at least three (3) restaurants in the Hotel; this disruption is the damage or injury inflicted on the Hotel by the collective action.

The application of the doctrine of proximate cause is an aspect of the case that Atty. Hilbay overlooked, for he approached the case on a piecemeal basis or exclusively from the prism of freedom of speech, that is, hair cropping as a tool of expression detached from the labor relations situation obtaining in the NUWHRAIN case. As shown above, however, hair cropping and the Hotel's reactionary refusal to allow the unionists entry into the Hotel premises leading to a work stoppage is actually a logical continuum instead of different, independent, separate and isolated occurrences. Treating the facts – *i.e.*, the action of the unionists, the reaction of the Hotel and the consequences flowing therefrom- separately, and isolating them from their context would definitely lead to varying conclusions on their effects and consequences, such as the supposed doctrinal flaw that Atty. Hilbay expounded on.

This discussion shows that the Court's conclusion actually rests on doctrinal or jurisprudential law and applicable basic legal principles. Thus, Atty. Hilbay's claim that the Court engaged in faulty judicial legislation is baseless and unjustified.

II. Freedom of Speech and Labor Relations

A. The Disappearing/Blurred Lines between "Public" and "Private"

To lay the groundwork for the application of constitutional law standards in labor law, Atty. Hilbay discussed what he described as *the now wobbly dichotomy between the categories public and private in general, and in particular in the case of labor legislation.* While the discussion calls for a stirring debate, it is with due and utmost respect

however to Atty. Hilbay that we disagree with this proposition for it is immediately negated by the continuing tradition of the dichotomy in our legal system.

First off, the deliberations in the 1987 Constitutional Commission show that the intention of the framers thereof was to limit the application of the Bill of Rights between the State and the individual.

> Sponsorship Speech of Commissioner Bernas in the Bill of Rights; Record of the Constitutional Commission, Vol. 1, p. 674; July 17, 1986, viz.:
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> "First, the general reflections. The protection of the fundamental liberties in the essence of constitutional democracy. Protection against whom? Protection against the state. **The Bill of Rights governs the relationship between the individual and the state. Its concern is not the relation between individuals, between a private individual and other individuals**. What the Bill of Rights does is to declare some forbidden zones in the private sphere inaccessible to any power holder."

American jurisprudence in fact holds that this traditional concept/understanding of the role of the Bill of Rights finds support in the wording or phraseology themselves of the provisions of the American Constitution.[12]

> *Second*, since the Bill of Rights is essentially copied from the Bill of Rights of the United States Constitution, local jurisprudence had been patterned along the above line of American jurisprudence. Thus, the provision of the Bill of Rights on: (a) the exclusionary rule regarding uncounselled confession by a person accused of a crime; and (b) the exclusionary rule on unlawful search has not been applied in cases in which either the uncounselled confession or the search was actually made by private individuals.[13] A claimed violation of the equal protection clause had been rejected in an illegal termination dispute along these lines.[14]
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> *Third*, in the law on libel and its related jurisprudence, the law presumes malice in every defamatory imputation. Under the doctrine of

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[12] District of Columbia v. Carter, 409 US 418, 93 S. Ct. 602, 34 L. Ed. 2d 613 (1973), reh'g denied, 410 US 959, 93 S. Ct. 1411, 35 L. Ed. 2d 694 (1973) and on remand to, 489 F. 2d 1272 (D.C. Cir. 1974); Moose Lodge No. 107 v. Irvis, 407 US 163, 92 S. Ct. 1965, 32 L. Ed. 2d 627 (1972); Equality Foundation of Greater Cincinnati, Inc. v. City of Cincinnati, 54 F. 3d 261, 67 Fair Empl. Prac. Cas. (BNA) 1290, 66 Empl. Prac. Dec. (CCH) ¶ 43542, 1995 FED App. 147P (6th Cir. 1995), cert. granted, judgment vacated on other grounds, 116 S. Ct. 2519, 135 L. Ed. 2d 1044, 71 Fair Empl. Prac. Cas. (BNA) 64 (US 1996), ON REMAND TO, 128 F. 3d 289, 75 Fair Empl. Prac. Cas. (BNA) 115, 1997 FED App. 318P (6th Cir. 1997); Gallagher v. Neil Young Freedom Concert, 49 F. 3d 1442, 98 Ed. Law Rep. 639 (10th Cir. 1995); Mahoney v. Babbitt, 105 F. 3d 1452 (DC Cir. 1997), reh'g denied, 113 F. 3d 219 (DC Cir. 1997). Cited in the Yrasuegui case, *infra*, note 15.

[13] See *People v. Marti* (G.R. No. 81561, January 18, 1991, 193 SCRA 57) on searches and seizure by private persons and *People v. Malngan* (G.R. No. 170470, September 26, 2006) on uncounselled confession.

[14] See *Yrasuegui v. Court of Appeals*, G.R. No. 168081, October 17, 2008.

fair comment however, malice is not presumed when the imputation is directed against a public official or a public figure.[15]

Fourth, the right to privacy had been affirmed in several cases as a constitutional right.[16]

These are but tips of the iceberg, so to speak, of a continuing legal tradition that supports the dichotomy between public and private. By themselves nevertheless, they show beyond doubt that any attempt to draw an analogy between free symbolic speech and collective action in the context of an industrial or labor relations dispute is futile, if not seriously doctrinally flawed. In the realm of industrial or labor relations which involve the interest of private persons – the enterprise and the union or the workers – the use of constitutional law standards even if by mere analogy must necessarily fail; it will easily crumble in the face of the above prevailing legal framework or tradition.

B. The Symbolic Speech Straitjacket

Significantly, hair cropping (in the NUWHRAIN case) is little speech, but extensively conduct. What is more, is that the conduct has its origins in a contentious labor relations dispute, a field of labor law that is closely guarded and regulated by the State as Atty. Hilbay already discussed in his article. *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Philippines, Inc.*[17] instructively holds:

> A strike is the most powerful of the economic weapons of workers which they unsheathe to force management to agree to an equitable sharing of the joint product of labor and capital. It is a weapon that can either breathe life to or destroy the Union and its members in their struggle with management for a more equitable due to their labors. The decision to declare a strike must therefore rest on a rational basis, free from emotionalism, envisaged by the tempers and tantrums of a few hot heads, and finally focused on the legitimate interests of the Union which should not, however, be antithetical to the public welfare, and, to be valid, a strike must be pursued within legal bounds. The right to strike as a means of attainment of social justice is never meant to oppress or destroy the employer.

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[15] The concepts are explained in *Yuchengco v. The Manila Chronicle Publishing Corporation,* G.R. No. 184315, November 25, 2009 as follows:

> In Borjal v. Court of Appeals, we stated that "the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. We stated that the doctrine of fair commentaries means "that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition."

[16] See *Ople v. Torres*, G.R. No. 127685, 23 July 1998, 293 SCRA 141.

[17] G.R. Nos. 164302-03, January 24, 2007.

> Since strikes cause disparity effects not only on the relationship between labor and management but also on the general peace and progress of society, the law has provided limitations on the right to strike.

Again, it is tempting to view the acts of the unionists in isolation and on this basis apply the rules and standards of free speech. This is difficult, if not impossible, to do given the various regulations on labor-capital relations.

III. The Right of the Hotel to Enforce Reasonable Company Rules and Regulations

Wittingly or unwittingly, the application of the constitutional rules and standards of free speech castrates the inherent management prerogative of prescribing reasonable rules and regulations for the government of their employees and requiring compliance thereto. That there is a brewing or full-blown industrial dispute or, in the extreme a strike, will not militate against the right of the Hotel to enforce the reasonable rules and regulations it prescribed. In the context of the labor relations situation that obtained in the NUWHRAIN case, the Hotel cannot vacillate on its enforcement of the prevailing company rules and regulations solely for fear that its insistence to do so shall expose it to free speech violation. In other words, the prevailing labor relations situation should have little impact if not no impact at all at how the Hotel will enforce its grooming standards – an industry specific rule or regulation - on its employees.

We conclude with an analogous hypothetical situation that will highlight the unreasonableness of the application of the free speech rules in the realm of labor relations. Let us assume that as a sign of protest to the management's stance in a collective bargaining negotiation, all the trade unionists reported for work wearing nothing (naked), in clear violation of the Hotel's rule on company uniform or dress code. Applying the free speech rules and the O'brien test, the trade unionists should be allowed to work even on the face of their flaunting violation of the Hotel's uniform or dress code, as they are merely expressing their discontent on the labor relations situation.

But, is such a course of action reasonable and acceptable or should the enterprise also prevent them from actually working for they have collectively rendered themselves ineligible for work, which action ultimately led to the disruption of the Hotel's operations? This drives home the point that this highly contentious issue could not be simply forced into the "freedom of speech straitjacket."

Marriage Settlement as Providing for the Process of Mediation (Anticipation and Resolution of Marital Disputes Through Marriage Settlement and Mediation)

*Celeste Marie R. Cruz**

Introduction

The marriage settlement or "prenuptial agreement" as it is commonly known, is the law's recognition of the practical or economic side of marriage. In terms of its importance to the property relations between future husband and wife, the law first takes cognizance of this contractual agreement between the couple before the default regime of *absolute community of property* becomes applicable. Aside from governing the property relations of the future spouses, however, it can also be used to help resolve possible conflicts between the couple and even conflicts between their respective families—especially when the spouses are not similarly-situated economically. Arguably, marriage settlements can remove doubts or innuendo on the intention and love of the "poorer" partner vis-a-vis the other partner; it can secure the future of the children of either spouse from their previous relationship or marriage; and obviously it can also secure the future of their potential common children. Hence, it can be said that marriage settlements are meant to strengthen the foundation of the marital relationship between the husband and the wife.

The above, notwithstanding, the drafting of a marriage settlement can be problematic or counter-productive. Considering the sensitive atmosphere at the time of its execution (*i.e.*, prior to the wedding or celebration of marriage) and the often negative impression that the public has on this type of agreement (*i.e.*, accusations of selfishness and/or of discrimination against the poor), issues regarding "fairness" of the provisions of marriage settlement itself and the risk of cancellation of the wedding and the marriage itself always loom overhead. With respect to the contents or the substance itself of the marriage settlement, financial and other sensitive matters that can be incorporated in the agreement may not even be brought into the open or discussed during the negotiations or drafting, either due to romantic shortsightedness or fear of rejection by the other future spouse. Worse, the failure of the couple to address or confront the sensitivity of these matters may even lead the marriage settlement to intentionally or unintentionally prejudice one spouse in favor of the

* Juris Doctor (2007), Ateneo de Manila School of Law; Director, Oversight Committee on Public Expenditure, Committee on Finance, Senate of the Philippines.

other, in terms of their property relations and other marital obligations, further straining the relationship.

Presently, there is a rising recognition that the alternative mode of dispute resolution known as mediation can be used in the drafting of marriage settlement in order to avoid the marital issues and problems described above. Furthermore, there is likewise an increasing awareness that the marriage settlement can likewise include a clause providing for resort to the use of mediation, where the future spouses can agree that mediation is their preferred means to resolve any marital disputes which may arise during their marriage. This, of course, is made within the limits provided by law.

This practice has been recognized in certain foreign jurisdictions. For instance, the Supreme Court of the State of California has specifically endorsed mediation, holding that "[i]n appropriate cases, mediation provides parties with a simplified and economical procedure for obtaining prompt and equitable resolution of their disputes and a greater opportunity to participate directly in resolving these disputes.... It is in the public interest for mediation to be encouraged and used where appropriate by the courts."[1]

Mediation in general

The *Alternative Dispute Resolution Act of 2004*[2] (the "*ADR Act*") defines mediation as "a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement regarding a dispute."

At the onset, it should be stressed that the *ADR Act* does not preclude either the use of mediation in the drafting of a marriage settlement and the inclusion of a mediation clause in the same, because the law merely provides that it shall not be applicable to the resolution or settlement of the following: (a) labor disputes; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f) future legitime; (g) criminal liability; and (h) those which by law cannot be compromised.[3] Moreover, these exceptions to the applicability of the *ADR Act* simply mean that the proposed use of mediation shall not be applicable to the above-enumerated disputes, which do not at all cover property relations, marital and parental rights and responsibilities that are usually disputed in a marriage.

To reiterate, mediation is a process of resolving different kinds of disputes, may they be civil or family in nature. With respect to the latter, mediation is usually

1 Foxgate Homeowners' Assn. V. Bramalea California, Inc. (2001) 26 Cal.4th 1.

2 Republic Act No. 9285, "Alternative Dispute Resolution Act of 2004." April 4, 2004.

3 Sec. 6, Republic Act No. 9285.

resorted to in order to resolve serious family issues and differences. It can be applied to either marital or even parental conflicts. To the latter, "[m]ediation is a process in which separated parents define their differences, explore their interests, evaluate possible solutions, and create written agreements."[4] To the former, on the other hand, it can be an alternative way of resolving marital conflict instead of, or before engaging in the adversarial and very public process of court litigation. In any event, the goal of mediation is to assist people in conflict "find a 'win – win' solution to problems without a costly courtroom battle."[5]

In marital conflicts, the process of mediation traditionally applies to an already existing marriage which faces the threat of termination. In the United States of America, where mediation for marital disputes is common practice, the normal procedure starts usually with court referral to mediation upon the written agreement of the parties or even upon the court's initiative. "The court may refer a suit for dissolution of marriage, including a suit affecting the parent-child relationship, to mediation."[6] Once the parties agree to the referral, they thereafter proceed to the court-referred mediator. "Mediation is a voluntary, confidential and cooperative problem-solving process in which the parties to a dispute meet with an impartial and neutral facilitator who assists them in communicating their primary concerns, first to the mediator, and eventually to each other. Through this process the parties work to identify issues, collect information, evaluate options and find solutions that address the concerns of both."[7] At the end of the process, mediation is concluded when the parties sign an agreement or when they end the same because they cannot agree on any solution.[8]

Although mediation is a relatively new procedure for dispute resolution, it is quickly becoming the preferred choice of conflicting spouses in settling their differences as compared to litigation, at least in the United States. The adversarial, lengthy, costly, and public nature of the court proceedings discourages many parties from resorting to this traditional process and they choose mediation instead. The length of court litigation can take many wasted years. "In such cases there is no better example of how the process can over-shadow the real issues between the parties and their need to find a functional means of settling them."[9] The length of the proceedings only means the piling up the costs for attorney's fees, documentation and other necessary expenses. "If no effort is made to help clients find a more effective expeditious way of settling disputes, their resources may be devastated by

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4 Judiciary of the State of Vermont, U.S.A, Mediation, Family Division Information (http://www.vermontjudiciary.org/gtc/family/mediation.aspx).

5 20th Judicial Circuit Courts of the State of Florida, U.S.A., Mediation Program Overview (http://www.ca.cjis20.org/home/main/mediation.asp).

6 *Id.*

7 Portman, Mark, *Divorce Mediation: A client's Choice,* In Brief Magazine, Santa Clara County Bar Association, Winter 1992 (http://www.themediator.com/divorce.htm).

8 18th Judicial Circuit Courts of the State of Florida, U.S.A., Mediation Program Overview (http://www.flcourts18.org/mediation_sem.html).

9 Portman, *supra* note 7.

the operation of the court system."[10] Yet, beyond the cost and the time consumed in litigation, the publicity that goes with every docket decided by the court creates an enormous hesitation for spouses to settle their disputes in court. Considering the very private nature of the marital dispute and the effect of the dispute on the spouses, and more so to their children, the public nature of court litigation can aggravate the situation and possibly ruin or scar the lives of the persons involved.

On the other hand, "mediation is usually quicker and more efficient than the trial process."[11] Considering that the process is not adversarial but one which is cooperatively conducted by the parties themselves, it is also "a less stressful, non-litigating process."[12] Furthermore, "[e]verything said during a mediation session is confidential with respect to any third person. Unless otherwise agreed by the parties, all sessions with the mediators and all substantive conversations should be held with both parties present."[13]

Although it is a common argument by the critics of mediation that women are generally at a disadvantaged position in mediation because they are allegedly less aggressive and confident than men in voicing out their views and interests in direct negotiations, "responses revealed that women in mediation were significantly more satisfied with the outcomes and did not believe that their spouses had any advantage over them."[14] This is due to the fact that the spouses call the shots, so to speak, in the mediation process. The mediator merely facilitates the dialogue between the parties, helping them arrive at an agreement without being too obtrusive. Furthermore, mediation is a confidential proceeding. Except for factual information, the agreement itself and matters discussed therein are not used as evidence in court. Hence, the privacy and confidentiality of the proceedings give assurance that the parties are able to resolve their conflicts in a proper and procedural way. "When parties are able to arrive at their own agreement, they are more likely to be satisfied with the arrangement and to follow it"[15] Thus, at least in America, mediation is now fast becoming the primary option of parties-in-dispute, with court litigation being further pushed away as a last resort, as it ideally should be.

Marriage Settlement as a Tool to Avoid Marital Problems

Article 74[16] of the *Family Code of the Philippines* provides that the property

10 *Id.*

11 *Supra* note 5.

12 Dudman, John Mark, *Co-Mediation with Attorney and Family Marriage Therapist,* March 20, 2006 (http://www.divorcenet.com/states/california/comediation_with_attorney_and_family_therapist).

13 *Id.*

14 Portman, *supra* note 7.

15 Dudman, *supra* note 12.

16 Art. 74. The property relationship between husband and wife shall be governed in the following order:

(1) By marriage settlements executed before the marriage;

(2) By the provisions of this Code; and

(3) By the local custom.

relations between husband and wife shall primarily be controlled by the marriage settlement of the spouses. The law does not provide for a definition of said contract, more commonly known as a "prenuptial agreement." However, as can be gleaned from the provision, a marriage settlement is a contract between the future spouses, concerning their property relationship during their marriage as the subject matter thereof, and their marriage as the reason for its execution. In substance, marriage settlements provide for the property regime[17] chosen by the couple to govern their marriage.

Beyond the purpose provided in the *Family Code*, it may be argued that marriage settlements should be utilized as mechanisms to resolve sensitive issues which are inevitably involved in married life but are often overlooked by marrying couples until after the wedding.

A marriage settlement can be a tool which can be used to definitively ascertain the rights and obligations of interested parties especially when either one or both spouses have an issue regarding previous relationships with other persons (*i.e.,* spouses and children from a previous marriage). Marriage settlements involve more than mere separation of property but likewise involve the selection or even creation of a unique property regime of the future spouses as provided in Article 75[18] of the *Family Code* and such other provisions relevant to their marriage which are not contrary to law or public policy. Moreover, marriage settlements "are favored by public policy as conducive to the welfare of the parties and the best purpose of the marriage relationship, and to prevent strife, secure peace, adjust rights, and to settle the question of marital rights in the property, thus tending to remove one of the frequent causes of family disputes—contention about property and allowances to the wife."[19]

To be valid, a marriage settlement should be made prior to the celebration of the marriage as provided in Article 76[20] of the *Family Code*. However, "[m]odification can be made after the marriage, but such modification shall need judicial approval and should only refer to the instances provided in Articles 66, 67, 128, 135, and 136."[21] Article 77[22] also provides that the contract itself and any modification thereto must be in writing and signed by the parties. "[T]he requirement that the ante-nuptial

17 Art. 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.

18 *Id.*

19 Sta. Maria, Melencio S. J.R., Persons and Family Relations Law (2004), at 391, *citing* 42 Am. Jur. 2d 233, 234.

20 Art. 76. In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Articles 66, 67, 128, 135 and 136.

21 Sta. Maria, *supra* note 19, at 396.

22 Art. 77. The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of properties.

agreement must be in writing is mandatory, not only for the purpose of enforceability but, more importantly, for its validity."[23]

Marriage settlements are private contracts that bind the future spouses as the only parties involved therein. It does not bind third parties unless, like any other ordinary contract, the same has been duly registered. It must be registered in the local civil registrar where the marriage contract is recorded and in the proper registries of property in order to bind third parties.[24]

Mediation in the Drafting of Marriage Settlement

Fairness and trust are important values required for efficient and effective marriage settlements. "The relationship between the parties to a prenuptial agreement is one of mutual trust and confidence. Since they do not deal at arm's length, they must exercise a high degree of good and candor in all matters bearing upon the contract."[25] The romantic atmosphere within which such contract is being drawn may work both ways in determining the fairness of the agreement. On one hand, the emotional attachment of the marrying couple has a correlative expectation that trust and selfless considerations are mutually present to each of them in favor of the other. Conversely, however, reality is not bereft of examples wherein the level of love and selflessness vis-à-vis practicality and shrewdness of one party may be of a different degree compared to that of the other. Jurisprudence itself recognizes such reality. Hence, any manifest unfairness in the provisions of the settlement is considered void and inexistent by law.[26]

However, such presumption and safeguard are not always sufficient. For one, they provide for an exception to the general rule of rejecting the patently unfair provisions. Jurisprudence states that even if the provisions of the marriage settlement may appear unfair or prejudicial to one party, the contract can maintain its validity if it can be shown that "the disadvantaged spouse, when she signed, had some understanding of her rights to be waived or prejudiced, or in any manner affected by the agreement."[27] But how can it be determined that such disadvantaged spouse either actually, willingly, and intelligently entered into a one-sided marriage settlement or was merely deceived? With this question, it becomes apparent that the neutral intervention of a mediator can be of great assistance in the drafting of the marriage settlement.

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23 Sta. Maria, *supra* note 19.

24 *Id.*

25 *Id.*

26 Sta. Maria, *supra* note 19, at 395, *citing Del Vecchio vs. Del Vecchio,* 143 So. 2d 17.

27 *Id.*

Second, marriage settlements involve financial and personal matters that may be too sensitive for verbal discussion prior, during, or even post marriage but, nonetheless, often trigger marital woes and even separation. Hence, it is not illogical to say that a marrying couple would be in a better position if they choose to have these sensitive yet crucial matters written down prior to the marriage rather than forever be tangled in oral and emotional arguments during the existence of their marital union. Arguably, this is the reason why "[m]any people have found that prenuptial agreement mediation can be the friendliest or most considerate approach to an often uncomfortable topic, as it allows couples to work together in coming up with an agreement that they mutually believe is fair. Furthermore, it provides couples an additional opportunity to learn communication skills, which will benefit them far into their marriage."[28] However, the very sensitivity of the topic may hinder the marrying couple from achieving an eloquent and thorough dialogue on the matter. Aside from the usually varying levels of eloquence between the couple, it usually takes a lot of courage to speak about finances with one's fiancé, for instance, without the hindrance of fear of possible conflict and even rejection. Hence, a mediator who can effectively and neutrally facilitate an open dialogue between the parties, considering their respective socio-economic standing and emotional conditions, can pave the way to the achievement of better and more open communication between the marrying couple that can be effectively helpful to their marriage, as well.

Third, in case of couples who are situated far apart in the economic and social spectrum, any possible public doubts on how the couple actually arrived at the marriage settlement can be eradicated or at least minimized, if it is clear that a neutral third party participated in the process to help attain fairness for both parties. The mediator should not give biased advice to either party and must remain neutral at all times. The mere presence of such third party who can facilitate and regulate discussion can lessen the tension between the parties involved and can also prevent any possible explosion of unrestrained emotions.

Provisional Process of Mediation

With or without the pre-nuptial mediation in the drafting of a marriage settlement, such settlement can likewise still serve as the written agreement of the spouses embodying their intent to enter into mediation in case of potential future disputes.

However, counter-intuitive as it may seem to include a provision on meditation for future marital dispute, the insertion of procedural guidelines for possible family mediation in the marriage settlement is neither impossible nor illegal. The *Family Code* itself only provides for general limitations in the content and constitution of

28 Mercer, Diana, Prenuptial Mediation Checklist (http://www.mediate.com/articles/mercerD1.cfm).

any marriage settlement—that such should not be contrary to law and public policy.[29] An agreement to resort to mediation in case of possible marital dispute is obviously neither against public policy nor the law. At most, it can be considered as a contractual clause providing for a suspensive condition—that is, once the event of marital dispute arises, the obligation to resolve the dispute through mediation over and above other available modes of procedure likewise arises.

Therefore, considering the benefits of mediation, a provision for such process in a marriage settlement can serve as a boulder that strengthens the foundation of marriage. Such "mediation clause" in a marriage settlement is not an agreement for future separation that circumvents the very reason of said agreement and diminishes the sanctity of marriage. On the contrary, it serves as a practical and prudent approach towards the marital union, an acceptance of the realistic possibility that disputes may arise at any time during the marriage. It must be noted that marriage settlements *per se* have a "preserving character that strengthens the relationship of the couple in a sense that, '[t]he parties' mutual satisfaction with the settlement increases the likelihood of their future cooperation in the execution of the agreement.' This is especially valuable with regard to parenting concerns and stabilizing the future relationship."[30]

Moreover, such a mediation clause in the marriage settlement is not contrary to Article 1 of the *Family Code* on the solidarity and sanctity of marriage. In fact, such a clause is a mechanism in preparation for marital challenges, congruent with the very nature and purpose of the marriage settlement. Mediation, taken as it is, is also a recognized process of possibly preventing the termination of marriage of conflicting spouses, and even if such termination occurs, it paves the way for an amicable separation wherein the financial and even emotional welfare of the spouses and their children can be provided, protected and secured on paper even before the complicated judicial proceedings commence.

Mediation Clause Contents and Considerations

As part of the marriage settlement, the provisions pertaining to the process of mediation must of course be written and must be incorporated in the settlement before the celebration of the marriage. As to contents, however, the choice will always be up to the couple to decide whether to (a) provide for a general clause to resort to mediation in case of marital conflict, or (b) provide the actual guidelines or rules for the process of mediation that would be applicable in case of marital conflict.

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29 This refers to Article 1 of the Family Code (STA. MARIA, *supra* note 19):

> Article 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. It is the foundation of the family and an inviolable social institution whose nature, consequences, and incidents are governed by law and not subject to stipulation, except that marriage settlements may fix the property relations during the marriage within the limits provided by this Code.

30 Portman, *supra* note 7.

A *general mediation clause* in a marriage settlement is an agreement by the future spouses that, if in any case during the marriage they are faced with a serious dispute in connection with their marital status and relationship, any financial misunderstanding, or even conflicting opinions and decision as to the management of the household and the family, the couple shall first resort to mediation in an attempt to settle their disputes before resorting to litigation or other forms of dispute resolution like litigation.

As provided above, the guidelines or rules for the mediation process can also be included in the marriage settlement for the guidance and convenience of the spouses and of the mediator, such as the following:

1. **Applicability of Mediation and the Scope of Issues Covered** - In as much as fairness is the key criterion in marriage settlements and mediation, such contract containing rules on possible mediation must also be created with fairness, knowledge, and willingness between the parties involved. In determining whether such fairness in entering the said settlement has been achieved, jurisprudence provides for the following considerations: "their respective ages, health, and experience, their respective properties, their family ties and connections, the spouses needs, and such factors as tend to show that the agreement was understandingly made."[31] Furthermore, considering the circumstances within which the man and the woman are situated prior to the marriage, when romance and respect for each other are more logically expected to be stronger, the fairness of the mediation process can be secured with relatively greater ease.

Considering the potentially broad application of the mediation provisions to any form of marital dispute, it is advisable that certain exceptions or limitations to its implementation be defined in the marriage settlement. The kind or nature of the marital dispute can be used as a means of classification to determine the application of the mediation provisions. For instance, the applicability of these provisions may be limited to financial marital disputes alone or, conversely, that the mediation provisions shall not apply to marital issues concerning emotional, physical, or psychological blackmail or harassment.

2. **The Mediator** - It is impractical for the prenuptial provision to include a particular or specific mediator. For one, the availability of such a person, not to mention his or her status and credibility at the time the dispute arises cannot be ascertained. However, the basic characteristics of a qualified and mutually acceptable mediator can be provided in the marriage settlement to serve as a criteria in choosing a mediator. For example, the mediator must be neutral and must not represent any particular point of view. The mediator must not decide who is right or wrong but

31 Sta. Maria, *supra* note 26.

should only help parties communicate in an informal and confidential setting,[32] or that the mediator should not give legal advice.[33]

In addition, the choice of the mediator's profession may also be provided in the marriage settlement. "Typically, a mediator is an attorney duly licensed to practice law; however, in the mediation process, the attorney is not acting as an attorney for the parties or for either party. Co-mediation using an attorney and marriage family therapist can be more effective at reaching settlement."[34]

3. Gathering of Information/Modes of Discovery - The mediation process does not preclude the gathering and evaluation of the same information that would be needed to present the case in court. "Mediation is not a means of eliminating private attorneys from [marital] dissolutions. However, the attorney's role changes in mediation compared to the traditional adversarial process. Both parties may individually retain counsel to advise them at any time before or during mediation."[35] Hence, although a lawyer may not be hired to represent either party in mediation, lawyers can still be hired to obtain relevant information - considering that the mediation process "allows the parties to promptly design and implement an integrated discovery plan."[36] They can include in these prenuptial provisions the discovery plan which they intend to apply in case of mediation. They may also indicate therein whether they agree to hire their respective attorneys or consultants for information getting purposes. They may also provide for an early agreement to voluntarily exchange information and documents or an agreement to sign any authorization to obtain information from third parties without delay when necessary.

4. Cost - The cost of mediation can be agreed upon by the spouses through a provision settling the division of cost to half for each party or by other percentage distribution, depending on the capacity of the spouses. Of course, the determination of such capacity shall be at the time of the application of such mediation provisions.

Conclusion

Marriage settlement and mediation are two contemporary solutions to the ever increasing complexities of marriage. One is the marrying couple's preparation for married life and the other is their resort to means of salvation upon termination of their union. Despite their differing application at opposite ends of the marital spectrum, marriage settlement and mediation share a common goal to unite love with practicality and to provide the couple with the best preparation when the often-complicated reality of marriage sets in.

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32 *Supra* note 4.

33 *Supra* note 5.

34 Dudman, *supra* note 12.

35 Portman, *supra* note 7.

36 Portman, *supra* note 7.

Thus, it is not surprising that mediation can act as an alternative way of preparing a marriage settlement and, in turn, for a marriage settlement to provide for the process of mediation in case of future marital disputes—financial or otherwise. "Mediation teaches people how to negotiate, a skill that can be used in future problem resolution.... Mediation allows individuals to tailor solutions to best meet their needs."[37] Mediation, therefore, need not be limited in its application and used only when the marital dispute has arisen. A marriage settlement, on the other hand, being a legally-recognized means of providing for the property regime of the future spouses, need not be confined only to the subject of property relationship of the future spouses.

In sum, the combined use of marriage settlement and mediation is an effective and efficient policy geared towards the noble goal of bringing about better marital relations. Either way, the combination of these contemporary mechanisms should be "favored by public policy as conducive to the parties... to prevent strife, to secure peace, adjust rights..."[38] not just on the issue of property but possibly, on the issue of marital harmony and existence, as a whole.

37 *Supra* note 5.

38 Sta. Maria, *supra* note 19.

Four Cardinal Principles in Determining Compliance with Prescribed Procedures on the Seizure and Custody of Dangerous Drugs

*Clarence Paul V. Oaminal**

As of 2009, among the 100,000 drug cases filed and pending before our courts, only 25 percent have been resolved. Majority of the resolved cases were decided in favor of the accused, either for dismissal or acquittal. In 2010, approximately 70 to 80 percent of the cases resolved were dismissed. Worse, there are even Regional Trial Courts that have a record of 90 percent acquittals.

Admittedly, there are law enforcers who are ignorant or are playing ignorant about the requirements of the law. However, there are also prosecutors and judges who have misinterpreted the law. We cannot assume malice with respect to these dismissals, as the Supreme Court has likewise made numerous interpretations of the law. There are judges who interpret the law liberally and others who construe it very strictly.

This confusion, however, could be resolved by a clear and categorical explanation of the law. The intent of this short article is to guide the judiciary and our prosecutors in drug complaints and cases. The procedure could be summarized in four so-called cardinal principles, thus:

1. **In all anti-drug operations there must be a physical inventory and photography.**

Whether the seizure is by virtue of warrantless seizure or in the implementation of a search warrant there must a physical inventory and photography. What is a physical inventory and photography?

Former DOJ Secretary Raul M. Gonzalez timely issued a circular during the height of the "Alabang Boys" controversy. Item number one of the circular is quoted hereunder:

"In the interest of the service, and as recommended by the Dangerous Drugs Board (DDB) Vice Chairman, Undersecretary Clarence Paul V. Oaminal, this Office

* Former Vice Chairman and Undersecretary, Dangerous Drugs Board.

hereby makes the following observations relative to the Supreme Court's ruling in ***People of the Philippine vs. Salvador Sanchez Y Espiritu, G.R. No. 175832, October 15, 2008*** on the necessity of complying with prescribed procedures on the seizure and custody of dangerous drugs:

1. Physical inventory and photography of seized and confiscated drugs are required in anti-drug operations.- Section 21 (1), Article II of Republic Act 9165 "Comprehensive Dangerous Drugs Act of 2002" and its Implementing Rules and Regulations (IRR) require that after seizure and confiscation of drugs, police officers shall immediately physically inventory and photograph the same in the presence of the following persons:

a. the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel,
b. a representative from the media,
c. a representative from the Department of Justice (DOJ), and
d. any elected public official

who shall sign, and be given copies, of the inventory." (DOJ Circular No. 3, January 19, 2009)

Parenthetically, anti-drug operations could be categorized into two: first, warrantless seizures commonly committed through buy-bust operations and check-points, and second, through raids aided with search warrants. The rule of thumb is that whatever the means of seizure there must be a physical inventory and photography.

The rationale why the framers of the law imbedded this proviso is to avoid allegations of robbery, thievery and planting of evidence by law enforcement officers. That is the reason why there is the presence of other personalities other than the law enforcement officers. Aside from protecting the person/s subject of the seizure, the law enforcement officer is likewise protected from any allegations of irregularities.

A "physical inventory" is a document where the searching officers shall make an entry of the approximate quantity of the drugs and other items seized, the names and positions of witnesses and the person subject of the search. The conduct of the physical inventory shall likewise be photographed.

This requirement is entirely different from what is mandated by the Rules of Court. Noting that even if the seizure is made without a warrant, the law enforcement officer is still required to conduct a physical inventory. Under the Revised Rules on Criminal Procedure, there are two documents to be complied with: a RECEIPT FOR THE PROPERTY SEIZED and a TRUE INVENTORY DULY VERIFIED UNDER OATH.

Therefore, law enforcement officers implementing and serving a search warrant for violations of Republic Act 9165 are required to comply with the following documentary requirements:

1. Receipt for the property seized
2. True inventory duly verified under oath
3. Physical Inventory and Photograph

2. The only difference in the conduct of the physical inventory and photography is the venue or situs, depending on the nature of the anti-drug operation.

One of the contentious issues in the conduct of the physical inventory and photography is venue. This is the crux of the controversy of the "Alabang Boys," as State Prosecutors insisted that the inventory should have been conducted in Alabang where the buy bust was conducted. The PDEA on the other hand insisted that it was correct for them to conduct the physical inventory and photography at their Headquarters at Barangay Pinahan, Quezon City.

DOJ Circular No. 3 is enlightening on this aspect, item no. 2 of which states:

"2. All anti-drug operations require physical inventory and photography of seized and confiscated drugs.- The mandatory nature of the requirements under Section 21(1), Article II of RA 9165 and its IRR does not distinguish between warrantless seizures and those made by virtue of a warrant. The difference merely lies in the venues of the physical inventory and photography of the seized items. Thus:

a) In seizures covered by search warrants, the physical inventory and photography must be conducted in the place where the search warrant was served;

b) In case of warrantless seizures such as buy-bust operation, the physical inventory and photography shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized."

It is clear that if the seizure is made by virtue a search warrant it must be conducted at the place where the warrant is served. If the seizure is made at a house, bodega, warehouse or wherever, the physical inventory and photography shall be conducted thereat. This, however, is not a problem besetting the judiciary and the law enforcers. What are hounding them are warrantless seizures commonly conducted

through buy-bust operations. It must be emphasized that in warrantless seizures the inventory is conducted at the nearest police station or office of the apprehending team.

Illustratively, if a buy-bust operation was conducted in the middle of the street or in an alley, the inventory must then be conducted at the nearest police station if the operatives are police officers and if by other law enforcement officers such as the PDEA or NBI the inventory must be conducted in their respective offices.

It would be comical to require the arresting officers to conduct the inventory in the middle of the street or in the alley. However, there are prosecutors and judges who insist that the inventory must be conducted at the place of the buy-bust operation. This misconception should be corrected. Laws should be interpreted with reason and not by ludicrous construction.

It is likewise clarified that the witnesses such as elected public officials need not belong to the jurisdiction where the search was conducted.

If the buy-bust operation was conducted at Brgy. X, and the office of the apprehending team is located at Brgy. Y, the elected public official serving as a witness need not come from Brgy. X. Any elected public official could be made a witness.

3. **The physical inventory and photography shall be conducted after the operations, meaning the witnesses need not be present during the conduct of the buy-bust operation or in the implementation of the search warrant.**

When would the inventory and photography be conducted? It is outrageous to see resolutions by prosecutors in preliminary investigation and judges' decisions showing complaints and cases which are dismissed on the ground that the inventory was not conducted right after the seizure and that the witnesses were not present during the anti-drug operation.

This should be carefully analyzed. Item number 1 of Section 21 Republic Act 9165 says:

"(1) The apprehending team having initial custody and control of the drugs shall, immediately after the seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s form whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof."

The presence of the enumerated witnesses is therefore only required after the custody of the drugs is obtained, meaning the witnesses need not be present during the conduct of the anti-drug operations. Remember that the witnesses under Section 21 are witnesses in the physical inventory and photography as distinguished from the witnesses under the Rules on Criminal Procedure and the Revised Penal Code.

There must first be custody of the drugs before the conduct of the physical inventory and photography. For example, when a PNP Unit conducts a checkpoint wherein law enforcement officers were able to seize dangerous drugs, could we say that it was wrong for them to effect a seizure in the absence of the enumerated witnesses? It is only after the seizure that the inventory in police station can be conducted.

The dictum is that there must first be custody of the drugs before conducting the inventory and thereafter requiring the presence of the witnesses. Is it not stupid and careless for a law enforcement agency to tag with them the witnesses in a buy-bust operation? A drug pusher would not sell his drug merchandise to a poseur-buyer who is accompanied by a legal counsel, elected public official, DOJ personnel and media representatives.

The law does not require the impossible. Again, the witnesses under Section 21 are witnesses in the conduct of the inventory and not witnesses in the anti-drug operations. Article 130 of the Revised Penal Code, entitled "Searching domicile without witnesses" makes a public officer criminally liable if he conducts a search in the absence of the person subject of the search or any member of his family or in their default two witnesses residing in the same locality. Therefore, the two-witness rule only comes into operation in the absence of the person subject of the search or any member of his family.

Article 130 of the Revised Penal Code and the Rules on Criminal Procedure (Rule 126, Section 8) are provisos on the persons required in the conduct of the search while Section 21 of Republic Act 9165 are witnesses in the conduct of the inventory.

The correct scenario is that in the service of a search warrant, the inventory and photography shall be conducted after custody is obtained of the drugs – it is only then that the presence of the witnesses enumerated in Section 21 are required.

It would be wrong to say that right after the buy-bust operation, the inventory shall then be immediately conducted, because the inventory is required to be conducted at the station or office and not at the place where the buy-bust operation was conducted.

4. Non-observance of the prescribed procedures does not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and evidentiary value of the seized items are not tainted.

DOJ Circular No. 3 Series of 2009, item number 3, is herein quoted:

"3. In case of non-observance of the prescribed procedures, the apprehending law enforcement officers must present an explanation to justify the same, and must prove that the integrity and evidentiary value of the seized items are not tainted. While lapses in the handling of confiscated evidence in anti-drug operations may be countenanced, these lapses must be duly recognized and explained in the terms of their justifiable grounds. The integrity and evidentiary value of the evidence seized must also be shown to have been preserved.

For proper guidance of all concerned, and in order to address the issue as regards the propriety of dismissing criminal complaints for violations of any of the provisions of RA 9165 (1) , Article II of RA 9165 and its IRR, it is hereby clarified pursuant to existing jurisprudence, law, rules and regulations, that the physical inventory and the photography of seized and confiscated drugs are mandatory in all anti drug operations, and compliance with these requirements must be duly proven by the apprehending law enforcement officers, PROVIDED That, in case of non-observance of the prescribed procedure, the law enforcement officers concerned must present satisfactory explanation to justify the same, and prove through sufficient credible and competent evidence that the integrity and evidentiary value of the seized items are not tainted."

The reality in the field is that there are areas where there are no media people or representatives from the DOJ. The absence of these witnesses does not automatically mean that the drug operation is invalid. Police Director General Raul Bacalzo, who is also a lawyer, has caused the issuance of a Memorandum for all PNP Units during the term of then PNP Chief Versoza requiring arresting officers to append in their complaint an Affidavit Justifying Failure to comply with Section 21. The rationale is that the police officers need not wait for the prosecutor or the counsel for the respondent to question non-compliance of the physical inventory and photography.

Survey of 2009 Supreme Court Decisions on Property and Land Registration

*Eduardo A. Labitag**

INTRODUCTION

The decisions promulgated by the Supreme Court in 2009 appear to be unremarkable owing to the lack of significant decisions enunciating novel doctrines. As a whole, however, the 2009 decisions endeavor to restate certain rules and doctrines found in past decisions with a view to clarifying the jurisprudence of those legal issues.

There must be caution in using the judicial pronouncements in these Supreme Court ponencias: many of them are mere obiter dicta; they may not be the ratio decidendi of the cases. Therefore, care must be taken in using these pronouncements. The cases should be read in the original to get their context.

I. OWNERSHIP

A. Actions to Recover Possession/Ownership of Real Property

1. Ejectment

Blas v. Eduardo
G.R. No. 159710. September 30, 2009.

In ejectment cases, the only issue is the physical and material possession of the property involved, the resolution being independent of any claim of ownership made by any of the litigants. The question of ownership is, at best, merely provisionally decided, but only for the sole purpose of determining which party has the better right to the physical possession of the property. Indeed, the judgment in the ejectment case could only determine who between the petitioner and the respondents had a better right to possess.

* Professor of Law, College of Law, University of the Philippines

Canlas v. Tubil
G.R. No. 184285. September 25, 2009.

Well-settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. An unlawful detainer proceeding is summary in nature, jurisdiction of which lies in the proper municipal trial court or metropolitan trial court. The action must be brought within one year from the date of last demand and the issue in said case is the right to physical possession.

On the other hand, *accion publiciana* is the plenary action to recover the right of possession which should be brought in the proper regional trial court when dispossession has lasted for more than one year. It is an ordinary civil proceeding to determine the better right of possession of realty independently of title.

The same ruling was reiterated in *Malabanan v. Rural Bank of Cabuyao* (G.R. No. 163495, 8 May 2009), where it was further stated that a pending action involving ownership of the same property does not bar the filing or consideration of an ejectment suit, nor suspend the proceedings. This is so because an ejectment case is simply designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings.

Bunyi v. Factor
G.R. No. 172547. June 30, 2009.

In an ejectment suit against the petitioners, they posed as a defense that the respondents were unable to prove prior ownership as far as the latter's father title. The respondents are co-owners of the property located in Las Piñas. Petitioner Precy Bunyi was the wife of Ruben Lubao, who was previously married to Gloria Factor. The latter was one of the co-owners. When Gloria died, Ruben was allowed to live at the rest house as a transient since he was sickly. Shortly after remarrying, he died. Petitioners forcibly occupied the house thereafter.

HELD: In ejectment cases, the only issue for resolution is who is entitled to the physical or material possession of the property involved, independent of any claim of ownership set forth by any of the party-litigants. The one who can prove prior possession *de facto* may recover such possession even from the owner himself. Possession *de facto* and not possession *de jure* is the only issue in a forcible entry case. This rule holds true regardless of the character of a party's possession, provided, that he has in his favor priority of time which entitles him to stay on the property until he is lawfully ejected by a person having a better right by either *accion publiciana* or *accion reivindicatoria.*

While petitioners claim that respondent never physically occupied the subject property, they failed to prove that they had prior possession of the subject property. On record, petitioner Precy Bunyi admitted that Gloria Factor-Labao and Ruben Labao, as spouses resided in Tipaz, Taguig, Metro Manila (the property in question being at Las Piñas) and used the subject property whenever they visit the same. Likewise, as pointed out by the MeTC and the RTC, Ruben and petitioner Precy's marriage certificate revealed that at the time of their marriage, Ruben was residing at Taguig. Considering that her husband was never a resident of the subject property, petitioner Precy failed to explain convincingly how she was able to move in with Ruben Lubao in the subject property during their marriage.

The same rule was reiterated in *Lee v. Dela Paz* (G.R. No. 183606, 27 October 2009). In *Grano v. Lacaba* (*supra*), the Court reiterated the rule that tax declarations and realty tax payments are not conclusive proof of possession. They are merely good indicia of possession in the concept of owner based on the presumption that no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. In *Daclag v. Macahilig* (G.R. No. 159578, 18 February 2009), the Court held that a possessor in good faith is entitled to the fruits only so long as his possession is not legally interrupted (Art. 544, NCC).

a. Forcible Entry

i. Elements

Lopez v. Espinosa
G.R. No. 184225. September 4, 2009.

There is forcible entry when one is deprived of physical possession of land or building by means of force, intimidation, threat, strategy or stealth. The basic inquiry centers on who has the prior possession *de facto.* The plaintiff must prove that he was in prior possession and that he was deprived thereof.

The same ruling was held in *Grano v. Lacaba* (G.R. No. 158877, 16 June 2009), where the Court added that a party who can prove prior possession can recover such possession even against the owner himself. Whatever may be the character of

his possession, if he has in his favor prior possession in time, he has the security that entitles him to remain in the property until a person with a better right lawfully ejects him. In *Mistica v. Republic* (G.R. No. 165141, 11 September 2009), the Court held that possession alone is not sufficient to acquire title to alienable land of the public domain because the law requires possession and occupation.

b. Unlawful Detainer

i. Elements

Cabrera v. Getaruela
G.R. No. 164213. April 21, 2009.

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (See also *Soriente v. Estate of A.E. Concepcion*, G.R. No. 160239, 25November 2009)

In *Panganiban v. Sps. Roldan* (G.R. No. 163053, 25 November 2009), that the Supreme Court held that, in unlawful detainer and forcible entry cases, the only issue to be determined is who between the contending parties has the better right to possess the contested property, independent of any claim of ownership. However, where the issue of ownership is so intertwined with the issue of possession, the courts may pass upon the issue of ownership if only to determine who has the better right to possess the property. While in *Samonte v. Century Savings Bank* (G.R. No. 176413, 25 November 2009), it was held that unlawful detainer and forcible entry suits under Rule 70 of the Rules of Court are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature. The provisional determination of ownership in the ejectment case cannot be clothed with finality. (See also *Sps. Barias v. Heirs of B. Boneo*, G.R. No. 166941, 14 December 2009)

Malabanan v. Rural Bank of Cabuyao (*supra.*)

Well established is the rule that if possession is by tolerance as has been alleged in the complaint such possession becomes illegal upon demand to vacate, with the

possessor refusing to comply with such demand. A person who occupies the land of another with the latter's tolerance or permission, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy against him.

2. Accion Publiciana

Padilla vs. Velasco
G.R. No. 169956. January 19, 2009.

Respondents are the heirs of Dr. Artemio A. Velasco (Artemio). who died single. Artemio acquired Lot No. 2161 from spouses Brigido Sacluti and Melitona Obial, evidenced by a deed of sale. In October 1987, petitioners entered the property as trustees by virtue of a deed of sale executed by the Rural Bank of Pagsanjan in favor of spouses Bartolome Solomon, Jr. and Teresita Padilla (Solomon spouses). Respondents demanded that petitioners vacate the property, but the latter refused. Thereafter, respondents filed a complaint for *accion publiciana*, accounting and damages against petitioners before the Regional Trial Court.

However, petitioners averred that the Solomon spouses owned the property; that the said spouses bought it from the Rural Bank of Pagsanjan as evidenced by a deed of sale; that the land was identified as Lot No. 76-pt; and that the spouses authorized petitioners to occupy the land and introduce improvements thereon. Petitioners further alleged that Valeriano Velasco obtained a loan from the Rural Bank of Pagsanjan, with Hector Velasco as co-maker, and the land was mortgaged by Valeriano as collateral. Valeriano's failure to pay the loan caused the foreclosure of the land. After which, Lot No. 76-pt was sold at a public auction. The Rural Bank of Pagsanjan was the highest bidder. A witness for petitioners also testified that Valeriano was the owner of the land. RTC rendered judgment in favor of respondents. CA affirmed.

The issues raised were: (1) whether or not respondents are entitled to possession of the property; (2) whether or not the action for *accion publiciana* has already prescribed; (3) whether or not there was collateral attack on the title;

HELD: (1) Yes. The instant case is for *accion publiciana*, or for recovery of the right to possess. This was a plenary action filed in the regional trial court to determine the better right to possession of realty independently of the title. *Accion publiciana* is also used to refer to an ejectment suit where the cause of dispossession is not among the grounds for forcible entry and unlawful detainer, or when possession has been lost for more than one year and can no longer be maintained under Rule 70 of the Rules of Court. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership.

Based on the findings of facts of the RTC which were affirmed by the CA, respondents were able to establish lawful possession of Lot No. 2161 when the

petitioners occupied the property. The Original Certificate of Title to the land was issued to Brigido Sacluti and Melitona Obial. On February 14, 1944, the original owners of the land sold the same to Artemio. From the date of sale, until Artemio's death on January 22, 1949, he was in continuous possession of the land.

(2) The case filed by respondents for accion publiciana has not prescribed. The action was filed with the RTC on October 14, 1991. Petitioners dispossessed respondents of the property in October 1987. At the time of the filing of the complaint, only four (4) years had elapsed from the time of dispossession. Under Article 555(4) of the Civil Code of the Philippines, the real right of possession is not lost till after the lapse of ten years. It is settled that the remedy of *accion publiciana* prescribes after the lapse of ten years. Thus, the instant case was filed within the allowable period.

(3) Yes. In *accion publiciana*, the principal issue is possession, and ownership is merely ancillary thereto. Only in cases where the possession cannot be resolved without resolving the issue of ownership may the trial court delve into the claim of ownership.

OBSERVATION: The case could have been in *accion reivindicatoria*, unless the plaintiffs (respondents) were not sure they could prove ownership by virtue of inheritance from Dr. Artemio Velasco.

In *Madrid v. Sps. Mapoy* (G.R. No. 150887, 14 August 2009), the Court added that *accion publiciana*, also known as *accion plenaria de posesion*, is an ordinary civil proceeding to determine the better right of possession of realty independently 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.

3. Accion Reivindicatoria

B. Action for Reconveyance

1. Nature of action

Sps. Lopez v. Sps. Lopez
G.R. No. 161925. November 25, 2009.

An action for reconveyance is a legal and equitable remedy granted to the rightful owner of a land which has been wrongfully or erroneously registered in the name of another for the purpose of compelling the latter to transfer or reconvey the land to him. The action does not seek to reopen the registration proceedings and to set aside the decree of registration but only purports to show that the person who secured the registration of the property in controversy is not the real owner thereof.

Rementizo v. Heirs of Vda. De Madarieta
G.R. No. 170318. January 15, 2009.

In an action for reconveyance, the decree of registration is respected as incontrovertible but what is sought instead is the transfer of the property wrongfully or erroneously registered in another's name to its rightful owner or to one with a better right. The person in whose name the land is registered holds it as a mere trustee.

2. Respects the decree of registration as incontrovertible

Pagaduan v. Sps. Ocuma
G.R. No. 176308. May 8, 2009.

An action for reconveyance respects the decree of registration as incontrovertible but seeks the transfer of property, which has been wrongfully or erroneously registered in other persons' names, to its rightful and legal owners, or to those who claim to have a better right.

The same ruling has been reiterated in *Pagaduan v. Sps. Estanislao* (G.R. No. 176308, 8 May 2009) and in *Pioneer Insurance v. Heirs of Coronado* (G.R. No. 180357, 4 August 2009).

3. Prescription of action for reconveyance

D.B.T. Mar-Bay Construction v. Panes
G.R. No. 167232. July 31, 2009.

An action for reconveyance can be barred by prescription. When an action for reconveyance is based on fraud, it must be filed within four (4) years from discovery of the fraud, and such discovery is deemed to have taken place from the issuance of the original certificate of title. On the other hand, an action for reconveyance based on an implied or constructive trust prescribes in ten (10) years from the date of the issuance of the original certificate of title or transfer certificate of title. The rule is that the registration of an instrument in the Office of the Register of Deeds constitutes constructive notice to the whole world and therefore the discovery of the fraud is deemed to have taken place at the time of registration.

However, the prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession of the property. If the plaintiff, as the real owner of the property also remains in possession of the property, the prescriptive period to recover title and possession of the property does not run against him. In such a case, the action for reconveyance, if nonetheless filed, would be in the nature of a suit for quieting of title, and the action that is imprescriptible.

The same ruling is reiterated in *Heirs of Toribio v. Sacabin* (G.R. No. 159131, 27 July 2009) and in *Rementizo v. Heirs of Vda. De Madarieta* (G.R. No. 170318, 15 January 2009).

C. Double sale of immovable property

Pagaduan v. Sps. Ocuma
G.R. No. 176308. May 8, 2009.

In November 26, 1961, Eugenia Reyes executed a unilateral deed of sale where she sold the northern portion with an area of 32,325 square meters to respondents for P1,500.00 and the southern portion consisting of 8,754 square meters to Agaton Pagaduan for P500.00. Later, on June 5, 1962, Eugenia executed another deed of sale, this time conveying the entire parcel of land, including the southern portion, in respondent's favor.

HELD: This case involves a double sale since there was a first sale by Eugenia Reyes to Agaton Pagaduan and a second sale by Eugenia Reyes to the respondents. For a second buyer, like the respondents, to successfully invoke the second paragraph of Article 1544 of the Civil Code, he must possess good faith from the time of the sale in his favor until the registration of the same.

Respondents sorely failed to meet this requirement of good faith since they had actual knowledge of Eugenia's prior sale of the southern portion property to the petitioners, a fact antithetical to good faith. This cannot be denied by respondents since in the same deed of sale that Eugenia sold them the northern portion to the respondents for P1,500.00, Eugenia also sold the southern portion of the land to Agaton Pagaduan for P500.00. It should be emphasized that the Agaton Pagaduan never parted with the ownership and possession of that portion of Lot No. 785 which he had purchased from Eugenia Santos; hence, the registration of the deed of sale by respondents was ineffectual and vested upon them no preferential rights to the property in derogation of the rights of the petitioners.

D. Payment of rental an implied admission of ownership of another

Calma v. Santos
G.R. No. 161027. June 22, 2009.

The subject of this controversy is a property known as "Calangain Fishpond" (Fishpond), The property was covered by TCTs registered in the names of Celestino Santos, a widower, with 1/2 share, and of his children the other one-half share. On April 11, 1975, Celestino Santos died. On various dates, petitioner, Francisco Calma, purchased the several shares in the fishpond, including shares of Celestino's children that they inherited from him. Petitioner then demanded from the other co-owners of the property the identification and segregation of the shares in the fishpond purchased

by him. The respondents did not comply. Thus, petitioner filed a complaint for specific performance and partition. In their answers, respondents, in effect, admitted the existence of the deeds of absolute sale and the other agreements covering the sale and transfer of the undivided shares in the fishpond in favor of petitioner, but alleged that Celestino sold during his lifetime his ½ undivided share to the Calangain Fishpond to respondent Arsenio Santos. It was also claimed by respondents that petitioner was the lessee of the Calangain Fishpond has been delinquent for many years in the payment of the lease rentals thereon. RTC ruled in favor of petitioner. CA reversed.

ISSUES:

(1) Whether or not Celestino's ½ share was validly sold to Arsenio during his lifetime
(2) Whether or not Calma is obligated to pay the unpaid rentals

HELD: (1) Yes. The sale of Celestino's share to Arsenio was executed in a notarial document. He has in his favor the presumption of regularity; thus, it is the petitioner who has the *onus* of overcoming the presumed regularity of the Deed of Absolute Sale, dated March 11, 1975, in favor of respondent Arsenio. The evidence presented by Calma were not sufficient to overcome the presumption of regularity in favor of the validity of the questioned Deed. Also, Petitioner's admission that he had to pay rentals up to April 30, 1989 strengthened the Court's view that Celestino's 1/2 share in the Fishpond could not have been validly sold to petitioner.

(2) Yes. By acknowledging his obligation to pay rentals, he also impliedly admitted the ownership of Arsenio over the 1/2 share of Celestino. Receipt of the two letters, dated July 18, 1988 and March 14, 1989, sent by respondent Arsenio to petitioner demanding the payment of his outstanding obligation in the amount of P300,000.00 was admitted by petitioner. There is nothing on record showing that he ever replied to these letters, much less, question the amount being demanded therein. Not having sufficiently denied the existence of the lease, petitioner is, thus, bound to pay the proper rent in the amount that appears in the receipt and the demand letters.

E. Prohibition against aliens owning lands.

Borromeo v. Descallar
G.R. No. 159310. February 24, 2009.

Wilhelm Jambrich, an Austrian met respondent Antonietta Opalla-Descallar, a separated mother of two boys, when she was working as a waitress at St. Moritz Hotel. They then fell in love and decided to live together. After some time, they transferred to their own house and lot in the Agro-Macro subdivision. In the Contracts to Sell covering the properties, Jambrich and respondent were referred to as the

buyers. A Deed of Absolute Sale was likewise issued in their favor. However, when the Deed of Absolute Sale was presented for registration before the Register of Deeds, registration was refused on the ground that Jambrich was an alien and could not acquire alienable lands of the public domain. Consequently, Jambrich's name was erased from the document. However, his signature remained on the left hand margin of page 1, beside respondent's signature as buyer on page 3, and at the bottom of page 4 which is the last page. Transfer Certificate of Title (TCT) Nos. 24790, 24791 and 24792 over the properties were issued in respondent's name alone. Their However, their relationship did not last long. They soon separated.

When Jambrich and respondent were already separated, the former met petitioner Camilo F. Borromeo sometime in 1986. Petitioner was engaged in the real estate business. In 1989, Jambrich purchased an engine and some accessories for his boat from petitioner, for which he became indebted to the latter for about P150,000.00. To pay for his debt, he sold his rights and interests in the Agro-Macro properties to petitioner for P250,000, as evidenced by a "Deed of Absolute Sale/ Assignment." Sometime after, when petitioner sought to register the deed of assignment, he discovered that titles to the three lots have been transferred in the name of respondent, and that the subject property has already been mortgaged. Petitioner then filed a complaint against respondent for recovery of real property. The RTC ruled in his favor. The CA reversed.

ISSUES:

(1) Whether or not Jambrich was the owner of the property during the transfer;
(2) Whether or not petitioner is entitled to the properties in question considering that he acquired title from an alien;

HELD: (1) Yes. The evidence clearly showed that at the time of the acquisition of the properties in 1985 to 1986, Jambrich was gainfully employed at Simmering-Graz Panker A.G., an Austrian company. He was earning an estimated monthly salary of ₱50,000.00. Then, Jambrich was assigned to Syria for almost one year where his monthly salary was approximately ₱90,000.00. On the other hand, respondent was employed as a waitress from 1984 to 1985 with a monthly salary of not more than ₱1,000.00. In 1986, when the parcels of land were acquired, she was unemployed, as admitted by her during the pre-trial conference. Thus, Jambrich has all authority to transfer all his rights, interests and participation over the subject properties to petitioner by virtue of the Deed of Assignment he executed on July 11, 1991.

(2) In the instant case, the transfer of land from Agro-Macro Development Corporation to Jambrich, who is an Austrian, would have been declared invalid if challenged, had not Jambrich conveyed the properties to petitioner who is a Filipino citizen. In *United Church Board for World Ministries v. Sebastian*, the Court reiterated the consistent ruling in a number of cases that if land is invalidly transferred to an alien

who subsequently becomes a Filipino citizen or transfers it to a Filipino, the flaw in the original transaction is considered cured and the title of the transferee is rendered valid.

While the acquisition and the purchase of Wilhelm Jambrich of the properties under litigation were void *ab initio* since they were contrary to the Constitution of the Philippines, he being a foreigner, yet, the acquisition of these properties by plaintiff who is a Filipino citizen from him, has cured the flaw in the original transaction and the title of the transferee is valid.

The rationale behind the Court's ruling in *United Church Board for World Ministries* is that since the ban on aliens is intended to preserve the nation's land for future generations of Filipinos, that aim is achieved by making lawful the acquisition of real estate by aliens who became Filipino citizens by naturalization or those transfers made by aliens to Filipino citizens. As the property in dispute is already in the hands of a qualified person, a Filipino citizen, there would be no more public policy to be protected. The objective of the constitutional provision to keep our lands in Filipino hands has been achieved.

Criticism of the decision: If the contract of sale of a parcel of land to an alien is void, how can a subsequent transfer to a Filipino validate such sale? No right is transferred to the transferee of a void contract.

F. Allegation of fraud immaterial when document alleged to have been executed through fraud is not the document that proves ownership

Heirs of Ulep v. Ducat
G.R. No. 159284. January 27, 2009.

Agustin Ulep and petitioner Cristobal Ducat executed an Agreement whereby the latter agreed to perform the conduct of all the necessary procedures for the registration and acquisition of title over several parcels of land possessed and occupied by the former in the concept of an owner, which included the land in dispute. Before Cristobal Ducat was able to accomplish his task of acquiring titles over the lands for and in behalf of Agustin Ulep, the latter died. After Agustin died, his son Cecilio Ulep took over as administrator of the properties. Cristobal Ducat continued working to acquire titles for the lands of Agustin Ulep.

Subsequently, Cristobal Ducat filed an Application for Free Patent over the land. The application was granted and accordingly OCT No. P-1390 was issued in the names of the Spouses Cristobal Ducat and Flora Kiong. Cristobal Ducat subsequently declared the property in his name for taxation purposes. On November 11, 1994, the heirs of Bernardo Ulep filed a complaint for the reconveyance of the land with damages against the Spouses Cristobal Ducat and Flora Kiong. Petitioners

insisted that Exhibit "D-2," is proof of the fraud perpetrated by respondents to obtain title to the land in dispute. MTC of La Trinidad rendered judgment in favor of the Spouses Cristobal Ducat and Flora Kiong. RTC affirmed the MTC decision but upon petitioners' MR, it reversed its initial decision. CA reversed and ruled in favor of respondents.

ISSUE: Whether or not petitioners are entitled to reconveyance of property.

HELD: No. It is well-settled that in order for an action for reconveyance based on fraud to succeed, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud. Exhibit "D-2" was not the document which proved respondent's ownership of the land in dispute. The existence of alterations and erasures on said document, whether caused by respondents or petitioners' own predecessors-in-interest, is immaterial, as it does not appear to be the basis for the grant of the certificate of title in favor of respondents. The more important document which proved respondents' ownership of the subject property is Exhibit "15".

The upper portion of Exhibit "15" contained the Transferee's Affidavit executed by respondent Cristobal Ducat, stating that he bought the subject property from Cecilio Ulep and Bernardo Ulep, while the lower portion contained the Transferor's Affidavit executed by Cecilio Ulep and Bernardo Ulep, stating that on the 5th day of March 1981, they sold/donated subject property to Cristobal Ducat and said person is now the legal owner of the same.

G. Builder, planter, sower

Sps. Narvaez v. Sps. Alciso
G.R. No. 165907. July 27, 2009.

Article 448 is inapplicable in cases involving contracts of sale with right of repurchase – it is inapplicable when the owner of the land is the builder, sower, or planter. Article 448 does not apply to a case where the owner of the land is the builder, sower, or planter who then later loses ownership of the land by sale or donation. Otherwise stated, where the true owner himself is the builder of the works on his own land, the issue of good faith or bad faith is entirely irrelevant.

II. CO-OWNERSHIP

A. Aliqout interest of a co-owner transferable

Calma v. Santos
G.R. No. 161027. June 22, 2009.

Art. 493 of the Civil Code provides that "(e)ach co-owner shall has the full ownership of his part and of the fruits and benefits pertaining thereto, and he may

therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved..."

B. Action of a co-owner benefits others

Marmo v. Anacay
G.R. No. 182585. November 27, 2009.

When the controversy involves a property held in common, Article 487 of the Civil Code explicitly provides that "any one of the co-owners may bring an action in ejectment." The term "action in ejectment" includes a suit for forcible entry or unlawful detainer. The term "action in ejectment" includes "also, an *accion publiciana* (recovery of possession) or *accion reivindicatoria* (recovery of ownership).

This should be distinguished from a case where the actions for quieting of title and unlawful detainer, respectively, were brought for the benefit of the plaintiff alone who claimed to be the sole owner. Such action will not prosper unless the plaintiff impleaded the other co-owners who are indispensable parties. In these cases, the absence of an indispensable party rendered 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.

Thus, where the suit is brought by a co-owner, without repudiating the co-ownership, then the suit is presumed to be filed for the benefit of the other co-owners and may proceed without impleading the other co-owners. However, where the co-owner repudiates the co-ownership by claiming sole ownership of the property or where the suit is brought against a co-owner, his co-owners are indispensable parties and must be impleaded as party-defendants, as the suit affects the rights and interests of these other co-owners.

In *Plasabas v. CA* (G.R. No. 166519, 31 March 2009), the Court added that any judgment of the court in favor of the plaintiff will benefit the other co-owners, but if the judgment is adverse, the same cannot prejudice the rights of the unimpleaded co-owners.

C. Co-owner builds, plants or sows in co-owner land

Heirs of Limense v. Vda. De Ramos (*supra*)

Article 448 of the Civil Code cannot apply where a co-owner builds, plants or sows on the land owned in common for then he did not build, plant or sow upon the land that exclusively belongs to another but of which he is a co-owner. The co-owner is not a third person under the circumstances, and the situation is governed by the rules of co-ownership. However, when the ownership is terminated by the partition and it appears that the house of defendants overlaps or occupies a portion of 5

square meters of the land pertaining to plaintiffs which the defendants obviously built in good faith, then the provisions of Article 448 of the new Civil Code should apply.

[Note: When a co-owner builds, plants or sows on land owned in common, the rule to be applied depends upon whether the building, planting or sowing is characterized as an act of alteration (act of ownership) or an act of mere administration or better use and enjoyment of the thing owned in common. See Articles 491, 492]

D. Phases of partition

Go v. Go
G.R. No. 183546. September 18, 2009.

An action for partition involves two phases. During the first phase, the trial court determines whether a co-ownership in fact exists while in the second phase the propriety of partition is resolved. Thus, until and unless the issue of co-ownership is definitely resolved, it would be premature to effect a partition of the subject property.

E. Condominium Act

Goldcrest Realty vs. Cypress Gardens Condominium
G.R. No. 171072. April 7, 2009

Petitioner Goldcrest Realty Corporation (Goldcrest) was the developer of Cypress Gardens. On April 26, 1977, Goldcrest executed a Master Deed and Declaration of Restrictions which constituted Cypress Gardens into a condominium project and incorporated respondent Cypress Gardens Condominium Corporation (Cypress) to manage the condominium project and to hold title to all the common areas. Title to the land on which the condominium stands was transferred to Cypress but Goldcrest retained ownership of the two-level penthouse unit on the ninth and tenth floors of the condominium. Goldcrest and its directors, officers, and assigns likewise controlled the management and administration of the Condominium until 1995.

Following the turnover of the administration and management of the Condominium to the board of directors of Cypress in 1995, it was discovered that certain common areas pertaining to Cypress were being occupied and encroached upon by Goldcrest. Thus, in 1998, Cypress filed a complaint with damages against Goldcrest before the HLURB seeking to compel the latter to vacate the common areas it allegedly encroached on and to remove the structures it built thereon. Cypress sought to remove the door erected by Goldcrest along the stairway between the 8th

and 9th floors, as well as the door built in front of the 9th floor elevator lobby, and the removal of the cyclone wire fence on the roof deck. For its part, Goldcrest averred that it was granted the exclusive easement for the use of the roof deck's limited common area by Section 4(c) of the condominium's Master Deed. It likewise argued that it constructed the contested doors for privacy and security purposes, and that, nonetheless, the common areas occupied by it are unusable and inaccessible to other condominium unit owners. The Supreme Court affirmed the CA's ruling that Goldcrest's right to the exclusive use of the easement covering a portion of the roof deck appurtenant to the penthouse did not include the unrestricted right to build structure thereon to lease such area to third persons. The CA ordered the removal of the permanent structures.

HELD: The second question of whether or not a certain act impairs an easement is undeniably one of fact, considering that its resolution requires the Court to determine the act's propriety in relation to the character and purpose of the subject easement. Not only did Goldcrest's act impair the easement, it also illegally altered the condominium plan, in violation of Section 22 of Presidential Decree No. 957.

The owner of the dominant estate cannot violate any of the following prescribed restrictions on its rights on the servient estate, to wit: (1) it can only exercise rights necessary for the use of the easement; (2) it cannot use the easement except for the benefit of the immovable originally contemplated; (3) it cannot exercise the easement in any other manner than that previously established; (4) it cannot construct anything on it which is not necessary for the use and preservation of the easement; (5) it cannot alter or make the easement more burdensome; (6) it must notify the servient estate owner of its intention to make necessary works on the servient estate; and (7) it should choose the most convenient time and manner to build said works so as to cause the least convenience to the owner of the servient estate. Any violation of the above constitutes impairment of the easement.

In this case, a careful scrutiny of Goldcrest's acts showed that it breached a number of the aforementioned restrictions. First, the construction and the lease of the office structure were neither necessary for the use or preservation of the roof deck's limited area. Second, the weight of the office structure increased the strain on the condominium's foundation and on the roof deck's common limited area, making the easement more burdensome and adding unnecessary safety risk to all the condominium unit owners. Lastly, the construction of the said office structure clearly went beyond the intendment of the easement since it illegally altered the approved condominium project plan and violated Section 4 of the condominium's Declaration of Restrictions.

III. EASEMENTS

A. In General

BAPCI v. Obias
G.R. No. 172077. October 9, 2009.

Easement or *praedial* servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. By its creation, easement is established either by law (in which case it is a legal easement) or by will of the parties (a voluntary easement).

In terms of use, easement may either be continuous or discontinuous. An easement is continuous if its use is, or may be, incessant without the intervention of any act of man, like the easement of drainage; and it is discontinuous if it is used at intervals and depends on the act of man, like the easement of right of way. The easement of right of way is considered discontinuous because it is exercised only if a person passes or sets foot on somebody else's land. Like a road for the passage of vehicles or persons, an easement of right of way of railroad tracks is discontinuous because the right is exercised only if and when a train operated by a person passes over another's property. In other words, the very exercise of the servitude depends upon the act or intervention of man which is the very essence of discontinuous easements. The easement of right of way – the privilege of persons or a particular class of persons to pass over another's land, usually through one particular path or line – is characterized as a discontinuous easement because its use is in intervals and depends on the act of man. Because of this character, an easement of a right of way may only be acquired by virtue of a title not by prescription.

The presence of more or less permanent railroad tracks does not, in any way, convert the nature of an easement of right of way to one that is continuous. It is not the presence of apparent signs or physical indications showing the existence of an easement, but rather the manner of exercise thereof, that categorizes such easement into continuous or discontinuous. The presence of physical or visual signs only classifies an easement into apparent or non-apparent. Thus, a road (which reveals a right of way) and a window (which evidences a right to light and view) are apparent easements, while an easement of not building beyond a certain height is non-apparent.

The same rules were reiterated in *Privatization and Management Office v. Legaspi Towers* (G.R. No. 147957, 22 July2009) and in *Heirs of Limense v. Vda. De Ramos* (G.R. No. 152319, 28 October 2009).

B. Kinds

1. Legal

a. Power of Eminent Domain

NAPOCOR v. Villamor
G.R. No. 160800. June 19, 2009.

Easement of right of way falls within the purview of the power of eminent domain. In installing the 230 KV Talisay-Compostela transmission lines which traverse respondent's lands, a permanent limitation is imposed by petitioner against the use of the lands for an indefinite period. This deprives respondent of the normal use of the lands. In fact, not only are the affected areas of the lands traversed by petitioner's transmission lines but a portion is used as the site of its transmission tower. Because of the danger to life and limbs that may be caused beneath the high-tension live wires, the landowner will not be able to use the lands for farming or any agricultural purposes.

Republic v. Sps. Libunao
G.R. No. 166553. July 30, 2009.

The nature and effect of the installation of power lines and the limitations on the use of the land for an indefinite period should be considered, as the owners of the properties would be deprived of the normal use of their properties. For this reason, the property owners are entitled to the payment of just compensation based on the full market value of the affected properties. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way.

True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not *gratis*. Considering the nature and the effect of the installation of power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land. (See *Republic v. Sps. Libunao*, *supra*)

2. Voluntary

Unisource Commercial v. Chung
G.R. No. 173252. July 17, 2009.

Petitioner Unisource Commercial and Development Corporation is the registered owner of a parcel of land covered by a TCT. The title contains a memorandum of encumbrance of a voluntary easement which has been carried over from the OCT of Encarnacion S. Sandico. The annotation read: "It is declared that Francisco Hidalgo Y Magnifico has the right to open doors in the course of his lot..." As Sandico's property was transferred to several owners, the memorandum of encumbrance of a voluntary easement in favor of Mr. Hidalgo was consistently annotated at the back of every title covering Sandico's property until OCT No. 176253 was issued in favor of petitioner. On the other hand, Hidalgo's property was eventually transferred to respondents Joseph Chung, Kiat Chung and Cleto Chung under TCT No. 121488. Thereafter, petition filed a Petition to Cancel Encumbrance of Voluntary Easement of Right of Way on the ground that the dominant estate has an adequate access to a public road which is Matienza Street.

HELD: In its Memorandum before the trial court, petitioner reiterated that the annotation found at the back of the TCT of Unisource is a voluntary easement. Petitioner claims that the same should be cancelled since the dominant estate is not an enclosed estate as it has an adequate access to a public road which is Callejon Matienza Street. As the Court has said, the opening of an adequate outlet to a highway can extinguish only legal or compulsory easements, not voluntary easements like in the case at bar. The fact that an easement by grant may have also qualified as an easement of necessity does not detract from its permanency as a property right which survives the termination of the necessity. A voluntary easement of right of way, like any other contract, could be extinguished only by mutual agreement or by renunciation of the owner of the dominant estate.

Neither can petitioner claim that the easement is personal only to Hidalgo since the annotation merely mentioned Sandico and Hidalgo without equally binding their heirs or assigns. That the heirs or assigns of the parties were not mentioned in the annotation does not mean that it is not binding on them. Again, a voluntary easement of right of way is like any other contract. As such, it is generally effective between parties, their heirs and assigns, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law.

Although the easement does not appear in respondent's title over the dominant estate, the same subsists. It is settled that the registration of the dominant estate under the Torrens System without the annotation of the voluntary easement in its favor does not extinguish the easement. On the contrary, it is the registration of the servient estate as free, that is, without the annotation of the voluntary easement, which extinguishes the easement. Finally, the mere fact that respondents subdivided

the property does not extinguish the easement. Article 618 of the Civil Code provides that if the dominant estate is divided between two or more persons, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way.

[Note: An easement, whether legal or voluntary attaches to the land either as a dominant or a servient estate. As long as it is not extinguished by of the ways of extinguishing an easement, it attaches to the land. An easement has the characteristics of: inherence, intransfermissibility (i.e. from the land to which it attaches, indivisibility and permanence].

IV. MODES OF ACQUIRING OWNERSHIP OR REAL RIGHTS

A. Prescription

Imuan v. Cereno
G.R. No. 167995. September 11, 2009.

Prescription is another mode of acquiring ownership and other real rights over immovable [as well as movable] property. It is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted and adverse. Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public of the people in the neighborhood. The party who asserts ownership by adverse possession must prove the presence of the essential element of acquisitive prescription.

Gutierrez v. Mendoza-Plaza
G.R. No. 185477. December 4, 2009.

Prescription as a mode of acquisition requires the existence of the following: (1) capacity to acquire by prescription; (2) a thing capable of acquisition by prescription; (3) possession of the thing under certain conditions; and (4) lapse of time provided by law. Acquisitive prescription may either be ordinary, in which case the possession must be in good faith and with just title; or extraordinary, in which case there is neither good faith nor just title. In either case, there has to be possession, which must be in the concept of an owner, public, peaceful and uninterrupted. As a corollary, Article 1119 of the Civil Code provides that:

> Art. 1119. Acts of possessory character executed in virtue of license or by mere tolerance of the owner shall not be available for the purposes of possession.

Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not *en concepto de dueño*, and such possessory acts, no matter how long so continued, do not start the running of the period of prescription.

Olegario v. Mari
G.R. No. 147951. December 14, 2009.

Despite 25 years of occupying the disputed lots, therefore, petitioners did not acquire ownership. Firstly, they had no just title. Petitioners did not present any document to show how the titles over Lot Nos. 17526 and 17533 were transferred to them, whether from respondent, his predecessor, or any other person. Petitioners, therefore, could not acquire the disputed real property by ordinary prescription through possession for 10 years. Secondly, it is settled that ownership cannot be acquired by mere occupation. Unless coupled with the element of hostility towards the true owner, occupation and use, however long, will not confer title by prescription or adverse possession. In other words, possession, to constitute the foundation of a prescriptive right, must be possession under claim of title, that is, it must be adverse.

B. Accretion

New Regent Sources, Inc. v. Tanjuatco
G.R. No. 168800. April 16, 2009.

Petitioner filed a complaint for rescission/declaration of nullity of contract, reconveyance and damages against respondents. Primarily, NRSI anchors its claim over the lands subjects of this case on the right of accretion. It submitted in evidence, titles to four parcels of land, which allegedly adjoin the lots in the name of Tanjuatco. It also claims that Tanjuatco is a buyer in bad faith. The issue raised was whether or not petitioner is entitled to reconveyance of property

HELD: No. It must be stressed that accretion as a mode of acquiring property under Article 457 of the Civil Code requires the concurrence of the following requisites: (1) that the deposition of soil or sediment be gradual and imperceptible; (2) that it be the result of the action of the waters of the river [or a lake], and (3) that the land where accretion takes place is adjacent to the banks of rivers [or a lakeshore]. Thus, it is not enough to be a riparian owner in order to enjoy the benefits of accretion. One who claims the right of accretion must show by preponderant evidence that he has met all the conditions provided by law. Petitioner has notably failed in this regard as it did not offer any evidence to prove that it has satisfied the foregoing requisites.

V. LEASE

A. Nature of a contract of lease

Lopez v. Umale-Cosme
G.R. No. 17189. February 24, 2009

It is well settled that where a contract of lease is verbal and on a monthly basis, the lease is one with a definite period which expires after the last day of any given thirty-day period. In the recent case of *Leo Wee v. De Castro* where the lease contract between the parties did not stipulate a fixed period, the Supreme Court ruled:

> The rentals being paid monthly, the period of such lease is deemed terminated at the end of each month. Thus, respondents have every right to demand the ejectment of petitioners at the end of each month, the contract having expired by operation of law. Without a lease contract, petitioner has no right of possession to the subject property and must vacate the same. Respondents, thus, should be allowed to resort to an action for ejectment before the MTC to recover possession of the subject property from petitioner. It should be emphasized, however, that the lessor has to give the lessee a notice to vacate at the end of that particular month. It is the notice to vacate by such specific period which makes the lessee's *de facto* possession unlawful.

Verily, the lessor's right to rescind the contract of lease for non-payment of the demanded increased rental was recognized by this Court in *Chua v. Victorio*:

> The right of rescission is statutorily recognized in reciprocal obligations, such as contracts of lease. x x x under Article 1659 of the Civil Code, the aggrieved party may, at his option, ask for (1) the rescission of the contract; (2) rescission and indemnification for damages; or (3) only indemnification for damages, allowing the contract to remain in force. Payment of the rent is one of a lessee's statutory obligations, and, upon non-payment by petitioners of the increased rental in September 1994, the lessor acquired the right to avail of any of the three remedies outlined above.

B. Lessee cannot be builder in good faith

Sulo sa Nayon v. Nayong Pilipino Foundation
G.R. No. 170923. January 20, 2009

Respondent Nayong Pilipino Foundation, owned a parcel of land in Pasay City. On June 1, 1975, respondent leased a portion of the land, consisting of 36,289

square meters, to petitioner Sulo sa Nayon, Inc. for the construction and operation of a hotel building, to be known as the Philippine Village Hotel. The lease was for an initial period of 21 years, or until May 1996. It was renewable for a period of 25 years under the same terms and conditions upon due notice in writing to respondent of the intention to renew at least 6 months before its expiration. On March 7, 1995, petitioners sent respondent a letter notifying the latter of their intention to renew the contract for another 25 years. On July 4, 1995, the parties executed a Voluntary Addendum to the Lease Agreement. The addendum was signed by the Senior Executive Vice President of the PVHI and by the Chairman of the Nayong Pilipino Foundation. They agreed to the renewal of the contract for another 25 years, or until 2021. Under the new agreement, petitioner PVHI was bound to pay the monthly rental on a per square meter basis at the rate of ₱20.00 per square meter, which shall be subject to an increase of 20% at the end of every 3-year period. At the time of the renewal of the lease contract, the monthly rental amounted to ₱725,780.00.

Beginning January 2001, petitioners defaulted in the payment of their monthly rental. Respondent repeatedly demanded petitioners to pay the arrears and vacate the premises. The last demand letter was sent on March 26, 2001. As of July 31, 2001, the arrearages of lessee was ₱26,183,225.14.

On September 5, 2001, respondent filed a complaint for unlawful detainer. MeTC rendered its decision in favor of respondent. RTC modified the decision of the MeTC. It held that respondents were builders in good faith and thus, the rules on accession were applied to them. CA held that the RTC erroneously applied the rules of accession.

ISSUE: Whether or not the rules on accession were applicable to this case

HELD: The Supreme Court reiterated the doctrine that a lessee is neither a builder in good faith nor in bad faith that would call for the application of Articles 448 and 546 of the Civil Code. Otherwise the lessee could improve the lessor out of his property. It affirmed the ruling of the CA that introduction of valuable improvements on the leased premises does not give the petitioners the right of retention and reimbursement which rightfully belongs to a builder in good faith. Otherwise, such a situation would allow the lessee to easily "improve" the lessor out of its property. The Court reiterated the doctrine that a lessee is neither a builder in good faith nor in bad faith that would call for the application of Articles 448 of the Civil Code. His rights are governed by Article 1678 of the Civil Code.

Under Article 1678, the lessor has the option of paying one-half of the value of the improvements which the lessee made in good faith, which are suitable for the use for which the lease is intended, and which have not altered the form and substance of the land. On the other hand, the lessee may remove the improvements should the lessor refuse to reimburse.

The same ruling was expounded in *Cheng v. Vittorio (*G.R. No. 167017, June 22, 2009), wherein it was held that "the possessor in good faith naturally cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased property. Neither can he deny the ownership or title of his lessor. Knowing that his occupation of the premises continues only during the life of the lease contract and that he must vacate the property upon termination of the lease or upon the violation by him of any of its terms, he introduces improvements on said property at his own risk in the sense that he cannot recover their value from the lessor, much less retain the premises until such reimbursement."

C. Pre-emptive rights

Yuki v. Wellington Co.
G.R. No. 178527. November 27, 2009.

The right of first refusal, also referred to as the preferential right to buy, is available to lessees only if there is a stipulation relative thereto in the contract of lease or where there is a law granting such right to them (i.e., Presidential Decree No. 1517 (1978), which vests upon urban poor dwellers who merely lease the house where they have been residing for at least ten years, preferential right to buy the property located within an area proclaimed as an urban land reform zone). Unlike co-owners and adjacent lot owners, there is no provision in the Civil Code which grants to lessees preemptive rights. Nonetheless, the parties to a contract of lease may provide in their contract that the lessee has the right of first refusal.

And even assuming that he has, the same will not prevent the ejectment case filed by the respondent from taking its due course. A contract of sale entered into in violation of preemptive right is merely rescissible and the remedy of the aggrieved party whose right was violated is to file an appropriate action to rescind the sale and compel the owner to execute the necessary deed of sale in his favor. The Court has categorically held that an action for unlawful detainer cannot be abated or suspended by an action filed by the defendant-lessee to judicially enforce his right of preemption.

Estate of Llenado vs. Llenado
G.R. No. 145736. March 4, 2009

Not all agreements "affecting land" must be put into writing to attain enforceability. The Supreme Court has held that the setting up of boundaries, the oral partition of real property, and an agreement creating a right of way are not covered by the provisions of the statute of frauds. The reason simply is that those agreements are not among those enumerated in Article 1403 of the New Civil Code.

A right of first refusal is not among those listed as unenforceable under the statute of frauds. Furthermore, the application of Article 1403, par. 2(e) of the New Civil Code presupposes the existence of a perfected, albeit unwritten, contract of

sale. A right of first refusal, such as the one involved in the instant case, is not by any means a perfected contract of sale of real property. At best, it is a contractual grant, not of the sale of the real property involved, but of the right of first refusal over the property sought to be sold. The statute of frauds does not contemplate cases involving a right of first refusal. As such, a right of first refusal need not be written to be enforceable and may be proven by oral evidence.

VI. LAND TITLES AND DEEDS

A. Reason for Adoption to Torrens system

Several rulings of the Supreme Court in 2009 elucidated on the nature of Torrens Title.

Acosta v. Salazar (*supra*)

In *Acosta v. Salazar*, the Court ruled that allow any individual, such as the Salazars in this case, to impugn the validity of a Torrens certificate of title by the simple expediency of filing an *ex parte* petition for cancellation of entries would inevitably erode the very reason why the Torrens system was adopted in this country, which is to quiet title to land and to put a stop forever to any question on the legality of the title, except claims that were noted, at the time of registration, in the certificate, or which may arise subsequent thereto. Once a title is registered under the Torrens system, the owner may rest secure, without the necessity of waiting in the portals of the courts or sitting in the "*mirador su casa*" to avoid the possibility of losing his land. Rarely will the court allow another person to attack the validity and indefeasibility of a Torrens certificate, unless there is compelling reason to do so and only upon a direct action filed in court proceeded in accordance with law.

D.B.T. Mar-Bay Construction v. Panes (*supra*)

While the Torrens system is not a mode of acquiring title, but merely a system of registration of titles to lands, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of the registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system would forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties. Thus, where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard those rights and order the cancellation of the certificate. The effect of such outright cancellation will be to

impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance on whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law. Every person dealing with the registered land may safely rely on the correctness of the certificate of title issued therefor, and the law will in no way oblige him to go behind the certificate to determine the condition of the property.

B. Nature of Land Registration Proceedings

Heirs of Sebe v. Heirs of Sevilla
G.R. No. 174497. October 12, 2009.

"Title" is different from a "certificate of title" which is the document of ownership under the Torrens system of registration issued by the government through the Register of Deeds. While title is the claim, right or interest in real property, a certificate of title is the evidence of such claim.

Another way of looking at it is that, while "title" gives the owner the right to demand or be issued a "certificate of title," the holder of a certificate of title does not necessarily possess valid title to the real property. The issuance of a certificate of title does not give the owner any better title than what he actually has in law. Thus, a plaintiff's action for cancellation or nullification of a certificate of title may only be a necessary consequence of the defendant's lack of title to real property. Further, although the certificate of title may have been lost, burned, or destroyed and later on reconstituted, title subsists and remains unaffected unless it is transferred or conveyed to another or subjected to a lien or encumbrance.

In *Bote v. San Pedro Cineplex* (G.R. No. 180675, 27 July 2009), it was settled that the person who has a Torrens title over the land is entitled to possession thereof.

1. Issuance of:

a. Second owner's duplicate Certificate of Title

Dizon v. Philippine Veterans Bank
G.R. No. 165938. November 25, 2009.

In a petition for the issuance of a second owner's duplicate copy of a certificate of title in replacement of a lost one, the only questions to be resolved are: whether or not the original owner's duplicate copy has indeed been lost and whether the petitioner seeking the issuance of a new owner's duplicate title is the registered owner or other person in interest.

b. Free Patents

Encinares v. Achero
G.R. No. 161419. August 25, 2009.

A Free Patent may be issued where the applicant is a natural-born citizen of the Philippines; is not the owner of more than twelve (12) hectares of land; has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public land subject to disposition, for at least 30 years prior to the effectivity of Republic Act No. 6940; and has paid the real taxes thereon while the same has not been occupied by any other person.

Once a patent is registered and the corresponding certificate of title is issued, the land covered thereby ceases to be part of public domain, becomes private property, and the Torrens Title issued pursuant to the patent becomes indefeasible upon the expiration of one year from the date of such issuance. However, a title emanating from a free patent which was secured through fraud does not become indefeasible, precisely because the patent from whence the title sprung is itself void and of no effect whatsoever.

c. Emancipation Patents

Petronila Maylem v. Ellano
G.R. No. 162721. July 13, 2009.

Central to the resolution of this petition is the undeniable fact that Abad had previously been granted Emancipation Patent No. A-21347 covering the land in question, which, in turn, constituted the basis for the issuance in his name of TCT No. T-028668. On this score, we agree with the ruling of both the DARAB and the Court of Appeals that by reason of such grant, Abad became the absolute owner in fee simple of the subject agricultural land.

Land transfer under P.D. No. 27 is effected in two stages: (1) the issuance of a certificate of land transfer to a farmer-beneficiary as soon as the DAR transfers the landholding to him in recognition of his being deemed an owner; and (2) the issuance of an emancipation patent as proof of full ownership of the landholding upon full payment of the annual amortizations or lease rentals by the farmer-beneficiary. No principle in agrarian reform law is indeed more settled than that the issuance of an emancipation patent entitles the farmer-beneficiary to the vested right of absolute ownership of the landholding, and it constitutes conclusive authority for the issuance of an original or transfer certificate of title in his name. It presupposes that the grantee or beneficiary has, following the issuance of a certificate of land transfer, already complied with all the preconditions required under P.D. No. 27, and that the landowner has been fully compensated for his property. And upon the issuance of

title, the grantee becomes the owner of the landholding and he thereby ceases to be a mere tenant or lessee. His right of ownership, once vested, becomes fixed and established and is no longer open to doubt or controversy. Inescapably, the grantee becomes the owner of the subject property upon the issuance of the emancipation patents and, as such, enjoys the right to possess the same—a right that is an attribute of absolute ownership.

2. Reconstitution of titles

Republic v. Dela Raga
G.R. No. 161042. August 24, 2009.

The sufficiency of the Register of Deeds' report is not an indispensable requirement in reconstitution cases. The report may even be disregarded. In *Puzon v. Sta. Lucia Realty and Development, Inc.*, the Court held:

> "Even LR[A] Circular No. 35, which is also mentioned in Circular 7-96, does not require any clearance. Rather, it requires the Chief of the Clerks of Court Division to make a report, and likewise the Register of Deeds to write a report of his or her findings after verifying the status of the title, which is the subject of the reconstitution. Both reports are to be submitted to the reconstitution court on or before the date of the initial hearing. It is not mandatory, however, for the reconstitution court to wait for such reports indefinitely. If none is forthcoming on or before the date of the initial hearing, it may validly issue an order or judgment granting reconstitution. This is implied from the provisions of Section 16 of the same Circular, which states:
>
> 16. Should an order or judgment granting reconstitution be issued by the Court without awaiting the report and the recommendations of this Commission as well as the verification of the Register of Deeds concerned, or while the examination, verification and preparation of the report and recommendation are still pending in the said Offices due to the failure of the Clerk of Court or the petitioner to comply with all the necessary requirements as called for herein, and it appears that there is a valid ground to oppose the reconstitution, a motion to set aside the order/judgment granting reconstitution or to stay the period of finality of said order/judgment shall be filed by the Land Registration Commissioner and/or the Register of Deeds thru the Solicitor General or the provincial or city fiscal concerned."

3. Cancellation of certificate of title

Reyes v. Montemayor
G.R. No. 166516. September 3, 2009.

When a certificate of title is cancelled, the owner's duplicate must also be surrendered to the Register of Deeds for cancellation, in accordance with Section 53 of Presidential Decree No. 1529, otherwise known as the Property Registration Decree, as amended.

C. Nature and effect of land registration

Acosta v. Salazar
G.R. No. 161034. June 30, 2009.

Registration of land under the Torrens system is a proceeding *in rem* and not *in personam*. Such a proceeding *in rem*, dealing with a tangible res, may be instituted and carried to judgment without personal service upon the claimants within the state or notice by mail to those outside of it. Jurisdiction is acquired by virtue of the power of the court over the res. Such a proceeding would be impossible were this not so, for it would hardly do to make a distinction between constitutional rights of claimants who were known and those who were not known to the plaintiff, when the proceeding is to bar all.

Pico v. Adalim-Salcedo
G.R. No. 152006. October 2, 2009.

A title, once registered, cannot be defeated, even by adverse, open and notorious possession. The title, once registered, is notice to the world. All persons must take notice. No one can plead ignorance of the registration.

MCIAA v. Tirol
G.R. No. 171535. June 5, 2009.

Well-settled is the rule that registration of instruments must be done in the proper registry in order to effect and bind the land. Prior to the Property Registration Decree of 1978, Act No. 496 (or the Land Registration Act) governed the recording of transactions involving registered land, i.e., land with a Torrens title. On the other hand, Act No. 3344, as amended, provided for the system of recording of transactions over unregistered real estate without prejudice to a third party with a better right. Accordingly, if a parcel of land covered by a Torrens title is sold, but the sale is registered under Act No. 3344 and not under the Land Registration Act, the sale is not considered registered and the registration of the deed does not operate as constructive notice to the whole world.

Consequently, the fact that petitioner MCIAA was able to register its Deed of Absolute Sale under Act No. 3344 is of no moment, as the property subject of the sale is indisputably registered land. Section 50 of Act No. 496 in fact categorically states that it is the act of registration that shall operate to convey and affect the land; absent any such registration, the instrument executed by the parties remains only as a contract between them and as evidence of authority to the clerk or register of deeds to make registration, viz.:

> SECTION 50. An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use and sufficient in law for the purpose intended. But no deed, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies.

Destreza v. Riñoza-Plazo
G.R. No. 176863. October 30, 2009.

Registration only serves as the operative act to convey or affect the land insofar as third persons are concerned. It does not add anything to the efficacy of the contract of sale between the buyer and the seller. In fact, if a deed is not registered, the deed will continue to operate as a contract between the parties.

Vda. de Agatep v. Rodriguez
G.R. No. 170540. October 28, 2009.

It is settled that registration in the public registry is notice to the whole world. Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds of the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering. Under the rule of notice, it is presumed that the purchaser has examined every instrument of record affecting the title. Such presumption may not be rebutted. He is charged with notice of every fact shown by the record and is presumed to know every fact shown by the record and to know every fact which an examination of the record would have disclosed. This presumption cannot be overcome by any claim of innocence or good faith. Otherwise, the very purpose and object of the law requiring a record would be destroyed. Such presumption cannot be defeated by

proof of want of knowledge of what the record contains any more than one may be permitted to show that he was ignorant of the provisions of the law. The rule that all persons must take notice of the facts which the public record contains is a rule of law. The rule must be absolute; any variation would lead to endless confusion and useless litigation.

Luna v. Cabales
G.R. No. 173533. December 14, 2009.

While every person dealing with registered land can safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property, one will not be permitted to benefit from this general rule if there exist important facts which create suspicion to call for an investigation of the real condition of the land. One who deliberately ignores a significant fact which would naturally generate wariness is not an innocent purchaser for value.

Dadizon v. CA
G.R. No. 159116. September 30, 2009.

No deed, conveyance, mortgage, lease, or other voluntary instrument affecting land not registered under the Torrens system shall be valid, except as between the parties thereto, unless such instrument shall have been recorded in the manner herein prescribed in the office of the Register of Deeds for the province or city where the land lies.

1. **Jurisdiction of land registration court to hear LR case without waiting for DENR to rule on cancellation of survey plan.**

SM Prime Holdings v. Madayag
G.R. No. 164687. February 12, 2009.

Respondent Angela V. Madayag filed with the Regional Trial Court an application for registration of a parcel of land. Attached to the application was a tracing cloth of Survey Plan approved by the Land Management Services (LMS) of the Department of Environment and Natural Resources (DENR). Petitioner SM Prime Holdings, Inc., demanded the cancellation of the respondent's survey plan because the lot encroached on the properties it recently purchased from several lot owners and that, despite being the new owner of the adjoining lots, it was not notified of the survey conducted.

Meanwhile, petitioner filed with the DENR a petition for cancellation of the survey plan. Subsequently, petitioner filed an Urgent Motion to Suspend Proceedings in the land registration case, alleging that the court should await the DENR resolution of the petition for the cancellation of the survey plan "as the administrative case is

prejudicial to the determination" of the land registration case. RTC granted the motion. CA declared the RTC orders as null and void.

ISSUE: Whether or not the land registration court may proceed with the trial despite the petition for cancellation of survey plan pending with the DENR.

HELD: Yes. In view of the nature of a Torrens title, a land registration court has the duty to determine whether the issuance of a new certificate of title will alter a valid and existing certificate of title. An application for registration of an already titled land constitutes a collateral attack on the existing title, which is not allowed by law. But the RTC need not wait for the decision of the DENR in the petition to cancel the survey plan in order to determine whether the subject property is already titled or forms part of already titled property. The court may already verify this allegation based on the respondent's survey plan vis-à-vis the certificates of title of the petitioner and its predecessors-in-interest. After all, a survey plan precisely serves to establish the true identity of the land to ensure that it does not overlap a parcel of land or a portion thereof already covered by a previous land registration, and to forestall the possibility that it will be overlapped by a subsequent registration of any adjoining land.

2. Requisites

a. Judicial confirmation of imperfect title

Republic v. Lee Tsai
G.R. No. 168184. June 22, 2009.

Respondent filed an application for the confirmation and registration of the subject property under Presidential Decree No. 1529. She (alleged that she is the owner of the subject property and the improvements thereon. She also declared that she and her predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject property for more than 30 years. The trial court granted respondent's application for registration. Court of Appeals affirmed the trial court's decision. It ruled that respondent need not prove that she and her predecessors-in-interest have been in possession of the subject property since 12 June 1945 or earlier because Section 48(b) of CA 141 was already superseded by Republic Act No. 1942 (RA 1942), which provides for a simple 30 year prescriptive period of occupation by an applicant for judicial confirmation of title.

ISSUE: Whether or not it is required for respondent to prove her open, continuous, exclusive and notorious possession of the subject property since 12 June 1945 or earlier.

HELD: YES. Note that respondent did not specify under what paragraph of Section 14 of PD 1529 she was filing the application. But it appeared that respondent

filed her application under Section 14(1) of PD 1529. There are three requisites for the filing of an application for registration of title under Section 14(1) of PD 1529: (1) that the property in question is alienable and disposable land of the public domain; (2) that the applicant by himself or through his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation; and (3) **that such possession is under a bona fide claim of ownership since 12 June 1945 or earlier**. The right to file the application for registration derives from a *bona fide* claim of ownership going back to 12 June 1945 or earlier, by reason of the claimant's open, continuous, exclusive and notorious possession of alienable and disposable land of the public domain.

There were various amendments to PD 1529. In *Republic v. Doldol*, the Court provided a summary of these amendments:

> "The original Section 48(b) of C.A. No.141 provided for possession and occupation of lands of the public domain **since July 26, 1894**. This was superseded by R.A. No. 1942, which provided for a **simple thirty-year prescriptive period** of occupation by an applicant for judicial confirmation of imperfect title. The same, however, has already been amended by Presidential Decree No. 1073, approved on January 25, 1977. As the law now stands, a mere showing of possession and occupation for 30 years or more is not sufficient. Therefore, since the effectivity of PD 1073 on 25 January 1977, it must now be shown that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, started on 12 June 1945 or earlier. This provision is in total conformity with Section 14(1) of PD 1529."

In this case, respondent failed to comply with the period of possession and occupation of the subject property, as required by both PD 1529 and CA 141. Respondent's earliest evidence can be traced back to a tax declaration issued in the name of her predecessors-in-interest only in the year 1948. In view of the lack of sufficient showing that respondent and her predecessors-in-interest possessed the subject property under a *bona fide* claim of ownership since 12 June 1945 or earlier, respondent's application for confirmation and registration of the subject property under PD 1529 and CA 141 should be denied.

The same ruling was reiterated in *Republic v. Javier* (G.R. No. 179905, 19 August 2009).

Mistica v. Republic (*supra*)

Being the applicant for confirmation of imperfect title, petitioner bears the burden of proving that: 1) the land forms part of the alienable and disposable land of the public domain; and 2) she has been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of

ownership form June 12, 1945 or earlier. These the petition must prove by no less than clear, positive and convincing evidence.

Republic v. INC
G.R. No. 180067. June 30, 2009.

The more reasonable interpretation of Section 14(1) is that it merely requires the property sought to be registered as already alienable and disposable at the time the application for registration of title is filed. If the State, at the time the application is made, has not yet deemed it proper to release the property for alienation or disposition, the presumption is that the government is still reserving the right to utilize the property; hence, the need to preserve its ownership in the State irrespective of the length of adverse possession even if in good faith. However, if the property has already been classified as alienable and disposable, as it is in this case, then there is already an intention on the part of the State to abdicate its exclusive prerogative over the property.

3. Fraudulent registration

Reyes v. Montemayor (*supra*)

Insofar as a person who fraudulently obtained a property is concerned, the registration of the property in said person's name would not be sufficient to vest in him or her the title to the property. A certificate of title merely confirms or records title already existing and vested. The indefeasibility of the Torrens title should not be used as a means to perpetuate fraud against the rightful owner of real property. Good faith must concur with registration because, otherwise, registration would be an exercise in futility. A Torrens title does not furnish a shield for fraud, notwithstanding the long-standing rule that registration is a constructive notice of title binding upon the whole world. The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee.

Hegna v. Paderanga
A.M. Case No. 5955. September 8, 2009.

While the act of registration of a document is not necessary in order to give it legal effect as between the parties, requirements for the recording of the instruments are designed to prevent frauds and to permit and require the public to act with the presumption that a recorded instrument exists and is genuine.

4. Distinction between actual and constructive fraud; between extrinsic and intrinsic fraud.

Rabaja Ranch v. AFP RSBS
G.R. No. 177181. July 7, 2009.

Fraud is of two kinds: actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons.

Fraud may also be either extrinsic or intrinsic. Fraud is regarded as intrinsic where the fraudulent acts pertain to an issue involved in the original action, or where the acts constituting the fraud were or could have been litigated therein. The fraud is extrinsic if it is employed to deprive parties of their day in court and thus prevent them from asserting their right to the property registered in the name of the applicant.

The distinctions assume significance because only actual and extrinsic fraud had been accepted and is contemplated by the law as a ground to review or reopen a decree of registration. Thus, relief is granted to a party deprived of his interest in land where the fraud consists in a deliberate misrepresentation that the lots are not contested when in fact they are; or in willfully misrepresenting that there are no other claims; or in deliberately failing to notify the party entitled to notice; or in inducing him not to oppose an application; or in misrepresenting about the identity of the lot to the true owner by the applicant causing the former to withdraw his application. In all these examples, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court or from presenting his case. The fraud, therefore, is one that affects and goes into the jurisdiction of the court.

The Court has repeatedly held that relief on the ground of fraud will not be granted where the alleged fraud goes into the merits of the case, is intrinsic and not collateral, and has been controverted and decided. Thus, we have underscored the denial of relief where it appears that the fraud consisted in the presentation at the trial of a supposed forged document, or a false and perjured testimony, or in basing the judgment on a fraudulent compromise agreement, or in the alleged fraudulent acts or omissions of the counsel which prevented the petitioner from properly presenting the case.

5. Res judicata

Hu Chuan Hai v. Unico
G.R. No. 146534. September 18, 2009.

The decision of a land registration court in a petition for consolidation of ownership and registration precludes another action for annulment of auction sale.

D. Classification of lands under C.A. 141 and important amendments thereto by PD 1673

Malabanan v. Republic
G.R. No. 179987. April 29, 2009.

Commonwealth Act No. 141, also known as the Public Land Act has, since its enactment, governed the classification and disposition of lands of the public domain. The President is authorized, from time to time, to classify the lands of the public domain into alienable and disposable, timber, or mineral lands. Alienable and disposable lands of the public domain are further classified according to their uses into (a) agricultural; (b) residential, commercial, industrial, or for similar productive purposes; (c) education, charitable, or other similar purposes; or (d) reservations for town sites and for public and quasi-public uses.

Sec. 11 of the Public Land Act acknowledges that public lands suitable for agricultural purposes may be disposed of "by confirmation of imperfect or incomplete titles" through "judicial legalization." Sec. 48 of the Public Land Act, as amended by P.D. 1073, supplies the details and unmistakably grants that right, subject to the requisites stated therein.

Section 48(b) of Com. Act No. 141 received its present wording in 1977 when the law was amended by P.D. No. 1073. Two significant amendments were introduced by P.D. No. 1073. First, the term "agricultural lands" was changed to "alienable and disposable lands of the public domain." The OSG submits that this amendment restricted the scope of the lands that may be registered. This is not actually the case. Under Section 9 of the Public Land Act, "agricultural lands" are a mere subset of "lands of the public domain alienable or open to disposition." Evidently, alienable and disposable lands of the public domain are a larger class than only "agricultural lands."

Second, the length of the requisite possession was changed from possession for "thirty (30) years immediately preceding the filing of the application" to possession "since June 12, 1945 or earlier."

E. Indefeasibility of title; limitation

Pagaduan v. Sps. Ocuma (*supra*)

Despite a host of jurisprudence that states a certificate of title is indefeasible, unassailable and binding against the whole world, it merely confirms or records title already existing and vested, and it cannot be used to protect a usurper from the true owner, nor can it be used for the perpetration of fraud; neither does it permit one to enrich himself at the expense of others.

1. Collateral attack on title; exception

Gregorio Araneta University Foundation v. RTC
G.R. No. 139672. March 4, 2009.

The Gonzales or Maysilo estate was expropriated by the Republic of the Philippines, with the understanding that the Government would resell the property to its occupants. The Government and its instrumentality, then Rural Progress Administration and later the People's Homesite and Housing Corporation (PHHC), was, however, unable to resell the property. In view of this, the occupants and tenants of the estate filed a complaint to compel PHHC to sell to the tenants their respective occupied portions of the Gonzales estate. Institute of Agriculture, now Gregorio Araneta University Foundation (GAUF) intervened on the ground that 52 tenants of the property and Araneta Institute of Agriculture entered into an agreement or "Kasunduan" whereby the former conveyed to the latter their priority rights to purchase portion of the estate. On the basis of this "Kasunduan," a compromise agreement was submitted which was duly approved by the court. Included in this compromise agreement are Lots 75 and 54 awarded to Gregorio Bajamonde. Incidentally, it appears that on the basis of the "Kasunduan" compromise, Araneta University was able to register in its name Lots 75 and 54.

However, in two civil cases filed with the CFI, the compromise agreement entered into by and between Araneta University and the tenants was declared null and void for being a forgery. Eventually, TCT No. C-24153 for Lots 75 and 54 in the name of Araneta University was cancelled and TCT No. 174672 for lot 75 and TCT No. 174671 for lot 54 were issued to the rightful owner thereof, Gregorio Bajamonde. After which, the heirs of Bajamonde sold a portion of lot 54 to the other respondent, Remington Realty Development, Inc.

On appeal to the Supreme Court, petitioner claimed that the orders in question directing the cancellation of its TCT No. 24153 constituted a collateral attack on its title, a course of action prohibited by Section 48 of P. D. No. 1529 because said orders were issued in connection with Civil Case No. C-760, a suit for specific performance and damages and not a direct proceeding for the cancellation of its title.

ISSUE: Whether or not the case constituted as a collateral attack on petitioner's title

HELD: No. While it may be true that Civil Case No. C-760 was originally an action for specific performance and damages, nonetheless the case cannot constitute a collateral attack on the petitioner's title which, to begin with, was irregularly and illegally issued. The Supreme Court stressed that the source of GAUF's title was the Compromise Agreement purportedly executed by Gregorio Bajamonde, et al. However, that compromise agreement was subsequently held to be null and void for being a forgery. The rule that a title issued under the Torrens System is presumed valid and, hence, is the best proof of ownership does not apply where the very certificate itself is faulty as to its purported origin, as in the present case.

Well-settled is the rule that the indefeasibility of a title does not attach to titles secured by fraud and misrepresentation. In view of these circumstances, it was as if no title at all was ever issued in this case to the petitioner and therefore this is hardly the occasion to talk of collateral attack against a title.

Heirs of Limense v. Vda. De Ramos (*supra*)

A certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law. Otherwise, the reliance on registered titles would be lost. The title became indefeasible and incontrovertible after the lapse of one year from the time of its registration and issuance. Section 32 of PD 1529 provides that "upon the expiration of said period of one year, the decree of registration and the certificate of title shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or other persons responsible for the fraud. It has, therefore, become an ancient rule that the issue on the validity of title, i.e., whether or not it was fraudulently issued, can only be raised in an action expressly instituted for that purpose.

The same ruling was reiterated in *Leonero v. Sps. Barba* (G.R. No. 159788, 23 December 2009), wherein the Court added that the issue of whether a title was procured by falsification or fraud should be raised in an action expressly instituted for the purpose, not in an action for quieting of title. Moreover, in *Catores v. Afidchao* (G.R. No. 151240, 31 March 2009), the Court noted that a collateral attack against a title cannot be allowed in an *accion publiciana*.

F. Purchaser in good faith

Baladad v. Rublico
G.R. No. 160743. August 4, 2009.

As a rule, the purchaser is not required to explore further than what the Certificate indicates on its face. This rule, however, applies only to innocent purchasers for value and in good faith; it excludes a purchaser who has knowledge of a defect in the title of the vendor, or of facts sufficient to induce a reasonable prudent man to inquire into the status of the property.

MCIAA v. Tirol (*supra*)

Respondents may not be characterized as buyers in bad faith for having bought the property notwithstanding the registration of the first Deed of Absolute Sale under Act No. 3344. An improper registration is no registration at all. Likewise, a sale that is not correctly registered is binding only between the seller and the buyer, but it does not affect innocent third persons.

G. Reversion

Republic v. DRC
G.R. No. 180218. December 18, 2009.

Since a complaint for reversion can upset the stability of registered titles through the cancellation of the original title and the others that emanate from it, the State bears a heavy burden of proving the ground for its action.

The same ruling was reiterated in *Republic v. Leonor* (G.R. No. 161424, 23 December 2009).

MISCELLANEOUS RULINGS

Rules on computation of just compensation – reiterated.

Land Bank v. Heirs of De Leon
G.R. No. 164025. May 8, 2009.

Sec. 4, Art. XIII of the 1987 Constitution mandates that the redistribution of agricultural lands "shall be subject to the payment of just compensation." The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not also make an insurmountable obstacle to a successful agrarian reform. Hence, the landowner's right to just compensation should be balanced with agrarian reform. In *Land Bank v. Court of Appeals*, the Court declared that it is

the duty of the court to protect the weak and the underprivileged, but this duty should not be carried out to such an extent as to deny justice to the landowner whenever the truth and justice happens to be on his side.

DAR v. Tongson
G.R. No. 171674. August 4, 2009.

The issue, once the subject of a number of cases, has finally been settled by this Court in recent years. It has been ruled that, if just compensation was not settled prior to the passage of RA 6657, it should be computed in accordance with the said law, although the property was acquired under PD 27.

Republic v. Far East Enterprises
G.R. No. 176487. August 25, 2009.

Just compensation, on the other hand, is the final determination of the fair market value of the property. It has been described as "the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation." Market values, has also been described in a variety of ways as the "price fixed by the buyer and seller in the open market in the usual and ordinary course of legal trade and competition; the price and value of the article established as shown by sale, public or private, in the ordinary way of business; the fair value of the property between one who desires to purchase and one who desires to sell; the current price; the general or ordinary price for which property may be sold in that locality.

Sps. Ciriaco v. City of Cebu
G.R. Nos. 181562-63 and 181583-84. October 2, 2009.

It is well-settled in jurisprudence that the determination of just compensation is a judicial prerogative. The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation. The Court, therefore, held that P.D. No. 1533, which eliminated the court's discretion to appoint commissioners pursuant to Rule 67 of the Rules of Court, is unconstitutional and void. To hold otherwise would be to undermine the very purpose why this Court exists in the first place.

Though the ascertainment of just compensation is a judicial prerogative, the appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. While it is true that the findings of commissioners may be disregarded and the trial court may substitute

its own estimate of the value, it may only do so for valid reasons; that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive. Thus, "trial with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all."

A. Difference between Provisional Value and Just Compensation

Vicente v. Avera
G.R. no. 169970. January 20, 2009.

In *Capitol Steel Corporation v. PHIVIDEC Industrial Authority*, the Supreme Court clarified that the payment of the provisional value as a condition for the issuance of a writ of possession is different from the payment of just compensation for the expropriated property. While the provisional value is based on the current relevant zonal valuation, just compensation is based on the prevailing fair market value of the property. *The Supreme Court held that:*

> The first refers to the preliminary or provisional determination of the value of the property. It serves a double-purpose of pre-payment if the property is fully expropriated, and of an indemnity for damages if the proceedings are dismissed. It is not a final determination of just compensation and may not necessarily be equivalent to the prevailing fair market value of the property. Of course, it may be a factor to be considered in the determination of just compensation. Just compensation, on the other hand, is the final determination of the fair market value of the property.

B. Power of eminent domain.

Office of the Solicitor General v. Ayala Land, Inc.
G.R. No. 177056. September 18, 2009.

The power to eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of only to impose a burden upon the owner of the condemned property, without loss of title and possession. It is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is usually in cases where title remains with the private owner that inquiry should be made to determine whether the impairment of a property is merely regulated or amounts to a compensable taking. A regulation that deprives any person of the profitable use of his property constitutes a taking and entitles him to compensation, unless the invasion of his rights is so slight as to permit the regulation to be justified

under the police power. Similarly, a police regulation that unreasonably restricts the right to use business property for business purposes amounts to a taking of property, and the owner may recover therefor.

C. Writ of possession – explained.

BPI v. Icot
G.R. No. 168081. October 12, 2009.

A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property. A writ of possession may be issued under the following instances: (1) land registration proceedings under Section 17 of Act 496; (2) 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; and (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act 3135, as amended by Act 4118 (Act 3135).

Under Section 7 of Act 3135, a writ of possession may be issued either (1) within the one year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond or of a separate and independent action. This is founded on the purchaser's right of ownership over the property which he bought at the auction sale and his consequent right to be placed in possession thereof. However, this rule admits of an exception, that is, Section 33 (former Section 35) of Rule 39 of the Revised Rules of Court, which provides that the possession of the mortgaged property shall be given to the purchaser "unless a third party is actually holding the property adversely to the judgment obligor."

GC Dalton Industries v. Equitable PCI Bank
G.R. No. 171169. August 24, 2009.

The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title. The trial court does not exercise discretion in the issuance thereof. For this reason, an order for the issuance of a writ of possession is not the judgment on the merits contemplated by Section 14, Article VIII of the Constitution.

Top Art Shirt v. METROBANK
G.R. No. 184005. August 4, 2009.

A writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. In *IFC Service Leasing and Acceptance Corporation v. Nera*, the Court reasoned that if under Sec. 7 of Act No. 3135, as amended, the RTC

has the power during the period of redemption to issue a writ of possession on the ex parte application of the purchaser, there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title had already been issued in the name of the purchaser. Put simply, a purchaser seeking possession of the foreclosed property he bought at the public auction sale, after the redemption period expired without redemption having been made, may still avail itself of the procedure under Sec. 7 of Act No. 3135, as amended; this time, without any more need for the purchaser to furnish a bond.

Survey of 2009 Supreme Court Decisions in Human Relations, Torts and Damages

*Carmelo V. Sison**

PART ONE
TORTS

A. In General

Tort may be defined as a civil wrong consisting of either the violation of a right or breach of a duty for which the law grants a remedy in damages or other relief. The right is a legally protected interest of anyone regarding his person or property or relation. A legally protected interest is one that is recognized in law, by giving a person the power to compel another to observe a duty or prestation – either to render what is due him or to refrain from causing him injury. The source of this right or duty is law, which includes statutes, decisions of the Supreme Court, and rules and regulations. In the Civil Code, civil liability arises from the following sources: (1) law, (2) contracts, (3) quasi-contracts, (4) acts or omissions punished by law, and (5) quasi-delict (Art. 1157). Evidently, from this provision tort, as such, is not named as a source of obligation. As explained by the Code Commission, when the provision was under consideration, it was confronted with a question of nomenclature (i.e. whether to use the term *tort*, *culpa aquiliana*, or *culpa extra contractual*). *Tort* was seen as over-inclusive as was *culpa extra contractual,* while *culpa aquiliana* was of ancient lineage. The Commission finally decided to use *quasi-delict.* Unfortunately, by definition, in the Civil Code, *quasi-delict* is essentially an omission of diligence and does not include intentional acts, as *tort* does. The Supreme Court has said:

> "Quasi-delict, known in Spanish legal treatises as *culpa aquiliana*, is a civil law concept while tort is an Anglo-American or common law concept. Tort is a much broader than *culpa aquiliana* because it includes not only negligence, but intentional criminal acts as well as such assault and battery, false imprisonment and deceit. In the general scheme of the Philippine legal system envisioned by the Commission responsible for drafting the New Civil Code, intentional and malicious acts, with certain exceptions, are to be governed by the Revised Penal Code while negligent acts or

* Professor of Law, University of the Philippines.

> omissions are to be covered by Article 2176 of the Civil Code. In between these opposite spectrums are injurious acts, which in the absence of Article 21, would have been beyond redress. Thus, Article 21 fills that vacuum. It is even postulated that together with Articles 19 and 20 of the Civil Code, Article 21 has greatly broadened the scope of the law on civil wrongs; it has become much more supple and adaptable than the Anglo-American law on torts."[1]

Tort has found its way into our law because it has been used and applied in Supreme Court decisions, explained in law textbooks, and named as a separate subject in the law curriculum.

Tort may be divided according to the manner of commission and the interest affected. As to the manner of commission tort has three classes, namely, (1) intentional, (2) negligent and (3) strict liability torts. According to the interest affected, tort may be committed against rights of the person, rights to property, or rights to certain relations. Both manner and interest may be combined if the law designates or names a particular tort. Thus, in Article 33, in the tort of physical injuries the manner of commission is intentional and the interest affected is the right to one's person.

Tort is intentional if the tortfeasor (a) desires to cause the consequences of his act, or, (b) believes that the consequences are substantially certain to result from it. Defendant's intent is usually proved circumstantially or inferred from his conduct. He is presumed to intend the natural and probable consequences of his act. In tort law, the certainty of harmful consequences is the basis of the distinction between intentional and negligent conduct. If the harmful result is intended or substantially certain to occur, the tort is intentional.

If the conduct creates merely a foreseeable risk of harm that may or may not be realized, the conduct is *negligent*. In strict liability tort it is sufficient that the act causes the injury and the law, for reasons of public policy, imposes liability. Negligence as defined under Article 1173 merely refers to the manner of commission or omission.

B. Civil Liability

1. *Sources*

Tort arises from the sources of obligation found in Article 1157 of the Civil Code. Simply stated, it is any act or omission that causes damage or injury to others. While the Civil Code defines *quasi-delict* as an act or omission causing damage, there being "fault or negligence if there is no pre-existing contractual obligation," it has been held in several cases that a quasi-delict may arise even if contractual obligations

1 *Baksh v. CA* [G.R. No. 97336, 19 February 1993). Citing Report of the Code Commission, 161-162 and TOLENTINO, A.M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, vol. 1, 1985 ed., 72.

are present. The act violating a contract may itself be a tort, and a liability for tort may arise even under a contract, if the act that breaches the contract is a tortious act.

In ***Mindanao Terminal and Brokerage Service, Inc. v. Phoenix Assurance Company of New York/McGee & Co., Inc.***[2] Del Monte Philippines, Inc. contracted petitioner Mindanao Terminal and Brokerage Services, Inc., a stevedoring company, to load and stow a shipment belonging to Del Monte Fresh Produce International, Inc. into a vessel. Del Monte Produce ensured the shipment with Phoenix Assurance Company of New York/McGee & Co., Inc. Upon discharge of the cargo, it was discovered that some of it was in a bad condition. Consequently, Del Monte Produce filed a claim for damages. Phoenix and McGee evaluated the claim, and, thereafter, sent a check to Del Monte Produce representing the recommended amount of claim. Del Monte Produce then issued a subrogation receipt to private respondent.

On the strength of the subrogation receipt, Phoenix and McGee instituted an action for damages against petitioner. The Regional Trial Court (RTC) decided that Phoenix and McGee had no cause of action against Mindanao Terminal because the latter, whose services were contracted by Del Monte a Corporation, distinct from Del Monte Produce, had no contract with the assured Del Monte Produce. The Supreme Court reversed the ruling of the RTC and said that Phoenix and McGee did not sue for damages for injuries arising from the breach of the contract of service but from the negligent manner by which Mindanao Terminal handled the cargo belonging to Del Monte Produce. Despite the absence of a contractual relationship between Del Monte Produce and Mindanao Terminal, the Court said that the allegation of negligence on the part of the defendant should be sufficient to establish a cause of action arising from quasi-delict.

2. *Effect of Acquittal In Criminal Cases*

In ***Dayap v. Sendiong***[3] the Court held that the acquittal of the accused does not automatically preclude a judgment against him in the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt, since only a preponderance of evidence is required; (b) the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from, or, is not based upon the crime of which the accused is acquitted. However, the civil action based on *delict* may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.

Thus, if demurrer is granted and the accused is acquitted by the court, the accused has the right to adduce evidence in the civil aspect of the case unless the court also declares that the act or omission from which the civil liability may arise

2 G.R. No. 162467, May 8, 2009.

3 G.R. No. 177960, January 29, 2009.

did not exist. This is because when the accused files a demurrer to evidence, he has not yet adduced evidence in, both, the criminal and civil aspects of the case. The only evidence on record is the evidence for the prosecution. What the trial court should do is issue an order or partial judgment granting the demurrer to evidence acquitting the accused, and set the case for continuation of trial for the accused to adduce evidence on the civil aspect of the case and for the private complainant to adduce evidence by way of rebuttal. Thereafter, the court must render judgment on the civil aspect of the case.

A scrutiny of the Municipal Trial Court's (MTC's) decision supports the conclusion that the acquittal was based on the findings that the act or omission from which the civil liability may arise did not exist and that petitioner did not commit the acts or omission imputed to him; hence, petitioner's civil liability is extinguished by his acquittal. It should be noted that the MTC categorically stated that it could not find any evidence which would prove that a crime had been committed and that accused was the person responsible for it. It added that the prosecution failed to establish that it was petitioner who committed the crime as charged since its witnesses never identified petitioner as the one who was driving the cargo truck at the time of the incident. Furthermore, the MTC found that the proximate cause of the accident was the damage to the rear portion of the truck caused by the swerving of the Colt Galant into the rear left portion of the cargo truck and not the reckless driving of the truck by petitioner, clearly establishing that petitioner was not guilty of reckless imprudence. Consequently, there was no further need to remand the case to the trial court for proceedings on the civil aspect of the case, since petitioner's acquittal had extinguished his civil liability.

On the other hand, in ***Ambito v. People***[4] the Court held that Ambito's acquittal for his violation of B.P. Blg. 22, because of the failure of the prosecution to prove all the elements of the offense beyond reasonable doubt, did not entail the extinguishment of his civil liability for dishonored checks. An acquittal based on reasonable doubt does not preclude the award of civil damages. The judgment of acquittal extinguishes the liability of the accused for damages only when it includes a declaration that the facts from which the civil liability might arise did not exist.

Finally, in ***Romero v. People***[5] the Court ruled that every person criminally liable is also civilly liable. Criminal liability gives rise to civil liability only if the felonious act or omission results in damage or injury to another and is the direct and proximate cause thereof. Every crime gives rise to (1) a criminal action for the punishment of the guilty party and (2) a civil action for the restitution of the thing, repair of the damage, and indemnification for the losses. The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on *delict* is deemed extinguished if there is a finding in a final judgment in the

4 G.R. No. 127327 (13 February 2009)

5 G.R. No. 167546, July 17, 2009.

criminal action that the act or omission from which the civil liability may arise did not exist.

3. *Effect of Death*

In ***Asset Privatization Trust v. T.J. Enterprises***[6] the Court held that civil actions for tort or *quasi-delict* do not fall within the class of claims to be filed under the notice to creditors required under Rule 86. These actions, being as they are civil, survive the death of the decedent and may be commenced against the administrator pursuant to Section 1, Rule 87.

4. Liability of Principal, Accomplice, and Accessory to the Crime

In ***People v. Tampus***[7] the Court held that the entire amount of the civil indemnity, together with the moral and actual damages, should be apportioned among the persons who cooperated in the commission of the crime, in accordance with their respective responsibilities and actual participation in the criminal act. The person with greater participation in the commission of the crime should have a greater share in the civil liability than those who played a minor role in the crime or those who had no participation in the crime but merely profited from its effects. Each principal should shoulder a greater share in the total amount of indemnity and damages than the accomplice, and each accomplice should also be liable for a greater amount as against every accessory. Care should also be taken in considering the principals *versus* accomplices and accessories. Since the principal, Tampus, died while the case was pending in the Court of Appeals, his liability for civil indemnity *ex delicto* was extinguished by reason of his death before the final judgment. His share in the civil indemnity and damages could not be passed to the accomplice, Ida, because Tampus' share of the civil liability had been extinguished.

C. Damnum Absque Injuria

Dart Philippines, Inc. v. Sps. Calogcog[8] the Court deemed that petitioner's exercise of its rights, under the agreement to conduct an audit, to vary the manner of processing purchase orders, and to refuse the renewal of the agreement was supported by legitimate reasons, principally, to protect its own business. The exercise of its rights was not impelled by any evil motive designed, whimsically and capriciously, to injure or prejudice respondents. The rights exercised were all in accord with the terms and conditions of the distributorship agreement, which had the force of law between them. Clearly, petitioner could not be said to have committed an abuse of its rights. A complaint based on Article 19 of the Civil Code must necessarily fail if it has nothing to support it but innuendo and conjecture. Given that petitioner did

6 G.R. No. 167195, May 8, 2009.

7 G.R. No. 181084, June 16, 2009.

8 G.R. No.149241, August 24, 2009.

not abuse its rights, it was not liable for any of the damages sustained by respondents. The law affords no remedy for damages resulting from an act that does not amount to a legal wrong. Such situations are denominated *damnum absque injuria.*

D. Tortfeasor

Article 2176 provides that any person by act or omission causes damage to another, provided that there is fault or negligence and that there is no pre-existing contractual relation between the parties, is liable for *quasi-delict.*

Article 2180 further identifies those persons who are liable, not only for their own acts, but also for persons for whom they are responsible, to wit:

> "The father and, in case of his death or incapacity, the mother, are responsible for damages caused by the minor children who live in their company.
>
> Guardians are liable for damages caused by the minors or incapacitated persons who are under their authority and live in their company.
>
> The owners and managers of an establishment or enterprise are likewise responsible for damages caused by their employees in the service of the branches in which the latter are employed or on the occasion of their functions.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.
>
> The State is responsible in like manner when it acts through a special agent; but not when the damage has been caused by the official to whom the task done properly pertains, in which case what is provided in Article 2176 shall be applicable.
>
> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody."

The liability of the father and mother for damages caused by their minor children is no longer alternative but solidary. Finally, the last paragraph of Article 2180 provides that the liability of these persons shall cease when they proved that they observed all the diligence of a good father of a family to prevent damage.

1. Employer

In ***City Government of Tagaytay v. Guerrero***[9] the Court held that by the doctrine of *respondeat superior*, the principal is liable for the negligence of its agents acting within the scope of their assigned tasks. The City of Tagaytay was liable for all the necessary and natural consequences of the negligent acts of its city officials. It was liable for the tortious acts committed by its agents who sold lots to the Melencios despite the clear mandate of R.A. No. 1418, separating Barrio Birinayan from its jurisdiction and transferring the same to the Province of Batangas. The negligence of the officers of the City of Tagaytay in the performance of their official functions gave rise to an action *ex contractu* and *quasi ex-delicto*. However, the complainants could not recover twice for the same act or omission of the City of Tagaytay. While the result may be just, the *ratio* should be the direct and primary responsibility of the employer for lack of diligence in the supervision and selection of the employee, which may be rebutted if the employer shows diligence in the selection and supervision, unlike the doctrine of *respondent superior* where the act of the employee is conclusive on the employer and may no longer be rebutted.

In ***Tan v. Jam Transit, Inc***[10] the Court stated that whenever an employee's negligence causes damage or injury to another, there instantly arises a presumption *juris tantum* that the employer failed to exercise *diligentissimi patris familia* in the selection (*culpa in eligiendo*) or supervision (*culpa in vigilando*) of its employees. To avoid liability for a quasi-delict committed by its employee, an employer must overcome the presumption, by presenting convincing proof that he exercised the care and diligence of a good father of a family in the selection and supervision of his employee. In this case, aside from the testimony of the employer, JAM did not present any other evidence, whether documentary or testimonial, in its favor. Inevitably, the presumption of its negligence as Dimayuga's employer applied and it was, thus, solidarily liable for the damages sustained by petitioner.

In ***Cang v. Cullen***[11] the Court reiterated the doctrine that when an employee causes damage due to his own negligence while performing his duties, there arises the *juris tantum* presumption that his employer is negligent, rebuttable only by proof of observance of the diligence of a good father of a family. Thus, in the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. With respect to the supervision of employees, employers must formulate standard operating procedures, monitor their implementation, and impose disciplinary measures for breach thereof. These facts must be shown by concrete proof, including documentary evidence.

The fact that the employee was driving alone with only a student permit was proof enough that the employer was negligent – either she did not know that he

9 G.R. Nos. 140743 & 140745, September 17, 2009.

10 G.R. No. 183198, November 25, 2009.

11 G.R. No. 163078, November 25, 2009.

only had a student permit or she allowed him to drive alone knowing this deficiency. Either way, the inevitable conclusion was that she failed to exercise the due diligence required of her as an employer in supervising her employee. Thus, the trial court properly denied her claim for damages. One who seeks equity and justice must come to this Court with clean hands.

Finally, in ***Guillang v. Bedania***[12] the Court held that having failed to prove that he exercised all the diligence of the good father of a family in the selection and supervision of his employees, the employer, was also liable for the damages suffered by petitioners.

E. Proximate Cause

In ***Gaid v. People***[13] the Court ruled that it was not sufficient that petitioner had been negligent. It should be shown that his negligence was the proximate cause of the accident. Proximate cause is defined as that which, in a natural and continuous sequence, unbroken by any efficient, intervening cause, produces the injury, and without which the result would not have occurred. In order to establish a motorist's liability for the negligent operation of a vehicle, it must be shown that there was a direct causal connection between such negligence and the injuries or damages complained of. Thus, negligence that is not a substantial contributing factor in the causation of the accident is not the proximate cause of an injury.

Again, in ***Guillang v. Bedania***[14] the Court said that Bedania's negligence was the proximate cause of the collision that claimed the life of Antero and injured the petitioners. Following the definition of proximate cause, in ***Gaid v. People***[15] the Court recounted the sequence of events that resulted in the collision. The cause of the collision was traceable to the negligent act of Bedania for if the U-turn was executed with the proper precaution, in all probability, the mishap would not have occurred. The sudden U-turn of the truck without signal lights posed a serious risk to oncoming motorists. Bedania failed to prevent or minimize that risk. The truck's sudden U-turn triggered a series of events that led to the collision and, ultimately, to the death of Antero and the injuries of petitioners.

In ***Ramos v. C.O.L. Realty Corp.***[16] the Court gave a more comprehensive definition of proximate legal cause. Proximate legal cause is that of acting first and producing the injury either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause that first acted,

12 G.R. No. 162987, May 21, 2009.

13 G.R. No. 171636, April 7, 2009.

14 *Supra.* note12.

15 *Supra.* note 13.

16 G.R. No. 184905, August 28, 2009.

under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result from it.

Aquilino's act of crossing Katipunan Avenue via Rajah Matanda constituted negligence because it was prohibited by law. Moreover, it was the proximate cause of the accident, and thus precluded recovery for any damages suffered by respondent from the accident. If Aquilino had heeded the MMDA prohibition against crossing Katipunan Avenue from Rajah Matanda, the accident would not have happened. This specific untoward event was exactly what the MMDA prohibition was intended for. Thus, as a prudent and intelligent person who resided within the vicinity where the accident occurred, Aquilino had reasonable ground to expect that the accident would be a natural and probable result if he crossed Katipunan Avenue since such crossing was considered dangerous on account of the busy nature of the thoroughfare and the ongoing construction of the Katipunan-Boni Avenue underpass. It was manifest error for the Court of Appeals to have overlooked the principle embodied in Article 2179 of the Civil Code, that when the plaintiff's own negligence is the immediate and proximate cause of his injury, he cannot recover damages.

In ***Agusan del Norte Cooperative, Inc. (ANECO) v. Balen***[17] the Court opined that one of the tests for determining the existence of proximate cause is the foreseeability test, viz., where the particular harm was reasonably foreseeable at the time of the defendant's misconduct, his act or omission is the legal cause thereof. Foreseeability is the fundamental test of the law of negligence. To be negligent, the defendant must have acted or failed to act in such a way that an ordinarily reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risk that made the actor's conduct negligent. It is obviously the consequence that is determinant for the actor to be held legally responsible. Otherwise, the legal duty is entirely defeated. Accordingly, the generalization may be formulated that all particular consequences, that is, consequences that occur in a manner that was reasonably foreseeable by the defendant at the time of his misconduct, were legally caused by his breach of duty.

Thus, applying the foreseeability test, ANECO should have reasonably foreseen that even if it complied with the clearance requirements under the Philippine Electrical Code in installing the high tension wires above Balen's house, a potential risk that people would get electrocuted still existed, considering that the wires were not insulated. It was further strengthened by the fact that Balen had complained about the installation of the line but ANECO did not do anything about it. Moreover, there was scant evidence showing that [respondents] knew beforehand that the lines installed by ANECO were live wires. Otherwise stated, the proximate cause of the electrocution of [respondents] was ANECO's installation of its main distribution

17 G.R. No. 173146, November 25, 2009.

line of high voltage over the house of Balen without which the accident would not have occurred. Clearly, ANECO's act of leaving unprotected and uninsulated the main distribution line over Balen's residence was the proximate cause of the incident that claimed Exclamado's life and injured respondents Balen and Lariosa.

F. Evidence

1. Res Ipsa Loquitur

In ***Tan v. Jam Transit, Inc.***[18] the Court provided a comprehensive discussion of *res ipsa loquitur*, a Latin phrase that literally means "the thing or the transaction speaks for itself." It is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation. Where the thing that caused the injury complained of is shown to be under the management of the defendant or his servants and the accident, in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable, and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care. This rule is grounded in the superior logic of ordinary human experience and it is on the basis of such experience or common knowledge that negligence may be deduced from the mere occurrence of the accident itself. Hence, the rule is applied in conjunction with the doctrine of common knowledge.

However, *res ipsa loquitur* is not a rule of substantive law and does not constitute an independent or separate ground for liability. Instead, it is considered as merely evidentiary, a mode of proof, or a mere procedural convenience, since it furnishes a substitute for, and relieves a plaintiff of, the burden of producing a specific proof of negligence. In other words, mere invocation and application of the doctrine do not dispense with the requirement of proof of negligence. It is simply a step in the process of such proof, permitting plaintiff to present, along with the proof of the accident, enough of the attending circumstances to invoke the doctrine, creating an inference or presumption of negligence and thereby placing on defendant the burden of going forward with the proof. Still, before resort to the doctrine may be allowed, the following requisites must be satisfactorily shown:

1. The accident is of a kind that ordinarily does not occur in the absence of someone's negligence;
2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and
3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

18 *Supra.* note 10.

G. Principles of Tort

1. *Abuse of Right*

In ***Development Bank of the Philippines v. Doyon***[19] the Court said that what is due to a person is determined by the circumstances of each particular case. For an action for damages under Article 19 to prosper, the complainant must prove that:

(a) defendant has a legal right or duty;
(b) he exercised his right or performed his duty with bad faith; and
(c) complainant was prejudiced or injured as a result of the exercise or performance by defendant.

On the first requisite, the Court found that petitioner had the legal right to foreclose on the real and chattel mortgages. Since respondents neither assailed the due execution of the June 29, 1994 promissory notes nor presented proof of payment thereof, their obligation remained outstanding. Upon default, by prior mutual agreement, petitioner had the right to foreclose on the real and chattel mortgages securing their loans. The June 29, 1994 promissory notes uniformly stated that failure to pay an installment (or interest) on the due date was an event of default. Respondents were therefore in default when they failed to pay the quarterly amortizations on the designated due dates. When the principal obligation becomes due and the debtor fails to perform his obligation, the creditor may foreclose on the mortgage for the purpose of alienating the (mortgaged) property to satisfy his credit.

Regarding the second requisite, bad faith imports a dishonest purpose or some moral obliquity or conscious doing of a wrong that partakes of the nature of fraud. It was noted that the RTC "sat" on the case for three long years. This inordinate delay prejudiced petitioner. Inasmuch as petitioner was in the business of lending out money it borrowed from the public and sound banking practice called for the exercise of a more efficient legal remedy against a defaulting debtor like respondent. Thus, petitioner could not be faulted for resorting to foreclosure through a special sheriff. Such procedure was, after all, the more efficient method of enforcing petitioner's rights as mortgagee under its charter.

Moreover, the March 2, 1998 order of the RTC merely stated that the withdrawal of the application for extrajudicial foreclosure in the RTC rendered the case moot and academic. Nothing in the order stated, or even hinted, that respondents' obligation to petitioner had in fact been extinguished. Thus, there was nothing on the part of petitioner even remotely showing that it led respondents to believe that it had waived its claims.

Lastly, inasmuch as petitioner demanded payment from them right after the dismissal of the case, respondents could not have reasonably presumed that the

19 G.R. No. 167238, March 25, 2009.

bank had waived its claims against them. Furthermore, the fact that a demand for payment was made, negated bad faith on the part of petitioner. Despite giving respondents the opportunity to pay their long overdue obligations and avoid foreclosure, respondents still refused to pay. Since respondents did not have a cause of action against petitioner, the RTC and CA erred in granting damages to them.

In ***Calatagan Golf Club, Inc. v. Clemente, Jr.***[20] the Court presumed that the Corporate Secretary, as a lawyer, was knowledgeable about the law and the standards of good faith and fairness that the law requires. As custodian of corporate records, he should also have known that the first two letters sent to Clemente were returned because the P.O. Box had been closed. Given his knowledge of the law and of corporate records, it was surprising that he would send the third and final letter – Clemente's last chance before his share was sold and his membership lost – to the same P.O. Box that had been closed.

Calatagan argued that it "exercised due diligence before the foreclosure sale" and "sent several notices to Clemente's specified mailing address." Its act of sending the December 7, 1992 letter to Clemente's mailing address knowing full well that the P.O. Box had been closed could not be labeled as due diligence. Due diligence or good faith imposes upon the Corporate Secretary – the chief repository of all corporate records – the obligation to check Clemente's other address, which under the By-Laws, had to be kept on file and was in fact on file. One obvious purpose of giving the Corporate Secretary the duty to keep the addresses of members on file is specifically for matters of this kind, when the member cannot be reached through his or her mailing address. The Corporate Secretary did not have to do the actual verification of other addresses on record; a mere clerk could carry out the simple task of checking the files as in fact clerks actually undertake these tasks. In fact, one telephone call to Clemente's phone numbers on file would have alerted him of his impending loss.

Ultimately, the petition was bound to fall because Calatagan had failed to duly observe both the spirit and letter of its own by-laws. The by-law proviso was clearly conceived to afford due notice to the delinquent member of the impending sale and not just to provide an intricate façade that would facilitate Calatagan's sale of the share. The bad faith on its part was palpable. As found by the Court of Appeals, Calatagan very well knew that Clemente's postal box to which it sent its previous letters had already been closed yet it persisted in sending that final letter to the same postal box. It was apparent that it had known very well that the letter would never actually reach Clemente. It is noted that in his membership application Clemente had provided his residential address along with his residence and office telephone numbers. Nothing in Section 32 of Calatagan's by-laws required that the final notice prior to the sale be made solely through the member's mailing address.

20 G.R. No. 165443, April 16, 2009.

Calatagan's bad faith and failure to observe its own by-laws resulted not merely in the loss of Clemente's privilege to play golf at its golf course and avail of its amenities but also in significant pecuniary damage to him. For that loss, the only blame that could be thrown Clemente's way was his failure to notify Calatagan of the closure of the P.O. Box. Indeed, knowing as he did that Calatagan was in possession of his home address as well as residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him. In addition, according to Clemente, he was not even aware of the closure of the postal box, the maintenance of which was not his responsibility but his employer, Phimco's.

The utter bad faith exhibited by Calatagan brings into operation Articles 19, 20 and 21 of the Civil Code, under the Chapter on Human Relations. These provisions, which the Court of Appeals did apply, enunciate a general obligation under law for every person to act fairly and in good faith towards one another. A non-stock corporation like Calatagan was not exempt from that obligation in its treatment of its members. The obligation of a corporation to treat every person honestly and in good faith extends even to its shareholders or members, even if the latter find themselves contractually bound to perform certain obligations to the corporation. A certificate of stock cannot be a charter of dehumanization.

Similarly ***Valley Golf & Country Club, Inc. v. Vda. De Caram***[21] held that when the loss of membership in a non-stock corporation entails the loss of property rights, the manner of deprivation of such property right should also be in accordance with the provisions of the Civil Code. The utter bad faith exhibited by Valley Golf in sending out the final notice to Caram on the deliberate pretense that he was still alive could bring into operation Articles 19, 20, and 21 under the Chapter on Human Relations of the Civil Code. These provisions enunciate a general obligation under law for every person to act fairly and in good faith towards others. Non-stock corporations and their officers are not exempt from that obligation.

Moreover, in ***Dart Philippines, Inc. v. Sps. Calogcog***[22] the Court explained that under Article 19 of the Civil Code, every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. To find the existence of abuse of right under Article 19, the following elements must be present: (1) there is a legal right or duty, (2) which is exercised in bad faith, (3) for the sole intent of prejudicing or injuring another. Thus the exercise of a right must always be in accordance with the purpose for which it has been established, and must not be excessive or unduly harsh – there must be no intention to injure another. A person is protected only when he acts in the legitimate exercise of his right, that is, when he acts with prudence and in good faith, not when he acts with negligence or abuse.

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21 G.R. No. 158805, April 16, 2009.

22 *Supra.* Note .8

Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to a state of mind that is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking any unscrupulous or unconscionable advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same. Bad faith does not simply indicate bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of a known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice suggests ill will or spite and speaks not in response to duty. It implies an intention to do an ulterior and unjustifiable harm. Malice is bad faith or bad motive.

To cite another example, in ***Cinco v. CA***[23] the Court held that the act of refusing payment was motivated by bad faith because of the utter lack of substantial reasons to support it. The unjust refusal amounted to an abuse of rights; respondent acted in an oppressive manner and, thus, was held liable for moral and exemplary damages.

H. Classes of Tort

1. *Intentional Torts*

a. Malicious prosecution

In ***Premiere Development Bank v. Central Surety & Insurance Co., Inc.***[24] the Court explained that malicious prosecution, both in criminal and civil cases, requires the presence of two elements, to wit: (a) malice and (b) absence of probable cause. Moreover, there must be proof that the prosecution was prompted by a sinister design to vex and humiliate a person; and that it was initiated deliberately, knowing that the charge was false and baseless. Hence, the mere filing of what turns out to be an unsuccessful suit does not render a person liable for malicious prosecution, for the law could not have meant to impose a penalty on the right to litigate. Malice must be proved with clear and convincing evidence, which was wanting in this case. There was no malice on the part of Central Surety. It filed the case in the lower court in good faith, upon the honest belief that it had the prerogative to choose to which loan its payments should be applied.

Also, in ***Delos Santos v. Papa***[25] the Court concluded that from the surrounding factual and legal circumstances, the petitioner was at the point of losing his home and was motivated by the desire to prevent the loss, rather than by any intent to vex or harass the respondents. He had a legal basis, although a disputable one, to back up his claim. If he failed at all to pursue his case, it was not due to lack of merit. The

23 G.R. No. 151903 October 9, 2009.

24 G.R. No. 176246, February 13, 2009.

25 G.R. No. 154427, May 8, 2009.

case was lost because nobody pursued the case after his son and attorney-in-fact, who was handling the case for him, died.

2. *Strict Liability Tort*

a. *Violation of civil and political rights*

In ***Sy Tiong Shiou v. Sy Chim***[26] petitioners sought to recover from respondents P8 Million in temperate damages, P1 Million in exemplary damages, and P1 Million in attorney's fees. Given respondents' clear violation of petitioner's constitutional guarantee of free expression, the Court ruled that the right to damages from respondents was squarely assured by Article 32 (2) of the Civil Code, which provides:

> Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
> xxx xxx xxx
> (2) Freedom of speech;

In ***Lim v. Ponce de Leon***[27] the Court noted that "[p]ublic officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. [and] the object of [Article 32 of the Civil Code] is to put an end to official abuse by plea of the good faith,"

The application of Article 32 not only serves as a measure of pecuniary recovery to mitigate the injury to constitutional rights, it likewise serves notice to public officers and employees that any violation on their part of any person's guarantees under the Bill of Rights will meet with final reckoning.[28]

3. *Negligence*

a. *Definition and test of negligence*

In ***Guillang v. Bedania***[29] the Court defined negligence as the failure to observe, for the protection of another's interest, that degree of care, precaution, and vigilance that the circumstances justly demand and whereby such person suffers injury. In ***Picart v. Smith***[30] it was held that the test of negligence is whether the defendant in carrying out the alleged negligent act used that reasonable care and caution that an ordinary person would have used in the same situation. Foreseeability is the

26 G.R. No. 174168, March 30, 2009.

27 160 Phil. 991, 1001 (1975).

28 *Newsounds Broadcasting Network v. Cesar Dy,* Gr. Nos. 1702708 and 179411, April 2, 2009.

29 *Supra* note 12.

30 37 Phil. 809, 813 (1918).

fundamental test of negligence. To be negligent, a defendant must have acted or failed to act in such a way that an ordinarily reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks.

In ***Achevara v. Ramos***[31] the Court emphasized that foreseeability is the fundamental test of negligence. To be negligent, a defendant must have acted or failed to act in such a way that an ordinary reasonable man would have realized that certain interests of certain persons were unreasonably subjected to a general but definite class of risks. Here, seeing that the owner-type jeep was wiggling and running fast in a zigzag manner as it travelled on the opposite side of the highway, Valdez was made aware of the danger ahead if he met the owner-type jeep on the road. Yet he failed to take precaution by immediately veering to the rightmost portion of the road or by stopping the passenger jeep on the right shoulder of the road and letting the owner-type jeep pass before proceeding southward; hence, the collision occurred. The Court of Appeals correctly held that Valdez was guilty of inexcusable negligence by failing to take such precaution, which a reasonable and prudent man would have done under the circumstances and which was the proximate cause of injury to another.

On the other hand, the Court also found Ramos guilty of gross negligence for knowingly driving a defective jeep on the highway. An ordinarily prudent man would know that he would be putting himself and other vehicles he would encounter on the road at risk for driving a mechanically defective vehicle. Under the circumstances, a prudent man would have had the owner-type jeep repaired or would have stopped using it until it was repaired. Ramos was, therefore, grossly negligent in continuing to drive on the highway the mechanically defective jeep, which later encroached on the opposite lane and bumped the passenger jeep driven by Valdez. Gross negligence is the absence of care or diligence as to amount to a reckless disregard of the safety of persons or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.

b. ***Presumption of Negligence***

In ***Cang v. Cullen***[32] the Court adopted the factual findings of the trial court that – at the time of the vehicular collusion, the driver of the motorcycle did not have a license but only had a student driver's permit, was not wearing the proper protective headgear, and was speeding. Section 30 of Republic Act No. 4136, or the Land Transportation and Traffic Code, provides:

> "Sec. 30. Student-driver's permit. — Upon proper application and the payment of the fee prescribed in accordance with law, the Director or his deputies may issue student-driver's permits, valid

31 G.R. No. 175172, September 29, 2009.

32 *Supra* note 11.

> for one year to persons not under sixteen years of age, who desire to learn to operate motor vehicles.
>
> A student-driver who fails in the examination on a professional or non-professional license shall continue as a student-driver and shall not be allowed to take another examination at least one month thereafter. No student-driver shall operate a motor vehicle, unless possessed of a valid student-driver's permit and accompanied by a duly licensed driver."

The driver was in clear violation of the foregoing provision at the time of the accident. Consequently, the presumption under Article 2185 of the Civil Code applied, to wit:

> "Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation."

Likewise, in ***Guillang v. Bedania***[33] the Court applied the presumption under Article 2185 of the Civil Code. In this case, the report showed that the truck, while making the U-turn, failed to signal, a violation of traffic rules. The police records also stated that, after the collision, the driver escaped and abandoned the petitioners and his truck. This was a clear violation of a traffic regulation. Therefore, the presumption arose that the driver was negligent at the time of the mishap.

c. ***Standard of Diligence Required***

(i) General rule

In ***Mindanao Terminal and Brokerage Service, Inc. v. Phoenix Assurance Company of New York/McGee & Co., Inc.***[34] the Court stated that Article 1173 of the Civil Code is very clear that if the law or contract does not state the degree of diligence that is to be observed in the performance of an obligation then that which is expected of a good father of a family or ordinary diligence shall be required. Mindanao Terminal, a stevedoring company charged with the loading and stowing the cargoes of Del Monte Produce aboard M/V Mistrau, had acted merely as a labor provider in the case at bar. There is no specific provision of law that imposes a higher degree of diligence than ordinary diligence for a stevedoring company or one charged only with the loading and stowing of cargoes. It was neither alleged nor proven by Phoenix and McGee that Mindanao Terminal was bound by contractual stipulation to observe a higher degree of diligence than that required of a good father of a family. Therefore, following Article 1173, Mindanao Terminal was required

33 *Supra* note 12.

34 G.R. No. 162467, May 8, 2009.

to observe ordinary diligence only in loading and stowing the cargoes of Del Monte Produce aboard M/V Mistrau.

d. *Negligence in Particular Activities*

(i) *Common Carriers*

In ***Mariano, Jr. v. Callejas***[35] the Court discussed the liability required of a common carrier. In accord with Articles 1733, 1755, and 1756 of the Civil Code, Celyrosa Express, a common carrier, through its driver and its registered owner had the express obligation "to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances", and to observe extraordinary diligence in the discharge of its duty. The death of the wife of the petitioner in the course of transporting her to her destination gave rise to the presumption of negligence of the carrier. To overcome the presumption, respondents were required to show that they observed extraordinary diligence in the discharge of their duty or that the accident was caused by a fortuitous event.

Thus, it is clear that neither the law nor the nature of the business of a transportation company makes it an insurer of the passenger's safety but that its liability for personal injuries sustained by its passenger rests upon its negligence, its failure to exercise the degree of diligence that the law requires.

Here, petitioner did not succeed in his contention that respondents failed to overcome the presumption of negligence against them. The totality of evidence showed that the death of petitioner's spouse was caused by the reckless negligence of the driver of the Isuzu trailer truck, which lost its brakes and bumped the Celyrosa Express bus, owned and operated by respondents.

Furthermore, in ***Regional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co.***[36] the Court reiterated the rule that a common carrier is presumed to have been negligent if it fails to prove that it exercised extraordinary vigilance over the goods it transported. When the goods shipped are either lost or arrive in damaged condition, a presumption arises against the carrier of its failure to observe that diligence and there need not be an express finding of negligence to hold it liable. To overcome the presumption of negligence, the common carrier must establish by adequate proof that it exercised extraordinary diligence over the goods. It must do more than merely show that some other party could be responsible for the damage.

RCL and EDSA Shipping failed to prove that they did exercise that degree of diligence required by law over the goods they transported. Indeed, there was sufficient

35 G.R. No. 166640, July 31, 2009.

36 G.R. No. 168151, September 4, 2009.

evidence showing that the fluctuation of the temperature in the refrigerated container van, as recorded in the temperature chart, occurred after the cargo had been discharged from the vessel and was already under the custody of the arrastre operator, ICTSI. This evidence, however, did not disprove that the condenser fan – which caused the fluctuation of the temperature in the refrigerated container – was not damaged while the cargo was being unloaded from the ship. It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier; RCL and EDSA Shipping failed to dispute this.

RCL and EDSA Shipping could have offered evidence before the trial court to show that the damage to the condenser fan did not occur: (1) while the cargo was in transit; (2) while they were in the act of discharging it from the vessel; or (3) while they were delivering it actually or constructively to the consignee. They could have presented proof to show that they exercised extraordinary care and diligence in the handling of the goods, but they opted to file a demurrer to evidence. As the order granting their demurrer was reversed on appeal, the Court upheld the CA ruling that they were deemed to have waived their right to present evidence and, hence, the presumption of negligence should prevail.

RCL and EDSA Shipping's claim that the loss or damage to the cargo was caused by a defect in the packing or in the containers was found to be without merit. To exculpate itself from liability for the loss/damage to the cargo under any of the causes, the common carrier is required to prove any of the causes in Article 1734 of the Civil Code claimed by it by a preponderance of evidence. If the carrier succeeds, the burden of evidence is shifted to the shipper to prove that the carrier was negligent. RCL and EDSA Shipping, however, failed to satisfy this standard of evidence and in fact offered no evidence at all on this point; a reversal of a dismissal based on a demurrer to evidence bars the defendant from presenting evidence supporting its allegations.

Finally, in ***RT Transport Corporation v. Pante***[37] the Court opined that the testimonial evidence of respondent showed that petitioner, through its bus driver, failed to observe extraordinary diligence, and was, therefore, negligent in transporting the passengers of the bus safely to Gapan, Nueva Ecija on January 27, 1995, since the bus bumped a tree and a house, and caused physical injuries to respondent. Article 1759 of the Civil Code explicitly states that the common carrier is liable for the death or injury to passengers through the negligence or willful acts of its employees, and that such liability does not cease upon proof that the common carrier exercised all the diligence of a good father of a family in the selection and supervision of its employees. Hence, even if petitioner is able to prove that it exercised the diligence of a good father of the family in the selection and supervision of its bus driver, it is still liable to respondent for the physical injuries he sustained due to the vehicular accident.

37 G.R. No. 162104, September 15, 2009.

(ii) *Banks and Credit Card Companies*

The business of a bank is affected with public interest; thus it makes a sworn profession of diligence and meticulousness in giving irreproachable service. For this reason, the bank should guard against an injury attributable to negligence or bad faith on its part. It should never disregard its obligation to exercise the highest and strictest diligence in serving its depositors.[38] Furthermore, every client should be treated equally by a banking institution regardless of the amount of deposits and each client has the right to expect that every centavo he entrusts to a bank will be handled with the same degree of care as the accounts of other clients.[39]

In ***Bank of America NT & SA v. Philippine Racing Club***[40] the confluence of the irregularities on the face of the checks and the circumstances that departed from the usual banking practice of respondent should have put petitioner's employees on guard that the checks were possibly not issued by the respondent in the due course of its business. Petitioner's subtle sophistry could not exculpate it from behavior that fell far short of the highest degree of care and diligence required of it as a banking institution.

Extraordinary diligence demands that petitioner should have ascertained from respondent the authenticity of the subject checks or the accuracy of the entries therein not only because of the presence of highly irregular entries on the face of the checks but also of the decidedly unusual circumstances surrounding their encashment. Petitioner plainly failed to adhere to the high standard of diligence expected of it as a banking institution.

(iii) *Doctors*

In a medical malpractice suit, in order for the patient or his heirs to prevail, they are required to prove by preponderance of evidence that the physician failed to exercise that degree of skill, care, and learning possessed by other persons in the same profession; and that as a proximate result of such failure, the patient or his heirs suffered damages.[41]

The physician has the duty to use at least the same level of care that any other reasonably competent physician would use to treat the condition under similar circumstances. This standard level of care, skill, and diligence is a matter best addressed by expert medical testimony, because the standard of care in a medical malpractice case is a matter peculiarly within the knowledge of experts in the field. Medical negligence cases are best proved by opinions of expert witnesses belonging in the same general neighborhood and in the same general line of practice as defendant

38 Metropolitan Bank and Trust Company v. BA Finance Corp. [G.R. No. 179952, December 4, 2009].

39 Bank of America NT & SA v. Philippine Racing Club [G.R. No. 150228, July 30, 2009].

40 G.R. No. 150228, 30 July 2009.

41 Lucas v. Tuaño [G.R. No. 178763, April 21, 2009].

physician or surgeon. The deference given by courts to the expert opinion of qualified physicians [or surgeons] stems from its realization that the latter possess unusual technical skills that the layman in most instances is incapable of intelligently evaluating; hence, the indispensability of expert testimony. If no standard is established through expert medical witnesses, courts have no standard by which to gauge the basic issue of breach, by the physician or surgeon.

e. *Degrees of Negligence*

Gross inexcusable negligence refers to negligence characterized by the lack of even the slightest care, acting, or omitting to act, in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[42] On the other hand, bad faith does not simply equate bad moral judgment or negligence. There must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent or ill will. It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[43]

In ***LBC Express–Metro Manila, Inc. v. Mateo***[44] the Court found that Mateo was grossly negligent when he left the motorcycle along Burke Street in Escolta, Manila without locking it in spite of clear and specific instructions to do so. His argument that he stayed inside the LBC office for only three to five minutes was of no moment. On the contrary, it only proved that he did not exercise even the slightest degree of care during that very short time. Mateo deliberately did not heed the employer's very important precautionary measure to ensure the safety of company property. Regardless of the reasons advanced, the exact evil sought to be prevented by LBC (in repeatedly directing its customer associates to lock their motorcycles) occurred, resulting in a substantial loss to LBC.

On the contrary, in ***PNB v. Sps. Agustin and Rocamora***[45] the court was not sufficiently convinced that PNB acted fraudulently, in bad faith, or in wanton disregard of its contractual obligations, simply because it increased interest rates and delayed the foreclosure of mortgages. Bad faith cannot be imputed simply because the defendant acted with bad judgment or with attendant negligence. Bad faith is more than these; it pertains to a dishonest purpose, to some moral obliquity, or to the conscious doing of a wrong, a breach of a known duty attributable to a motive, interest or ill will that partakes of the nature of fraud. The Court found that proof of actions of this character were indisputably lacking in this case.

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42 Soriano v. Marcelo [G.R. No. 160772, July 13, 2009].

43 *Ibid.*

44 G.R. No. 168215, June 9, 2009.

45 G.R. No. 164549,18 September 2009.

f. *Defenses*

(i) Doctrine of Last Clear Chance

The doctrine of last clear chance applies to a situation where the plaintiff was guilty of prior or antecedent negligence but the defendant – who had the last fair chance to avoid the impending harm, failed to do so – is made liable for all the consequences of the accident, notwithstanding the prior negligence of the plaintiff.[46] However, the doctrine does not apply where the party charged is required to act instantaneously, and the injury cannot be avoided by the application of all means at hand after the peril is or should have been discovered.[47]

In ***Bank of America NT & SA v. Philippine Racing Club***[48] the Court held that respondent was indeed negligent in pre-signing blank checks but that petitioner had the last clear chance to avoid the loss. Petitioner's own operations manager admitted that they could have called up the client for verification or confirmation before honoring the dubious checks. Petitioner had the final opportunity to avert the injury that befell the respondent. Failing to make the necessary verification due to the volume of banking transactions on that particular day is a flimsy and unacceptable excuse, considering that the banking business is so impressed with public interest where the trust and confidence of the public in general is of paramount importance such that the appropriate standard of diligence must be a high degree of diligence, if not utmost diligence.

In another case[49] the Court rejected the application of the doctrine of last clear chance. It held that even if it could be said that it was Valdez who had the last chance to avoid the mishap before the owner-type jeep encroached on the western lane of the passenger jeep, he no longer had the opportunity to avoid the collision. The Answer of petitioners stated that when the owner-type jeep encroached on the lane of the passenger jeep, Valdez maneuvered his vehicle towards the western shoulder of the road to avoid a collision, but the owner-type jeep driven by Ramos continued to move to the western lane and bumped the left side of the passenger jeep. Considering that the time of impact was only a matter of seconds, he no longer had the opportunity to avoid the collision. Although the records were bereft of evidence showing the exact distance between the two vehicles when the owner-type jeep encroached on the lane of the passenger jeep, it must have been near enough, because the passenger jeep driven by Valdez was unable to avoid the collision. Hence, the doctrine of last clear chance did not apply to this case.

46 Pantranco v. North Express, Inc. [G.R. Nos. 79050-51, November 14, 1989, 179 SCRA 384].

47 Id., citing Ong v. Metropolitan Water District [104 Phil. 397 (1958)].

48 *Supra* note 40.

49 *Achevara v. Ramos, Supra* 31.

(ii) Contributory negligence

The underlying precept of 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 thus be held liable only for the damages actually caused by his negligence.[50]

In ***Bank of America NT & SA v. Philippine Racing Club***, [51] the Court held that it was proper to consider respondent's own negligence to mitigate petitioner's liability pursuant to Article 2179 of the Civil Code. Respondent's practice of signing checks in blank whenever its authorized bank signatories would travel abroad was a dangerous policy, especially considering the lack of evidence on record that respondent had appropriate safeguards or internal controls to prevent the pre-signed blank checks from falling into the hands of unscrupulous individuals and being used to commit a fraud against the company. There could have been other secure and reasonable way to guarantee the non-disruption of respondent's business. As testified to by petitioner's expert witness, other corporations would ordinarily have another set of authorized bank signatories who would be able to sign checks in the absence of the preferred signatories. Indeed, if not for the fortunate happenstance that the thief failed to properly fill up the subject checks, respondent would expectedly take the blame for the entire loss since the defense of forgery of a drawer's signature(s) would be unavailable to it. Considering that respondent knowingly took the risk that the pre-signed blank checks might fall into the hands of wrongdoers, it is but just that respondent shares in the responsibility for the loss. It should also be taken into consideration that the person who stole the pre-signed checks subject of this case from respondent's accountant turned out to be another employee, purportedly a clerk in respondent's accounting department.

Following established jurisprudential precedents, sixty percent (60%) of the actual damages involved in this case (represented by the amount of the checks with legal interest) was allocated to petitioner. In light of its contributory negligence, respondent was directed to bear forty percent (40%) of its own loss.

(iii) Fortuitous event

Fortuitous event is governed by Art. 1174 of the Civil Code provides that except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires assumption of risk, no person shall be responsible for those events which could not be foreseen, or which though foreseen, were inevitable. The elements of a fortuitous event are: (a) the cause of the unforeseen and unexpected occurrence, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible

50 *Ibid.*

51 *Supra* note 40.

to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner, and; (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[52]

In ***Asset Privatization Trust v. T.J. Enterprises***[53] petitioner argued that the reason for its failure to make actual delivery of the properties was not attributable its fault and was beyond the control of petitioner. It argued that the refusal of Creative Lines to allow the hauling of the machinery and equipment was unforeseen and constituted a fortuitous event.

The Court found that Creative Lines' refusal to surrender the property to the vendee did not constitute *force majeure* which exculpated APT from the payment of damages. This event could not be considered unavoidable or unforeseen. APT knew for a fact that the properties to be sold were housed in the premises leased by Creative Lines. It should have made arrangements with Creative Lines beforehand for the smooth and orderly removal of the equipment. The principle embodied in the 'act of God' doctrine strictly requires that the act must be one occasioned exclusively by the violence of nature and all human agencies are to be excluded from creating or entering into the cause of the mischief. When the effect, the cause of which is to be considered, is found to be in part the result of the participation of man, whether it be from active intervention or neglect, or failure to act, the whole occurrence is thereby humanized, as it were, and removed from the rules applicable to the acts of God.

PART TWO
DAMAGES

A. Actual or Compensatory Damages

In determining actual damages, the Court cannot rely on speculation, conjecture or guesswork as to the amount. Actual and compensatory damages are those recoverable because of pecuniary loss in business, trade, property, profession, job or occupation and the same must be sufficiently proved, otherwise, if the proof is flimsy and unsubstantiated, no damages will be given.

In ***Cinco v. CA***[54] spouses Go Cinco were unable to substantiate the amount they claimed as unrealized profits; there was only their bare claim that the excess could have been invested in their other businesses. Without more, their claim of expected profits was at best speculative and could not be the basis for a claim for damages.

52 Asset Privatization Trust v. T.J. Enterprises, *supra* note 6.

53 *Ibid.*

54 G.R. No. 151903, October 9, 2009.

In another case[55] the Court ruled that it is necessary for a party seeking an award for actual damages to produce competent proof or the best evidence obtainable to justify such award. In that case, the claim of P70,000 as actual damages was supported merely by a list of expenses instead of official receipts. A list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions. Neither can the mere testimony of private complainant on the amount she spent suffice.

Moreover, settled is the rule that only receipted expenses can be the basis of actual damages arising from funeral expenditures. In ***People v. Obligado***[56] all that the prosecution presented was a receipt from the funeral parlor amounting to P15,000. Since the receipted expenses of the victim's family was less than P25,000, temperate damages in the said amount could be awarded in lieu of actual damages. Accordingly, the heirs of the victim were not entitled to actual damages but to temperate damages in the amount of P25,000.

Similarly, in ***People v. Comillo, Jr.***[57] the Court reiterated the rule that to be entitled to actual damages, the amount of loss must not only be capable of proof but must actually be proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable of the actual amount thereof, such as receipts or other documents to support the claim. In that case, no receipt or supporting document pertaining to the amount of hospital, funeral and burial expenses for Pedro was submitted. Hence, actual damages are not recoverable.

B. Attorney's Fees

"There are two concepts of attorney's fees. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services rendered. On the other hand, in its extraordinary concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party, such that, in any of the cases provided by law where such award can be made (e.g., those authorized in Article 2208 of the Civil Code), the amount is payable not to the lawyer but to the client, unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof."[58] The law on damages is concerned with the award of attorney's fees in its extraordinary concept.

The award of attorney's fees is the exception rather than the rule.[59] Also, the award thereof lies within the discretion of the court and depends upon the circumstances of each case. However, the discretion of the court to award attorney's

55 People v. Guillera [G.R. No. 175829, March 20, 2009].

56 G.R. No. 171735, April 16, 2009.

57 G.R. No. 186538, November 25, 2009.

58 Masmud v. NLRC [G.R. No. 183385, February 13, 2009].

59 Delos Santos v. Papa [G.R. No. 154427, May 8, 2009].

fees under Article 2208 of the Civil Code of the Philippines demands factual, legal, and equitable justification, without which the award is a conclusion without a premise and improperly left to speculation and conjecture.[60] It becomes a violation of the proscription against the imposition of a penalty on the right to litigate.[61] Consequently, the reason for the award must be stated in the text of the court's decision. If it is stated only in the dispositive portion of the decision, the same must be disallowed.[62]

Furthermore, while Article 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, there must be a showing that the losing party acted willfully or in bad faith and practically compelled the claimant to litigate and incur litigation expenses. In view of the declared policy of the law that awards of attorney's fees are the exception rather than the rule, it is necessary for the trial court to make express findings of fact and law that would bring the case within the exception and justify the grant of such award.[63]

In ***Sps. Reyes v. Montemayor***[64] the award of attorney's fees was held in order because private respondent acted in gross and evident bad faith in refusing to satisfy petitioners' plainly valid, just and demandable claim. Given the time spent on the case, which lasted for more than 15 years, the extent of services rendered by petitioners' lawyers, the benefits resulting in favor of the client, as well as said lawyer's professional standing, the award of P100,000.00 was held proper.

C. Temperate Damages

Under Article 2224 of the Civil Code, temperate damages may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. In ***People v. Comillo***[65] it could not be denied that the heirs of Pedro suffered pecuniary loss due to Pedro's hospital, funeral and burial expenses, although the amount thereof was not determined with certitude. Accordingly, in lieu of actual damages, the heirs of Pedro are entitled to temperate damages in the amount of P25,000.00.

The Court enunciated a similar ruling in ***People v. Guillera***[66] where, in the absence of substantiated and proven expenses relative to the wake and burial of

60 Dutch Boy, Phils., Inc. v. Seniel [G.R. No. 170008, January 19, 2009].

61 Universal Shipping Lines, Inc. v. Intermediate Appellate Court [188 SCRA 170 (1990)]

62 Refractories Corporation of the Philippines v. Intermediate Appellate Court, 176 SCRA 539 [1989]). [Pagsibigan v. People, G.R. No. 163868, June 4, 2009]; [Bunyi v. Factor, G.R. No. 172547, June 30, 2009].; [Madrid v. Mapoy, G.R. No. 150887, August 14, 2009].

63 Tomimbang v. Tomimbang [G.R. No. 165116, August 4, 2009].; Cheng v. Vittorio and Donini [G.R. No. 167017, June 22, 2009].

64 G.R. No. 166516, September 3, 2009.

65 *Supra* note 57.

66 G.R. No. 175829. March 20, 2009.

Enrique, temperate damages in the amount of P25,000 were awarded to his heirs, since they clearly incurred funeral expenses.

In ***Newsounds Broadcasting Network v. Cesar Dy***[67] the prayer for temperate damages was premised on the existence of pecuniary injury to petitioner due to the actions of respondents, the amount of which nevertheless being difficult to prove. Temperate damages are availed when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The existence of pecuniary injury in this case could not be denied. Petitioners had no way of knowing it when they filed their petition but the actions of respondents led to the closure of their radio stations from June 2004 until the Court issued a writ of preliminary injunction in January 2006. The lost potential income during the one-and-a-half year of closure could only be presumed as substantial enough. The amount of P4 Million was deemed "reasonable under the circumstances."

D. Nominal Damages

In ***Sps. Reyes v. Montemayor***[68] private respondent's fraudulent registration of the subject property in her name violated petitioners' right to remain in peaceful possession of the subject property; hence petitioners were entitled to nominal damages under Article 2221 of the Civil Code. They were awarded P50,000.00. In ***De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU)***[69] the Court awarded nominal damages according to Article 2221 (13) of the Civil Code.

E. Moral Damages

Article 2217 of the Civil Code provides that moral damages may be recovered if the party underwent physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury. Moral damages are justified under par. 1 of Art. 2219 of the Civil Code, which provides that moral damages may be recovered from a criminal offense resulting in physical injuries.[70]

Moral damages are not meant to enrich a person at the expense of the other but are awarded to enable the injured party to obtain means, diversions or amusements that will serve to alleviate the moral suffering the person has undergone, by reason of defendant's culpable action.[71] The award is aimed at restoration, as much as possible, of the spiritual *status quo ante*. The social standing of the aggrieved

67 *Supra* note 28.

68 *Supra* note 64.

69 G.R. No. 177283, April 7, 2009.

70 People v. Montemayor [G.R. No. 184050, May 8, 2009].

71 City Government of Tagaytay v. Guerrero, *Supra* note 8.

party is also essential to the determination of the proper amount of the award.[72] Otherwise, the goal of enabling him to obtain means, diversions, or amusements to restore him to the *status quo ante* would not be achieved.[73] It must also be proportionate to the suffering inflicted even if it is incapable of pecuniary estimation.[74] Since each case must be governed by its own peculiar circumstances, there is no hard-and-fast rule in determining the proper amount.

In ***Siga-an v. Villanueva***[75] respondent testified that she experienced sleepless nights and wounded feelings when petitioner refused to return the amount paid as interest despite her repeated demands. Hence, the award of moral damages was justified. However, the amount of P300,000.00, as fixed by the RTC and the Court of Appeals, was found to be exorbitant and equitably reduced. Article 2216 of the Civil Code instructs that assessment of damages is left to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court. The amount of P150,000.00 as moral damages was declare to be fair, reasonable, and proportionate to the injury suffered by respondent.

In ***Delos Santos v. Papa***[76] the Court said that assuming petitioner's case lacked merit, the award of moral damages was not a legal consequence that automatically followed. Moral damages are only awarded if the basis therefore, as provided in the law, is duly established. Here, the ground the respondents invoked and failed to establish was malicious prosecution. The law could not have meant to impose a penalty on the right to litigate. Otherwise, moral damages must be awarded every time in favor of the prevailing defendant against an unsuccessful plaintiff.

In another case[77] respondent sustained a "laceration in the frontal area, with fracture of the right humerus" due to the vehicular accident. He underwent an operation for the fracture of the bone extending from the shoulder to the elbow of his right arm. After a few years of rest, he had to undergo a second operation. Respondent, therefore, suffered physical pain, mental anguish and anxiety as a result of the vehicular accident. Hence, the Court ruled that the award of moral damages in the amount of P50,000.00 was proper.

Finally, in ***Pantaleon v. American Express International, Inc.***[78] the Court ruled that moral damages may be awarded in cases of breach of contract where the defendant acted fraudulently or in bad faith, and the court should find that under

72 *Ibid.*

73 *Ibid.*

74 *Ibid.*

75 G.R. No. 173227, January 20, 2009.

76 *Supra* note 25.

77 RT Transport Corporation v. Pante [G.R. No. 162104, September 15, 2009].

78 G.R. No. 174269, May 8, 2009.

the circumstances, such damages are due. The findings of the trial court were ample enough in establishing the bad faith and unjustified neglect of respondent, attributable in particular to the "dilly-dallying" of respondent's Manila credit authorizer.

However, the Court cautioned that moral damages are not awarded to soothe the plaints of the simply impatient, so this decision should not be a cause for relief "for those who time the length of their credit card transactions with a stopwatch." The somewhat unusual circumstances attending the purchase – that there was a deadline for the completion of that purchase by petitioner before any delay would redound to the injury of his several traveling companions – gave rise to the moral shock, mental anguish, serious anxiety, wounded feelings and social humiliation sustained by the petitioner. Those circumstances were considered fairly unusual and hence, the Court held that these could not give rise to a general entitlement for damages under a more mundane set of facts.

F. Exemplary Damages

Exemplary or corrective damages are imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated, or compensatory damages.[79] Article 2229 of the Civil Code grants the award of exemplary or corrective damages in order to deter the commission of similar acts in the future and to allow the courts to mould behavior that can have grave and deleterious consequences to society;[80] and not to enrich one party or impoverish another.[81] While the amount thereof need not be proved, respondent must show proof of entitlement to moral, temperate, or compensatory damages before the Court may consider awarding exemplary damages.[82]

Article 2232 of the Civil Code states that in a quasi-contract, such as *solutio indebiti*, exemplary damages may be imposed if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In ***Siga-an v. Villanueva***[83] petitioner acted oppressively when he pestered respondent to pay interest and threatened to block her transactions with the PNO if she would not pay interest. This forced respondent to pay interest despite a lack of agreement. Thus, the award of exemplary damages was found appropriate. The amount of P50,000.00 was imposed as exemplary damages so as to deter petitioner and other lenders from committing similar and other serious wrongdoings. Likewise, in ***RT Transport Corporation v. Pante***,[84] a case involving a contract of carriage, the Court also deemed it proper to award exemplary damages. In this case, respondent's testimonial evidence showed that the bus driver was driving the bus very fast in a reckless, negligent, and

79 City Government of Tagaytay v. Guerrero, *supra* note 8.

80 *Ibid.*

81 *Supra* note 63.

82 De La Salle University v. De La Salle University Employees Association (DLSUEA-NAFTEU), *supra* note 69.

83 *Supra* note 75.

84 *Supra* note 37.

imprudent manner; hence, the bus hit a tree and a house along the highway in Baliuag, Bulacan. The award of exemplary damages was, therefore, justified.

The addition of exemplary damages is appropriate under Article 2230 of the Civil Code when a crime is committed with an aggravating circumstance, either qualifying or generic.[85] Hence, in another case, the court ruled that the use of a deadly weapon in the commission of a crime could be considered as basis for an award of exemplary damages, although such circumstance could not be appreciated for the purpose of fixing a heavier penalty.

Furthermore, exemplary damages can be awarded where temperate damages are available. Public officers who violate the Constitution they are sworn to uphold embody "a poison of wickedness that may not run through the body politic", said the Court. Respondents, by purposely denying the commercial character of the property in order to deny petitioners' the exercise of their constitutional rights and their business, manifested bad faith in a wanton, fraudulent, oppressive and malevolent manner. The amount of exemplary damages need not be proved where it is shown that plaintiff is entitled to temperate damages. The amount of P500,000 in attorney's fees was also deemed suitable under the circumstances.

G. Damages in Labor Cases

"The Court has consistently ruled that in illegal dismissal cases, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs, or public policy. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, i.e., that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom."[86]

Accordingly, in ***Mantle Trading Services v. NLRC*** [87] the Court saw it fit to award moral damages to respondent because the manner in which respondent was treated upon petitioners' suspicion of her involvement in drafting and in circulating a letter of appeal and the alleged staging of the "no work day," was contrary to good morals because it caused unnecessary humiliation to respondent.

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85 People v. Mara, *Supra*; People v. Marcos, [G.R. No. 185380, June 18, 2009]; [People v. Manalili, G.R. No. 184598, June 23, 2009].

86 Mantle Trading Services, Inc. v. NLRC [G.R. No. 166705, July 28, 2009].

87 *Ibid.*

On the matter of attorney's fees, the rule is that attorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer. In the same case[88] respondent's unjustified and unwarranted dismissal prompted her to engage the professional services of a counsel and she is thus entitled to an award of attorney's fees.

With respect to the award of nominal damages, it was stressed in ***Mantle Trading Services, Inc. v. NLRC***[89] that the Court is given the latitude to determine the amount of nominal damages to be awarded to a validly dismissed employee but whose due process rights were violated. The Court said that a distinction should be made between a valid dismissal due to just causes under Article 282 of the Labor Code, and those based on authorized causes, under Article 283.

A dismissal for just cause under Article 282 implies that the employee concerned has committed or is guilty of some violation against the employer, i.e., the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in ***Agabon v. NLRC***[90], he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

A dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, i.e., when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

Hence, the Court held that : (1) if the dismissal was based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal was based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative. Here, the cause for termination was abandonment, thus it was due to the employee's fault. Under these circumstances petitioner company was ordered to pay nominal damages in the amount of P30,000.00, similar to the case of *Agabon*.

Finally, the general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he acted maliciously or in bad faith in terminating

88 *Id.*

89 *Id.*

90 G.R. No. 158693, 17 November 2004.

the services of the employee.[91] The employer corporation has a separate and distinct personality from its officers who merely act as its agents.[92]

H. Damages in Cases of Rape and Acts of Lasciviousness

Civil indemnity *ex delicto* is mandatory and automatic upon a finding of the fact of rape.[93] The award thereof is valued at P75,000.00 in case of qualified rape, P50,000.00 in case of simple rape,[94] P30,000.00 in case of rape with sexual assault,[95] and P2,000.00 in case of each act of lasciviousness.[96]

Moral damages are also automatically awarded for each count of rape without need of further proof other than the fact of its commission.[97] It is presumed that the victim necessarily suffered injury due to the odiousness of the crime.[98] In a long line of cases, the Court has held that the amount for each count of rape should be P75,000.00; while in another set of cases, the Court valued the same at P50,000.00. The award of P30,000.00 is be deemed proper in cases of rape by sexual assault and acts of lasciviousness.

Contrary to the foregoing damages, exemplary damages in rape cases are awarded only when the commission thereof was attended with one or more aggravating circumstances, whether ordinary or qualifying.[99] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[100] The amount of such award is P25,000.00 in case of rape, and P2,000.00 in case of acts of lasciviousness.[101]

I. Damages in Case of Death

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages[102] (6) attorney's fees and expenses of litigation, and (7) interest, in proper cases.[103] The

91 *Id.*

92 *Id.*

93 People v. Corpuz, [G.R. No. 175836, January 30, 2009]; Sierra v. People, [G.R. No. 182941, July 3, 2009]; People v. Martinez, [G.R. No. 182687, July 23, 2009]; People v. Grande, [G.R. No. 170476, December 23, 2009].

94 Corpuz, *ibid.*

95 People v. Abello [G.R. No. 151952, March 25, 2009].

96 *Id.*

97 *Id.*

98 *Id.*

99 People v. Grande [G.R. No. 170476, December 23, 2009.].

100 People v. Teodoro [G.R. No. 172372, December 4, 2009.]

101 *Id.*

102 Herrera v. Sandiganbayan [G.R. Nos. 119660-61, February 13, 2009].

103 People v. Mokammad, [G.R. No. 180594, August 19, 2009]; People v. Lusabio, Jr., [G.R. No. 186119, October 27, 2009; People v. Lacaden, [G.R. No. 187682, November 25, 2009].

foregoing is awarded even if the heirs of the deceased failed to seek the affirmative relief of damages on appeal.

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Under prevailing jurisprudence, the award of P50,000 to the heirs of the victims as civil indemnity is in order. In cases of murder and homicide, moral damages may be awarded without need of allegation and proof of the emotional suffering of the heirs, other than the death of the victim, since the emotional wounds from the vicious killing of the victims cannot be denied.

In ***People v. Reyes***[104] the Court ruled that even if the death penalty was not to be imposed on the accused because of the prohibition in Republic Act No. 9346, the civil indemnity of P75,000.00 was still proper, as the said award was not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.

Actual damages may only be awarded if the claim therefor is substantiated. Otherwise, only temperate damages can be awarded. Loss of income is a component of actual damages. The general rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity.[105] As an exception, damages may be awarded in the absence of documentary evidence, provided there is testimony that the victim was either (1) self-employed and earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) employed as a daily wage worker earning less than the minimum wage under current labor laws.[106]

In *People v. Comillo*[107] neither of the two exceptions applied. Luz testified that Pedro was earning an amount of not less than P350.00 per day as a carpenter. The earning of Pedro was above the minimum wage set by labor laws in his workplace at the time of his death. This being the case, the general rule of requiring documentary evidence of earning capacity was applied. Unfortunately for Pedro's heirs, no such proof was presented. The non-awarding of damages for loss of earning capacity was therefore held proper.

The Court went on to say that should the award thereof be duly substantiated, its amount should be computed using the following formula:[108]

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104 G.R. No. 178300, March 17, 2009.

105 People v. Comillo, *supra* note 57.

106 *Id.*

107 *Id.*

108 *Id.*

Life expectancy = 2/3 x (80- [age of the victim at the time of his death])

In the absence of proof of his living expenses, his net income is deemed to be 50% of his gross income.

Net earning capacity:
= Life expectancy x (Income – 50% Income)
= Loss of Earnings

Exemplary damages are awarded in case the crime is committed with one or more aggravating circumstances, whether generic or qualifying.[109]

Moral damages are mandatory in cases of murder and homicide, without need of any allegation or proof other than the death of the victim. Moral damages are awarded despite the absence of proof of mental and emotional sufferings of the victim's heirs because, as borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Consistent with this rule, the award of P50,000.00 as moral damages was held in accordance with prevailing jurisprudence.[110]

109 People v. Español, G.R. No. 175603, February 13, 2009].; [People v. Garchitorena, G.R. No. 175605, August 28, 2009].; [Garcia v. People, G.R. No. 171951, August 28, 2009].

110 Villamor v. People [G.R. No. 182156, November 25, 2009].

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15 J. Vargas Avenue, Ortigas Center, Pasig City 1600
Telephone: (632) 631-3014/18 • Fax: (632) 634-4697
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