



# PHILJA Bulletin



July to September 2001

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## From the Chancellor's Desk

A variety of activities characterized this quarter.

For something different, we can mention the digital videoconference on judicial education through the courtesy of the Cultural Affairs Office of the U.S. Embassy held on July 31, 2001. We could converse with Honorable Fern M. Smith who was in Washington, D.C., and was projected on the screen, as if she were personally in front of us. She, in turn, engaged the PHILJA Academic Council in Manila in a frank and lively exchange of views. Judge Smith is the Director of the U.S. Federal Judicial Center. She is a U.S. Federal Court Judge, now on leave, while serving as Director of the Center.

It is always an exciting experience to communicate through this modern technology, a first for some of us, and a second for those who participated in the World Bank Distance Learning Course on "Judicial Reforms, Performance and Accountability" last April to June 2001. This also utilized video-conferencing technology and had as participants representatives from Bangladesh, Indonesia, Philippines, Sri Lanka and Thailand.

For the first time, we introduced to our judges the PHILJA-UNDP "Philippine Judiciary Workshop: Realizing Economic, Social and Cultural Rights" last September 2001. We understand that this was also the first in Asia and may be replicated in other jurisdictions. Former Chief Justice P.N. Bhagwati of India, Dr. Clarence Dias, President of the International Center for Law and Development based in New York and Dean Virginia B. Dandan, Chair of the International Committee on Economic and Social Rights, were among the distinguished resource persons. Among the lecturers was Justice Leonardo A. Quisumbing who spoke on the key issue of the Role of the Judiciary in the application of economic, social and cultural rights. PHILJA-UNDP undertook this activity in cooperation with the Office of the UN High Commissioner for Human Rights. UNDP Representative Mr. Terence D. Jones emphasized, in his message during the Closing Ceremonies, UNDP's commitment to adopting a preventive, instead of a reactive, approach to effect changes in systems that hinder the full enjoyment of human rights. Chief Justice Hilario G. Davide, Jr., in his Inspirational Message, stressed that the judiciary remains vigilant in order that fundamental freedoms and human rights are always protected. Dr. Purificacion V. Quisumbing ably steered the proceedings as the Project Director.

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## CASA/GAL TRAINING FOR LUZON VOLUNTEERS

The Philippine Judicial Academy (PHILJA), in cooperation with the United Nations Children's Fund (UNICEF), the Assisi Development Foundation, and the AKAP-Ateneo Human Rights Center, held the *Court Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) Volunteers' Training (Luzon)*, on July 9-10, 2001 at the De La Salle University-College of St. Benilde Angelo King Center, Manila. Atty. Sedfrey M. Candelaria, Associate Dean for Student Affairs of the Ateneo Law School and PHILJA Professor, is the Project Coordinator. Twenty-eight (28) volunteers who mostly came from non-government agencies completed the entire course. Actual cases decided by the Supreme Court and involving the child victim, child offender and child-witness were used in the seminar.



*Mrs. Virginia P. Davide, wife of Chief Justice Hilario G. Davide, Jr., was a participant at the CASA/GAL Volunteer's Training (Luzon). She acted as a Judge at the Role playing session on child abuse.*



*Participants of the CASA/GAL Volunteers' Training Program in Luzon with Dr. Purificacion V. Quisumbing (5th from right) and Atty. Sedfrey M. Candelaria (4th from right), Project Director.*

## QUASI-JUDICIAL BODIES' SEMINAR AT THE SC

The *Seminar for Quasi-Judicial Bodies* was conducted by the Philippine Judicial Academy (PHILJA) from July 10 to 12, 2001, at the Centennial Building, Supreme Court, Manila. In attendance were eighty-four (84) quasi-judicial officers from the Board of Investments, Bureau of Customs, Central Board of Assessment Appeals, Commission on Appointments, Construction Industry Arbitration Commission, Department of Agrarian Reform, Employees Compensation Commission, Energy Regulatory Board, Housing Regulatory Board, Insurance Commission, Intellectual Property Office, Land Transportation, Franchising & Regulatory Board, National Telecommunication Commission, Office of the Ombudsman, Securities & Exchange Commission, Social Security System, Commission on the Settlement of Land Problem, and the National Electrification Administration.

## 6<sup>TH</sup> JUVENILE JUSTICE SEMINAR HELD IN CEBU

The Philippine Judicial Academy (PHILJA), in cooperation with the United Nations Children's Fund (UNICEF), conducted the 6<sup>th</sup> Regional Multi-Sectoral Seminar on Juvenile and Domestic Relations Justice (Western and Central Visayas), from July 17 to 20, 2001, at the Holiday Plaza Hotel, Cebu City. With the theme of "Towards a Comprehensive and Restorative Justice System in Family Courts," seventy-three (73) participants from the five pillars of justice attended the seminar.

An innovation in the program highly rated by the participants was the Exposure Trip to Family Court Br. 22 of Judge Pampio Abarintos; Community Scouts, Rehabilitation and Youth Guidance Center for children in conflict with the law; and Balay Pasilungan which is a temporary shelter and rehabilitation center for released youth offenders.

*Mock Trial using Video Conferencing in Judge Abarintos' court*



*Youths of the Balay Pasilungan interact with the participants of the 6th Regional Multi-Sectoral Seminar on Juvenile and Domestic Relations Justice.*



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<b>Date</b>	<b>Seminars / Activities</b>	<b>Venue</b>
November 6-8	Seminar-Workshop on Enhancement of Agrarian Reform Adjudication	Fontana Leisure Park, Clark Air Base, Angeles City, Pampanga
November 8-10	Philippine Trial Judges League, Inc. (PTJLI) Convention Seminar	Waterfront Hotel, Cebu City
November 9	Accreditation Ceremony (Mediation)	Court of Appeals Auditorium, Manila
November 12-16	Corporate Rehabilitation Seminar for Commercial Court Judges	Holiday Inn, Clarkfield, Pampanga
November 13-16	Tenth Regional Seminar for Judges, Clerks of Court, Branch Clerks of Court, Legal Researchers and Sheriffs of the Regional Trial Courts and First-Level Courts of Region IV (First Batch)	Development Academy of the Philippines, Tagaytay City
November 20-21	Intellectual Property Rights Seminar	Tagaytay City
November 21-23	MeTC & City Court Judges Convention Seminar	Bacolod City
November 23	Plenary for the Revision of the Clerks of Court Manual	OCA Conference Room, Supreme Court, Manila

## ENVIRONMENTAL LAW SEMINAR IN PALAWAN

Forty-two (42) First and Second Level Court Judges from twelve judicial regions, (with the exception of the National Capital Judicial Region and Region IX), attended the *Seminar on Environmental Law – The Environment on the Scale: Ipagtanggol ang Kalikasan II*, held in Puerto Princesa City, Palawan, from July 23 to 26, 2001. Conducted by PHILJA with the cooperation of Tanggol Kalikasan, Canadian International Development Agency (CIDA), The Ford Foundation, USAID-The Asia Foundation, and the Foundation for the Philippine Environment (FPE).

Present in the seminar were Justice Reynato S. Puno who delivered the Keynote Address; PHILJA Chancellor Ameurfina A. M. Herrera; Justice Oswaldo D. Agcaoili, Court of Appeals; Atty. Rodolfo Ferdinand N. Quicho, Jr., Executive Director, Tanggol Kalikasan; Atty. Maria Paz G. Luna, Executive Director, Babilonia Wilner Foundation; Dr. Perry S. Ong, Science Director, Conservation International Phils.; and Dr. Jurgenne Honculada-Primavera, Senior Scientist, Southeast Asian Fisheries Development Center.



*Participants at the Seminar on Environmental Law with Justice Reynato Puno of the Supreme Court; Justice Oswaldo Agcaoili of the Court of Appeals; PHILJA Chancellor Ameurfina A.M. Herrera; and Executive Director Rodolfo Ferdinand N. Quicho, Jr. of Tanggol Kalikasan (middle row; 6th, 7th, 5th and 4th from left, respectively)*

## 19<sup>th</sup> ORIENTATION SEMINAR FOR NEWLY APPOINTED JUDGES

The Philippine Judicial Academy conducted the 19<sup>th</sup> *Orientation Seminar- Workshop for Newly Appointed Judges* on July 30 to August 3, 2001, at PHILJA, Tagaytay City. There were thirty (30) participants: 20 newly appointed; 4 promoted; and 6 lateral transfer. Of these, fifteen (15) are RTC Judges, and the remaining are First Level Court Judges.

*The newly-appointed and promoted judges together with Vice-Chancellor Antonio M. Martinez (9th from left) and Executive Secretary Priscila S. Agana (7th from left)*



## SEMINAR FOR COURT ATTORNEYS

The Philippine Judicial Academy (PHILJA) conducted the *Seminar for Court Attorneys of the Supreme Court, the Court of Appeals, and the Sandiganbayan*, on August 14 to 16, 2001, at the Court of Appeals Auditorium, Court of Appeals, Manila. A total of two hundred sixty-seven (267) Court Attorneys attended the seminar: 138 came from the Supreme Court; 118 from the Court of Appeals; and 11 from the Sandiganbayan. The Honorable Chief Justice Hilario G. Davide, Jr. gave the Inspirational Message and thereafter distributed the Certificates of Attendance assisted by PHILJA Chancellor Ameurfina A. M. Herrera, and the Presiding Justice of the Court of Appeals, Justice Ma. Alicia A. Martinez.

## NLRC SEMINAR HELD IN OLONGAPO CITY

The Philippine Judicial Academy and the National Labor Relations Commission held the *NLRC In The Forefront of Development Seminar-Workshop* from August 29 to 31, 2001, at the Subic International Hotel, Olongapo City. A total of thirty-three (33) participants attended the seminar-workshop which included Commissioner Vicente S. E. Veloso, III; nine (9) Executive Labor Arbiters; and twenty-three (23) Labor Arbiters.

Also present were Justice Hugo E. Gutierrez, Jr. (ret.); Justice Jesus M. Elbinias (ret.); Acting Court Administrator Zenaida N. Elepaño; Judge Priscila S. Agana (ret.), PHILJA Executive Secretary; DOLE Secretary Patricia A. Sto. Tomas; Former DOLE Secretary Bienvenido Laguesma; NLRC Chairman Roy V. Señeres; and Commissioner Lourdes C. Javier, Chairperson, Committee on Personal Development.

## CASA/GAL TRAINING FOR VISAYAN VOLUNTEERS

The Philippine Judicial Academy, in cooperation with UNICEF, the Assisi Development Foundation, and the AKAP-Ateneo Human Rights Center, conducted the *Court Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) Volunteers' Training Program (Visayas Region)*, from September 2 to 4, 2001, at the Sarabia Manor Hotel and Convention Center, Iloilo City. Thirty-seven (37) participants attended the training program which included an exposure trip to the Child and Youth Detention Home operated by the Bureau of Jail Management and Penology (BJMP).



*Visayas volunteers attend the CASA/GAL Training Program held in Iloilo City. With the participants are (seated from left, second row): PHILJA Chancellor Ameurfina A. Melencio Herrera (sixth); Dr. Purificacion V. Quisumbing (seventh); Attorney Sedfrey M. Candelaria, CASA/GAL Program Director (fifth); Attorney Katrina Legarda (eighth); and the PHILJA staff (first row).*

## 3rd FAMILY COURT SOCIAL WORKERS' SEMINAR

The *3rd Seminar-Workshop for Court Social Workers of Family Courts* was held on September 9 to 15, 2001, at the Traders Hotel, Pasay City. Conducted by the Philippine Judicial Academy with the assistance of UNICEF, AKAP-Ateneo Human Rights Center/ILO-IPEC, and the Department of Social Welfare and Development (DSWD), sixty-five (65) court social workers from the country's thirteen judicial regions attended the seven-day live-in seminar-workshop. Part of the seminar-workshop was an exposure trip to centers such as the Haven, Marillac Hills, EGV at Alabang, Muntinlupa, and Chosen Children at Silang, Cavite, which provide treatment, rehabilitation, skills training and professional education to children who are victims of abuses, exploitation, and domestic violence.

## SEMINAR ON E-COMMERCE LAW AND ELECTRONIC EVIDENCE

For the first time, the Land Registration Authority (LRA) requested the Philippine Judicial Academy to conduct a program exclusively for their agency. The Seminar on the Law on E-Commerce and the Rules on Electronic Evidence was held on September 14, 2001, at the LRA Office, Diliman, Quezon City. Ninety-one (91) participants attended the seminar, with LRA Director Benjamin A. Flestado who gave the Closing Remarks, and Director Rosalinda G. Alonzo, the organizer of the seminar.

## SEMINAR ON JUSTICIABILITY OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Philippine Judicial Academy, with the assistance of the United Nations Development Programme (UNDP), and in cooperation with the Office of the UN High Commissioner for Human Rights, conducted the first ever *Philippine Judiciary Workshop on "Realizing Economic, Social and Cultural Rights"* from September 12 to 14, 2001, at PHILJA, Tagaytay City. Forty-five (45) participants attended the workshop. Prominent lecturers included Chief Justice P. N. Bhagwati, former Chief Justice of India and currently Regional Adviser of the High Commissioner for Human Rights for the Asia Pacific Region; Supreme Court Justice Leonardo A. Quisumbing; Dean Virginia B. Dandan of the University of the Philippines College of Fine Arts, also Chairperson of the United Nations Committee on Economic, Social and Cultural Rights (CESCR); Dr. Clarence Dias, President of the International Center for Law in Development; Commission on Human Rights (CHR) Chairperson Aurora P. Navarrete Recina; and Atty. Rene V. Sarmiento.



*The Philippine Judiciary Workshop on Realizing Economic, Social and Cultural Rights featured Former Chief Justice P.N. Bhagwati of India (standing); CESCR Chair Virginia B. Dandan (seated, leftmost); and Dr. Clarence Dias (seated, third from left).*

## 20<sup>TH</sup> ORIENTATION SEMINAR FOR NEWLY APPOINTED JUDGES

The Philippine Judicial Academy conducted the 20<sup>th</sup> Orientation Seminar-Workshop for Newly Appointed Judges on September 17 to 21, 2001, at PHILJA, Tagaytay City. Thirty-two (32) participants were composed of: 19 newly appointed judges (RTC-12 judges; First Level Court-7 judges); 11 promoted judges; and 2 lateral transferees.



*The latest batch of the country's new judges with Justice Alfredo L. Benipayo (6th from right) and Vice-Chancellor Antonio A. Martinez (5th from right).*

## UNICEF ADVISER FROM NEW YORK VISITS PHILJA

Mr. Peter D. C. Mason, Senior Adviser at the Office of the Executive Director, UNICEF New York, visited the Philippine Judicial Academy (PHILJA) on September 11, 2001. UNICEF has provided funding to several projects of the Supreme Court through the Academy, in particular, the series of eight (8) Regional Multi-Sectoral Seminars on Juvenile and Domestic Relations Justice. He was welcomed by Justice Ameurфина A. M. Herrera, Chancellor of PHILJA; Dr. Purificacion V. Quisumbing, Project Director of the Juvenile and Domestic Relations Justice seminars; Atty. Alberto Muyot, Project Officer-Juvenile Justice, UNICEF Manila; and Dr. Clarence Dias, President of the International Center for Law in Development.



## PHILJA PROFESSORS AT PROGRAM FOR JUDICIAL EDUCATORS IN CANADA

Dr. Purificacion V. Quisumbing, Chairperson of the Department of International Law and Human Rights of the Philippine Judicial Academy (PHILJA) as well as Head of its Research and Linkages Office, and Atty. Eulogia Cueva, Dean of the Lyceum of the Philippines College of Law and also Professor at PHILJA, attended the Commonwealth Judicial Education Institute's (CJEI's) "Intensive Study Program for Judicial Educators," held from May 27 to June 15, 2001, at Halifax, Nova Scotia, Canada. The Canadian International Development Agency (CIDA) provided funding support.

CJEI primarily designed the course for Commonwealth judiciaries, but has included the Philippines for the past three years because of the strong commitment to judicial reform and the fairly well-developed program on judicial education of PHILJA, the education/training arm of the Supreme Court. Through this course, CJEI aims "to create or support impartial, competent, efficient and effective judiciaries to strengthen good governance and provide an environment for economic growth."

The course content had two parts: the two-week substantive sessions held in Halifax, and the practicum which consisted of observation visits to courts and judicial institutions such as the Supreme Court of Canada, National Judicial Institute, and the Ontario Court of Justice. A total of eighteen (18) participants attended the course, the others coming from the Bahamas, Bangladesh, Barbados, Fiji, Nigeria, Singapore, South Africa, St. Lucia, Trinidad, and Zambia.





## THE CENTENARY LECTURE SERIES

### II

Commemorating the historic event, the Supreme Court – together with its education arm, the Philippine Judicial Academy (PHILJA) – organized the first Centenary Lecture Series, held monthly from July 11, 2000 to June 11, 2001. It was so well received hence this Centenary Lecture Series II. Once more, eminent Filipino and foreign jurists and legal luminaries have been invited to deliver lectures on legal and judicial topics of fundamental significance in the development of the Philippine judiciary, as well as law and jurisprudence – past, present and future.

### AUSTRALIAN JUSTICE NICHOLSON IS SC'S 12<sup>TH</sup> CENTENARY LECTURER

The lecture of Justice Robert Nicholson of the Federal Court of Australia on *"The Paperless Court?: Technology and the Courts in the Region,"* held on September 26, 2001, was well attended. More than 300 participants attended the lecture. Co-sponsors were the Australian Embassy, Polytechnic University of the Philippines (PUP), WofPac Communications, Inc., and Center for Intellectual Property Education, Information Dissemination & Exchange (CentipedeAsia). Justice Nicholson discussed the legislative recognition of electronic transactions; its impacts on criminal trials and evidence as well as on confidentiality and privacy; and Asian and Australasian Regional Developments.



*Justice Robert Nicholson with Justice Ameurfina A. Melencio Herrera, PHILJA Chancellor and Justice Antonio M. Martinez, Vice-Chancellor.*

#### *Chancellor's Desk, continued from page 1*

We strengthened linkages with our overseas counterparts. The Chief Justice authorized the attendance of Dr. Purificacion V. Quisumbing and Professor Eulogia M. Cueva, PHILJA faculty members, at the Commonwealth Judicial Education Institute's intensive judicial training program, in Halifax, Nova Scotia, as the representatives from the Philippines. We welcomed the Senior Adviser, Office of the Executive Director, UNICEF, New York, who visited PHILJA. We were privileged with a visit from the Executive Vice-President of The Asia Foundation. Justice Artemio V. Panganiban, Justice Leonardo A. Quisumbing, and the PHILJA Chancellor were invited to attend the EINSHAC First International Working Conversation on Enviro-Genetics Disputes and Issues in Kona, Hawaii, in July 2001. We continue to work actively with the Project Management Office of the Judicial Reforms Project to design proposals for training programs that can qualify for technical assistance from international agencies.

It is gratifying to note that the evaluations submitted by the participants themselves show that they have found the respective seminars profitable, and have given high ratings to both the regular and special programs as an educational experience. The general assessments presented enable the Academy to review the components of the program development process.

PHILJA tries unabatedly to fulfill its mission and to facilitate a process of growth and development for all judicial officers, court personnel, aspirants for judicial positions, and quasi-judicial officials.



## CIVIL LAW

### Lease contract; Article 1687 of the Civil Code explained.

Article 1687 of the Civil Code is explicit that if the period for the lease has not been fixed, it is understood to be from month to month if the rent agreed upon is monthly. However, even though a monthly rent is paid and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over a year. However, the power of the courts to establish a grace period pursuant to Article 1687 is potestative or discretionary, to be exercised or not depending on the particular circumstances of the case; a longer term to be granted where equities come into play demanding extension, to be denied where none appears, always with due deference to the parties' freedom to contract. (*Bellosillo, J., Eulogio Lo Chua v. CA, GR 140886, April 19, 2001*)

### Damages for injuries; choice of remedies.

In *Floresca v. Philex Mining Corporation*, the Court ruled that the injured employee or his heirs in case of death, has a right of choice of action between availing himself of the workers rights under the Workman's Compensation Act and suing in the regular courts under the Civil Code for higher damages from the employers, but he cannot pursue both courses of action simultaneously. However, a claimant who had been paid under the Workman's Compensation Act could still sue under the Civil Code on the basis of supervening facts or developments occurring after he opted for the first remedy such as when his employee has been found negligent. (*Kapunan, J., DM Consunji v. CA & Maria Juego, GR 137873, April 20, 2001*)

### Double sale of immovable; when a sale is considered equitable mortgage; form of contract of sale of real property; appellate docket fee.

Article 1544 of the Civil Code provides that where immovable property is the subject of a double sale, ownership shall be transferred to the person acquiring it who in good faith first recorded it in the Registry of Property; in default thereof, to the person who in good faith was first in possession; and in default thereof, to the person who presents the oldest title. Where the property is recorded, the law requires that both acquisition

and recording are in good faith. To be entitled to priority, the second purchaser must not only prove prior recording of his title but that he acted in good faith i.e., without knowledge of a prior sale to another.

A contract of sale with right of repurchase is considered an equitable mortgage in any of the following cases: (1) when the price is unusually inadequate; (2) when the vendor remains in possession as lessee or otherwise; (3) when upon or after the expiration of the right to repurchase, another instrument extending the period of redemption is executed; (4) when the purchaser retains for himself a part of the purchase price; (5) when the vendor binds himself to pay the taxes on the thing sold; (6) in any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation. In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.

Articles 1357 and 1358 in relation to Article 1403(2) of the Civil Code requires that the sale of real property must be in writing for it to be enforceable, but it need not be notarized. If the sale has not been in writing, either of the parties can compel the other to observe such requirement. There is nothing in the above provision which require that a contract of sale of realty must be executed in a public document.

In appealed cases, the failure to pay the appellate docket fee does not automatically result in the dismissal of the appeal, the dismissal being discretionary on the appellate court. (*Mendoza, J., Rev. Dante Martinez v. CA, GR 123547, May 21, 2001*)

### Alternative methods of dispute resolution.

Courts encourage the use of alternative methods of dispute resolution. When parties agree to settle their disputes arising from or connected with construction contracts, the Construction Industry Arbitration Commission (CIAC) acquires primary jurisdiction. It may resolve not only the merits of such controversies; when appropriate, it may also award damages, interests, attorney's fees and expenses of litigation.

*Continued on next page*

## CIVIL LAW *continued*

Section 4 of Executive Order 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes arising from or connected with construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration and Section 19 of said Executive Order 1008 expressly provides that monetary awards by the CIAC are final and unappealable if supported by substantial evidence. (*Panganiban, J., Philrock v. Construction Industry Arbitration Commission, et al, GR 132848-49, June 26, 2001*)

## REMEDIAL LAW

**Petition for Certiorari under Rule 65; three essential dates that must be stated in the petition.**

There are three (3) essential dates that must be stated in a petition for certiorari brought under Rule 65. First, the date when notice of the judgment or final order or resolution was received; second, when a motion for new trial or reconsideration was filed; and third, when notice of denial thereof was received. The requirement of setting forth the three dates is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from the notice of the judgment, order or resolution sought to be assailed. (*Bellosillo, J., Ismael Santos, et al v. CA, GR 141947, July 5, 2001*)

## TAXATION

**Jurisdiction of courts in tax cases.**

The trial court has no jurisdiction to entertain a petition for Prohibition absent petitioner's payment, under protest, of the tax assessed as required by Sec. 64 of the Real Property Tax Code. Payment of the tax assessed under protest is a condition sine qua non before the trial court could assume jurisdiction over the petition and failure to do so, the RTC has no jurisdiction to entertain it. (*De Leon, Jr., J., Manila Electric Co. v. Nelia Barlis, GR 114231, May 18, 2001*)



## CRIMINAL LAW

**Judgment of Conviction; requirements of the Rules of Court.**

A look at the trial court decision reveals that the trial judge failed to explain why the offense was qualified to murder. Although the information explicitly alleged that the crime was committed with treachery and evident premeditation, the trial court in its decision was silent about the presence or absence of these qualifying circumstances. The trial court failed to specifically discuss the qualifying circumstances or any other modifying circumstance in the body or in the dispositive portion of the decision. Such a decision does not conform to the requirement of the Rules of Court that a judgment of conviction shall state the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances attending the commission thereof if there are any. Nevertheless, such lapse is not fatal to the validity of the decision. (*Pardo, J., People v. Orlando Herrera de Leon, GR 126287, April 16, 2001*)

**Illegal recruitment in a large scale; elements thereof.**

The essential elements of the crime of illegal recruitment in a large scale are (1) the accused engages in acts of recruitment and placement of workers defined under Article 13 (b) or in any of the prohibited activities under Article 34 of the Labor Code; (2) that the accused has not complied with the guidelines issued by the Secretary of Labor and Employment particularly with respect to the securing of a license or an authority to recruit and deploy workers either locally or overseas, and (3) that the accused commits the unlawful acts against three or more persons individually or as a group. (*Mendoza, J., People v. Luz Gonzales, GR 138535-38, April 19, 2001*)

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when the issue raised is purely one of law; (2) where the error is patent; (3) when the order is void, and (4) when the questions raised on certiorari are the same as those already squarely presented to and passed upon by the lower court. (*Bellosillo, J., National Housing Authority, et al, v. CA, GR 144275, July 5, 2001*)

## CIVIL LAW

### Contract for a piece of work distinguished from a contract of sale.

As ruled in *Engineering & Machinery Corp. v. Court of Appeals*, a contract for a piece of work, labor and materials may be distinguished from a contract of sale by the inquiry as to whether the thing transferred is one not in existence and which would never have existed but for the order of the person desiring it. In such case, the contract is one for a piece of work, not a sale. On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to some other person even if the order had not been given, then the contract is one of sale. (*Puno, J., Inocencia Dino and her Husband v. Court of Appeals, et al*, GR 113564, June 20, 2001)

### Period of redemption of foreclosed and sold property under the General Banking Act; correct amount of redemption price; Section 78 of the Banking Act amends Section 6 of Act 3135.

Pursuant to Section 78 of the General Banking Act, a mortgagor whose real property has been sold at a public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, shall have the right within one year after the sale of the real estate to redeem the property to be reckoned from the date of the registration of the sale. Any action for the annulment of the mortgage will not stop the running of the one year period of redemption. Said Section 78 of the General Banking Act had the effect of amending Section 6 of Act 3135 in so far as the redemption price is concerned when the mortgagee is a bank or a banking or credit institution. (*De Leon, Jr., J., Union bank v. CA*, et al, GR 134068, June 25, 2001)

## CRIMINAL LAW

### Custodial investigation; when a person is considered under custodial investigation.

Custodial investigation commences when a person is taken into custody and is singled out as a suspect in the commission of a crime under investigation, and the police officers begin to ask questions on the suspect's participation therein and which tend to elicit an admission. (*Pardo, J., People v. Alberto Pasuday*, GR 128822, May 4, 2001)

### Custodial investigation.

As previously ruled, the constitutional procedures on custodial investigations do not apply to a spontaneous statement not elicited through questioning by the authorities but given in an ordinary manner whereby appellant orally admitted having committed the crime. (*Kapunan, J., Solomon Alvarez v. CA*, GR 141801, June 25, 2001)

## CONSTITUTIONAL LAW

### Police line-up; custodial investigation; right to counsel.

The guarantees of Section 12(1), Art. III of the 1987 Constitution or the so-called Miranda rights may be invoked only by a person under custodial investigation which starts when the police investigation is no longer general inquiry into an unsolved crime, but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements. Police line-up is not part of the custodial investigation, hence, the right to counsel guaranteed by the Constitution cannot yet be invoked at this stage. The right to be assisted by counsel attaches only during custodial investigation and cannot be claimed by the accused during identification in a police line-up, because it is not part of the custodial investigation process. During the police line-up, the process has not yet shifted from the investigatory to the accusatory and it is usually the witness or the complainant who is interrogated who gives a statement in the course of the line-up. (*Kapunan, J., People v. Valeriano Amestuzo, et al.*, GR 104383, July 12, 2001)

## REMEDIAL LAW

### Motion for reconsideration; instances when not a condition *sine qua non* before resorting to certiorari.

Generally a motion for reconsideration must first be filed before resorting to certiorari in order to give the lower court an opportunity to rectify its errors, except in the following instances: (1)

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## SUPREME COURT

### RESOLUTION OF THE COURT EN BANC dated 4 JULY 2001 on A.M. NO. 01-7-02-SC- PHILJA

"A.M. No. 01-7-02-SC-PHILJA. - Re: Resolutions Nos. 01-16; 01-17; and 01-18 passed by PHILJA Board of Trustees on 27 June 2001. - The Court Resolved to APPROVE Resolution No. 01-16, recommending the re-appointment of Judge Priscila S. Agana (ret.) as Executive Secretary of the Philippine Judicial Academy for another term of two (2) years commencing on July 7, 2001 pursuant to Section 6, Republic Act No. 8557 (An Act Establishing the Philippine Judicial Academy, Defining Its Powers and Functions, Appropriating Funds Therefor, and For Other Purposes.)

The Court further Resolved to APPROVE the PHILJA's proposal contained in Resolution No. 01-17:

(a) To request the Commission on Audit: (1) in general, to modify and simplify accounting and auditing rules insofar as foreign grants to PHILJA are concerned; and (2) in particular, to consider accounting and liquidation reports which the Academy submits to donor agencies, with the approval of the Board of Trustees, as sufficient compliance with COA's requirements, subject to immediate submission of "Report of Disbursements and other Financial Statements for Post-Auditing Purposes;

(b) The designation of the Executive Secretary, Judge Priscila S. Agana, to be the PHILJA Special Disbursing Officer, authorized to hold cash advances, who will be duly bonded for the purpose, in such amount as may be prescribed; and

(c) The processing by PHILJA of its own financial transactions and disbursements, in order to assist the FMBO of the Court, subject to the latter's supervision.

The Court also Resolved to APPROVE Resolution No. 01-18, recommending to the Court En Banc the accreditation of Three Hundred Thirty-nine (339) mediators, Two Hundred Twenty-Six (226) in Metro Manila, Fifty-Seven (57) in Cebu, and Fifty-Six (56) in Davao, without prejudice to the subsequent accreditation of Twenty (20) other mediators with pending status, under the following conditions attached to their accreditation:

1. The accreditation shall be effective for a period of two (2) years;
2. The accredited Mediators shall maintain good standing;
3. The accredited Mediators shall complete, within the two-year period, refresher courses and evaluation exercises to be given by the Philippine Mediation Center."

Panganiban, Quisumbing and Santiago, *Jl.*, abroad on official business. Gonzaga-Reyes, *J.*, on leave.

Very truly yours,

LUZVIMINDA D. PUNO  
Clerk of Court

By:

(Sgd.) MA. LUISA D. VILLARAMA  
Assistant Clerk of Court



### RESOLUTION OF THE COURT EN BANC dated 7 August 2001 on A.M. NO. 99-10-05-0

"A.M. No. 99-10-05-0 (*Re: Procedure in Extra-Judicial Foreclosure of Mortgages*). - For consideration are various letters received by the Court regarding this subject matter.

1. Atty. Michael G. Jornales of the Bank of the Philippine Islands, requests, in a letter dated January 11, 2001, that the Court issue a circular to reflect a later change introduced by §47 of R.A. No. 8791 (The General Banking Law of 2000) to Act No. 3135 concerning the period of redemption of properties sold in extrajudicial foreclosures so far as juridical persons are concerned.

2. Atty. Jeffrey S. Joaquino, Clerk of Court VII, RTC of Cebu, and Mr. Tomas P. Arejola, manager of the LBC Bank, Naga City, in separate letters, dated May 28, 2001 and May 11, 2001, respectively, inquire (a) whether the ceiling of P100,000.00 for sheriff's fees provided for in paragraph 2(d) of A.M. No. 99-10-05-0 applies as well to the fees assessed in extrajudicial foreclosure held under the direction of a notary public and (b) whether, in addition to the fee under Rule 141, §20(d), as amended, the payment of sheriff's fees under Rule 141, §9(l) is a condition for the issuance of the certificate of sale in extrajudicial foreclosure.

RESOLUTION dated 7 August 2001 *continued*

3. A "taxpayers" letter, dated March 5, 2001, which Director Emilio A. Gonzales III, Office of the Ombudsman, indorses, seeks a review of Circular A.M. No. 99-10-05-0, and other administrative issuances pertaining to extrajudicial foreclosure under Act No. 3135.

The Court, taking note of the foregoing letters, RESOLVED as follows:

1. The proposal of Atty. Jornales is well taken. Under Act No. 3135, §6, as amended, any person having interest or lien on the property sold in extrajudicial foreclosure sale may redeem the same "at any time within the term of one year from and after the date of the sale." The one-year period is counted from the date of the registration of the certificate of sale with the Register of Deeds. Thus, paragraph 2(e) of Circular A.M. No. 99-10-05-0 provides:

"Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:

e. After the certificate of sale has been issued to the highest bidder, keep the complete records, while waiting redemption within a period of one (1) year from the date of registration of the certificate of sale with the Register of Deeds concerned, after which the records shall be archived."

(Emphasis added)

However, R.A. No. 8791, §47, which took effect on June 13, 2000, after the promulgation of Circular A.M. No. 99-10-052-0 on December 14, 1999, provides:

"Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration."(Emphasis added)

An exception is thus made in the case of juridical persons who are allowed to exercise the right of redemption only "until, but not after, the registration of the certificate of foreclosure sale" and in no case more than three (3) months after foreclosure, whichever comes first. This exception must be duly reflected in A.M. No. 99-10-05-0.

Accordingly, Circular A.M. No. 99-10-05-0, paragraph 2(e), as amended, is further amended so as to make it read as follows:

"e. After the certificate of sale has been issued to the highest bidder, keep the complete records, while awaiting any redemption within a period of one (1) year from date of registration of the certificate of sale with the Register of Deeds concerned, after which, the records shall be archived. NOTWITHSTANDING THE FOREGOING PROVISION, JURIDICAL PERSONS WHOSE PROPERTY IS SOLD PURSUANT TO AN EXTRA-JUDICIAL FORECLOSURE, SHALL HAVE THE RIGHT TO REDEEM THE PROPERTY UNTIL, BUT NOT AFTER, THE REGISTRATION OF THE CERTIFICATE OF FORECLOSURE SALE WHICH IN NO CASE SHALL BE MORE THAN THREE (3) MONTHS AFTER FORECLOSURE, WHICHEVER IS EARLIER, AS PROVIDED IN SECTION 47 OF REPUBLIC ACT NO. 8791."

2. With respect to the query posed in the letter of Atty. Joaquin, paragraph 2(d) of Circular A.M. No. 99-10-05-0, states:

"Upon receipt of an application for extrajudicial foreclosure of mortgage, it shall be the duty of the Clerk of Court to:

d. Sign and issue the certificate of sale, subject to the approval of the Executive Judge, or in his absence, the Vice-Executive Judge. No certificate of sale shall be issued in favor of the highest bidder until all fees provided for in the aforementioned sections and in Rule 141, Section 9(l) as amended by A.M. No. 00-2-01-SC, shall have been paid; Provided, that in no case shall the amount payable under Rule 141, Section 9(l), as amended, exceed P100,000.00."

The imposition of the P100,000.00 ceiling on the sheriff's fees, as provided in Rule 141, §9(l), has been explained as follows:

"Considering that the amount paid for the sheriff's commission, as in the other fees which are required to be paid, will be included in the computation of the redemption price, the imposition of a cap or ceiling thereon works to the benefit both of the creditor-mortgagee as well as the debtor-mortgagor. Accordingly, while sheriff's fees in extrajudicial foreclosure are to be computed in accordance with Rule 141, §9(l), the total amount of the fees should not exceed P100,000.00." (Minute Res., A.M. No. 99-10-05-0, January 30, 2001)

*Continued on next page*

**RESOLUTION dated 7 August 2001 continued**

There is no reason why the ceiling in par. 2(d) of Circular A.M. No. 99-10-05-0 should not be applied to the fees collected in extrajudicial foreclosure sales conducted by notaries public under Rule 141, §20(e) which provides:

"Other fees – The following fees shall also be collected by the clerks of Regional Trial Courts or courts of the first level, as the case may be:

e. For applications for and certificates of sale in notarial foreclosures:

1. On the first four thousand (P4,000) pesos, five (5%) per cent;
2. On all sums in excess of four (P4,000) pesos, two and one-half (2.5%) percent." (A.M. No. 99-8-01-SC, September 14, 1999)

Thus, whether the sale is conducted by the sheriff under Rule 141, §9(l) or by a notary public under §20(e), the limit of P100,000.00 on the amount of fees which may be collected should be applied.

3. Anent Mr. Arejola's query, the payment not only of the sheriff's fees under §9(l) but also of the filing fees under §7(c) is a condition for the issuance of the certificate of sale as provided in Administrative Circular No. 3-98, dated February 5, 1998, and now reiterated in paragraph 2(d) of Circular A.M. No. 99-10-05-0. The fee provided in Rule 141, §20(d) pertains to applications for and the entries of certificates of sale and final deeds of sale in extra-judicial foreclosures of mortgages. Such fee is separate and distinct from the filing and sheriff's fees under Rule 141, §§7(c) and 9(l).

4. The points raised in the letter of unnamed "taxpayers" have no merit. Circular A.M. No.99-10-05-0, like Administrative Order No. 3 and Administrative Circular No. 3-98, was issued to implement Act No. 3135. Under Administrative Order No. 6, dated June 30, 1975, Executive Judges are responsible for the management of courts within their administrative areas, including the supervision of the work of Clerks of Court, as *Ex-officio Sheriffs*, in the conduct of extrajudicial foreclosure of mortgages under Act No. 3135.

On the other hand, the Court's authority to impose the payment of fees incident to the implementation of Act No. 3135 is derived from Presidential Decree No. 1949 which authorizes the judiciary to generate its own funds and resources for the discharge of its functions and duties. The unnamed "taxpayers'" challenge to the constitutionality of P.D. No. 1949 on the ground that

it authorizes the Court to exercise taxing powers can only be raised in a proper case.

There is likewise no merit in the contention that the participation of the Executive Judge in approving the certificate of sale is "uncalled for" as he may later on preside over a case questioning the validity of the foreclosure sale. Such possibility can easily be avoided by re-assigning the case to another branch of the court. Nor do the cases of *China Banking Corporation v. Court of Appeals*, 265 SCRA 327 (1996), and *Supena v. De la Rosa*, 267 SCRA 1 (1997), cited by the unnamed letter writers, support their contention. In *China Banking*, the Court ruled that in case of conflict between Act No. 3135 and the administrative issuance implementing such, which, at that time, was Administrative Order No. 3, the former prevails. That proposition is not in dispute; no conflict exists between Act No. 3135 and Circular A.M. No. 99-10-05-0. Similarly, the case of *Supena*, which concerns an administrative complaint against a judge for having applied in an extrajudicial foreclosure of mortgage the rules on venue actions under the Rules of Court instead of that under Act No. 3135, is irrelevant to the question raised by the unnamed parties."

Very truly yours,

LUZVIMINDA D. PUNO  
Clerk of Court

By:

(Sgd.) MA. LUISA D. VILLARAMA  
Assistant Clerk of Court



**RESOLUTION OF THE COURT EN BANC  
dated 14 AUGUST 2001 on A.M. NO. 99-11-07-SC.**

"A.M. No. 99-11-07-SC. – Re: Designation of Certain Branches of the Regional Trial Courts as Family Courts. – The Court Resolved to:

- a. NOTE the Memorandum dated 11 July 2001 of Acting Court Administrator Zenaida N. Elepaño re: letter dated 31 May 2001 of Judges Pampio A. Abarintos and Olegario R. Sarmiento, RTC Branches 22 and 24, respectively, both in Cebu City;

**RESOLUTION dated 14 August 2001 *continued***

- b. GRANT the request of Judges Abarintos and Sarmiento for the designation of an additional Family Court in Cebu City;
- c. DESIGNATE RTC, Branch 14, Cebu City, presided over by Judge Raphael B. Yrastoza as Family Court; and
- d. REVOKE the previous designation of Branch 14 as drug court in the resolution dated 1 August 2000 in A.M. No. 00-8-01-SC, and instead, DESIGNATE RTC, Branch 15, Cebu City, presided over by Judge Fortunato M. de Gracia as such. The guidelines set forth in the resolution dated 1 February 2000 in A.M. No. 99-11-07-SC and the resolution dated 1 August 2000 in A.M. No. 00-8-01-SC shall be adopted insofar as they are applicable."

Very truly yours,

LUZVIMINDA D. PUNO  
Clerk of Court

By:

(Sgd.) MA. LUISA D. VILLARAMA  
Assistant Clerk of Court

**ADMINISTRATIVE CIRCULAR NO. 40-2001**

To: Judges of the Courts of the First and Second Levels

Re : GUIDELINES IN THE ISSUANCE OF SUBPOENA REQUIRING A DETENTION PRISONER DETAINED IN ONE PLACE TO APPEAR IN ANOTHER PLACE FOR THE PURPOSE OF TAKING HIS TESTIMONY

It has been observed that judges issue as a matter of course subpoena to prisoners-accused who are detained in another place, requiring them to personally appear and testify before their courts, without considering the validity of the purpose of the application for subpoena and the necessity or indispensability of the personal attendance of such prisoners as required by the rules and other pertinent circulars. This practice exposes prisoners to security risks attendant to travel, often resulting in dire consequences.

To minimize or prevent the unnecessary transfer of detained prisoners to another place for the taking of their testimony, and subject to the provisions of Section 2, Rule 21 of the Rules on Civil Procedure and Administrative Circular No. 6 dated 05 December 1977, the following guidelines shall be strictly observed:

1. Any application for the issuance of *subpoena ad testificandum* shall be studied carefully and judiciously by the judge receiving the same to determine whether the application is for a valid purpose.
2. If, in his sound judgment, the personal appearance or attendance at the hearing or trial of the case before him by a prisoner detained in another place can be dispensed with, considering all the circumstances of the case in light of the "absolute necessity" rule and the availability under the Rules of Court of more practicable alternative modes of taking the testimony of the prisoner other than personal appearance, the application shall be denied.
3. On the other hand, if the personal appearance or attendance of the prisoner at the hearing or trial is indispensable or that his complicity in the commission of the offense subject of the hearing or trial has been fully established, the said application shall be granted.
4. In case a subpoena is issued, the court before which the case of the detained prisoner is pending shall forthwith be duly informed thereof by the judge issuing the same as a matter of judicial courtesy and an orderly procedure in the context of trial scheduling.
5. The full testimony of the prisoner shall be taken at once, and immediately thereafter, the prisoner shall be returned to his original place of confinement.

Full compliance of the above matters is hereby enjoined. The Office of the Court Administrator is directed to implement this Administrative Circular.

This Administrative Circular shall take effect immediately.

Issued this 8<sup>th</sup> day of August 2001.

(SGD.) HILARIO G. DAVIDE, JR.  
Chief Justice

3rd Floor of the Supreme Court Building  
Taft Avenue, Manila

## PRESIDING JUDGE

RESEARCH AND PUBLICATIONS OFFICE  
PHILIPPINE JUDICIAL ACADEMY  
SUPREME COURT

## 2001 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars/Activities</i>	<i>Venue</i>
September 30-October 3	7 <sup>th</sup> & 8 <sup>th</sup> Regional Multi-Sectoral Seminar on Juvenile and Domestic Relations Justice	Marco Polo Hotel, Davao City
October 5	13 <sup>th</sup> Centenary Lecture <i>Legacies of Civil Law from Justice Arsenio Dizon and his Peers,</i> Justice Ricardo C. Puno, Sr.	Supreme Court Session Hall, Supreme Court, Manila
October 8-10	Eighth Regional Seminar for Judges, Clerks of Court, Branch Clerks of Court, Legal Researchers and Sheriffs of the Regional Trial Courts and First-Level Courts of Region VI	Bacolod Covention Plaza Hotel, Bacolod City
October 18-21	Court Appointed Special Advocate/Guardian <i>Ad Litem</i> (CASA/GAL) Volunteer's Training Program (Mindanao Region)	Lauremar Beach Hotel, Misamis Oriental
October 23-25	Training Course for Housing and Land Use Regulatory Board Lawyers and Assistants	University Hotel, UP Diliman, Quezon City
October 23-26	Ninth Regional Seminar for Judges, Clerks of Court, Branch Clerks of Court, Legal Researchers and Sheriffs of the Regional Trial Courts and First-Level Courts of Region XII	Waterfront Hotel, Cebu City

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*Chancellor, Philippine Judicial Academy*  
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