



# PHILJA Bulletin



July to September 2002

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## From the Chancellor's Desk *Ben*

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For this 3<sup>rd</sup> Quarter Issue, we depart from our usual reportorial format and publish instead the "Summation and Inspirational" delivered by Mr. Justice Ricardo C. Puno at the Closing Ceremonies of the 2<sup>nd</sup> Plenary Assembly of the PHILJA Corps of Professors held on October 1, 2002 at the Pearl Manila Hotel, Taft Avenue, Manila.

Justice Puno chairs the Department of Civil Law and the Pre-Judicature Program Committee of the Academy.

### *Summation and Inspirational*

*We are proud of PHILJA.*

*PHILJA is performing its function to improve the justice system and to train judges in the management of their courts, is using the best teaching methods and strategies, has been drawing the proper insights in the solving of problems, has adopted the modern developmental approaches in its programs, has applied accepted principles in continuing legal education, has performed its duties as excellently as its institutional counterparts in the French and other leading justice systems, and has competently apprised judges of the new paradigm shifts in Constitutional Law in keeping with the demands of our times.*

*We are proud of the Corps of Professors.*

*We draw inspiration in the realization that we are commissioned to train and committed to guide the judges and justices who preside over the lives, fortunes and destinies of men and women, even as we ourselves continue to learn in all modesty and strive to teach with all humility.*

Captured in a few words, Justice Puno sums up in his own inimitable way, the accomplishments over the years and delivers a meaningful, and lasting Message.

We congratulate, and express our sincerest appreciation, to the Heads of our Curricular Departments, and the Corps of Professors, for elevating the Academy to the status that it enjoys today, locally and internationally.

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## COURT LIBRARIANS' SEMINAR

Another pilot program, the *Seminar Workshop for Court Librarians*, conducted by the Philippine Judicial Academy on July 3 to 5, 2002, at PHILJA, Tagaytay City, was realized through the initiative of Mrs. Milagros Santos Ong, Chief Librarian of the Supreme Court. Thirty-six (36) court librarians attended the said program.

The sessions of this three-day activity focused on the technical skills essential to a law librarian like cataloging & classification; indexing; legal research & bibliography; and basic archiving skills. To keep abreast with information technology, the librarians were also introduced to computers for library services and computerized legal research. To tackle all these topics, PHILJA invited professors from the Institute of Library Science, University of the Philippines, and the Academic Council of the Academy.

## 3<sup>RD</sup> TELE-VIDEO CONFERENCE

On July 9, 2002, PHILJA conducted its 3<sup>rd</sup> *Tele-Video Conference* in four cities all over the nation – MosCom Makati and Baguio Cities (Luzon); MosCom Cebu City (Visayas); and Moscom Davao City (Mindanao). The conference focused on two topics: Enforcement of Foreign Judgments Related to Conflict of Laws, discussed by Justice Oscar M. Herrera, and Law & Technology, discussed by Atty. Ivan John E.Uy. Both lectures were delivered in Makati City, but all participants from the four sites benefited from it owing to this technological innovation.

## TWO BATCHES OF 4<sup>TH</sup> REGIONAL JCEP

The 4<sup>th</sup> *Regional Judicial Career Enhancement Program (JCEP) for Judges, Clerks of Court, Branch Clerks of Court, Interpreters and Docket Clerks of the Regional Trial Courts and First Level Courts of Region III (Level 2)* was divided into two batches. Two hundred eighty-five (285) participants attended the first batch on July 23 to 26, 2002, while three hundred ninety-five (395) participants attended the second batch on July 30 to August 2, 2002. Both regional seminars were held at the Crown Peak Garden Hotel, Subic, Olongapo City.

## ADVOCATES FORUMS FOR LAWYERS

The Philippine Judicial Academy, in coordination with the Philippine Bar Association (PBA), Integrated Bar of the Philippines (IBP), and Women Trial Lawyers Organization of the Philippines, held two *Advocates Forums for Lawyers on Alternative Dispute Resolution*. The forums aim to abreast lawyers on theory and concepts underlying mediation, so as to promote speedy justice through mediation, and provide an MCLE Accredited Seminar on ADR.

The first Advocates Forum for Lawyers on Alternative Dispute Resolution was held on July 6, 2002, at the Quezon City Sports Club, and was attended by 161 participants. The second Forum was held on July 26 at the Court of Appeals Auditorium, Manila, and was attended by 57 participants.

## DISCUSSION SESSIONS FOR CA & SB JUSTICES

The Philippine Judicial Academy organized a two-part *Discussion Sessions for the Justices of the Court of Appeals and the Sandiganbayan* subsequently held on August 1 and August 8, 2002, at the Session Hall of the Court of Appeals, Manila. The justices discussed notable developments in law and jurisprudence.

## ORIENTATION OF PROSPECTIVE CA MEDIATORS

Two *Orientation Seminars for Prospective Court of Appeals Mediators* were held on August 2 to 4 (Phase 2, Batch 1) and August 6-8, 2002 (Phase 2, Batch 2), at the Hotel Intercontinental, Makati City. Pursuant to the Supreme Court *en banc* resolution approving the Pilot Testing of Mediation at the Court of Appeals, the program covered basic and advanced mediation principles and practices. Conducted by PHILJA's Philippine Mediation Center, the six-day activity was done in cooperation with the Court of Appeals, USAID-AGILE and the Philippine Mediation Foundation, Inc. (PMFI).

## PMC IN SAN JUAN

On August 2, 2002, the Supreme Court, through PHILJA, inaugurated a unit of the Philippine Mediation Center (PMC) in San Juan, Metro Manila. Held at the San Juan PNP building, the event was attended by the Hon. Mayor Joseph Victor Estrada and the Academy's Vice Chancellor Antonio M. Martinez.

## DISTANCE EDUCATION TRAINING

Twelve (12) Executive Judges from all over the Philippines attended the *Judicial Education Training Seminar* conducted by the Philippine Judicial Academy on August 7 to 8, 2002, at the PHILJA Conference Room, 3/F Centennial Bldg., Manila.

As the academic arm of the Supreme Court of the Philippines, PHILJA has already started to realize two of its goals for judicial education: the regionalization of judicial education and the development of distance education. These twin goals aim to increase efficiency in the delivery of judicial education and reduce the expenditure of resources, both financial and human.

This two-day program was designed to train the first batch of judicial educators in their respective regions. Thus, they were oriented in the administration and supervision of distance-education both in electronic and non-electronic forms, and were also introduced to the principles of professional and adult education.

## SEMINAR ON JUVENILE & DOMESTIC RELATIONS JUSTICE

In cooperation with the United Nations Children's Fund (UNICEF), the Academy held the first *Seminar on Juvenile and Domestic Relations Justice for Single-Sala Courts* on August 13 to 14, 2002, at The Pearl Manila Hotel. Forty-six (46) participants attended the seminar, with Professor Sedfrey M. Candelaria, Head of PHILJA's Research & Linkages Office, as Project Officer. The seminar featured lectures on the new SC Rules on Children and the Psychology of the Child Abuser, The Victim and the Child in Conflict with the Law.

## CRIMINAL COURTS MANAGEMENT PROGRAM

The Academy, in collaboration with USAID-AGILE, the Criminal Division of the US Department of Justice, and the Office of Overseas Prosecutorial Development Assistance and Training (OPDAT), held a *Roundtable Discussion on Criminal Courts Management Program* on August 15 to 16, 2002, at the Pan Pacific Hotel, Manila. Fifteen (15) judges and ten (10) officials and officers from the Office of the Court Administrator attended the Discussion.

Foreign lecturers included: US District Court Executive Sherry Carter who spoke on Financial Priorities and Personnel Management Strategies and Administrative Services and Non-Judicial Public Accountability; Hon. Ronald Lew, US District Judge of the Central District of California gave lectures on Courtroom Control and Enforcement of Court Orders and Judicial Security, Courtroom Security, and Prisoner Movement.

Reactors included: the Sandiganbayan - Justice Diosdado Peralta and Justice Rodolfo Palattao, Members of PHILJA's Department of Criminal Law; the Court of Appeals - Justice Romeo J. Callejo, Sr., Chair of PHILJA's Department of Criminal Law, Justice Hilarion L. Aquino, Chair of PHILJA's Department of Ethics & Judicial Conduct, Justice Ricardo P. Galvez (ret.), Vice Chair of PHILJA's Department of Remedial Law, and Justice Nicolas P. Lapeña (ret.), Member also of the Remedial Law Department.

## PJA's BACOLOD CONVENTION

The *Convention and Seminar of the Philippine Judges Association (PJA)*, attended by more than 350 judges nationwide, was held on August 15 to 17, 2002, at the Bacolod Convention Plaza Hotel, Bacolod City. Among its prominent speakers were: Chief Justice Hilario G. Davide, Jr. (Keynote Address); Secretary of Justice Hernando B. Perez (Message); Hon. Joseph G. Marañon, Governor of Negros Occidental (Message); and Hon. Luzviminda Joy Valdez, Mayor of Bacolod City (Welcome Remarks). Hon. Marino M. de la Cruz, Jr., PJA's President, gave the Opening Remarks. PJA's theme for this year is "*The Judiciary, A Partner in Progress.*"

## NATIONAL WORKSHOP ON PREVENTION OF TORTURE

Two batches of *"The National Workshop on Prevention of Torture for Judges, Prosecutors and Public Defense Attorneys"* were conducted through the coordinated efforts of the U.P. Institute of Human Rights, PHILJA, the Embassy of the United Kingdom, and the Department of Justice. The first workshop, for Luzon Region, was held on July 24 to 26, 2002 in Subic, while the second workshop, for the Visayas Region, was held on August 21 to 23, 2002 in Cebu. In both workshops, the participants were given an intensive orientation on the following: Overview of Torture in the Philippines from the 1970's to the Present; Torture as Psycho-Social Trauma: Health Professionals as Human Rights Workers and Lawyers as Care-Givers; Medico-Legal Perspective on Torture; Defining Torture Under Domestic and International Law; Overcoming Impunity: Flaws in the Legal Framework and Barriers to the Criminal Investigation of Torture; Overcoming Impunity: An Independent Judiciary and Prevention of Torture by Agents of the State; State Obligations in the Implementation of Treaties on Torture. After the two-day lecture, participants were asked to formulate Guidelines on Cases Involving Torture During Arrest, Custodial Investigation and Detention and Policy Proposals on Torture: Legislative, Judicial, and Administrative. As a result, all endorsed the passage of House Bill No. 2855 criminalizing the use of torture.

## PHILACI's GENERAL ASSEMBLY

The *General Assembly and Seminar of the Philippine Association of Court Interpreters (PHILACI)*, attended by 428 court interpreters, was held on August 15 to 17, 2002, at the Grand Men Seng Hotel, Davao City. Hon. Presbitero J. Velasco, Jr., Court Administrator of the Supreme Court, delivered the Keynote Address. Fr. Rafael Cruz, Parish Priest of Our Lady of Remedies Chapel, gave a lecture on Living Values, Living Well and Coping with Life's Stresses. Retired Presiding Justice Jesus M. Elbinias of the Court of Appeals spoke on the topic of Communication Skills.

## 3<sup>RD</sup> BATCH OF SEMINAR FOR FAMILY COURT SOCIAL WORKERS

Through the joint effort of the Philippine Judicial Academy, UNICEF, AKAP-Ateneo Human Rights Center, and the Department of Social Welfare and Development, the third batch of the *Seminar-Workshop for Family Court Social Workers (Level 2)* was conducted on September 16 to 20, 2002, at the Montebello Hotel, Cebu City. Thirty-seven (37) participants from Regions VI to VIII attended the seminar. The fourth and last batch for Regions V, IX, X, XI and XII is scheduled on October 21 to 25, 2002, at the Marco Polo Hotel, Davao City.

## ROUNDTABLE DISCUSSION ON TWO BENCHBOOKS

The *Roundtable Discussion on the Benchbook on Corporate Rehabilitation and Benchbook on Insolvency and Liquidation* was held on September 12, 2002, at the New World Hotel, Makati City. Ten (10) participants attended the one-day event which featured, among its lecturers, Atty. Francis Ed Lim, PHILJA Professorial Lecturer and Senior Partner at the ACCRA Law Office, and Atty. Manuel Yngson, Principal Lawyer at Yngson & Associates. Hon. Lilia R. Bautista, Chairperson of the Securities and Exchange Commission, delivered the Closing Remarks, congratulating the presentors and PHILJA for taking an active part in the project. She said that the two Benchbooks are significant contributions to the strengthening of the Philippine capital market, making the country's practices on corporate rehabilitation at par with the rest of the world.

## 25<sup>th</sup> ORIENTATION SEMINAR WORKSHOP

Twelve out of fifteen Judges attended the *25<sup>th</sup> Orientation Seminar/Workshop* conducted by the Academy on September 16-20, 2002 at PHILJA Tagaytay, City. Among the fifteen Judges, ten are Newly Appointed, three are Promoted and two are Lateral Transfers.

*(List of Judges is at the next page)*

We congratulate the following Judges:

#### Newly Appointed

1. *Hon. Mario V. Alonzo*  
MCTC Hindang-Inopacan, Leyte
2. *Hon. Sixto G. Azcarraga*  
MCTC, San Miguel-Tunga, Leyte
3. *Hon. Zenaida Najera Bragais*  
MTCC, Br. 3, Naga City
4. *Hon. Robert P. Fangayen*  
MTC, Calasiao, Pangasinan
5. *Hon. Absalon U. Fulache*  
RTC, Br. 14, Baybay, Leyte
6. *Hon. Romualdo E. Galarrita*  
MTCC, Br. 3, Cagayan De Oro City
7. *Hon. Vicente M. Luna, Jr.*  
RTC, Br. 40, Tandag, Surigao del Sur
8. *Hon. Ma. Chona Pulgar Navarro*  
MTC, Lopez, Quezon
9. *Hon. Maria Elisa Ello Ochoco*  
MCTC, Cortes-Antequera, Maribojoc, Bohol
10. *Hon. Jaime V. Samonte*  
RTC, Br. 21, Malolos, Bulacan

#### Promoted

1. *Hon. Narciso M. Aguilar*  
RTC, Br. 4, Kalibo, Aklan
2. *Hon. Maria Cristina Joaquin Cornejo*  
RTC, Br. 147, Makati City
3. *Hon. Eloida R. De Leon Diaz*  
RTC, Br. 58, Lucena City

#### Lateral Transfer

1. *Hon. Romeo F. Barza*  
RTC, Br. 61, Makati City
2. *Hon. Gregorio T. Villanueva*  
RTC, Br. 30, San Pablo City, Laguna

### VISITORS FROM THE MINISTRY OF JUSTICE, NEPAL

Two (2) officials and four (4) lawyers from the Ministry of Law, Justice & Parliamentary Affairs of the Kingdom of Nepal visited the Philippine Judicial Academy on August 15, 2002, namely: Undersecretary Ranjan K. Aryal; Undersecretary Narendra Man Shrestha; and Section Officers Dal Bahadur Adhikari, Keshab Prasad Adhikari, Babukaji Baniya, and Alok Chandra Shrestha. They were sent by their country to the Philippines to attend the *Career Enhancement for Lawyers of the Ministry of Law, Justice and Parliamentary Affairs of the Kingdom of Nepal*, on August 14 to 16, 2002. This seminar was sponsored by the University of the Philippines Law Center Institute of Judicial Administration (UP-IJA), in cooperation with the United Nations Development Program (UNDP).

### CHIEF JUSTICES OF INDONESIA & PHILIPPINES MEET IN SUMMIT

A *Judicial Summit Meeting* was held between Chief Justice Bagir Manan of the Republic of Indonesia and Chief Justice Hilario G. Davide, Jr. on September 4 to 6, 2002. Held at the Office of the Chief Justice, Supreme Court of the Philippines, Manila, the Summit Meeting was proposed and sponsored by The Asia Foundation. Four other delegates from Indonesia participated in the Summit Meeting: Judge Gunanto Suryono, Secretary General/Chief Registrar of the Supreme Court of Indonesia; Judge Susanti Adi Nugroho, Head of Research and Development of the Supreme Court of Indonesia; and Mr. Zacky Husein, Program Officer of The Asia Foundation in Indonesia. The Summit Meeting was an opportunity for the two Chief Justices to share their respective experiences on judicial reforms, particularly since the Foundation is a partner to many of their projects such as mediation and other legal reforms.

(From left): Mr. Francis Initorio of the Project Management Office, Supreme Court; Mr. Zacky Husein, Program Officer of TAF Indonesia; Judge Susanti Adi Nugroho, Head of Research and Development, Supreme Court of Indonesia; Fr. Ranhilio C. Aquino, Head of PHILJA's Academic Affairs Office; Chief Justice Bagir Manan of Indonesia; Justice Ameurфина Herrera, Chancellor of PHILJA; Judge Gunanto Suryono, Secretary General/Chief Registrar of the Supreme Court of Inodnesia; and Atty. Carol Mercado, Program Officer of TAF Philippines.



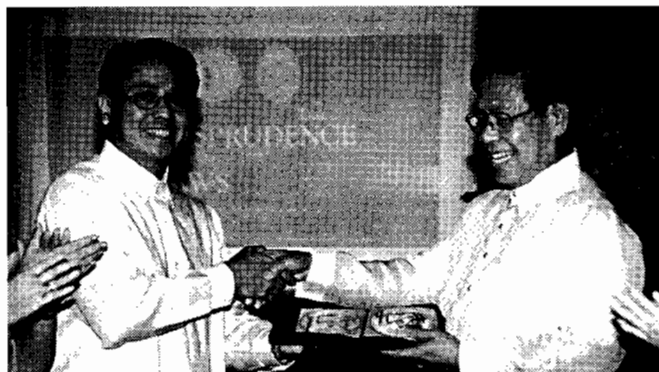
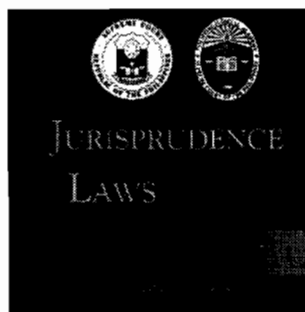
## DEPUTY CHIEF JUSTICE FROM VIETNAM VISITS SC

Invited by the Department of Foreign Affairs, a delegation of five from the Supreme People's Court of the Socialist Republic of Vietnam arrived for a three-day visit, from September 8 to 11, 2002. Deputy Chief Justice Dang Quang Phuong headed the delegation. He was accompanied by three other members of the Supreme People's Court: Judges Do Van Chinh, Ta Minh Go, and Pham Quang Liem. With them also is Interpreter Chu Trung Dung, also an expert from the Institute of Judicial Science. The group observed the conduct of trial proceedings here in the Philippines.



## DONATIONS

CD Technologies Asia donated to PHILJA 76 more units of the *Lex Libris* Series for the use of lower courts. 1,157 units were earlier donated by CD Asia. At present, 1,233 *Lex Libris* software units are being installed to the lower courts.



- The Asia Foundation donated the following:
- Complete Set of West's Annotated California Codes (370 volumes) - August 29, 2001
  - American Jurisprudence: Trials (52 volumes) - July 5, 2002
  - American Jurisprudence: Proof of Facts, 3rd Series (39 volumes) - July 5, 2002
  - United States Code Annotated (64 volumes) - July 5, 2002
  - California Jurisprudence, 3rd Ed. (97 volumes) - (2 sets for PHILJA Manila and PHILJA Tagaytay) - September 19, 2002
  - Numerous books on various subjects such as conflict resolution, comparative law, politics, etc.



## CIVIL LAW

### Expanded Jurisdiction of the HLURB

Section 1 of P.D. 1344 expanded the jurisdiction of the HLURB under P.D. 957 to include (1) any claim filed by condominium buyer against the project owner, developer, dealer, broker or salesman, and (2) cases involving specific performance of contractual and statutory obligations filed by buyers of condominium unit against the owners, developers, dealer, broker or salesman. Corollarily, a transaction to "buy" and "purchase" under P.D. 957 has been defined as any contract to buy, purchase, or otherwise acquire for a valuable consideration xxx a condominium unit in a condominium project. The term "buyer" is not limited to those who enter into contracts of sale. Its concept is broad enough as to include those who acquire for a valuable consideration a condominium unit. (*Sandoval-Gutierrez, Jr., AMA Computer College v. Jesus R. Factora*, GR 137911, February 27, 2002)

## REMEDIAL LAW

### Appeals from the decision or final orders of the Civil Service Commission should be by a petition for review.

Appeals from the decisions or final orders of the Civil Service Commission to the Court of Appeals should be by a petition for review pursuant to Rule 43 of the 1997 Rules of Civil Procedure. Section 5 thereof provides that a copy of the petition should be served on the adverse party and on the Civil Service Commission, and Section 6 (a) provides that the petition should state the full names of the parties to the case without impleading the Civil Service Commission either as petitioner or respondent. Section 7 provides that the failure of the petitioner to comply with any of the foregoing requirements regarding proof of service and the contents of the petition is a sufficient ground for the dismissal of the same. The petition for "writ of certiorari" filed by respondent should therefore have been dismissed for its failure to implead petitioner as the adverse party and to serve a copy of the petition to her. (*Mendoza, J., Remedios Pastor v. City of Pasig*, GR 146873, May 9, 2002)

## REMEDIAL LAW *continued*

### Right of plaintiff to amend complaint before answer has been served not precluded by the filing of motion to dismiss.

The right granted to the plaintiff under procedural law to amend the complaint before an answer has been served is not precluded by the filing of a motion to dismiss or any other proceeding contesting its sufficiency, otherwise, the right to amend a pleading under Section 2, Rule 10 will be rendered nugatory and ineffectual since all that a defendant has to do to foreclose this right is to challenge the adequacy of the complaint before he files an answer. (*Ynares-Santiago, J., Remington Industrial Sales v. Court of Appeals*, GR 133657, May 29, 2002)

### Payment of fees under Rule 141; date of receipt of proceeds of the sale in extrajudicial foreclosure of mortgage and issuance of certificate of sale determines the amount payable.

Although petitioner's application for extrajudicial foreclosure of mortgage was filed two days before the effectivity of the increase in the fees prescribed in Section 9 (l) and Section 20 (e) of Rule 141, nonetheless the increased fees should be collected because it is the date of receipt of the proceeds of the sale and the issuance of the certificate of sale which determine the amount of the fees payable. Petitioner's contention that the foreclosure of mortgage is a single process and therefore what is material is the date of filing of the application for foreclosure overlooks the fact that the collection of fees in Section 9 (l) and Section 20 (e) of Rule 141 is contingent on a party's becoming the highest bidder in the auction sale. Until money is received by the sheriff or notary public and the highest bidder is known and a certificate of sale is to be issued to the latter, there is no basis for the collection of fees and commission on sale. On the other hand, the amounts payable as filing fees would be those prescribed by laws as of the date of the filing of the application for the extrajudicial foreclosure of mortgage. In short, some fees are for filing, others are for receipt of money realized from the sale of properties, while still others are for the issuance of the certificate of sale. The amount of each fee will be determined by the effective rates at the time each becomes due. It is no argument to say that the foreclosure is just a single process.

**REMEDIAL LAW** *continued*

The amendment to Circular AM No. 99-10-05-0 putting a cap of P100,000 on the amounts of fees collected as commission cannot be retroactively applied without adverse effects on collections already made between March 1, 2000, when the new rates took effect and March 1, 2001 when the cap was introduced. (*Mendoza, J., United Coconut Planters Bank v. Hon. Vicente Yap*, GR 149715, May 29, 2002)

**CRIMINAL LAW****B.P. 22, *Ratione cessat lex, et cessat lex.***

While the gravamen of violation of B.P. 22 is the issuance of worthless checks that are dishonored upon the presentment for payment, penal laws should not be applied mechanically. We must find if the application of the law is consistent with the purpose of and reason for the law. *Ratione cessat lex, et cessat lex* (When the reason for the law ceases, the law ceases.) It is not the letter alone but the spirit of the law also that gives it life. This is especially so where a debtor's criminalization would not serve the ends of justice but in fact subvert it. The creditor having collected more than a sufficient amount to cover the values of the checks for payment of rentals, via auction sale, holding the debtor's president to answer for a criminal offense under B.P. 22 two years after said collection, is no longer tenable nor justified by law or equitable consideration. (*Quisumbing, J., Geoffrey Griffith v. Court of Appeals*, GR 129764, March 12, 2002)

**Before the death penalty can be imposed in incestuous rape, two conditions are required to concur.**

Before the death penalty can be imposed in incestuous rape the victim must be (1) under eighteen years of age and (2) that the offender be a parent, ascendant, step-parent, guardian, common-law spouse of the parent of the victim, or a relative by consanguinity or affinity within the third civil degree. These requirements not only have to be alleged in the complaint or information but also should be proved beyond reasonable doubt.

Indubitably, the victim was well under eighteen years when the rape occurred. In addition to the birth certificate indicating the she was born

**CRIMINAL LAW** *continued*

on 31 August 1986, her mother testified to confirm her age. The prosecution, however, failed to prove the alleged kinship between the offender and his victim, itself a qualifying circumstance that should also be established with equal degree of certainty as that required for proof of age. In *People v. Liban* where the age of the victim was at issue, the Court ruled that the testimony of the victim was insufficient to establish her minority, but that, further thereto, the prosecution should present corroborative evidence. In the instant case, the bare statement in passing of the victim that appellant "is an uncle" without any corroborating testimonial or documentary evidence to clearly establish that relationship, would be insufficient to pass the test set in *Liban*. (*Vitug, J., People v. Restituto Capili*, GR142747, March 12, 2002)

**ADMINISTRATIVE LAW****Ombudsman cannot directly dismiss an official from the government service. He can only recommend dismissal.**

The Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.

The assailed resolution of the Ombudsman dismissing the petitioner from the government service is reversed and set aside. (*De Leon, Jr., J., Renato Topiador v. Office of the Ombudsman and Atty. Ronaldo Ledesma*, GR 129124, March 15, 2002)

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COMMONWEALTH JUDICIAL EDUCATION  
INSTITUTE's Inaugural Meeting,  
Halifax, Nova Scotia, Canada,  
December 2001



## CIVIL LAW

### Award of Attorney's Fees

The reason which the RTC gave, i.e., the petitioner had compelled respondent to file an action against it, falls short of the Court's requirement in *Scott Consultants and Resources Development v. CA*. The award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded everytime a party wins suit. The power of the Court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification; its basis cannot be left to speculation or conjecture. Where granted, the court must explicitly state in the body of the decision, and not only in the dispositive portion thereof, the legal reason for the award of attorney's fees. Moreover, in *National Power Corporation v. Philipp Brothers*, GR 126204, the Court ruled that in the absence of a stipulation, a winning party may be awarded attorney's fees only in case plaintiff's action or defendant's stand is so untenable as to amount to gross and evident bad faith. Indeed, respondent was compelled to file the suit to vindicate his rights. However, such fact by itself will not justify an award of attorney's fees when there is no showing of petitioner's bad faith in refusing to pay the said rentals, repair and overhaul costs. (*Panganiban, J.*, *Mindex Resources v. Ephraim Morillo*, GR 138123, March 12, 2002)

## CRIMINAL LAW

### Double Jeopardy; requisites for double jeopardy to attach.

For double jeopardy to attach, there must be (1) valid indictment, (2) before a competent court, (3) after arraignment (4) when a valid plea has been entered, and (5) when the defendant was acquitted or convicted or the case was dismissed or otherwise terminated without the express consent of the accused. There are, however, two occasions when double jeopardy will attach even if the motion to dismiss the case is made by the accused himself. The first is when the ground is insufficiency of evidence of the prosecution and the second is when the proceedings have been unreasonably prolonged in violation of the right to a speedy trial. (*Puno, J.*, *People v. Acelo Verra*. GR 134732, May 29, 2002)

## CRIMINAL LAW *continued*

### Treachery; when accepted as a circumstance

For treachery to be appreciated, that circumstance must be present at the inception of the attack and if absent and the attack is continuous, treachery, even if present at a subsequent stage, is not to be considered. That the final fatal blows may have in truth been delivered under conditions exhibiting some features of treachery does not remedy the fact that the prosecution failed to prove the existence of treachery at the onset of the attack. (*Ynares-Santiago, J.*, *People v. Angelo Zeta*, GR 140901-02, May 9, 2002)

## REMEDIAL LAW

### Extrinsic fraud merit the annulment of the trial court's decision.

Extrinsic fraud contemplates a situation where a litigant commits acts outside of the trial of the case, the effect of which prevents a party from having a trial, a real contest, or from presenting all of his case to the court, or where it operates upon matters pertaining, not to the judgment itself, but to the manner in which it was procured so that there is not a fair submission of the controversy. The overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court. Hence, the court has held that extrinsic fraud is present in cases where a party (1) is deprived of his interest in land because of a deliberate misrepresentation that the lots are not contested when in fact they are; (2) applies for and obtains adjudication and registration in the name of a co-owner of land which he knows has not been allotted to him in partition; (3) intentionally conceals facts and connives with the land inspector, so that the latter would include in the survey plan the bed of a navigable stream; (4) deliberately makes a false statement that there are no other claims; (5) induces another to oppose an application; (6) deliberately fails to notify the party entitled to notice; or (7) misrepresents the identity of the lot to the true owner, causing the latter to withdraw his opposition. Fraud in these cases, goes into and affects the jurisdiction of the court, thus, a decision rendered on the basis of such fraud becomes subject of annulment (*De Leon, Jr., J.*, *Rexlon Realty Group Inc. v. Court of Appeals et al.*, GR 128412, March 15, 2002)

**REMEDIAL LAW** *continued*

**Fraud as a ground to nullify a judgment must be extrinsic to the litigation.**

Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of trial of the case whereby the defeated party has been prevented from exhibiting fully his side of the case by fraud or deception practiced on him by his opponent. Examples of which are: (1) the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent as by keeping him away from court, a false promise of a compromise; (2) the defendant never has knowledge of the suit being kept in ignorance by the acts of the plaintiff; (3) an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; (4) the attorney regularly employed corruptly sells out his client's interest to the other side.

It must be emphasized that the fraud or deceit cannot be of the losing party's own doing, nor must it contribute to it. The extrinsic fraud must be employed against it by the adverse party, who because of some trick, artifice or device naturally prevails in the suit. The end result not only defeats legitimate rights of the losing party in the lawsuit.

On a larger scale, it circumvents the adversarial system of our litigation process and makes a mockery of our judicial contests. That instead of having two antagonists who genuinely compete to fully ventilate their cause and demolish that of his opponent's, what transpires is a scripted theatrical drama played before the august hall of an officer of the court. (*Puno, J., People v. Acelo Verra, GR 134732, May 29, 2002*)

**ADMINISTRATIVE LAW**

**Indefinite reassignment of an employee is constructive removal**

A reassignment that is indefinite and results in a reduction in rank, status, and salary is in effect a constructive removal from the service. Petitioner's reassignment to different offices in the local government of Pasig is indefinite. She has been on virtual floating assignment which cannot but amount to a diminution of her rank, hence impermissible under the law. Her reassignment to various offices is more than merely a temporary one and for all intents and purposes is a removal without cause. (*Mendoza, J., Remedios Pastor v. City of Pasig, GR 146873, May 9, 2002*)



**CANADA GIVES SUPPORT TO  
JUDICIAL REFORMS**

The Government of Canada and the Supreme Court of the Philippines, on behalf of the Government of the Republic of the Philippines, agreed to collaborate on the implementation of a Canadian development assistance project in the country, namely, the *Judicial Reform Support Program*. To seal the agreement, Hon. Susan Whelan, Canada's Minister for International Cooperation, and Chief Justice Hilario G. Davide Jr. signed the Memorandum of Understanding between the two governments on June 18, 2002, in Quebec, Canada. The *Court En Banc* of the Supreme Court of the Philippines confirmed this understanding in its Resolution, A.M. No. 02-7-01-SC, dated July 9, 2002.

Canada will take charge of the overall financial, administrative and technical management, as well as monitoring and evaluation of the Project. The total value of its contribution will not exceed seven million Canadian dollars (Cdn \$7,000,000.00). The Philippines, on the other hand, will be responsible for technical and administrative inputs, including access to required information and other related support necessary for Project operations and activities.

**SUPREME COURT****ADMINISTRATIVE CIRCULAR NO. 38-2002**

TO: ALL TRIAL JUDGES

RE: IMPLEMENTATION OF SECTION 68 OF R.A. No. 6657, ALSO KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988

In Administrative Circular No. 29-2002, the Supreme Court reminded all trial judges of the need for a careful and judicious application of Republic Act No. 6657, also known as the Comprehensive Agrarian Reform Law (CARL) of 1988, as amended. It stressed the need to avoid conflict of jurisdiction with the Department of Agrarian Reform (DAR) and the Department of Environment and Natural Resources (DENR). It likewise exhorted judges to avoid delays in the resolution of agrarian cases.

In furtherance of the Court's policy to expedite the resolution of cases involving agrarian disputes to fully implement the objectives of the CARL, Judges are hereby enjoined to strictly observe Section 68, R.A. No. 6657, which provides as follows:

Section 68. Immunity of Government Agencies from Undue Interference.—No injunction, restraining order, prohibition or mandamus shall be issued by the lower courts against the Department of Agrarian Reform (DAR), the Department of Agriculture (DA), the Department of Environment and Natural Resources (DENR), and the Department of Justice (DOJ) in their implementation of the program.

The Office of the Court Administrator shall implement this Administrative Circular, which shall take effect upon its issuance.

Issued this 28<sup>th</sup> day of August 2002

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

**MEMORANDUM ORDER NO. 28-2002**

TO: EXECUTIVE JUDGES OF THE REGIONAL TRIAL COURTS

RE: SUPERVISION OF NOTARIES PUBLIC

Complaints have reached the Supreme Court regarding the improper conduct of some notaries public. Needless to state, any such improper conduct would, directly or indirectly, impair the solemnity of a jurat or an acknowledgement and degrade the profession.

Under existing laws and rules, Executive Judges are charged with the supervision of notaries public. Administrative Circular No. 11-93, dated 30 June 1993, likewise empowers Executive Judges to impose appropriate administrative sanctions against erring notaries public.

Executive Judges are, therefore, reminded to closely supervise and monitor the exercise of the privilege given to the various notaries public within the respective jurisdiction of the former. Personal inspection, wherever possible, shall be conducted as mandated in Section 248, Article VI, Chapter II of Act No. 2657, as amended. They are likewise directed to submit to the Office of the Court Administrator (OCA) on or before 30 November 2002 their suggestion or recommendation on what should be embodied in the Rules to be thereafter promulgated for the more effective supervision of the notaries public. For this purpose, the Executive Judges may avail themselves of the assistance of the chapters of the Integrated bar of the Philippines within their respective jurisdictions.

On the basis of the suggestion or recommendation of the Executive Judges and whatever the OCA may deem appropriate and necessary, the Court Administrator shall draft the Rules which shall be submitted to the Supreme Court for its consideration not later than 31 December 2002.

For strict compliance.

16 September 2002.

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

## OFFICE OF THE COURT ADMINISTRATOR

### OCA CIRCULAR NO. 3-2002

TO: ALL EXECUTIVE JUDGES AND PRESIDING JUDGES OF THE REGIONAL TRIAL COURTS, SHARIA DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS AND SHARIA CIRCUIT COURTS

SUBJECT: PERIODIC REPORT ON DETENTION PRISONERS

The Supreme Court En Banc in its Resolution dated 29 January 2002, on A.M. No. 02-1-02-SC, Resolved to:

- a. DIRECT the lower courts to submit a periodic report on detention prisoners to the Office of the Court Administrator thru its Executive Judge, either quarterly or semi-annually;
- b. SEEK assistance of the Department of Interior and Local Government (DILG) which has jurisdiction over the Bureau of Jail Management and Penology, and likewise the assistance of the local government concerned to require the Jail Warden to submit a regular inventory report of detained prisoners preferably by Branch, to all Executive Judges who have jurisdiction over the accused;
- c. DIRECT the Executive Judges to attest to the veracity of the reports submitted by the courts/branches within their jurisdiction. Relative to the administrative power of the Executive Judge, the reports on detention prisoners submitted by courts over which the Executive Judge has jurisdiction as well as the reports of the Jail Warden shall be consolidated with his report on Monthly Jail Visitation. Thereafter, all reports shall be submitted to the Court Administrator;
- d. REQUIRE the Court Management Office of the Office of the Court Administrator to submit a periodic evaluation on the reports on detention prisoners submitted by the lower courts;

### OCA CIRCULAR NO. 3-2002 *continued*

- e. APPROVE the proposed forms submitted by the Task Force relative to directives (a), (b) and (c) to be accomplished by the lower courts as well as by the Jail Warden to serve the purpose of Administrative Circulars Nos. 1-2000 and 9-2000,

All concerned are hereby enjoined to comply with the directives of the Honorable Court.

For strict compliance.

2 May 2002

(Sgd.) PRESBITERO J. VELASCO, JR.  
Court Administrator



### OCA CIRCULAR NO. 13-2002

TO: ALL EXECUTIVE JUDGES AND PRESIDING JUDGES OF THE REGIONAL TRIAL COURTS DESIGNATED AS FAMILY COURTS

SUBJECT: INHIBITION OF PRESIDING JUDGE OF A FAMILY COURT

The Supreme Court Second Division issued a Resolution dated 24 September 2002, in A.M. No. 01-8-478-RTC, to the effect that:

In cases where the presiding judge of a Family Court, whether multiple or single sala, under A.M. 99-11-07-SC inhibits himself from trying a case, the same should not be raffled to other RTC Branches not so specially designated but should instead remain in the dockets and be taken cognizance of by the pairing judge or in his absence the executive judge. This rule should apply even where there are two or more special courts in a particular station.

For the information and guidance of all concerned.

4 June 2002

(Sgd.) JOSE P. PEREZ  
Officer-In-Charge  
Office of the Court Administrator

**OCA CIRCULAR NO. 14-2002**

TO: THE COURT OF APPEALS, SANDIGANBAYAN, REGIONAL TRIAL COURTS, SHARIA DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS AND SHARIA CIRCUIT COURTS, THE DEPARTMENT OF JUSTICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: AMENDMENT TO SECTION 5, RULE 110 OF THE REVISED RULES OF CRIMINAL PROCEDURE

The Supreme Court En Banc in its Resolution dated 10 April 2002, in A.M. No. 02-2-07-SC, RE: Proposed Amendments to Section 5, Rule 110 of the Revised Rules of Criminal Procedure, Resolved to approve the amendment to Sec. 5, rule 110 to read as follows:

*"Section 5. Who must prosecute criminal actions.- All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of a public prosecutor. In case of heavy work schedule of the public prosecutor, or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court. Once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to the end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.*

xxx                      xxx                      xxx"

This amendment to Rule 110 took effect on the first day of May 2002 following its publication in the Manila Bulletin.

For the information and guidance of all concerned.

18 June 2002

(Sgd.) JOSE P. PEREZ  
Acting Court Administrator

**OCA CIRCULAR NO. 18-2002**

TO: ALL PRESIDING JUDGES AND CLERKS OF COURT OF THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS

SUBJECT: SUBMISSION OF COPIES OF FINAL ORDERS, DECISIONS, WARRANTS OF ARRESTS AND FILE PHOTOGRAPHS INVOLVING CASES OF ILLEGAL RECRUITMENT

The Philippine Overseas Employment Administration (POEA), pursuant to Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, has been mandated to prepare and implement programs toward the eradication of illegal recruitment activities. In this connection, you are directed to submit to the said office, the following:

1. Copies of final orders and decisions involving cases of illegal recruitment;
2. Copies of warrants of arrest issued against accused illegal recruiters who remain at large or who jumped bail;
3. If available, a copy of the file photograph of the accused.

The communication shall be addressed to:

VICTORIA C. BARCILES  
Officer-In-Charge  
Philippine Overseas Employment  
Administration  
POEA Bldg.  
Ortigas Avenue  
cor. EDSA Mandaluyong  
P.O. Box 175  
Greenhills, San Juan  
Metro Manila

20 June 2002

(Sgd.) JOSE P. PEREZ  
Acting Court Administrator



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

## PRESIDING JUDGE

### 2002 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars / Activities</i>	<i>Venue</i>
September 24-27 September 25-27	Regional JCEP Seminar for Region VIII National Workshop on Role of Judges, Prosecutors and Public Defense Attorneys on the Prevention of Torture	Tacloban City Marco Polo Hotel, Davao City
October 1 October 3-5 October 21-25	Plenary Assembly of the Corps of Professors PTJLI Convention Seminar Seminar-Workshop on Case Management for Family Court Social Workers (Level 2)- 4th batch	Pearl Manila Hotel, Manila Baguio City Marco Polo Hotel, Davao City
October 28-31 November 5 November 11-12	Regional JCEP Seminar for Region I Seminar on Dangerous Drugs Act Seminar on Juvenile and Domestic Relations Justice for Single Sala Courts- 2nd batch	Vigan City, Ilocos Sur Pearl Manila Hotel, Manila Montebello Villa Hotel, Cebu City
November 18-22 November 19-22 November 26-29 November 28-30	Seminar for the Commissioners & Hearing Officers of the CSC Seminar on Capability Building for Rape Case Management Regional JCEP Seminar for Region XI COSTRAPHIL Convention Seminar	Angelo King Int'l. Center, Manila PHILJA, Tagaytay City Marco Polo Hotel, Davao City Batac, Ilocos Norte

*Chancellor, Philippine Judicial Academy*  
**Justice Ameurfina A. Melencio Herrera**

*Editor-in-Chief*

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