



PHILJA Bulletin



April to June 2003

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From the Chancellor's Desk 

A LETTER FROM A NEWLY APPOINTED JUDGE

Republic of the Philippines
REGIONAL TRIAL COURT
6th Judicial Region
Branch 17, Roxas City

April 10, 2003

Justice Ameurfina A. Melencio Herrera
Chancellor, Philippine Judicial Academy
Supreme Court, Padre Faura Street, Manila

Dear Madam Justice,

I just would like to share with you the modest achievement I accomplished after I completed the seminar on newly appointed judges last January 13-17, 2003. I was completely satisfied, intellectually and academically, with the way the seminar was conducted. The excellent training we were subjected to, coupled with the cool weather in Tagaytay City at the time, certainly contributed in making the seminar participants-judges fully prepared, as they have been updated with the latest jurisprudence and recent developments in substantive and procedural law.

Perhaps because of this excellent training I had undergone under your able stewardship that I felt so confident and upbeat when I began to discharge my judicial functions when I returned to my sala in our province. So much so that within the first twenty (20) working days in my discharge of judicial functions, I was able to dispose of twenty-two (22) long-submitted cases in my sala which I inherited from different previous judges. Specifically, I rendered and wrote twenty-two (22) decisions on the merits in the span of my first twenty (20) working days.

Once again my gratitude for the fine and excellent training I was fortunate to have undergone under your stewardship.

Very truly yours,

(Sgd.) JUDGE EDWARD B. CONTRERAS

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Excellence in the Judiciary



PHILJA ACADEMIC PROGRAMS

RESULTS OF THE 5TH PRE-JUDICATURE PROGRAM

The 5th *Pre-Judicature Program* was held on March 3 to 17, 2003, at the Lotus Garden Hotel, Manila. Of the fifty-seven (57) participants who took the Written Evaluative Exercise (WEE), thirty (30) passed and twenty-seven (27) failed. The highest score obtained was 80 and the lowest was 25. Three components make up the computation of the grade – participation, attendance, and WEE results. The WEE, on the other hand, was composed of four essay questions on Judicial Values, Development and Public International Law, Human Rights, and Philosophy of the Law; and objective questions on substantive law. The 6th *Pre-Judicature Program* will be held on June 16 to July 11, 2003, in Cebu City. The Pre-Judicature Program is MCLE compliant.

12TH REGIONAL IN TAGAYTAY

The 2nd batch of the 12th *Regional Judicial Career Enhancement Program (Level 2) for Judges, Clerks of Court, Branch Clerks of Court, Interpreters and Docket Clerks of the Regional Trial Courts and First Level Courts of Region IV* was held on April 22 to 25, 2003, at PHILJA and DAP, both in Tagaytay City. In attendance were: 65 Judges, 130 Clerks of Court, 96 Docket Clerks, and 86 Interpreters.

CAREER ENHANCEMENT PROGRAM FOR ATTORNEYS

The 1st batch of the *Career Enhancement Program for Attorneys of the Court of Appeals, Sandiganbayan, Court of Tax Appeals and Quasi-Judicial Bodies (MCLE Compliant)* was held on May 13 to 14, 2003, at the Garden Plaza Hotel, Paco Park, Manila. A total of 54 attorneys from the Court of Appeals, Sandiganbayan, Court of Tax Appeals, Bureau of Customs, and LTFRB attended the two-day seminar which is MCLE Compliant. It covered five (5) out of seven (7) subject areas prescribed under Bar Matter No. 850 or Mandatory Continuing Legal Education, namely: Legal Ethics; Alternative Dispute Resolution; Updates on Substantive and Procedural Laws, and

Jurisprudence; Legal Writing; and International Law & International Convention. The participants were expected to enhance their writing skills and analytical proficiency. They were also reminded of the time honored principle in law and the creed that they vowed to uphold.

The 2nd batch was held on June 3 to 4, 2003, at the Garden Plaza Hotel, Manila. A total of 61 attorneys participated and came from the Court of Appeals, Sandiganbayan, Office of the President's Legal Office, National Labor Relations Commission, Employees Compensation Commission, Energy Regulations Commission, Housing Land Use and Regulatory Board, Bureau of Customs, Bureau of Immigration, and Civil Aeronautics Board. The seminar was formally opened by the Chancellor of the Academy, Justice Ameurфина A. Melencio Herrera. She stressed in her message that continuing legal or judicial education should not be seen by participants as a burden and a chore, but as an opportunity for improvement, as a means of knowing their strengths and weaknesses, the opportunities that beckon, as well as the threats that face them.

13TH REGIONAL, BATCH 1 & 2 IN MANILA

The 1st batch of the 13th *Regional Judicial Career Enhancement Program (Level 2) for Judges, Clerks of Court, Branch Clerks of Court, Interpreters and Docket Clerks of the Regional Trial Courts and First Level Courts of NCJR* was held on May 20 to 23, 2003, at the Century Park Hotel, Manila. In attendance were 273 Judges, Clerks of Court, Interpreters and Docket Clerks from the RTCs and First-Level Courts of the cities of Makati, Mandaluyong and Pasay, and the municipalities of San Juan, Taguig and Pateros. On the last day, an additional 183 Legal Researchers, Court Stenographers, Sheriffs, and Clerks from other regions arrived.

The second batch was held on June 24 to 27, 2003, at the Manila Pavillion Hotel, Manila. In attendance from the cities of Caloocan, Quezon, Marikina and Valenzuela, and the municipalities of Malabon and Navotas were 75 judges, 92 Clerks of Court and Branch Clerks of Court, 75 Interpreters, 94 Docket Clerks, 66 Legal Researchers, 95 Court Stenographers, and 80 Sheriffs, a total of 577 participants.



PROGRAMS OF SPECIAL FOCUS

NEW TREND IN UNDERSTANDING WOMEN AND CHILDREN

To address the plight of women and children and make the judges more aware of such, the Philippine Judicial Academy and the University Partnership and Cooperation in Development-CIDA conducted a two-day *Seminar on the New Trend in Understanding Women and Children*, held on May 8 to 9, 2003, at the Century Resort Hotel, Balibago, Angeles City.

Twenty-four (24) RTC/MTCC Judges from San Fernando, Guagua, Macabebe and Angeles City, attended the activity. Both foreign and local lecturers were invited to expound on salient topics. Prof. Devlin of Dalhousie University, Nova Scotia, Halifax, Canada, talked on the reasons and ultimate goals of "Social Context Education." In his discussion, Prof. Devlin stressed the right of battered women to self-defense from any violence against them. Dr. Edna Keeble, from St. Mary's University, Nova Scotia, Halifax, Canada, talked about the "Myths and Facts About Prostituted Women." Commissioner Teresita Dy-Liacco Flores lectured on "Jurisprudence, Statutes, and Laws Affecting Women" while Atty. Rosa Maria T. Juan-Bautista discussed "Jurisprudence, Statutes and Laws Affecting Children." Dr. Meredith Ralston, also from Nova Scotia, Halifax, Canada, facilitated a film showing and its discussion. The highlight of the activity was the judges-participants' exposure trip to bars in Angeles City, with police escorts, where they observed the activities and demeanor of the girls and boys who work in those bars.

CFM PILOT TESTING STARTS

The pilot testing of Caseflow Management (CFM) will be implemented in thirteen (13) Regional Trial Courts (RTCs), four (4) Metropolitan Trial Courts (MeTCs), and two (2) Offices of the Clerk of Court in Pasay City on July 1, 2003. In preparation for the activity, the Philippine Judicial Academy, armed with the CFM Manual already approved by Chief Justice Hilario G. Davide, Jr., held a briefing at the Pasay City Hall of Justice on

June 17, 2003. The Handbook defines Caseflow Management as the supervision of management by the court of case events or stages in the movement of a case through the court system from the point of filing to disposition. The process entails the elimination of unnecessary time intervals or case events, and the addition of case events for swift movement that will shorten the disposition time. Aside from the judge and the court personnel, CFM also requires the participation of public prosecutors, practicing lawyers, public attorneys, and litigants.

The CFM Committee, chaired by Justice Ameurfina A. Melencio Herrera, PHILJA Chancellor, has the following members:

Hon. Presbitero J. Velasco, Jr.
SC Court Administrator
Hon. Zenaida N. Elepaño
SC Senior Deputy Court Administrator
Hon. Jose P. Perez
SC Deputy Court Administrator
Hon. Christopher O. Lock
SC Deputy Court Administrator
Hon. Bernardo T. Ponferrada
Head, PHILJA Judicial Reforms Office
Hon. Vicente L. Yap
Pasay City RTC Executive Judge
Hon. Pedro B. Corales
Pasay City MeTC Executive Judge
Atty. Persida V. Rueda-Acosta
Chief, Public Attorney's Office
Ms. Evelyn T. Dumdung
Director, SC Project Management Office
Atty. Ivan John Uy
Chief, SC Management Information Systems Office
Atty. Francisco R. Beron
Pasay City Chief Prosecutor
Atty. Santos V. Catubay, Jr.
Governor, Integrated Bar of the Philippines



CFM Briefing of the Pasay City Regional Trial Court Judges and Metropolitan Trial Court Judges



CONVENTIONS

SCOPHIL HELD 12TH CONVENTION

The 12th *Convention and Seminar of the Sheriffs' Confederation of the Philippines (SCOPHIL)* was held on May 7 to 9, 2003 at the Department of Education EcoTech Center, Lahug, Cebu City. Out of the 614 Sheriffs who attended, 8 were from the Department of Agrarian Reform (DAR), 3 from the Philippine Overseas Employment Agency (POEA), and 603 from the 13 regions all over the country. The theme of the convention was "*Upgrading Sheriffs' Awareness, Competence and Proficiency in the Justice System.*"

1ST CONVENTION OF COURT LIBRARIANS

The 1st *National Convention and Seminar-Workshop for Court Librarians* of the Court Librarians Association of the Philippines (CLAPHIL) was held on June 18 to 20, 2003, at Cebu Normal University, Cebu City. Eighteen (18) participants attended the convention with the theme, "*Court Librarians: A Continuing Call for Effective Research Services for the Judiciary.*"

CLAPHIL was organized in June 2002 through the initiative of the Director of the Supreme Court Library, Mrs. Milagros Santos Ong, who is also the Association's adviser. The Officers and Board Members of the Association are as follows:

CLAPHIL Officers:

President: Mrs. Namnama Lopez (Region 1)
 Vice-President: Mrs. Lydia Abejuela (Region 8)
 Secretary: Mrs. Anjanette Mangila (Region 7)
 Treasurer: Mrs. Almyra D. Yap (Region 3)
 Auditor: Ms. Asuncion Nacionales (Region 6)
 PRO: Ms. Editha Gochingco (NCJR)

Board Members:

Ms. Miriam Jane Baquiran (Region 2)
 Ms. Cirila Cristeta Villena (Region 4)
 Ms. Petchie Porcalla (Region 5)
 Ms. Anita Deza (Region 9)
 Mrs. Amparo Sy (Region 10)
 Mr. Francisco Campaner (Region 11)
 Mrs. Editha Tomaron (Region 12)
 Mrs. Catherine Macasero (Region 13)



ON PHILJA

RE-APPOINTMENT & RANK UPGRADING

Justice Antonio M. Martinez (ret.) has been re-appointed as Vice Chancellor of the Philippine Judicial Academy (PHILJA) for another term of two (2) years, commencing on April 16, 2003 until April 16, 2005.

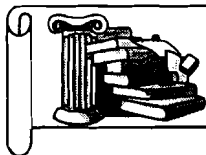
Justice Diosdado M. Peralta of PHILJA's Criminal Law Department, DCA Jose P. Perez of the Department of Court Management, Dean Cesar L. Villanueva of the Department of Commercial Law, and Dean Eduardo de los Angeles of the Department of Civil Law are now Professorial Lecturers II at the Academy, effective March 10, 2003.

Prof. Sedfrey M. Candelaria, Head of PHILJA's Research and Linkages Office, is now Chairperson of the Department of Special Areas of Concern.



Court Librarians with PHILJA's Executive Secretary, Judge Priscila S. Agana and staff during their 1st National Convention at Cebu Normal University.





JUDICIAL MOVES

Supreme Court

Associate Justice Vicente V. Mendoza
retired as of April 4, 2003

Court of Appeals

Presiding Justice Cancio C. Garcia
appointed as of April 9, 2003

Associate Justice Hakim S. Abdulwahid
appointed as of March 12, 2003

Associate Justice Lucas P. Bersamin
appointed as of March 12, 2003

Associate Justice Rosmari Declaro Carandang
appointed as of March 12, 2003

Associate Justice Noel G. Tijam
appointed as of March 12, 2003

Associate Justice Candido V. Rivera
retired as of February 1, 2003

Associate Justice Teodoro P. Regino
retired as of April 1, 2003

Sandiganbayan

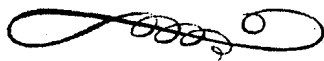
Presiding Justice Minita Chico Nazario
appointed as of February 26, 2003

Associate Justice Norberto Y. Galdez
appointed as of January 21, 2003

Judicial and Bar Council

Hon. Amado L. Dimayuga
appointed as Member

(Professor of Law, ad interim), on March 31, 2003.



OBITUARY

Honorable Supreme Court Associate Justice
Sabino R. De Leon (Ret.)
passed away on June 16, 2003.



RESOLUTION dated 17 June 2003

(continued from page 23)

4. The Special Commercial Courts shall have jurisdiction over cases arising within their respective territorial jurisdiction with respect to the National Capital Judicial Region and within the respective provinces with respect to the First to Twelfth Judicial Regions. Thus, cases shall be filed in the Office of the Clerk of Court in the official station of the designated Special Commercial Court;
5. In the event of inhibition of the judge of a designated Special Commercial Court, the following guidelines shall be observed: (a) where there is only one (1) Special Commercial Court, the case shall be raffled among the other judges in the station; (b) where there are two (2) Special Commercial Courts in the station, the Executive Judge shall immediately assign the case to the other Special Commercial Court; and (c) in case of inhibition of both judges of the Special Commercial Courts, the Executive Judge shall raffle the case among the judges in the station.
6. In order to ensure a just and equitable distribution of cases, the designated Special Commercial Courts shall continue to participate in the raffles of other cases. *Provided, however,* that the Executive Judge concerned shall adopt a procedure whereby every IP and SEC case assigned to a Special Commercial Court should be considered a case raffled to it and be duly credited to such court.

The Court further Resolved that this Resolution shall take effect on the first day of July 2003 after its publication in the newspaper of general circulation not later than 25 June 2003." Martinez, J., is on leave.

Very truly yours,

(Sgd.) LUZVIMINDA D. PUNO
Clerk of Court

REMEDIAL LAW

Failure of appellant to submit memorandum; ground for dismissal of appeal.

Rule 40, Section 7 of the 1997 Rules of Civil Procedure is a new provision. Said section is based on Section 21 (c) and (d) of the Interim Rules Relative to the Implementation of the Judiciary Reorganization Act of 1980 (Batas Blg. 129) with modifications. These include the following changes: (a) The appellant is required to submit a memorandum discussing the errors imputed to the lower court within 15 days from notice, and the appellee is given the same period counted from receipt of the appellant's memorandum to file his memorandum; (b) The failure of the appellant to file a memorandum is a ground for the dismissal of the appeal.

Rule 40, Section 7 (b) provides that, "it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal." (*Quisumbing, J., Melba Moncal Enriquez v. Court of Appeals and Victorina Tigue*, GR 140473, January 28, 2003)

State witness, testimony of proposed State witness may be validly presented at the hearing for his discharge.

Rule 119, Section 17 of the Revised Rules of Criminal Procedure provides that the trial court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the State after requiring the prosecution to present evidence and the sworn statement of each proposed State witness at a hearing in support of the discharge. The provision does not make any distinction as to the kind of evidence the prosecution may present. What it simply requires in addition to the presentation of the sworn statement of the accused concerned is the presentation of such evidence that is necessary to determine if the conditions exist for the discharge, so as to meet the object of the law which is to prevent unnecessary or arbitrary exclusion from the complaint of persons guilty of the crime charged. No exemption from the term evidence is provided by the law as to exclude the testimony of the accused. When the law does not distinguish, we should not distinguish. (*Yñares-Santiago, J., People v. Hon. Nazar Chaves*, GR 131377, February 11, 2003)

REMEDIAL LAW (continued)

Requirement of notice mandatory.

The requirement of notice under Sections 4 and 5, Rule 15, in connection with Section 2, Rule 37 of the Revised Rules of Court, is mandatory. The absence of a notice of hearing is fatal and in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency. xxx The motion for reconsideration being fatally defective for lack of notice of hearing cannot be cured by a belated filing of a notice of hearing. (*Carpio-Morales, J., National Commercial Bank of Saudi Arabia v. Court of Appeals & Philippine Banking Corporation*, GR 124267, January 31, 2003)

Proceedings for indirect contempt; how initiated; abuse of the processes of the court; principal party to disclose pendency of another action; willful and deliberate forum-shopping.

Section 4, Rule 71 of the 1997 Rules of Civil Procedure provides that proceedings for indirect contempt must be initiated either *motu proprio* by the court or by verified petition with supporting particulars and certified true copies of documents or papers involved therein. Courts are vested with the power to penalize a party for filing an action raising the same basic issue while one is still pending or already disposed of which the same party has filed in another court. Such an act is deemed an abuse of the processes of the court. To curb and punish such abuses, courts are vested with the power to declare the guilty party in contempt. A counsel who participates in such abuse of court processes can also be held in contempt. Courts should be informed of the pendency of similar proceedings because of the harsh penalties the law prescribes for non-compliance. As provided in Section 5, Rule 7, failure to comply may cause one to be declared in indirect contempt. Moreover, if the non-compliance is willful and deliberate, then such person may even be declared guilty of direct contempt of court. The same section specifically mandates that either the plaintiff or principal party filing the initiatory pleading must disclose to the court the pendency of another proceeding concerning the same case.

REMEDIAL LAW (continued)

Also, as stated in Section 5 of Rule 7, if the acts of the party or his counsel clearly constitute willful and deliberate forum-shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as administrative sanctions, x x x and even if the party or his counsel did not sign the certification of forum-shopping, if from the circumstances one can infer a willful and deliberate attempt to mislead the courts, he can still be held in direct contempt. (*Carpio, J., Tomas R. Leonidas v. Judge Francisco G. Supnet*, AM MTJ -02-1433, February 21, 2003)

Pre-trial; absence of prosecution witnesses not valid ground for dismissal.

Under RA 8493, the absence during pre-trial of any witness for the prosecution listed in the information, whether or not said witness is the offended party or the complaining witness, is not a valid ground for the dismissal of a criminal case. Although under the law, pre-trial is mandatory in criminal cases, the presence of the private complainant or the complaining witness is, however, not required. Even the presence of the accused is not required unless directed by the trial court. It is enough that the accused is represented by his counsel.

Even if none of the witnesses listed in the information for the State appeared for the pre-trial, the same can and should proceed. After all, the public prosecutor appeared for the State. The public prosecutor is vested with authority to consider those matters catalogued in Section 2 of RA 8493. (*Callejo, J., People v. Hon. Judge Paterno Tac-an and Mario Austria*, GR 148000, February 27, 2003).

CRIMINAL LAW

Section 9 of P. D. 651 refers to acts that are *mala prohibita*.

It is a settled doctrine that the legislature has the power to forbid certain acts in a limited class of cases and to make their commission criminal without regard to the intent of the doer. Laws defining crimes as *mala prohibita* condemn behavior

CRIMINAL LAW (continued)

directed not against particular individuals, but against public order. The legislature used its prerogative to penalize certain acts mentioned in P.D. 651 in order to develop a reliable source of statistics necessary for the development of the health and social programs of the government (*Panganiban, J., Rosario D. Adrian v. Judge Francisco D. Villanueva*, AM MTJ-99-1232, February 19, 2003)

Application for bail; notice to prosecution necessary.

Under Section 4, Rule 15 of the Revised Rules of Court, notice of application for bail to prosecution is necessary. It is only when the information was filed with the corresponding recommendation for bail that notice to prosecutor is no longer necessary, unless bail is a matter of discretion and not a matter of right. The prosecution's recommendation in the information is sufficient basis for the grant of bail. (*AM OCA IPI No. 02-1436-RTJ, Manuel Magbanua v. Judge Novato Cajigal*, March 3, 2003)

ELECTION LAW

Preliminary investigation; power of Comelec to conduct preliminary investigation of election offenses.

The Comelec has the exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same except as may otherwise be provided by law. The Chief State Prosecutor, all Provincial and City Prosecutors, or their respective assistants are, however, given continuing authority, as deputies of the Comelec, to conduct preliminary investigation of complaints involving election offenses and to prosecute the same. This authority may be revoked or withdrawn by the Comelec anytime whenever in its judgment such revocation or withdrawal is necessary to protect the integrity of the Comelec and to promote the common good, or when it believes that the successful prosecution of the case can be done by the Comelec. (*Daivde, J., Comelec v. Hon. Lucenito Tagle*, GR 148948, February 17, 2003).

CIVIL LAW

Damages; nominal damages; purpose of the award.

Nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss, but for the recognition and vindication of a right. Nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted, but simply a recognition of the existence of a technical injury. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages. (*Mendoza, J., Rommel P. Almeda v. Leonor A. Cariño, et al.*, GR 152143, January 13, 2003)

Interests; proper interest on amounts due.

In *Eastern Shipping Lines v. Court of Appeals*, the Supreme Court formulated the following rules in the grant of interest on amounts due:

"I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts, or quasi-delicts, is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.

"II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

CIVIL LAW (continued)

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art.1169, Civil Code); but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2 above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit."

(*Austria-Martinez, J., Conrado M. Vicente et al. v. Planters Development Bank, et al.*, GR 136112, January 28, 2003)

Contract of loans; kinds of; *commodatum*; *mutuum*.

Article 1933 of the Civil Code distinguishes between the kinds of loans, i.e., *commodatum* and *mutuum*. By the contract of loan, one of the parties delivers to another either something not consumable so that the latter may use the same for a certain time and return it in which case the contract is called *commodatum*; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid in which case the contract is simply called a loan or *mutuum*. *Commodatum* is essentially

CIVIL LAW (continued)

gratuitous. Simple loan may be gratuitous or with a stipulation to pay interest. In *commodatum* the bailor retains the ownership of the thing loaned while in simple loan ownership passes to the borrower. The said provision implies that if the subject of the contract is consumable xxxx the contract is *mutuum*. However, there are instances where a *commodatum* has for its object a consumable thing. Article 1936 of the Civil Code provides that consumable goods may be the subject of *commodatum* if the purpose of the contract is not the consumption of the object, as when it is merely for exhibition. Thus, if consumable goods are loaned only for purposes of exhibition or when the intention of the parties is to lend consumable goods and to have the very same goods returned at the end of the period agreed upon, the loan is a *commodatum* and not a *mutuum*. The rule is that the intention of the parties thereto shall be accorded primordial consideration in determining the actual character of a contract. In case of doubt, the contemporaneous and subsequent acts of the parties shall be considered in such determination. (*Callejo, J., Producers Bank of the Philippines v. Court of Appeals and Franklin Vives, GR 115324, February 19, 2003*)

REMEDIAL LAW**Specific denial; modes of.**

Section 10, Rule 8 of the 1997 Rules of Civil Procedure, as amended, contemplated three modes of specific denial: (1) By specifying each material allegation of the fact in the complaint, the truth of which the defendant does not admit, and whenever practicable, setting forth the substance of the matters which he will rely upon to support his denial; (2) By specifying so much of an averment in the complaint as is true and material and denying only the remainder; and (3) By stating that the defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment in the complaint which has the effect of a denial. (*Sandoval-Gutierrez, J., Spouses Napoleon L. Gaza, et al. v. Ramon Lim and Agnes Lim, GR 126863, January 16, 2003*)

REMEDIAL LAW (continued)**Interdiction against warrantless searches and seizures not absolute; exceptions; plain view doctrine.**

The interdiction against warrantless searches and seizures is not absolute. The recognized exceptions established by jurisprudence are: (1) Search of moving vehicles; (2) Seizure in plain view; (3) Customs search; (4) waiver or consented search; (5) Stop and frisk situation (Terry search); (6) Search incidental to lawful arrest; and (7) Search made pursuant to route airport security procedure under Section 9 of RA 6235.

Under the "plain view" doctrine, unlawful objects within the plain view of an officer who has the right to be in the position to have that view are subject to seizure and may be presented in evidence. Nonetheless, the seizure of evidence in plain view must comply with the following requirements: (a) Prior valid intrusion in which the police are legally present in the pursuit of their official duties; (b) The evidence was inadvertently discovered by the police who had the right to be where they are; (c) The evidence must be immediately apparent; and (d) The plain view justified mere seizure of evidence without further search. (*Davide, Jr., CJ., People of the Philippines v. Abdul Macalaba y Digayon, GR 146284-86, January 20, 2003*)

Motion to dismiss; when filed; exception; *litis pendentia*

The requirement that a motion to dismiss should be filed within the time for filing the answer is not absolute. Even after filing the answer has been filed, a defendant can still file a motion to dismiss on the following grounds:

1. Lack of jurisdiction;
2. *Litis pendentia*;
3. Lack of cause of action; and
4. Discovery during trial of evidence that would constitute a ground for dismissal.

Litis pendentia is also one of the grounds that authorize a court to dismiss a case *motu proprio*. *Litis pendentia* as a ground for the dismissal of a civil action refers to that situation wherein another action is pending between the same parties for the

(Continued on next page)

REMEDIAL LAW (continued)

same cause of action and that the second action becomes unnecessary and vexatious. To determine which case should be dismissed, the following factors should be considered:

1. Date of filing with preference generally given to the first action filed to be retained;
2. Whether the action sought to be dismissed was filed merely to preempt the latter action or to anticipate its filing and lay the basis for its dismissal, and
3. Whether the action is the appropriate vehicle for litigating the issues between the parties.

(*Carpio, J., Carmelita T. Panganiban v. Pilipinas Shell Petroleum Corporation*, GR 131471, January 22, 2003)

Child witness; requirements of a child's competence as a witness.

The Supreme Court has held that a witness is not incompetent to give testimony simply because he or she is of tender age. The requirements of a child's competence as a witness are: (1) Capacity of observation, (2) Capacity of recollection, and (3) Capacity of communication. It is the degree of a child's intelligence that determines the child's competence as a witness. If the witness is sufficiently mature to receive correct impressions by his senses, to recollect and narrate intelligently and to appreciate the moral duty to tell the truth, he is competent to testify. A minor's testimony will suffice to convict a person of a crime so long as it is credible.

The determination of a child's intellectual preparedness to be a witness rests primarily with the trial judge, who assesses the child's manners, his apparent possession or lack of intelligence, as well as his understanding of the obligation of an oath. (*Quisumbing, J., People of the Philippines v. Willerie Avendaño*, GR 137407, January 28, 2003)

Rules on Summary Procedure; filing of counter-affidavit within 10 days mandatory.

The Revised Rule on Summary Procedure was promulgated specifically to achieve an expeditious and inexpensive determination of cases. In allowing the submission of the accused's counter-affidavits after 130 days from notice, respondent

judge violated the Rule. Section 12(b) of the Rule provides that the court shall issue an order requiring the accused to submit his counter-affidavits and those of his witnesses not later than 10 days from receipt of said order. Section 19 (e) of the same Rule also provides that a motion for extension to file affidavits is prohibited. These provisions are mandatory. (*Sandoval-Gutierrez, J., Bobby Carriega v. Municipal Judge Romeo Anasario*, AM MTJ-02-1403, February 3, 2003)

Testifying against a co-defendant no need to discharge him first as State witness.

It is true that an accused cannot be made a hostile witness for the prosecution for to do so would compel him to be a witness against himself. However, he may testify against a co-defendant where he has agreed to do so with full knowledge of his right and the consequences of his acts. It is not necessary that the court discharges him first as State witness. There is nothing in the rules that say so. There is a difference between testifying as State witness and testifying as a co-accused. In the first, the proposed State witness has to qualify as witness for the State, after which he is discharged as an accused and exempted from prosecution. In the second, the witness remains an accused and can be made liable should he be found guilty of the criminal offense. (*Yñares-Santiago, J., People v. Hon. Nazar Chaves, et al.*, GR 131377, February 11, 2003)

Execution pending appeal; appellate court, not trial court, determines dilatory intent of an appeal.

International School v. Court of Appeals upheld the authority of the appellate court to pass upon the issue of whether an appeal is frivolous and dilatory. Thus, a trial court has no power to order an execution pending appeal on that ground. Also in *Philippine Bank of Communication v. Court of Appeals*, the Supreme Court explained that an execution pending appeal may be allowed only upon a showing of good reason such as the impending insolvency of the adverse party or the patently dilatory intent of the appeal. (*Panganiban, J., Philippine Nails and Wires Corp. v. Malayan Insurance Company, Inc.*, GR 143933, February 14, 2003).

REMEDIAL LAW (continued)

15-day period for filing an appeal; prohibition against the filing of a motion for extension of time to file a motion for new trial or reconsideration; the Habaluyas doctrine.

In a long line of cases, the Supreme Court reiterated the Habaluyas doctrine which made two significant pronouncements: (1) That the 15-day period for filing an appeal is non-extendible, and (2) That there is a prohibition against the filing of a motion for extension of time to file a motion for new trial or reconsideration in all courts except the Supreme Court. It was pointed out that neither jurisprudence nor the procedural rules provide for an exception. (*Azcuna J., Rafael Amatorio v. People of the Philippines*, GR 150453, February 14, 2003)

Service of notice to counsel; address of record.

As a rule, where a party appears by attorney in an action or proceeding in a court of record, all notices or orders required to be given therein must be given to the attorney of record, and, unless the counsel files a notice of change of address, his official address remains to be that of his address of record. Although some attorneys maintain more than one office, only the one given by them in their appearance should be considered his address of record for that particular case. (*Mendoza, J., National Power Corporation v. Hon Paterno Tacan, et al.*, GR 155172, February 14, 2003)

Filing of Memorandum not indispensable in the resolution of cases.

The filing of the Memorandum containing the summary of issues litigated and proved is not indispensable in the resolution of pending cases. It is respondents' obligation as a trial judge to take down notes during the trial to assist him in the prompt disposition of the cases without awaiting and relying on the Memoranda of the Parties (*Puno, J., Office of the Court of Administrator v. Judge Francisco Joven*, AM RTJ-01-1646, March 11, 2003)



CRIMINAL LAW

Prejudicial question; definition of.

A prejudicial question is defined as that which arises in a case, the resolution of which is a logical antecedent of the issue involved therein and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court, but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime, but so intimately connected with it so as to determine the guilt or innocence of the accused. For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil action, the following requisites must be present: (1) The civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) In the resolution of the issue or issues based in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) Jurisdiction to try said question must be lodged in another tribunal. (*Yñares-Santiago, J., People v. Rafael Jose Consing, Jr.*, GR 148193, January 16, 2003)

Concepts of "stop-and-frisk" and of a search incidental to a lawful arrest.

In *Malacat v. Court of Appeals*, the Supreme Court distinguished the concepts of a "stop and frisk" and of a search incidental to a lawful arrest, to wit:

At the outset, we note that the trial court confused the concepts of a "stop and frisk" and of a search incidental to a lawful arrest. These two types of warrantless searches differ in terms of the requisite quantum of proof before they may be validly effected and in their allowable scope.

In a search incidental to a lawful arrest, as the precedent arrest determines the validity of the incidental search, the legality of the arrest is questioned in a large majority of these cases, e.g., whether an arrest was merely used as a pretext for

(Continued on next page)

CRIMINAL LAW (continued)

conducting a search. In this instance, the law requires that there first be arrest before a search can be made – the process cannot be reversed. At the bottom, assuming a valid arrest, the arresting officer may search the person of the arrestee and the area within which the latter may reach for a weapon or for evidence to destroy, and seize any money or property found, which was used in the commission of the crime, or the fruit of the crime, or that which may be used as evidence, or which might furnish the arrestee with the means of escaping or committing violence.

xxx xxx xxx

We now proceed to the justification for and allowable scope of a “stop and frisk” as a “limited protective search of outer clothing for weapons,” as laid down in *Terry*, thus:

We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude, in light of his experience, that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment.

Other notable points of *Terry* are that while probable cause is not required to conduct a “stop and frisk.” it nevertheless holds that mere suspicion or a hunch will not validate a “stop-and-frisk”. A genuine reason must exist, in light of the police officer’s experience and surrounding conditions, to warrant the belief that the person detained has weapons concealed about him. Finally, a “stop-and frisk” serves a two-fold interest: (1) The

general interest of effective crime prevention and detection, which underlies the recognition that a police officer may, under appropriate circumstances and in an appropriate manner, approach a person for purposes of investigating possible criminal behavior even without probable cause; and (2) The more pressing interest of safety and self-preservation which permit the police officer to take steps to assure himself that the person with whom he deals is not armed with a deadly weapon that could unexpectedly and fatally be used against the police officer. (*Emphasis ours*)

(*Yñares-Santiago, J., People v. Binad Sy Chua, GR 136066-67, February 4, 2003*)

Aggravating and qualifying circumstances must be expressly & specifically alleged in the complaints or information.

The Revised Rule on Criminal Procedure, which took effect on December 1, 2000, now require that the aggravating as well as the qualifying circumstances be expressly, and specifically alleged in the complaint or information. Otherwise, they cannot be considered by the trial court even if they are subsequently proved during the trial. (*Panganiban, J., People v. Jose Casitas, Jr., GR 137404, February 14, 2003*).

Factors to be considered in fixing the amount of bail in criminal cases; amount of bail should be reasonable at all times.

Section 9, Rule 114 of the Rules of Court provides that in fixing the amount of bail in criminal cases, judges shall primarily consider the following factors: (a) Financial ability of the accused; (b) Nature and circumstances of the offense; (c) Penalty for the offense charged; (d) Character and reputation of the accused; (e) Age and health of the accused; (f) Weight of the evidence against the accused; (g) Probability of the accused appearing at the trial; (h) Forfeiture of other bail; (i) The fact that the accused was a fugitive from justice when arrested; and (j) Pendency of other cases where the accused is on bail.

CRIMINAL LAW *(continued)*

The amount of bail should be reasonable at all times. Excessive bail shall not be required. In implementing this mandate, regard should be taken of the prisoner's pecuniary circumstances. That which is reasonable bail to a man of wealth may be unreasonable to a poor man charged with a like offense. (*Quisumbing, J., Modesto Magsucang v. Judge Rolando V. Balgos, et al.*, AM MTJ-02-1427, February 27, 2003)

Duties of a judge when an application for bail is filed.

In *Basco v. Rapatalo*, the Supreme Court laid down the following rules outlining the duties of a judge when an application for bail is filed:

- (1) Notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation.
- (2) Conduct a hearing of the application for bail regardless of whether or not the prosecutor refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its discretion.
- (3) Decide whether the evidence of guilt of the accused is strong based on the summary of evidence of the prosecution.
- (4) If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond. Otherwise, petition should be denied.

Based on said procedure and requirements, after the hearing, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution. A summary is defined as a comprehensive and usually brief abstract or digest of a text or statement. Based on the summary of evidence, the judge formulates his own conclusion on whether such evidence is strong enough to indicate the guilt of the accused. (*Yñares-Santiago, J., Rosalia Docena-Caspe v. Judge Arnulfo O. Bugtas*, AM RTJ-03-1767, March 28, 2003)



CONSTITUTIONAL LAW

Eminent domain; concept of public use.

It is now settled doctrine that the concept of public use is no longer limited to traditional purposes. Here, as elsewhere, the idea that "public use" is strictly limited to clear cases of "use by the public" has been abandoned. The term "public use" has now been held to be synonymous with "public interest," "public benefit," "public welfare," and "public convenience" (*Puno, J., Marina Z. Reyes, et al. v. National Housing Authority*, GR 147511, January 20, 2003)

LABOR LAW

Regular employees; work seasonal in nature.

For respondents to be excluded from those classified as regular employees, it is not enough that they perform work or services that are seasonal in nature. They must also have been employed only for the duration of one season. The evidence proves the existence of the first, but not of the second condition. The fact that respondents repeatedly worked as sugarcane workers for petitioners for several years is not denied by the latter. Evidently, petitioners employed respondents for more than one season. xxx respondents having performed the same tasks for petitioners every season for several years are considered the latter's regular employees. Petitioner's refusal to use their services even if they were ready, able and willing to perform their usual duties xxx and hiring of other workers to perform the tasks originally assigned to them amounted to illegal dismissal. (*Panganiban, J., Hacienda Fatima, et al. v. National Federation of Sugarcane Workers-Food and General Trade*, GR 149440, January 28, 2003)

ADMINISTRATIVE LAW

Negligence cannot be presumed; it has to be proven.

It is a settled rule that negligence cannot be presumed; it has to be proven. In the absence of any shred of evidence thereof, respondents gravely abused their discretion in finding petitioner negligent.

(Continued on page 17)

SUPREME COURT

EN BANC - A.M. No. 99-12-08-SC (Revised)

REFERRAL OF ADMINISTRATIVE MATTERS AND CASES TO THE DIVISIONS OF THE COURT, THE CHIEF JUSTICE, AND TO THE CHAIRMEN OF THE DIVISIONS FOR APPROPRIATE ACTION OR RESOLUTION

WHEREAS, a considerable number of administrative matters or cases are still referred to the Court *En Banc* for disposition, determination, or resolution;

WHEREAS, to relieve the Court *En Banc* from the additional burden which such matters or cases impose, and for it to have more time for judicial cases which require lengthy careful deliberations, administrative matters or cases shall be assigned to the Divisions of the Court, to the Chairmen of the Divisions, or to the Chief Justice alone;

NOW, THEREFORE, the Court hereby RESOLVES:

I. To REFER to the Divisions for their appropriate action or resolution, on behalf of the Court *En Banc*, the following:

- 1) Administrative matters relating to, or in connection with,
 - (a) Inhibition of judges;
 - (b) Extension of time to decide cases;
 - (c) Transfer of venues;
 - (d) Compulsory, optional, or disability retirement of judges and court personnel; and any matter arising therefrom, such as withholding of portion of retirement benefits, conflicting claims of heirs, and application for survivorship benefits;
 - (e) Reports on financial and judicial audits;
 - (f) Reports on burning or destruction of court records; and
 - (g) Cases left undecided by retired or promoted judges.

The Division concerned may order the conversion into an administrative case any of the foregoing matters or cases which in its judgment may properly be treated as an administrative case.

- 2) Administrative cases involving, relating to, or calling for,
 - (a) The discipline of judges, officials, and personnel of the Judiciary: *Provided*, however, that if the penalty to be imposed is dismissal from the service, suspension for more than one (1) year, or fine of more than P20,000, the Division concerned shall refer the case to the Court *En Banc* for final determination or resolution;
 - (b) The preventive suspension from the service of judges and court personnel during the pendency of their administrative cases;
 - (c) The discipline of members of the Philippine Bar: *Provided*, however, that if the penalty to be imposed is disbarment, indefinite suspension, suspension for more than one (1) year, or fine of more than P20,000 the Division concerned shall refer the case to the Court *En Banc* for final determination or resolution; and
 - (d) Any other administrative matter which the Division concerned has resolved to consider as an administrative case, subject to the proviso in 2)(a) above.
- II. To REFER to the Chairmen of the Divisions for their appropriate action or resolution, for and in behalf of the Court *En Banc*, administrative matters relating to, or in connection with,
- (a) Appointment and revocation or renewal of appointments of regular (including coterminous), temporary, casual, or contractual personnel in the Supreme Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts (including the Sharia'h courts), the Philippine Judicial Academy (PHILJA), and the Judicial and Bar Council (JBC); officers and members of existing committees; and consultants;
 - (b) Details of judges and court personnel, or the recall or revocation thereof: *Provided*, however, that the designation or

EN BANC- A.M. No. 99-12-08-SC (Revised) (continued)

assignment of an incumbent judge as acting Presiding Judge of a vacant court or as assisting judge of another judge, in addition to the regular duties of his own court, or the recall or revocation of such designation or assignment may be done by the Chief Justice alone;

- (c) Creation of additional regular committees, *ad hoc* committees, task forces, or similar bodies; and appointment of the officers and members thereof, or the revocation or recall of such appointment;
- (d) Extension of service of court officials or personnel after reaching the compulsory age of retirement;
- (e) Resignations of officials and employees of the Judiciary, or their transfer to other branches, agencies or instrumentalities of the Government;
- (f) Dropping from the roll personnel who are absent without leave;
- (g) Withholding of salaries and other benefits of court personnel, or the subsequent release thereof, as may be recommended by the Court Administrator or the Clerk of Court, as the case may be; and
- (h) Foreign travels of Justices of the Court of Appeals and the Sandiganbayan, Judges of the Court of Tax Appeals and the Lower Courts, and the officials and personnel of such courts; and the recall or revocation of the travel authority granted, as well as any matter arising from such travel authority or its recall or revocation.

III. To REFER to the Chief Justice for appropriate action or resolution, for and in behalf of the Court *En Banc*, administrative matters relating to, or in connection with,

- (a) Recommendations for the detail of personnel from one office, division, or section in the Supreme Court and the Office of the Court Administrator to another office, division, or section;
- (b) Rendition of overtime services and fixing of overtime compensation;

(c) Purchase of supplies, furniture, vehicles, and equipment, including computers and their accessories or paraphernalias; and approval or disapproval of claims for payment therefor;

(d) Awards of contracts for the supply of services, such as security, janitorial, photocopying services, operation of the canteen, and other allied or incidental services;

(e) Approval of requests for payment of electric, telephone and water bills, and bills for the services mentioned in the immediately preceding item;

(f) Requests for the repair of Halls of Justice and approval of claims for payment therefor;

(g) Disposal of old records and unserviceable vehicles, equipment, computers, and the like;

(h) Domestic travel of officials and personnel of the Judiciary; and

(i) Such other matters where the decision, action, or resolution thereon or approval thereof is vested in the Chief Justice by the Constitution, by law, by the Court *En Banc*, by resolutions of the Constitutional Fiscal Autonomy Group (CFAG), or by this revised Resolution, such as, the augmentation of items in the budget from savings in other items thereof, realignment of the budget allocation of the continuing appropriation of the Court (the Fiscal Autonomy Account), or the administration of the Judiciary Development Fund (JDF), or those which are traditionally vested in the Chief Justice as head of the Judiciary.

All other administrative matters or cases which are either expressly declared above to be cognizable by the Court *En Banc* or are not covered by the foregoing referrals shall be acted upon or resolved by the Court *En Banc*. The Chief Justice may likewise refer to the Court *En Banc* for its action or resolution any other matter which, in his opinion, should be resolved by it.

EN BANC- A.M. No. 99-12-08-SC (Revised) (continued)

IMPLEMENTING GUIDELINES

To effectively and efficiently carry out the foregoing referral system, the following guidelines are hereby adopted:

1. The foregoing rule on referral, notwithstanding any of the administrative cases or matters which had been referred to the Court *En Banc* prior to the date of effectivity of this revised Resolution, shall remain in the *En Banc* until they are finally disposed of.
2. New administrative matters or cases yet to be filed with the Court and originating from the Office of the Court Administrator, the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Lower Courts, and other agencies of the Government should be forwarded, transmitted to, or filed with, the Clerk of Court of the Supreme Court. The latter shall forthwith determine whether the cases or matters are, pursuant to the above rules on referral, cognizable by the Divisions of the Court or by the Court *En Banc*; assign them a docket number; and submit them to the Raffle Committee concerned for their raffle among the Members of the Court. These matters or cases shall thereafter be included in the agenda of the Division concerned or the Court *En Banc*, as the case may be, for its meeting immediately following the raffle.
3. Matters which are, by this referral system, to be referred to the Chairmen of the Divisions or to the Chief Justice alone must forthwith be forwarded to the Office of the Chief Justice for appropriate action.
4. Administrative matters or cases directly filed with the Office of the Chief Justice may be indorsed by the Chief Justice, for such purpose as he may determine, to (a) the Office of the Court Administrator if they involve judges and personnel of the Court of Tax Appeals and the Lower Courts; (b) the Clerk of Court of the Supreme Court if they involve officials and personnel of the Supreme Court and the Office of the Court Administrator; and (c) the Presiding Justices of the Court of Appeals and the Sandiganbayan, as the case may be, if they involve officials and personnel of their respective courts: *Provided*, however, that if

such matters may be acted upon or resolved by the Chief Justice alone or Chairmen of the Divisions, the Chief Justice shall act on them alone, or submit them to the Chairmen of the Divisions for appropriate action as the case may be.

5. Any report or memoranda submitted by any official of the Judiciary required to make a study or evaluation or conduct an investigation or submit recommendation relative to the matters or cases assigned to the Division or the *En Banc* should be directly forwarded to or filed with the Clerk of Court of the Division concerned or to the Clerk of Court of the Court *En Banc*, as the case may be, for inclusion in the agenda of the Division or *En Banc* for its meeting immediately following receipt by the Clerk of Court concerned of the report or memoranda. These should not be filed with the Office of the Chief Justice.
6. Pleadings filed by the parties in any pending administrative case or matter shall be filed in like manner as pleadings in judicial cases or matters and forthwith transmitted to the Division concerned or the Court *En Banc*.
7. The papers on matters which the Chairmen of the Divisions or the Chief Justice alone, as the case may be, has acted upon or resolved shall be transmitted either to (a) the office or official concerned, copy furnished the Clerk of Court, or (b) the Clerk of Court, who shall forthwith transmit them to the concerned office or official, or implement them, if necessary and called for.

The provisions of previous Circulars, resolutions, or orders inconsistent herewith are deemed repealed or modified accordingly.

This Revised Resolution shall take effect on the 1st day of May 2003.

Promulgated this 22nd day of April 2003.

(Sgd.) DAVIDE, JR., CJ, BELLOSILLO, PUNO, VITUG, PANGANIBAN, QUISUMBING (ON OFFICIAL LEAVE), YÑARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO-MORALES, CALLEJO, SR., AZCUNA, JJ.

SUPREME COURT

EN BANC

A. M. No. 00-11-01-SC

**RE: AMENDMENT TO THE
RULE ON SUMMARY PROCEDURE OF CRIMINAL CASES
TO INCLUDE WITHIN ITS COVERAGE VIOLATIONS
OF B.P. BLG. 22 OTHERWISE KNOWN AS THE
BOUNCING CHECKS LAW**

RESOLUTION

Acting on the recommendation of the Chairman of the Committee on Revision of the Rules of Court submitting for this Court's consideration and approval the Proposed Amendment to the Rule On Summary Procedure of Criminal Cases to Include Within Its Coverage Violations of B.P. Blg. 22, Otherwise Known as the Bouncing Checks Law, the Court Resolved to APPROVE the same.

The amendment shall take effect on April 15, 2003, following its publication in a newspaper of general circulation not later than March 30, 2003.

March 25, 2003.

(Sgd.) DAVIDE, JR., CJ, BELLOSILLO, PUNO, VITUG, MENDOZA, PANGANIBAN, QUISUMBING, YÑARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO-MORALES, CALLEJO, SR., AZCUNA, JJ.

**AMENDMENT TO THE
RULE ON SUMMARY PROCEDURE OF CRIMINAL CASES
TO INCLUDE WITHIN ITS COVERAGE VIOLATIONS
OF B.P. BLG. 22 OTHERWISE KNOWN AS THE
BOUNCING CHECKS LAW**

Section 1 of the Revised Rule on Summary Procedure (Resolution of the Court *En Banc* dated October 15, 1991), is amended as follows:

"Section 1. *Scope.* This Rule shall govern the summary procedure in Metropolitan Trial Courts, the Municipal Trial Courts in Cities, Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction.

A. Civil Cases:

x x x

B. Criminal Cases:

x x x

4. Violations of Batas Pambansa Bilang 22 (Bouncing Checks Law);

5. All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (P1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom: *Provided, however,* that in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (P10,000.00).

This Rule shall not apply to a civil case where the plaintiff's cause of action is pleaded in the same complaint with another cause of action subject to the ordinary procedure; nor to a criminal case where the offense charged is necessarily related to another criminal case subject to ordinary procedure."

ADMINISTRATIVE LAW

(Continued from page 13)

Granting that the presence or the absence of negligence is a factual matter, the consistent ruling of the Supreme Court is that findings of fact of an administrative agency must be respected so long as they are supported by substantial evidence. But lacking support, the factual finding of the COA on the existence of negligence cannot stand on its own and therefore not binding on the Court. (*Panganiban, J., Filonila O. Cruz v. Hon. Celso D. Gangan et al. and Commission on Audit, GR 143403, January 22, 2003*)

EN BANC

A.M. No. 03-02-05-SC

RE: PROPOSED RULE ON GUARDIANSHIP OF MINORS

RESOLUTION

Acting on the letter of the Chairman of the Committee on Revision of Rules of Court submitting for this Court's consideration and approval the Proposed Rule on Guardianship of Minors, the Court Resolved to APPROVE the same.

The Rule shall take effect on May 1, 2003 following its publication in a newspaper of general circulation not later than April 15, 2003.

April 1, 2003

(Sgd.) DAVIDE, JR., CJ, BELLOSILLO, PUNO, VITUG, MENDOZA, PANGANIBAN, QUISUMBING, YÑARES-SANTIAGO, SANDOVAL-GUTIERREZ, CARPIO, AUSTRIA-MARTINEZ, CORONA, CARPIO-MORALES, CALLEJO, SR., AZCUNA, JJ.

RULE ON GUARDIANSHIP OF MINORS

SECTION 1. *Applicability of the Rule.*- This Rule shall apply to petitions for guardianship over the person or property, or both, of a minor.

The father and the mother shall jointly exercise legal guardianship over the person and property of their unemancipated common child without the necessity of a court appointment. In such case, this Rule shall be supplementary to the provisions of the Family Code on guardianship.

SEC. 2. *Who may petition for appointment of guardian.*- On grounds authorized by law, any relative or other person on behalf of a minor, or the minor himself if fourteen (14) years of age or over, may petition the Family Court for the appointment of a general guardian over the person or property, or both, of such minor. The petition may also be filed by the Secretary of Social Welfare and Development and by the Secretary of Health in the case of an insane minor who needs to be hospitalized.

SEC. 3. *Where to file petition.* - A petition for guardianship over the person or property, or both, of a minor may be filed in the Family Court of the province or city where the minor actually resides. If he resides in a foreign country, the petition shall be filed with the Family Court of the province or city where his property or any part thereof is situated.

SEC. 4. *Grounds of petition.*- The grounds for the appointment of a guardian over the person or property, or both, of a minor are the following:

- (a) Death, continued absence, or incapacity of his parents;
- (b) Suspension, deprivation or termination of parental authority;
- (c) Remarriage of his surviving parent, if the latter is found unsuitable to exercise parental authority; or
- (d) When the best interests of the minor so require.

SEC. 5. *Qualifications of guardians.*- In appointing a guardian, the court shall consider the guardian's:

- (a) Moral character;
- (b) Physical, mental and psychological condition;
- (c) Financial status;
- (d) Relationship of trust with the minor;
- (e) Availability to exercise the powers and duties of a guardian for the full period of the guardianship;
- (f) Lack of conflict of interest with the minor; and
- (g) Ability to manage the property of the minor.

SEC. 6. *Who may be appointed guardian of the person or property, or both, of a minor.*- In default of parents or a court-appointed guardian, the court may appoint a guardian of the person or property, or both, of a minor, observing as far as practicable, the following order of preference:

- (a) The surviving grandparent and in case several grandparents survive, the court shall select any of them, taking into account all relevant considerations;

RULE ON GUARDIANSHIP OF MINORS (*continued*)

- (b) The oldest brother or sister of the minor over twenty-one years of age, unless unfit or disqualified;
- (c) The actual custodian of the minor over twenty-one (21) years of age, unless unfit or disqualified; and
- (d) Any other person who, in the sound discretion of the court, would serve the best interests of the minor.

SEC. 7. *Contents of petition.* - A petition for the appointment of a general guardian must allege the following:

- (a) The jurisdictional facts;
- (b) The name, age and residence of the prospective ward;
- (c) The ground rendering the appointment necessary or convenient;
- (d) The death of the parents of the minor or the termination, deprivation or suspension of their parental authority;
- (e) The remarriage of the minor's surviving parent;
- (f) The names, ages, and residences of relatives within the 4th civil degree of the minor, and of persons having him in their care and custody;
- (g) The probable value, character and location of the property of the minor; and
- (h) The name, age and residence of the person for whom letters of guardianship are prayed.

The petition shall be verified and accompanied by a certification against forum shopping. However, no defect in the petition or verification shall render void the issuance of letters of guardianship.

SEC. 8. *Time and notice of hearing.* - When a petition for the appointment of a general guardian is filed, the court shall fix a time and place for its hearing, and shall cause reasonable notice to be given to the persons mentioned in the petition, including the minor if he is fourteen (14) years of age or over, and may direct other general or special notice to be given.

SEC. 9. *Case study report.* - The court shall order a social worker to conduct a case study of the minor and all the prospective guardians and submit his report and recommendation to the court for its guidance before the scheduled hearing. The social worker may intervene on behalf of the minor if he finds that the petition for guardianship should be denied.

SEC. 10. *Opposition to petition.* - Any interested person may contest the petition by filing a written opposition based on such grounds as the majority of the minor or the unsuitability of the person for whom letters are prayed, and pray that the petition be denied, or that letters of guardianship issue to himself, or to any suitable person named in the opposition.

SEC. 11. *Hearing and order for letters to issue.* - At the hearing of the petition, it must be shown that the requirement of notice has been complied with. The prospective ward shall be presented to the court. The court shall hear the evidence of the parties in support of their respective allegations. If warranted, the court shall appoint a suitable guardian of the person or property, or both, of the minor.

At the discretion of the court, the hearing on guardianship may be closed to the public and the records of the case shall not be released without its approval.

SEC. 12. *When and how a guardian of the property for non-resident minor is appointed; notice.* - When the minor resides outside the Philippines, but has property in the Philippines, any relative or friend of such minor, or anyone interested in his property, in expectancy or otherwise, may petition the Family Court for the appointment of a guardian over the property.

Notice of hearing of the petition shall be given to the minor by publication or any other means as the court may deem proper. The court may dispense with the presence of the non-resident minor.

If after hearing the court is satisfied that such non-resident is a minor and a guardian is necessary or convenient, it may appoint a guardian over his property.

RULE ON GUARDIANSHIP OF MINORS (*continued*)

SEC. 13. *Service of final and executory judgment or order.*- The final and executory judgment or order shall be served upon the Local Civil Registrar of the municipality or city where the minor resides, and the Register of Deeds of the place where his property or part thereof is situated shall annotate the same in the corresponding title, and report to the court his compliance within fifteen (15) days from receipt of the order.

SEC. 14. *Bond of guardian; amount; conditions.*- Before he enters upon the execution of his trust, or letters of guardianship issue, an appointed guardian may be required to post a bond in such sum as the court shall determine and conditioned as follows:

- (a) To make and return to the court, within three (3) months after the issuance of his letters of guardianship, a true and complete inventory of all the property, real and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person in his behalf;
- (b) To faithfully execute the duties of his trust, to manage and dispose of the property according to this Rule for the best interests of the ward, and to provide for his proper care, custody and education;
- (c) To render a true and just account of all the property of the ward in his hands, and of all proceeds or interest derived therefrom, and of the management and disposition of the same, at the time designated by this Rule and such other times as the court directs; and at the expiration of his trust, to settle his accounts with the court and deliver and pay over all the property, effects, and monies remaining in his hands, or due from him on such settlement, to the person lawfully entitled thereto; and
- (d) To perform all orders of the court and such other duties as may be required by law.

SEC. 15. *Where to file the bond; action thereon.*- The bond posted by a guardian shall be filed in the Family Court and, in case of breach of any of its conditions, the guardian may be prosecuted in the same proceeding for the benefit of the ward or of any other person legally interested in the property.

Whenever necessary, the court may require the guardian to post a new bond and may discharge from further liability the sureties on the old bond after due notice to interested persons, if no injury may result therefrom to those interested in the property.

SEC. 16. *Bond of parents as guardians of property of minor.*- If the market value of the property or the annual income of the child exceeds P50,000.00, the parent concerned shall furnish a bond in such amount as the court may determine, but in no case less than ten *per centum* of the value of such property or annual income, to guarantee the performance of the obligations prescribed for general guardians.

A verified petition for approval of the bond shall be filed in the Family Court of the place where the child resides or, if the child resides in a foreign country, in the Family Court of the place where the property or any part thereof is situated.

The petition shall be docketed as a summary special proceeding in which all incidents and issues regarding the performance of the obligations of a general guardian shall be heard and resolved.

SEC. 17. *General duties of guardian.* - A guardian shall have the care and custody of the person of his ward and the management of his property, or only the management of his property. The guardian of the property of a non-resident minor shall have the management of all his property within the Philippines.

A guardian shall perform the following duties:

- (a) To pay the just debts of the ward out of the personal property and the income of the real property of the ward, if the same is sufficient; otherwise, out of the real property of the ward upon obtaining an order for its sale or encumbrance;

RULE ON GUARDIANSHIP OF MINORS (*continued*)

- (b) To settle all accounts of his ward, and demand, sue for, receive all debts due him, or may, with the approval of the court, compound for the same and give discharges to the debtor on receiving a fair and just dividend of the property and effects; and to appear for and represent the ward in all actions and special proceedings, unless another person is appointed for that purpose;
- (c) To manage the property of the ward frugally and without waste, and apply the income and profits thereon, insofar as may be necessary, to the comfortable and suitable maintenance of the ward; and if such income and profits be insufficient for that purpose, to sell or encumber the real or personal property, upon being authorized by the court to do so;
- (d) To consent to a partition of real or personal property owned by the ward jointly or in common with others upon authority granted by the court after hearing, notice to relatives of the ward, and a careful investigation as to the necessity and propriety of the proposed action;
- (e) To submit to the court a verified inventory of the property of his ward within three (30) months after his appointment, and annually thereafter, the rendition of which may be required upon the application of an interested person;
- (f) To report to the court any property of the ward not included in the inventory which is discovered, or succeeded to, or acquired by the ward within three (3) months after such discovery, succession, or acquisition; and
- (g) To render to the court, for its approval, an accounting of the property one year from his appointment, and every year thereafter, or as often as may be required.

SEC. 18. *Power and duty of the court.*- The court may:

- (a) Request the assistance of one or more commissioners in the appraisal of the property of the ward reported in the initial and subsequent inventories;

- (b) Authorize reimbursement to the guardian, other than a parent, of reasonable expenses incurred in the execution of his trust, and allow payment of compensation for his services as the court may deem just, not exceeding ten *per centum* of the net income of the ward, if any; otherwise, in such amount the court determines to be a reasonable compensation for his services; and
- (c) Upon complaint of the guardian or ward, or of any person having actual or prospective interest in the property of the ward, require any person suspected of having embezzled, concealed, or disposed of any money, goods or interest, or a written instrument belonging to the ward or his property to appear for examination concerning any thereof and issue such orders as would secure the property against such embezzlement, concealment or conveyance.

SEC. 19. *Petition to sell or encumber property.*- When the income of a property under guardianship is insufficient to maintain and educate the ward, or when it is for his benefit that his personal or real property or any part thereof be sold, mortgaged or otherwise encumbered, and the proceeds invested in safe and productive security, or in the improvement or security of other real property, the guardian may file a verified petition setting forth such facts, and praying that an order issue authorizing the sale or encumbrance of the property.

SEC. 20. *Order to show cause.*- If the sale or encumbrance is necessary or would be beneficial to the ward, the court shall order his next of kin and all persons interested in the property to appear at a reasonable time and place therein specified and show cause why the petition should not be granted.

SEC. 21. *Hearing on return of order; costs.*- At the time and place designated in the order to show cause, the court shall hear the allegations and evidence of the petitioner and next of kin, and other persons interested, together with their witnesses, and grant or deny the petition as the best interests of the ward may require.

RULE ON GUARDIANSHIP OF MINORS (continued)

SEC. 22. *Contents of order for sale or encumbrance and its duration; bond.* - If, after full examination, it is necessary, or would be beneficial to the ward, to sell or encumber the property, or some portion of it, the court shall order such sale or encumbrance the proceeds of which shall be expended for the maintenance or the education of the ward, or invested as the circumstances may require. The order shall specify the grounds for the sale or encumbrance and may direct that the property ordered sold be disposed of at public sale, subject to such conditions as to the time and manner of payment, and security where a part of the payment is deferred. The original bond of the guardian shall stand as security for the proper appropriation of the proceeds, require an additional bond as a condition, for the sale or encumbrance. The authority to sell or encumber shall not extend beyond one (1) year, unless renewed by the court.

SEC. 23. *Court may order investment of proceeds and direct management of property.* - The court may authorize and require the guardian to invest the proceeds of sales or encumbrances, and any other money of his ward in his hands, in real or personal property, for the best interests of the ward, and may make such other orders for the management, investment, and disposition of the property and effects, as circumstances may warrant.

SEC. 24. *Grounds for removal or resignation of guardian.* - When a guardian becomes insane or otherwise incapable of discharging his trust or is found thereafter to be unsuitable, or has wasted or mismanaged the property of the ward, or has failed to render an account or make a return for thirty (30) days after it is due, the court may, upon reasonable notice to the guardian, remove him as such and require him to surrender the property of the ward to the person found to be lawfully entitled thereto.

The court may allow the guardian to resign for justifiable causes.

Upon the removal or resignation of the guardian, the court shall appoint a new one.

No motion for removal or resignation shall be granted unless the guardian has submitted the proper accounting of the property of the ward and the court has approved the same.

SEC. 25. *Ground for termination of guardianship.* - The court *motu proprio* or upon verified motion of any person allowed to file a petition for guardianship may terminate the guardianship on the ground that the ward has come of age or has died. The guardian shall notify the court of such fact within ten (10) days of its occurrence.

SEC. 26. *Service of final and executory judgment or order.* - The final and executory judgment or order shall be served upon the Local Civil Registrar of the municipality or city where the minor resides and the Register of Deeds of the province or city where his property or any part thereof is situated. Both the Local Civil Registrar and the Register of Deeds shall enter the final and executory judgment or order in the appropriate books in their offices.

SEC. 27. *Effect of the Rule.* - This Rule amends Rules 92 to 97 inclusive of the Rules of Court on guardianship of minors. Guardianship of incompetents who are not minors shall continue to be under the jurisdiction of the regular courts and governed by the Rules of Court.

SEC. 28. *Effectivity.* - This Rule shall take effect on May 1, 2003, following its publication in a newspaper of general circulation not later than April 15, 2003.

RESOLUTION of the COURT EN BANC dated 17 June 2003 on A.M. No. 03-03-03 SC

"A.M. No. 03-03-03-SC Re: Proposal to Consolidate Intellectual Property Courts with Commercial Courts.- The Court Resolved to (a) NOTE the memorandum, dated 22 April 2003 of Court Administrator Presbitero J. Velasco, Jr., in compliance with the resolution dated 05 March 2003, stating that the OCA finds no cogent reason to deviate from the proposal to consolidate Intellectual Property Courts with Commercial Courts (SEC Courts), as contained in Recommendation No. C-20 of the Consultants Group, Judicial Reforms Office, PHILJA, and recommends its approval and upon recommendation of the Office of the Court Administrator, (b) APPROVE the draft resolution of the Consultants Group, Judicial Reforms Office and PHILJA thereon, and (c) ADOPT the same as its own to read as follows:

RESOLUTION dated 17 June 2003 (continued)

RESOLUTION

WHEREAS, to implement the provisions of Sec. 5.2 of Republic Act No. 8799 (The Securities Regulation Code), and in the interest of a speedy and efficient administration of justice, the Supreme Court *en banc*, in the (a) Resolutions dated 21 November 2000 (Annex 1), 4 July 2001 (Annex 1-a), 12 November 2002 (Annex 1-b), and 9 July 2002 (Annex 1-c), all issued in A.M. No. 00-11-03-SC; (b) Resolution dated 27 August 2001 in A.M. No. 01-5-298-RTC (Annex 2); and (c) Resolution dated 8 July 2002 in A.M. No. 01-12-656-RTC (Annex 3), resolved to designate certain branches of the Regional Trial Courts to try and decide cases formerly cognizable by the Securities and Exchange Commission;

WHEREAS, pursuant to the same Resolutions, sixty-five (65) Regional Trial Courts, distributed in all regions (NCJR and Regions I-XII), were designated as SEC courts ("SEC Courts"), which courts have presently a total of 812 pending SEC cases (see Annex 6, Table);

WHEREAS, in A.O. No. 113-95, dated 2 October 1995, as amended by A.O. No. 104-96, dated 21 October 1996, the Regional Trial Courts in the National Capital Region and Regions 3, 4, 6, 7, 9, 10 and 11, with twenty-seven (27) judges, were especially designated to try and decide cases for violations of Intellectual Property Rights (Annex 4), and to ensure the speedy disposition of cases involving violations of intellectual property rights under the Intellectual Property Code (Rep. Act No. 8293), the Supreme Court *en banc*, in A.M. No. 02-1-11-SC, dated February 19, 2002, designated the Regional Trial Courts in Regions 1, 2, 5, 8 and 12, with a total of seven (7) judges, and Branch 24 of the Regional Trial Court of Manila with one (1) judge, as Special Intellectual Property Courts ("Special IP Courts") (Annex 5);

WHEREAS, pursuant to A.M. No. 02-1-11-SC and A.O. No. 113-95, these Special IP Courts have a total caseload of 503 cases. Of this number, 434 IP cases are pending in the NCJR (Annex 6, Table);

WHEREAS, since the establishment of Special IP Courts (except for the Special IP Court in Manila), 15 designated courts, in Regions

1, 2, 3, 4, 5, 6, 7, 8, 9 and 12 have zero (0) IP cases, and do not warrant their continued designations as Intellectual Property Courts (Annex 7, Table);

WHEREAS, intellectual property cases are commercial in nature;

WHEREAS, to streamline the court structure and to promote expediency and efficiency in handling such special cases, the jurisdiction to hear and decide IPC and SEC cases are best consolidated in one court;

NOW, THEREFORE, the Court Resolves:

1. The Regional Trial Courts previously designated as SEC Courts through the: (a) Resolutions of this Court dated 21 November 2000, 4 July 2001, 12 November 2002, and 9 July 2002, all issued in A.M. No. 00-11-03-SC, (b) Resolution dated 27 August 2001 in A.M. No. 01-5-298-RTC; and (c) Resolution dated 8 July 2002 in A.M. No. 01-12-656-RTC are hereby DESIGNATED and shall be CALLED as Special Commercial Courts to try and decide cases involving violations of Intellectual Property Rights which fall within their jurisdiction and those cases formerly cognizable by the Securities and Exchange Commission;
2. The designation of Intellectual Property Courts under Administrative Order No. 113-95, dated 2 October 1995, as amended by Administrative Order No. 104-96 dated 21 October 1996, and Resolution dated 19 February 2002 in A.M. No. 02-1-11-SC, is hereby revoked. However, the Regional Trial Court, Branch 24, Manila is hereby designated as an additional Special Commercial Court in the City of Manila;
3. Upon the effectivity of this Resolution, all IP cases shall be transferred to the designated Special Commercial Courts except those which have undergone the pre-trial stage in civil cases or those where any of the accused has been arraigned in criminal cases which shall be retained by the court previously assigned to try them;

(Continued on page 5)

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

PRESIDING JUDGE

RESEARCH AND LINKAGES OFFICE
PHILIPPINE JUDICIAL ACADEMY
SUPREME COURT

2003 Upcoming PHILJA Events

<i>Date</i>	<i>Seminars / Activities</i>	<i>Venue</i>
July 29 - August 1	Regional Judicial Career Enhancement Program (Level 2)- Third Batch	Manila Pavilion U.N. Avenue, Manila
August 4-5	TNA Seminar Workshop- First Batch	Manila Pavilion U.N. Avenue, Manila
August 11-12	TNA Seminar- Workshop- Second Batch	Marriott Hotel, Cebu City
August 13-15	Judges Forum on Environmental Protection	PHILJA Development Center, Tagaytay City
August 18-21	Regional Judicial Career Enhancement Program (Level 2)- Fourth Batch	Manila Pavilion, U.N. Avenue, Manila
August 26-29	Conference-Workshop on Bioscience and Biotechnology: <i>Science and the Law</i>	PHILJA Development Center, Tagaytay City

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