

### Title:

\*\*Department of Foreign Affairs vs. BCA International Corporation: A Case on Arbitration Assistance and Deliberative Process Privilege\*\*

### Facts:

The case originated from a Build-Operate-Transfer Agreement dated 5 April 2002, where the Department of Foreign Affairs (DFA) granted a Machine Readable Passport and Visa Project (MRP/V Project) to BCA International Corporation (BCA), which faced termination attempts by the DFA leading to arbitration as per the agreement. BCA requested the Regional Trial Court (RTC) of Makati City for subpoenas within the arbitration under the Alternative Dispute Resolution Act of 2004 (RA 9285) framework. DFA objected, citing legal limitations and the deliberative process privilege. The RTC ruled in favor of BCA, prompting DFA's appeal to the Supreme Court.

### Procedural Posture:

BCA's request for arbitration led to integrating court assistance for evidence gathering. DFA's challenge to this integration and the subsequent issuance of subpoenas by the RTC was grounded on the privileged nature of the requested information. The dispute's escalation to the Supreme Court was predicated on interpretations of RA 9285's applicability and the deliberative process privilege.

### Issues:

1. Whether RA 9285 and the Special ADR Rules apply to the arbitration proceedings.
2. If the information sought through subpoenas is protected by the deliberative process privilege.

### Court's Decision:

The Supreme Court partially granted DFA's petition. It affirmed RA 9285's applicability to the case as procedural law relevant to ongoing arbitration, thus allowing court assistance in subpoena issuance. However, it corrected the RTC's misapplication of the deliberative process privilege and remanded the case for a determination of whether the specific documents sought were protected under this privilege.

### Doctrine:

This case reinforced RA 9285 and Special ADR Rules' applicability to pending arbitration processes and clarified the deliberative process privilege's scope. It also distinguished between procedural applicability and the rights to protected communication in government

decision-making.

### Class Notes:

- **RA 9285 and Special ADR Rules**: Emphasize their procedural nature and retroactive application in arbitration cases.
- **Deliberative Process Privilege**: Understand its purpose to encourage frank discussion within agencies, its applicability even after decisions are made, and its extent—to protect information that precedes a definite government proposition or policy decision, with certain exceptions.
- **Issuance of Subpoenas in Arbitration**: The legal framework supporting such measures (RA 9285, RA 876) and the courts' role in providing evidentiary support.
- **Hierarchy of Courts and Procedural Adherence**: Highlight the importance of observing the proper procedural channels and the hierarchy of appeals in pursuing legal remedies.

### Historical Background:

This case arose against a backdrop of evolving arbitration laws in the Philippines, specifically the integration of RA 9285 designed to harmonize domestic arbitration processes with international standards. It underscores the judiciary's responsive adaptations to global arbitration frameworks (UNCITRAL Rules) while navigating domestically rooted legal provisions such as RA 876 (The Arbitration Law) and constitutional privileges.