

FUNDAMENTALS OF DECISION WRITING FOR JUDGES

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CHAPTER ONE

INTRODUCTION

A recent poll conducted by the Philippine Judicial Academy (PHILJA) among judges throughout the country has confirmed the general impression that they regard writing decisions as a major challenge to their learning and competence. While that finding does not appear earth-shaking, it has serious implications for the administration of justice in the country. With a backlog of more than 800,000 cases clogging the dockets of the more than 2,000 first- and second-level courts in the thirteen judicial regions, it is reasonably safe to conclude that a contributory cause for the delay in the resolution of cases is the inability of many of our judges to draft and promulgate their decisions fast enough in consonance with the Rules and statutory requirements. Clearly, there is an urgent need to improve the proficiency of our judges in judicial writing. We are comforted, however, by the realization that this will be an enjoyable chore since our judges are men and women of high intellectual achievement with considerable experience in the law who are committed to the ends of justice.

It is the purpose of this instructional handbook to introduce the nation's magistrates, especially the newly appointed judges, to the "fundamentals" of writing their decisions and orders as accurately, briefly, and clearly – the ABCs of good judicial writing – as humanly possible given the constraints of time, facilities, and resources.

While our judges are generally on their own in matters of style, form, and substance, it is in the exposition of the established facts and applicable law that normally presents some difficulty in organizing the so-called "architecture" of arguments and counter-arguments where a welter of procedural and evidentiary problems may come to the fore in determining the length of a decision. Longer is not necessarily better. It is interesting to note that the very first decision of our Supreme Court – *In re Aguas* (1 Phil . 1) – is all of one page!

The guidelines and suggested techniques that follow have all been sourced from published and unpublished materials prepared by well-known authorities on decision writing, most of whom are justices and judges themselves. We hereby duly acknowledge and express our appreciation for their contributions in the development and production of this instructional handbook, *Fundamentals of Decision Writing for Judges*. We are hopeful that it will serve them well and, by extension, the preservation of law and order in our land through well-thought out and equally well-written decisions.

CHAPTER TWO

CONSTITUTIONAL STANDARDS AND THE RULES OF COURT

It goes without saying that every decision, order, or opinion of the Court should be, at the very least, in conformity with what the Constitution and the Rules of Court require as minimum standards for the parties and litigants to recognize as valid and binding in the adjudication of their rights and obligations.

A. Elements of the Standards

1. Theory/Definition of Facts

A decision must state the essential ultimate facts upon which the court's conclusion is drawn. A court of justice is not hidebound to write in its decision every bit and piece of evidence presented by one party and the other upon the issues raised. Neither is it to be burdened with the obligation to specify in the verdict or sentence the facts which a party considered as proved. This is but a part of the mental process from which the court draws essential facts.

a. Finding of Fact

Finding of fact is the written statement of the ultimate facts as found by the court and essential to support the decision and judgment rendered thereon.

- A decision falls short of the constitutional standard when it tends to generalize and to form conclusions without detailing the facts from which such conclusions are deduced or derived.
- Selective finding of fact is allowed because it is for the judge to determine from the narration of facts, relevant or irrelevant, and the assertions by the parties, truthful or not, what actually happened in the case before him.
- There is no proscription against the court's adoption of the narration of facts made in the briefs or memoranda of the parties, instead of rewriting the same in its own words, for as long as it makes an assessment of the evidence presented before it.
- The fact that the case law supporting it is not cited does not make the decision any less valid since it is implicit in the appreciation of the evidence that discussion is made in the context of the law.

B. The Law

1. Constitutional Framework[1]

The form and content of a Decision is provided for in the Constitution, Article 8, Section 14, to wit:

SEC. 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

As explained by Justice Isagani A. Cruz:

Except for the second paragraph, which was introduced only in the present charter, Section 14 has been in force since the Constitution of 1935. The provision was recast in affirmative terms in the 1973 Constitution, but has been virtually restored to the original form in the Constitution of 1987, to apply to all courts, including the municipal courts. The purpose has always been the same, viz., to inform the person reading the decision, and especially the parties, of how it was reached by the court after consideration of the pertinent facts and examination of the applicable laws.[2]

2. Legal Requirements under the Rules of Court

Rule 36, Section 1 of the 1997 Rules on Civil Procedure provides:

SEC. 1. Rendition of Judgments. – A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court.

Rule 120, Sections 1-3 of the 2000 Revised Rules of Criminal Procedure states:

SEC. 1. Judgment; definition and form. – Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him, and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

SEC. 2. Contents of the judgment. – If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.

SEC. 3. Judgment for two or more offenses. – When two or more offenses are charged in a single complaint or information, but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense, setting out separately the findings of fact and law in each offense.

It is to be emphasized that the requirement of a clear statement of fact and law has reference to a decision rendered after previous presentation of proof in an ordinary civil or criminal case. It does not apply to orders resolving incidental matters.[3]

CHAPTER THREE

DEFINITION OF TERMS

In dealing with the basic concepts of the law so that their application to specific factual situations is appreciated in its appropriate context, it is helpful to enumerate early on a number of legal terms which figure prominently in judicial writing. A common understanding of such terms is essential to communicating their significance in disposing of cases and controversies which are brought before the courts.

A Quo

A reference to the previous court from where a case or matter originated. Thus, the term “court a quo” in appealed cases refers to a lower court whose decision is under review.

Acquittal

A judgment by a court that the accused is found not guilty of the crime imputed to him and is, therefore, absolved from prosecution for that crime.

Act of State

A sovereign act of government which cannot be the subject of a suit or be actionable in law.

Action in Personam

A suit directed against specific persons and which seeks personal judgments.

Action in Rem

A suit directed against the thing or property or status of a person and which seeks a judgment with respect thereto

as against the whole world.

Actionable

A matter or action that creates a ground for a “cause of action” or a suit at law.

Actual Case or Controversy

A conflict involving opposite legal claims susceptible of judicial resolution, one that is “definite and concrete, touching the legal relations of parties having diverse legal interests,” constituting a real and substantial controversy admitting of specific relief.

Ad Litem

A Latin term which means “just for a particular action.” Thus, a guardian ad litem is a guardian appointed to represent a minor or incompetent just for that specified proceeding.

Adjudicate

The act of a judge in rendering judgment, or making a decision between two opposed or competing claims, or upholding or denying a cause of action.

Admission

In the law of evidence, it refers to a statement, oral or written, made by a party about the existence of a relevant fact which can be taken against him that is material in a court proceeding.

Adverse Party

It usually refers to a party litigant in a case who would be adversely affected by the court’s decision.

Affidavit

An ex parte statement in writing made under oath before a notary public or other officer authorized to administer oaths, about facts which the affiant either knows of his own personal knowledge or is aware of to the best of his knowledge.

Affidavit of Desistance

A sworn statement, executed by the complainant in a criminal or administrative case, that he or she is discontinuing or disavowing his complaint for whatever reason he or she may cite.

Affirmative Defense

An allegation of new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him.

Alias Writ

A writ issued by a court to replace one that was previously issued or failed to be enforced.

Allegata et Probata

The Latin expression of a doctrine in criminal law which states that what is alleged in the information or complaint must be proven during trial; otherwise, the allegation cannot be used against the accused.

Alternative Dispute Resolution

ADR for short, it refers to the procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency in which a neutral third party participates to assist in the resolution of issues. The term includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.

Amicus Curiae

A “friend of the court” whose legal learning or expertise is judicially sought to advise on matters of which a judge may be doubtful or in need of special assistance.

Answer

The pleading in which a defendant sets forth his defenses against the complaint which must be filed within 15 days after service of summons.

Appeal

The remedial procedure by which an aggrieved party elevates the decision of a lower court to a higher court for review and reconsideration with a view to having it reversed or modified.

Appeal by Certiorari

An appeal to the Supreme Court where, generally, only questions of law are raised or involved. Note that the review by the Supreme Court is not a matter of right but of sound judicial discretion.

Appearance

A judicial term to denote a party’s or a counsel’s voluntary submission to a court’s jurisdiction.

Appellant

The party in a case who appeals a lower court’s decision to a higher court.

Appellee

The prevailing party in a case against whom a decision is appealed to a higher court.

Arraignment

A formal procedure in criminal prosecution “to afford an accused due process” by means of informing him of the nature and cause of the accusation against him before he is required to enter his plea of guilty or not guilty.

Assignment of Errors

A recitation of specific errors claimed to have been committed by the lower court to enable the appellate court and the opposing party to determine as to what points the appellant intends to ask for a reversal of judgment.

Attachment

A provisional remedy by which the property of an adverse party is taken into legal custody, either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any judgment that may be recovered by the plaintiff.

Best Evidence Rule

The rule that the original document itself is the best evidence of what it contains. It is only when the original document cannot be produced that a secondary or other evidence of its contents may be adduced.

Burden of Evidence

The onus that a party must carry to overcome the weight of the evidence which has tilted against him. Thus, it may shift back and forth during the course of the trial depending on who is better able to sustain a prima facie case in his favor.

Burden of Proof

The duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

Capacity to Act

The power to do acts with legal effect, such as entering into contracts or suing in court, usually associated with a person who is at least 18 years old.

Case at Bar

The case that is currently the subject of a particular trial or judicial proceeding.

Case at Bench

The case being heard before an appellate court.

Chose in Action

The instrument evidencing the right to sue for money or property, such as a promissory note. A legal claim or cause of action that can translate into a lawsuit.

Circumstantial Evidence

Evidence which indirectly proves a fact in issue through an inference which the fact-finder draws from the evidence established. It constitutes the combination of circumstances that is sufficient to overcome the presumption of innocence in criminal cases that can lead to conviction beyond reasonable doubt.

Civil Action

A suit filed by one party against another for the enforcement or protection of a right, or the prevention or redress of a wrong.

Civil Contempt

Contempt of court that is committed by a party who fails or neglects to do something ordered by the court or a judge for the benefit of the opposing party.

Civil Liability

This term generally refers to the satisfaction of the claims arising out of a criminal act which consists of restitution, reparation, and indemnification for consequential damages.

Civil Obligation

An obligation that gives a right of action to compel performance, as opposed to a natural obligation.

Class Suit

An action filed on behalf of many persons so numerous that it is impracticable to join them all as parties, brought

by a representative number of them who sue for the benefit of all concerning a controversy that is one of common or general interest to them all. It is also called a “representative suit.”

Clean Hands Doctrine

A legal principle grounded on equity which states that a complainant or plaintiff seeking relief in the courts must not himself be guilty in the matter subject of his claim.

Complaint

Generally, it is the pleading which alleges the plaintiff’s cause of action. In criminal law, it refers to the sworn written statement charging a person with an offense.

Conclusive Presumption

An assertion of a fact that is deemed to be true without the need of further proof.

Confession and Avoidance

An answer or a pleading filed by a party who, while admitting the allegations against him, either expressly or by implication, asserts matters or facts which render the “confession” ineffective, excusable, inadmissible, or void.

Consent Judgment

A compromise agreement between the parties to end further litigation by having a court of competent jurisdiction approve the compromise as having the same force and effect as a judgment by the court. Thus, once approved, it has the force of res judicata with respect to the contentious issues in the case.

Contempt of Court

It is a defiance of the authority, justice or dignity of the court – such conduct as tends to bring the authority and administration of the law into disrespect or to interfere with, or prejudice parties-litigants or their witnesses during litigation. It signifies not only a willful disregard or disobedience to the court’s order but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the administration of justice.

Costs of Suit

In law, they comprise the fees and indemnities in the course of judicial proceedings, whether fixed or unalterable amounts previously determined by law or regulations in force, including those amounts which are not subject to schedule.

Court-Annexed Mediation

Any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute.

Court-referred Mediation

A process where the parties to a pending case are directed by the court to submit their dispute to a neutral third party, called the mediator, who works with them to reach a settlement of their controversy resulting in a compromise agreement on the basis of which the court will render judgment.

Criminal Action

A proceeding in court by which the State prosecutes a person for an act or omission punishable by law.

Criminal Contempt

Contempt of court that consists of conduct directed against the authority and dignity of a court or a judge, as in unlawfully assailing or discrediting the authority and dignity of a court or a judge or in doing a forbidden act.

Criminal Liability

The liability incurred by a person who commits a felony even if the wrongful act done is different from what is intended; or when he performs an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

Culpa Aquiliana

Civil liability arising from fault or negligence which usually results from the commission of a tortious act or quasi-delict.

Culpa Contractual

Civil liability resulting from fault or negligence in the performance of a contractual obligation.

Custodia Legis

A Latin phrase which means “in the custody of the law,” that is, in the lawful and physical possession of a court or public officer in obedience to a judicial or administrative order.

Decision

The adjudication or settlement of a controversy by a court of law. It goes into the roots of the controversy, makes a searching examination of the facts and issues of the case, applies the law and considers the evidence presented, and finally determines the rights of the parties.

Declaratory Relief

A special civil action brought by a person interested under a deed, will, contract, or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation for the purpose of determining any question of construction or validity arising, and for a declaration of his rights and duties thereunder, before any breach or violation thereof occurs.

Default

The failure of a defending party to file his answer within the time allowed under the Rules of Court. Such failure will make him lose his standing in court, that is, he cannot appear therein, adduce evidence and be heard, nor take part in the trial or hearing of the case.

Dispositive Portion

That part of a court decision which contains the judgment or resolution of the issues subject of the complaint or petition. It usually appears as the very last paragraph in a decision as in “Petition is hereby dismissed for lack of merit.”

Disputable Presumption

An assertion of a fact which, unless contradicted and overcome by other evidence, is deemed to be true. That a person is “innocent unless proven guilty” is an example of a disputable presumption.

Dissenting Opinion

A separate opinion written by an appellate justice who differs from the opinion of the majority in deciding a case.

Early Neutral Evaluation

An ADR process wherein the parties and their lawyers are brought together early in a pre-trial phase to present summaries of their cases and receive a non-binding assessment by an experienced, neutral person, with expertise in the subject or substance of the dispute.

Entry of Judgment

An entry or notation in the judgment book kept by a clerk of court which indicates that the decision in the case to which it refers has become final and executory.

Ex Parte

Without notice to the other party. A Latin term which means “from one side only,” referring to the exclusion of one side in the presentation of testimony or evidence in a given case or proceeding.

Excess of Jurisdiction

A term which signifies that while the court, board, or officer may have jurisdiction over a case, the bounds for its lawful exercise have been transcended. It thereby becomes a fit subject for a court injunction. A ground for a special civil action where the respondent, being clothed with the power to determine the matter, oversteps his authority as determined by law.

Execution

In judicial parlance, execution is the legal act which corresponds to the enforcement of a judgment by the court.

Exhaustion of Administrative Remedies

A legal doctrine which requires that the procedural or remedial steps in resolving claims in the forum having original jurisdiction must first be exhausted before they are elevated or brought before another forum.

Fallo

A Spanish term which refers to the final judgment of the court as expressed in the dispositive portion of its order or decision.

Final Judgment

A decision of the court that may no longer be appealed or elevated to a higher court having become final and executory.

Final Order

A court order which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court, as opposed to an interlocutory order which does not dispose of a case completely but leaves something more to be decided upon.

Forum Shopping

An improper act of a party against whom an adverse judgment has been rendered in one forum, of seeking another opinion in another forum other than by appeal or the special civil action of certiorari, or the institution of two or more actual actions or proceedings grounded on the same cause on the supposition the one or the other court would make a favorable disposition.

Hearsay Rule

Only that testimony regarding facts which a witness knows of his own personal knowledge, or that is derived from his own perception, may be admitted in evidence. Note that this general rule admits of certain exceptions, such as dying declaration, declaration against interest, and part of the res gestae.

Hierarchy of Courts

A rule of procedure which states that between two courts of concurrent original jurisdiction, it is the lower court that should initially pass upon the issues of a case.

Implead

To bring in a third party in a lawsuit, at the instance of either the plaintiff or the defendant, for the determination of his liability to either the plaintiff or the defendant as the case may be. The pleading for this purpose is called “impleader.”

In Pari Materia

A Latin term which means “on the same topic.”

In Re

Latin for “in the matter of.” It usually precedes the title of a case which is in rem or quasi in rem, e.g., probate of a will, application for a writ of habeas corpus, a petition for guardianship.

Indirect Contempt

Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice not otherwise punishable by direct contempt. Note that it includes disobedience of or resistance to a lawful writ, process, order, or judgment of a court, or failure to obey a subpoena duly served.

Interpleader

A special civil action to determine who among the conflicting claimants to the same subject matter is legally entitled thereto, brought by a person who claims no interest therein or whose interest is not disputed by the claimants, in whole or in part. It is an action to compel them to interplead and litigate their several claims among themselves.

Intervenor

A person who has a legal interest in the matter under litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof who may, with leave of court, be allowed to intervene in the action.

Ipsa Facto

A Latin term which means “by that very fact.”

Ipsa Jure

A Latin term which means “by the law itself.”

Joinder of Actions

More properly, joinder of causes of action, it is the uniting of two or more demands or rights of action in one action, the statement of more than one cause of action in a declaration, or the union of two or more civil causes of action, each of which can be made the basis of a separate suit, in the same complaint, declaration or petition.

Judgment

An adjudication by the court that the accused is guilty or is not guilty of the offense charged, and the imposition of the proper penalty and civil liability provided for by law on the accused. It is usually the dispositive portion of a decision, but may be used interchangeably with the term decision itself.

Judgment on the Merits

A decision of the court which amounts to a legal declaration of the respective rights and duties of the parties, based upon the disclosed facts.

Judgment on the Pleadings

Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of the party, direct judgment on such pleading.

Judicial Admission

A written or verbal admission made by a party in the course of the proceedings in the same case and thereby conclusive on him and his successors in interest. The admission does not require proof and may be contradicted or repudiated only by showing that it was made through palpable mistake or that no such admission was made.

Judicial Notice

Issues of fact which do not require proof in a judicial proceeding because they are of public knowledge, capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

Judicial Review

The underlying power of the courts to scrutinize the acts of the Executive and Legislative branches of government, as well as administrative agencies exercising quasi-judicial authority on questions of law and jurisdiction, as well as their exercise of discretion.

Juridical Capacity

The fitness to be the subject of legal relations. It is inherent in every natural person and is lost only through death. It is to be distinguished from "capacity to act," which is the power to do acts with legal effect.

Jurisdiction

The power or authority of a court to hear and decide a given case.

Justiciable Controversy

A definite and concrete dispute touching on the legal relations of parties having adverse legal interests which may be resolved by a court through the application of a law.

Justiciable Issue

A matter that falls within the jurisdiction of the courts over which they can exercise judicial power to the exclusion of either the Executive or Legislative branch of government.

Law of the Case Doctrine

A term applied to an established rule that when an appellate court decides a question and remands the case to the lower court for further proceedings, the question there as settled becomes the law of the case upon subsequent appeal.

Lex Loci

A Latin term which means “the law of the place,” usually referring to the place where the court sits.

Lis Mota

The legal point or issue involved in a dispute that a court is called upon to resolve, the matter having been commenced and brought before it.

Majority Decision

A decision arrived at by a majority of the members of an appellate court, or any of its divisions, that is considered as a decision of the whole court. It is, thus, the controlling opinion of the entire court.

Mandamus

A special civil action brought by an aggrieved party against a tribunal, corporation, board, officer or person unlawfully neglecting the performance of an act which the law specifically requires as a duty to be performed resulting from an office, trust, or station. It also covers situations of unlawfully excluding another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law for the purpose of commanding the respondent to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful act of the respondent.

Mittimus

The final process for carrying into effect the decision of an appellate court, and the transmittal thereof to the court of origin that is predicated upon the finality of the judgment.

Motion

An application for relief other than by a pleading. It must be in writing except those made in open court or in the course of a hearing or trial. It shall state the relief sought to be obtained and the grounds upon which it is based.

Motion for Reconsideration

Referred to as MR for short, it is a pleading whereby the movant asks the court to revisit its decision which, in his view, is not supported by the facts, the law, or the evidence with a view to having it modified or reversed.

Motu Proprio

A Latin term which means taking action or using one’s initiative without prodding from anyone. Note the spelling of proprio – it is not “propio.”

Mutatis Mutandis

A Latin term which means “essentially the same except for minor details.”

Necessary Party

One who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those who are already parties to the case, or for a complete determination or settlement of the claim that is subject of the action.

Negative Defense

A specific denial by the defendant of the material fact or facts alleged in the pleading of the claimant essential to his cause or causes of action.

Negative Pregnant

A denial in a pleading which, in fact, can be interpreted as an affirmation or admission of a substantial fact that is at the heart of the issue involved.

Notatu Dignum

A Latin term which refers to the presumption of regularity in the performance of a judge's functions, hence, bias, prejudice, and even undue interest cannot be presumed, especially when weighed against a judge's sacred obligation under his oath of office to administer justice without respect to any person and do equal right to the poor and the rich.

Nunc Pro Tunc

A Latin term for "now for then," thus a judgment or order nunc pro tunc means that it is to be given retroactive effect.

Obiter Dictum

A Latin term which refers to an averment, assertion, or observation stated as an aside or a "by the way," or said in passing by a court that is not necessary in deciding the issues before the court.

Pendente Lite

A Latin term which translates into "while litigation is pending."

Per Curiam

A decision of a collegiate court acting unanimously and anonymously, usually with no dissent. The ponente or writer of such decisions is usually not identified.

Plain Meaning Rule

A principle of statutory construction which states that "where the words of a statute are clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation."

Pleadings

The written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment.

Ponente

A Spanish term which refers to the writer of a court's majority decision.

Precedent

In law, a decision of the Supreme Court that will serve as a rule or example to follow for courts to follow in

deciding cases where the facts or circumstances in such cases are similar or identical.

Prejudicial Question

One that arises in a case the resolution of which is a logical antecedent of the issue involved in another case, and the cognizance of which pertains to another tribunal. It generally comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue that must be preemptively resolved before the criminal action may proceed.

Preliminary Attachment

A provisional remedy by virtue of which a plaintiff or other proper party may, at the commencement of the action or at any time thereafter, have the property of the adverse party taken into the custody of the court as security for the satisfaction of any judgment that may be recovered.

Preliminary Injunction

A provisional order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency, or person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

Pre-Trial

The mandatory procedure which comes before the trial or hearing of the case on the merits when the last pleading has been filed. This is for the purpose of expediting the proceedings so that the case may be promptly disposed of. At this stage, the parties will be required to explore the possibility of an amicable settlement or referral to ADR, simplification of the issues, or obtaining stipulations of facts, or the admission of facts or documents to obviate a long and tedious litigation.

Prima Facie

A Latin term signifying “at first view,” referring generally to a situation or condition which – on its face – appears to be factual but may, in fact, not be.

Primary Jurisdiction

A doctrine which refers to cases involving specialized disputes whose resolution should be initially acted on by an administrative or other quasi-judicial agency of special competence to deal with the issue.

Pro Bono

A Latin term which means “for the public good.” It usually refers to a lawyer’s services which are extended for free, usually for a good cause or for an indigent litigant.

Pro Hac Vice

A Latin term which means “for this one time only” in limiting an action or decision to the instant matter only, i.e., not meant to be a precedent or determinative of a future disposition of a similar case or problem.

Pro Se

A Latin term which denotes “on his own behalf.” It is usually used in connection with the representation of one’s self in a court of law without the assistance of an attorney.

Question of Fact

This refers to a disputed legal issue whose truth or falsity is a subject of inquiry. Its resolution depends on the court's evaluation of the available evidence obtaining in a given situation. It revolves around the credibility of witnesses and the existence of relevant factual circumstances which have a bearing on the probability or improbability of the legal issue or situation which is the subject of the controversy.

Question of Law

A contentious legal issue whose resolution hinges on the proper application or interpretation of a constitutional or statutory provision. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted.

Ratio Decidendi

A Latin term which refers to the underlying reason or principle which justifies a court decision. In other words, it is the reasoning why the decision is so.

Ratio Legis

A Latin term which means "the reason of the law," e.g., jaywalking is prohibited to protect pedestrians from traffic accidents, or smoking is banned in enclosed spaces to prevent second-hand lung cancer. In statutory construction, it refers to the "spirit of the law" rather than to its literal interpretation.

Real Party in Interest

The party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

Recusal

A term which refers to the process in which a judge may inhibit or disqualify himself from hearing a case where his objectivity or impartiality may be called into question because of self-interest, bias or prejudice, on the objection of either party or on his own volition. It is also called "recusation."

Rejoinder

The answer of the defendant to the complainant's reply.

Relief from Judgment

It is a legal remedy whereby a party seeks to set aside a judgment rendered against him by a court when he was unjustly deprived of a hearing or was prevented from taking an appeal because of fraud, accident, mistake, or excusable negligence.

Res Gestae

Statements made by a person while a startling occurrence is taking place, or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. So, too, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the res gestae.

Res Ipsa Loquitur

A Latin term which translates into "the thing speaks for itself," that is, requiring no proof or further demonstration of the fact of its occurrence or existence.

Res Judicata

A Latin term which refers to a case or controversy that is already decided with finality and, therefore, deemed conclusive insofar as it applies to the subject matter of the controversy until and unless it is reversed. It is an established judicial doctrine in equity which mandates that the final decision of a court adjudicating the dispute becomes the law between the parties. By extension, Supreme Court decisions on particular issues assume the force of law for any similar controversy.

Rollo

The records of a case filed in a folder for their preservation while in the custody of the clerk of court.

Ruling

A judicial or administrative interpretation or resolution of an issue in a case arising out of a statute, order, regulation, ordinance, or other transaction which is embodied in the dispositive portion of a decision or judgment of the court.

Separate Opinion

Another written opinion by an appellate justice – which is either for or against a court’s majority decision – explaining his own position which may be in concurrence with the results only or in direct opposition to the conclusions reached by the majority. A justice of the Supreme Court, for example, may decide to write a separate opinion if he supports the result only but not the reasoning behind the decision.

Shari’a

Body of ordinances and regulations governing Muslims which are principally found in the Koran and the Hadith.

Sin Perjuicio Judgment

A judgment without a statement of the facts in support of its conclusion to be later supplemented by the final judgment. Its validity is questionable.

Stare Decisis

A Latin expression of a legal principle which says that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Put another way, it means “from settled precedents, there must be no departure.” Consequently, cases already settled are meant to serve as precedents for like cases where the facts and the law involved are similar.

Subjudice

A legal principle expressed in Latin which means that a certain matter is under judicial or court consideration whose result or consequence is still undetermined and, therefore, may not be an appropriate subject to comment on publicly as to its possible outcome. Any such comment may subject the commentator to contempt of court.

Summary Judgment

An adjudication by the court resolving the issues in litigation to protect the complainant from sham defenses intended merely to delay or to defeat recovery, or to shield the defendant from harassment complaints filed merely for their nuisance value. It refers to a judgment which a court may render before trial but after both parties have pleaded and the court finds that there is no genuine issue between them.

Traverse

A form of pleading which amounts to a denial of a factual matter alleged in the opposing party's pleading.

CHAPTER FOUR

APPROACH TO DECISION WRITING

It is the purpose of this chapter to walk you through the generalizations and particulars, as well as the comparisons and contrasts, of meaningful and effective judicial draftmanship. Through actual examples, the judge is carefully guided to construct coherent and persuasive decisions without, it is to be hoped, muddling through unnecessary facts and inapplicable statutory prescriptions and proscriptions.

A. Guide to Effective Communication

"There is no such thing as good writing," Justice Louis Brandeis once said: "There is only good rewriting." [1]

Below are arguably the most practical pointers to effectively guide judges in writing (and rewriting) their decisions.

1. The ABC of Effective Decision Writing

A decision has to be accurate, brief, and clear to be effective. These qualities of effective decision writing – accuracy, brevity, and clarity – are discussed below.

a. Accuracy

The first quality of effective decision writing is accuracy. This quality is primarily concerned with the way you present your statements of fact and lay down the grounds and basis for the ruling or the dispositive portion. [2]

Accuracy requires a judge to set forth the facts and the law with honesty, candor and specificity. [3] Candor and honesty will certainly inspire confidence. For instance, you should see to it that all your assertions of facts must be supported by the record because a diligent litigant's counsel or your superior or a reviewing justice will in time ferret out unsupported material. [4]

Inaccuracy in the statement of fact, whether arising from mistake or from intentional misstatement, inevitably tends to invalidate the conclusions drawn therefrom. Irrespective of ethical considerations which should prevent resort to any such dishonesty, an intentional misstatement or distortion of the facts is almost certain to be discovered and brought to the attention of the court or board you work for, with the natural and just result of creating a suspicion against the offending writer. [5]

A decision is accurate when it conforms to the facts, law, and settled jurisprudence. It must be written in correct English or Filipino. A judge should have mastery of the various branches of law. [6] Remember that your audience is not just the parties or their lawyers, but also the appellate court which may review your decisions and opinions. [7]

A judge cannot have the luxury of being imprecise and must be faithful to the facts all the time. Accuracy should also characterize your statements of the law involved or the relevant jurisprudence. A judge should not use or rely on memory but must go to the Constitution or the law itself for reference. The requirement along this line is to cite the law without misrepresentation as to its applicability or meaning, and to rely on jurisprudence which is appropriate and relevant. [8]

Likewise, a judge must counter-check his citations while writing his decision. If you are relying on citations from a commentator's book, make sure to refer to the primary source especially if you are citing a law or statute.

Remember, it is not enough to master the law. A judge should know where to look for the law. A judge's decision must not misquote a law because that decision may also be reported by the media and may be cited verbatim in appeals.

b. Brevity

Brevity means putting only so much as needed into one's decision writing. The length of a decision depends on the facts and the issues involved. To achieve brevity, a judge should have mastery of the facts and the law, careful planning, condensation, and attention to the essentials.[9]

Judges should not be reportorial. As pointed out in one decision:

Judges are not stenographers transcribing the testimony of the witnesses word for word. Judges must know how to synthesize, summarize, and simplify. Their failure to do so is one of the main reasons for the delay in the administration of justice. It also explains the despair of the public over the foot-dragging of many courts and their inability to get to the point and get there fast.”[10]

Brevity should never be secured at the expense of clarity.[11] A decision made unusually long by a word for word summary of testimonies, without any effort to separate the material from the immaterial, is to be condemned.[12] Legal writing should be taut, clean, and clear, without “an ounce of fat or an excess word.”[13]

Ideally, decision writing is taut. To tighten your style, run your pen through every other word on the page. Strike out every slack syllable. Make every word tell. Rooting out verbiage is not easy; verbosity often results from quick, facile writing.[14]

Brevity is not equated simply to the number of pages in a decision. Thus, brevity should be a flexible standard of conciseness in relation to the complexity of the case. A brief statement of fact, for example, is not necessarily a statement containing a few short paragraphs, for everything germane should be included. Events must be described succinctly and testimony compressed.[15]

But achieving brevity is a difficult, time-consuming task. The judge who writes a decision must first master the facts and law and then summarize them without distorting the true picture. A concise decision is the result of careful planning, condensation, and attention to essentials; such a decision is more effective because it is actually a better decision and it conserves the time and energies of the appellate court.[16]

Carefully take note of the difference in the following illustration.

Faulty:

At about 4:00 o'clock of the same day, September 2, 1970, Cerilo de Leon borrowed from Graciano Badilla the Cony (Exhibit H-2) telling the latter that he had a date. Graciano Badilla gave him the Cony and the accused Cerilo de Leon drove the Cony himself and proceeded along Peñafrancia Avenue and on passing in front of the Alatco station Cerilo de Leon saw Jose Arandia. The former called the latter and asked him to accompany him, Cerilo de Leon, being the “bilas” of Graciano Badilla, owner of the Cony he permanently drives everyday, and having been once his chief in the Saldaña Lines when Cerilo de Leon acted as its Manager while its owner, Mr. Saldaña was on a honeymoon, readily acceded and went, sitting himself beside De Leon in the front seat of the Cony. De Leon continued driving the Cony himself and they proceeded along Peñafrancia Avenue towards the North. On reaching Santonja Street they turned left and upon reaching Elias Angeles Street they turned right towards the junction of Bagumbayan and Elias Angeles Streets and turned left again to Ateneo Avenue. On reaching the gate of the Naga Parochial School along Ateneo Avenue, Cerilo stopped and parked the Cony in front of the gate, and alighted therefrom, telling Arandia to wait for him as he will just fetch somebody.[17]

This paragraph is an excerpt from an actual decision of a trial court. On review, the Supreme Court noted that the trial judge's "excruciating details especially the left and right turn clutter(ed) the decision and distract(ed) one's attention." [18]

Better:

That same day, September 2, 1970, at about 4 o'clock in the afternoon, Cerilo de Leon borrowed a Cony automobile from Graciano Badilla. While traveling along Peñafrancia Avenue, he met Jose Arandia, a former driver of Saldaña Lines which he had managed for a short time. Together, they then proceeded to the Naga Parochial School in Ateneo Avenue.

Brevity should not ignore essential facts, precedence, and discussions. Nor should it ignore evidence presented by the opposing parties. Base your findings of fact on the material evidence presented by the opposing parties. *People v. Banayo* is an example of an entire decision promulgated in an actual case which is illustrative of this cautionary lesson.

Illustration:

Alejandro Banayo is charged by the Assistant Provincial Fiscal of Quezon together with Rosendo Villanueva, Jr. alias Chito and Donato Alvero with the crime of Murder as defined and punished (sic) under Article 248 of the Revised Penal Code for having conspired (sic) and confederated together with intent to kill and treachery to attack, assault and stab one Armando Abel inflicting upon the latter wounds in the different parts of his body which directly caused his death.

Upon arraignment Alejandro Banayo pleaded not guilty, Donato Alvero and Rosendo Villanueva, Jr. are still at large.

After a careful consideration of the evidence (sic) for the prosecution and for the defense, the Court finds:

At around 8:00 o'clock in the evening of 30 September 1980 one Romualdo Cabrera together with his cousin Isidoro Cabrera were on their way home to Bungoy, Dolores, Quezon when they were engaged in a commotion in front of the house of one Hermilando Ventocilla by the group of Rosendo Villanueva, Alejandro Banayo and Donato Alvero, all accused in the above entitled criminal case. They threw stones and bottles at each (sic) other until Romualdo Cabrera sought refuge in the house of his uncle Peting Ventocilla. While in the house of Ventocilla his cousin Armando Abel went to the place of the incident.

When Armando Abel reached the place where the trouble took place things happened very fast and he was suddenly held by Donato Alvero and Alejandro Banayo while Chito Villanueva stabbed him from behind.

When Barangay Councilman Godofredo Valle arrived the three assailants ran away while Armando Abel fell to the ground on the side of the road. The victim Armando Abel was placed in a jeep and was brought to San Pablo.

Accused Alejandro Banayo claims that after more or less three minutes after the commotion where his group engaged the group of Chito Villanueva into a stone and bottle throwing commotion his uncle Rogelio Aurelio fetched him because his mother was sick at the time so that when Chito Villanueva stabbed Armando Abel he (Banayo) was no longer there.

In the face however of a positive identification (sic) of Alejandro Banayo by Alfredo Esguerra and Romualdo Cabrera, the Court cannot give much credence to the defense of alibi.

The action of Banayo in holding the victim while Chito Villanueva was stabbing him definitely (sic) establishes conspiracy between them beyond reasonable doubt.

The treachery alleged to be attendant to the killing of Armando Abel appears to the Court to be more of taking

advantage (sic) by Villanueva and his group of their superior strength (sic) when he stabbed Armando Abel.

WHEREFORE the Court finds Alejandro Banayo guilty beyond reasonable doubt as principal of the crime of Murder as defined and punished under Article 248 of the Revised Penal Code and hereby sentences him to life imprisonment and to indemnify the heirs (sic) of the victim in the amount of twelve thousand pesos.

SO IS THE JUDGMENT.

IT IS SO ORDERED.

City of Lucena, 23 February 1983.

On review, the Supreme Court found sufficient evidence to sustain the conviction but took to task the trial judge as follows:

At the onset, this Court takes a rather dim view of the apparently indifferent attitude displayed by the trial court towards a murder case it has tried as shown by the rendition of a decision, the body of which contains only 63 lines spread out over less than three typewritten pages, double spaced and wide margined. While brevity should characterize a court's decision and the length of a decision is not necessarily determinative of its quality, the lower court in deciding this murder case nonetheless should have outlined in greater and more satisfactory detail the evidence presented by both prosecution and the defense, the facts as found by the trial judge based on the evidence on record and the jurisprudence and authorities supporting the court's conclusions.

This, the trial judge failed to do. There is not one single citation of authority in the decision. The issues raised by the appellant include allegations of concocted testimony, the nature of a dying declaration, premeditation, conspiracy, treachery, and superior strength. The issues raised are quite serious and they deserved better treatment from the trial court.

Fortunately, while the decision is compressed, the records are quite ample. To his credit, the trial judge allowed the prosecution and defense to fully develop their respective cases.”[19]

Edit your own work. Know how to cut out your own work, which you prepared with great effort and difficulty. Do not hesitate to cross out what is not necessary to support your legal and factual conclusions.[20]

c. Clarity

Clarity is defined as clearness, directness, orderliness, and precision of thought or expression.[21] To achieve clarity, a decision should be easy to read and understand.[22] Only a decision that is clear can have adjudicative authority.

Useful pointers in writing your facts, texts, titles and headings, italicization, setting off words, numbers, date, and abbreviation to achieve clarity are briefly discussed below. Also included are discussions on parallelism of words and consistency.

i. Facts

Facts refer to actual events which have to be in the record. They represent the reality of events or things whose actual occurrence is to be determined by evidence.[23] Facts have to be established and have to be in the record.

The facts should be presented in an orderly and logical manner. A court of justice is not hidebound to write in its decision every bit and piece of evidence presented by one party and the other upon the issues raised.[24]

Findings of fact are statements of fact and not conclusions of law. A statement of fact in a pleading must be distinguished from a statement of fact in a judgment. In a pleading, only ultimate or essential facts need be

pleaded, evidentiary facts being unnecessary, whereas in a judgment not only the ultimate facts but the supporting evidentiary facts must be stated for that statement is what is called a finding of fact.[25]

Below are examples of findings of fact in *People v. Sabater*, a decision by the late Chief Justice Ramon C. Aquino promulgated on February 23, 1978.

Illustration:

We hold that the appeal is devoid of merit. The appellants were positively identified by the victim's widow and son who made separate sketches of the scene of the crime which was well-lighted (Exh. X and Y). Those sketches gave verisimilitude to their testimonies. The widow testified that she was paralyzed (natigilan) with fear when she saw the killing of her husband being consummated in her presence. She could not do anything. Moreover, the accused went into hiding for nearly eight years to avoid being prosecuted. Flight is an indicium of guilty.

The appellants admitted that they were unaware of any reason why the victim's widow and son would frame them up. They argued that the wife was not an eyewitness because she testified that she was merely informed by a person named Pol that her husband was killed.

The fact is that the wife in her statement to the police three weeks after the killing declared that Pol had warned her that her husband might be liquidated and that she witnessed the killing because she followed her husband when the latter went out of their residence (Exh. A). Appellants' assertion that Pol was their witness, Poe Caballero, is false because, as already stated, Pol was the victim's employer who had alerted Mrs. Papa to the contingency that her husband might be killed by his enemies (No. 8, Exh. A). Mrs. Papa told the police that five days before the shooting her husband had informed her that their neighbor, Tranquilino Sabater (the uncle of appellant Crisostomo), had harbored some resentment against Papa.

ii. Texts

- Avoid wordiness. Be simple. Minimize the use of highfalutin' language, legalese, and foreign words and phrases, although they may add dignity and majesty to a decision when used sparingly and in the proper context. They expose not erudition but exhibitionism and amateurism when excessively used.[26]

Faulty:

In common or ordinary parlance, and its ordinary signification, the term 'shall' is a word of command, one which has always or which must be given a compulsory meaning as denoting obligation. It has a peremptory meaning. And it is generally known as peremptory or mandatory.

This paragraph is verbose.

Better:

The word 'shall' denotes an imperative and indicates the mandatory character of law.

- Use specific words that are well-positioned. Vague generalities say nothing. Worse, they may even confuse the reader.[27] Learn when and how to put emphasis in your statements.

Emphasize a word or group of words by giving more space to the important rather than to the less important idea of a sentence. Place the more important part in a prominent position, which is either at the beginning or at the end of a sentence.

Faulty:

The rule is that no statute, decree, ordinance, regulation or policy shall be given retroactive effect, unless

explicitly so stated.

Better:

No statute, decree, ordinance, regulation, or policy shall be given retroactive effect unless it explicitly so states.

This sentence can have greater impact when emphasis is correctly placed on a word or group of words.

iii. Parallelism of Words

- Strive for logical and grammatical parallelism.[28]

Faulty:

Respondent challenges the credibility of the witnesses who, he says, are all bosom friends of the complainant, and that their testimonies contradict one another.

Better:

Respondent challenges the credibility of the witnesses because they are all complainant's bosom friends, and because their testimonies contradict one another.

The sentence is clearer and has an impact with the use of a specific word or words (e.g., because) to establish parallelism.

- Avoid faulty dangling participial phrases.[29]

Faulty:

WHEREFORE, finding no merit in the instant complaint, the same is hereby DISMISSED.

Better:

WHEREFORE, the complaint is hereby DISMISSED for lack of merit.

iv. Consistency

- Be consistent in tone, tense, words, and images.

Faulty:

There was no way the victim could ward off the accused's sexual advances. The accused, being armed and bigger than her, overpowers her.

Better:

There was no way the victim could have warded the accused's sexual advances. The accused, being armed and bigger, easily overpowered her.

Readers are distracted and confused when there is a shift in verb tenses without warning. Consistent verb tenses clearly establish the time of the actions being described.[30]

- Although avoiding monotony is desirable, words should not be changed for the sake of changing them. If you must repeat a word or phrase, then repeat it if it has a unique legal significance (e.g., "laches," "renvoi," "treachery").[31]

Illustration:

Citing Section 1, Rule 9 of the Rules of Court, which states that defenses not pleaded are deemed waived,

petitioners contend that the Court of Appeals erred in relying on laches. This principle, they allege, was not raised in respondents' complaint before the trial court or in their appeal to the CA. They further contend that the exception to the aforesaid rule is misapplied. In the cases cited by respondents – Catholic Bishop of Balanga v. Court of Appeals and Dando v. Fraser – the appellate court considered a matter not assigned, either because (1) it was closely related to an assigned error, or (2) it was raised in the trial court. In the present case, petitioners maintain that laches was not raised at any stage of the proceedings. Neither is it closely related to the errors invoked. Thus, they conclude that the CA should not have considered laches in disposing of this case.

v. Titles and Headings

Use topics and titles for distinct ideas, headings, and subheadings, as well as numbers or letters for enumerations and succession of ideas.[32]

Illustration:

D E C I S I O N

THE CHARGE

In an information filed by ...

EVIDENCE OF THE PROSECUTION

I. Testimonial Evidence:

II. Documentary Evidence:

EVIDENCE OF THE DEFENSE

I. Testimonial Evidence:

II. Documentary Evidence:

DISCUSSION

I

THE ISSUES

As there was no issue...

II

WAS THE ACCUSED INSANE AT THE TIME OF THE SHOOTING?

III

SELF-DEFENSE WAS NOT ESTABLISHED

IV

WHAT CRIME WAS COMMITTED: MURDER OR HOMICIDE?

THE RULING

vi. Italicization[33]

- Non-English Words

Italicize non-English words. Non-English words are those not found in the latest unabridged Webster's dictionary. When necessary, include a parenthetical explanation or translation immediately after the word.

Example:

Jueteng (illegal numbers game) is a major social ill in this country.

- Name of Newspapers and Magazines

Italicize the names of newspapers or magazines.

Example:

The notice of auction was published in *The Daily Planet*.

vii. Setting off Words[34]

- Added Emphasis

Use italics or boldface to emphasize specific words or phrases.

Examples:

The question of the legality of the act of dismissal is distinct from the issue of the legality of the manner by which that act of dismissal was performed.

The question of the legality of the act of dismissal is distinct from the issue of the legality of the manner by which that act of dismissal was performed.

- Use of Words as Words

Use quotation marks or italics when (a) referring to a word as a word or a phrase as a phrase or (b) providing a definition.

Examples:

The phrase pay to the order of on the face of the check indicates that it is negotiable.

Payment means – the delivery of money or the performance, in any other manner, of an obligation.

viii. Numbers[35]

- Spell out numbers zero to nine and use numerals for 10 and above. Use commas for large numbers, i.e., numbers of four digits or more.

Examples:

four

40

4,000

- If the number is significant, write it in both words and figures and enclose the figures in parentheses.

Example:

The accused is found guilty of thirteen (13) counts of malversation of public funds.

1. Numbers Grouped for Comparison

If a sentence or paragraph compares numbers in a particular category, use figures for all numbers in that category.

Example:

Exhibitors from five provinces came to the trade exposition: 21 from Laguna, 9 from Batangas, 7 from Sorsogon, 46 from Samar, and 12 from Zambales.

2. Adjacent Numbers

To clarify back-to-back modifiers, spell out the smaller number. If the numbers are the same, spell out one.

Examples:

The movie was interrupted by 15 ten-minute commercials.

She bought eighteen 18-wheeler trucks.

3. Numbers that Begin a Sentence

Spell out numbers that begin a sentence.

Example:

Two hundred fifty judges attended the seminar, but only 100 stayed for the cocktails.

4. Numbers in Dialogue

Spell out numbers in dialogue, except numbers in large amounts.

“Meet me under the mango tree in fifteen minutes,” he whispered.

“But that costs P250,000,” she interrupted.

5. Numbers in Common Expressions

Spell out numbers in figures of speech or certain common expressions.

Examples:

Ten Commandments

top twenty

roaring twenties

fifty-fifty chance

ten-foot pole

hang ten

6. Ordinal Numbers

Treat ordinal numbers the same as cardinal numbers. Spell out the first through the ninth, and use figures for the 10th onwards.

Examples:

He passed the bar examinations on his fourth attempt.

The 21st century ushered in biogenics.

However, in reference lists, footnotes, and tables, use figures to save space.

Example:

2nd [or 2d] ed.

7. Plural Form of Numbers

a. Plurals of spelled-out numbers are formed by adding s or es.

Example:

The winning lottery ticket was two sixes followed by three eights.

b. Plurals of figures are formed by adding s.

Examples:

F-15s

100s

8. Age

Age is expressed in figures.

Examples:

3-year-old child

9 months old

9. Percentage

a. Figures are used with either the word percent or the percent sign (%). Place the percent sign directly next to the number.

Examples:

The Board approved the 1 percent increase in rates.

The margin of error was 0.15%.

b. In pairs of numbers or numbers in a series, repeat the percent sign.

Examples:

15% to 20%

20%, 30%, and 40%

c. When a percentage is used as a unit modifier, no hyphen is necessary.

Example:

a 50% drop in price

d. Decimals, not fractions, should be used with the percent sign.

Example:

8.50%

10. Fraction

- a. Spell out common fractions and mixed numbers and use a hyphen.

Examples:

one-half

two and three-fourths

- b. When whole numbers, fractions, and mixed numbers appear together, use figures. When expressing mixed numbers as figures, insert a space between the whole number and the fraction. Do not use a hyphen.

Example:

The piece of wood measured 2 by $\frac{1}{2}$ by $12\frac{1}{4}$ inches.

11. Decimal

- a. Use figures for decimals.

Example:

The typical Filipino household has 5.9 persons.

- b.1. In text that mixes decimals and whole numbers, a trailing zero is added to the whole numbers.

Example:

2.9, 3.5, 4.0

- b.2. If any decimal number is less than one, a leading zero is added. However, if the quantity will never be greater than one, the zero is not added.

Examples:

0.2

.45 caliber

12. Voting Results

Use figures and the comparative term to when reporting voting results.

Example:

The vote was 19 to 5 in favor of the proposal.

13. Currency

- a. Place the currency sign directly before the number.

Examples:

P250

\$526

- b. Repeat the currency sign with each number in a pair or series. Do not use any hyphens when the currency

amount is used as a compound modifier.

Example:

P700 to P950 price range

c. Use currency abbreviation only when clarity requires it. Leave a space after the foreign currency abbreviation and before the indicated amount.

Examples:

PhP 250

USD 526

14. Unit of Measure

a. Spell out units of measure when first used.

Examples:

Six kilometers

240 square meters

b. Use figures with abbreviations, signs, and symbols.

Examples:

6 km

240 sq m

9°C

9 MHz

3° longitude

c. Use a hyphen to join a number and a unit of measure used as a modifier.

Examples:

20-kg sacks

6-cm board

100-m distance

five-kilometer route

15. Period of Time

a. Express time in figures followed by a.m. or p.m.

Examples:

7:30 a.m.

1:45 p.m.

b. When referring to 12 a.m. or 12 p.m., eliminate confusion by specifying 12 midnight or 12 noon, respectively.

ix. Date[36]

a. Either the American method (month-day-year) or the British method (day-month-year) of writing dates is acceptable. However, for consistency, use only one method throughout the text and footnotes.

Examples:

Petitioner filed his complaint on January 30, 2003.

Petitioner filed his complaint on 30 January 2003.

b. When referring to a date by month followed by the day, do not use the ordinal form.

Examples:

(correct) The September 19 hearing.

(wrong) The September 19[th] hearing.

c. When indicating a date by month and year only, do not place a comma before or after the year unless the sentence structure requires a comma after the year.

Examples:

Two lawyers attended the April 2005 deposition.

The trial, which was scheduled for June 2005, was postponed several times.

d. Spell out names of the days and months in the text and footnotes. Abbreviate only in formats such as tables, graphs, and catalogs where space is a consideration.

e. When indicating a period of several years, use to or through, not a hyphen.

Examples:

(correct) Judge Santos was on the bench from 1950 to 1971.

(wrong) Judge Santos was on the bench from 1950-1971.

f. Use an apostrophe to indicate a period of time.

Example:

24 months' incarceration

g. Do not use an apostrophe to indicate a decade.

Example:

1980s

x. Abbreviation[37]

- On first usage, names customarily abbreviated are spelled out followed by the abbreviation in parentheses.

Examples:

The Philippine Judicial Academy (PHILJA) is the education arm of the Supreme Court.

The Department of Education (DepEd) filed a petition for prohibition.

- As a rule, spell out Constitution, legislative enactments, treaties, executive and administrative issuances.

In exceptional instances when abbreviations are necessary, spell out the abbreviated words on first usage followed by the abbreviation in parentheses.

- After first usage, abbreviate specific parts of laws.

Example:

Section 5, Article VIII of the Constitution enumerates the powers of the Supreme Court. Sec. 5 includes the rule-making power of the Court.

CHAPTER FIVE

ORGANIZATION AND STRUCTURE

This chapter deals with the building blocks of crafting a decision that can withstand the test of acceptability by the parties and surmount an appellate challenge. The judge must, of course, have adequately analyzed the established facts and evidence admitted in the course of the proceedings in his court before he can properly determine how to apply present law and jurisprudence to come up with such decisions.

A. Organizing Decisions and Opinions

Write an outline of the points. See to it that there are not too many point headings, or that points are not merely subdivisions of other headings, instead of being separate headings themselves. The initial outline may contain five or more point headings. Upon re-examination and revision, it may be reorganized into only two or three point headings.[1]

Organization of positions on the facts and the law should proceed logically and directly to the desired conclusion.

1. Identifying and defining the issues.[2]

Determining the issues early is essential to efficiency in the writing process and economy in the result. Partitioning the issues is essential to the structure of the argument. Dividing the arguments into discrete issues enables one to focus the analysis on each one individually.

Plan the body of the judgment before settling on an introduction.

Practical Tip:

Use a stack of note cards, or half sheets of paper, or the equivalent space on a computer screen. On each card write the word ISSUE, followed by a brief statement of any question the court must decide. If the issues change as the case proceeds, prepare separate cards for the new ones and discard those that become irrelevant.

2. Preparing a Losing Party's Position (LOPP)/Flaw In Losing Party's Position (FLOPP) analysis for each issue.[3]

- The easiest way to organize the analysis of each issue is to follow this pattern:

(LOPP) Losing Party's Position

(FLOPP) Flaw in Losing Party's Position

CONCLUSION

Express the losing party's position as effectively as possible – as if the judge is representing that party – and then identify the flaw in the position with surgical detachment. If the judge cannot find the flaw in the best statement of the losing party's position, there may be a need to reconsider the conclusion.

- Exceptions to the LOPP/FLOPP pattern:

- When the controlling law is not so much a law as a principle of equity or a matter of judicial discretion
 - e.g., In determining custody or visitation rights, judges can help calm raging emotions by downplaying the notion of a “losing” party.
- When judges are finding facts
 - it generally makes sense to begin with the position of the party with the burden of proof

- Balance is the key. Support findings with sufficient reasons to show that they are not arbitrary and capricious, but do not provide so much detail that readers will be tempted to draw inferences of their own.

3. Arranging the analysis of issues like rooms in a shotgun house.[4]

A shotgun house is one in which each room follows the other in a straight line: front porch, back porch, and a series of perfectly parallel rooms in between.

- The front porch is the introduction, the back porch the conclusion.
- Once the issues have been determined, arrange them in a sequence that makes sense.
- Sometimes, there would be threshold issues and normally these are dealt with first. Sometimes, issues can be grouped in categories. Sometimes the issues can be arranged in a logical chain, each issue dependent on the other for its viability. Sometimes each issue is completely independent of the others, which can be arranged chronologically, if the material allows it.
 - Consider arranging the issues for their rhetorical effect, starting from those which have the best analysis.
 - The analysis of each issue should be self-contained.
 - In some cases, another section needs to be added to the structure: the rhetorical equivalent of a doorway or an entrance hall, an antechamber just after the introduction and just before the analysis of the first issue. This section is necessary in cases that cannot be understood without a detailed narration of facts.

4. Preparing an outline with generic and case-specific headings.[5]

- If a decision is very short, it may need no headings. In longer texts, headings are essential.
- Headings must be as brief as possible. They should not be entire arguments (though it is often effective to put a brief summary of an argument immediately after a heading).
- There are two kinds of headings: generic and case-specific.

Generic headings: These can be transferred from case to case, regardless of the facts and issues.

Illustration:

- I. Introduction
- II. Background
- III. Issues

IV. Relief Sought

Case-specific headings: These are extremely useful when they mark analyses of separate issues.

Illustration:

I. Was the Warrant Valid?

II. Was the Search Proper?

This type of heading can be phrased in three ways:

As an Argument:

The National Telecommunications Commission is an agency of the State.

As a Question:

Is the National Telecommunications Commission an agency of the State?

As a Topic:

State Agency

B. Drafting the Decision

1. Writing the beginning.

- One is not in a position to write an introduction until the facts and issues to be resolved have been determined.

“Statement of the Case” – a clear and concise statement of the nature of the action, a summary of the proceedings, and other matters necessary to an understanding of the nature of the controversy.[6]

- The beginning must be interesting to catch the reader’s attention. Avoid beginning with technical, dry, or uncontested assertions.

- A perfect introduction provides two things: a synopsis of the facts and a brief statement of the issues.

- A simple story-plus-issue is the best way to gain the reader’s interest and attention.

- A good statement of issues foreshadows the structure of what follows and provides the reader with a glimpse of the grounds of the argument. It does not cite laws, precedents, or records that can be more carefully cited in the analysis section.

2. Writing the body of the decision.

The Constitution provides, “No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.”[7] A decision that does not conform to the form and substance required by the Constitution and the law is void and deemed legally nonexistent.[8]

- Finding of Fact

- Types of narration[9]

- Reportorial – Simply a report of what happened during trial. It usually consists, in a summation, of what the witnesses testified to.

- Synthesis – The judge summarizes the factual theory of the plaintiff or prosecution, then the version of the

defense. After the summary, the judge will state which version he or she takes as true and correct and then renders the adjudication.

The court may also summarize the version it accepts and adopts, without narrating or explaining the other version. After a summation of the accepted version, the judge renders the decision.

- Semi-reportorial Type – The judge summarizes the version he accepts, and then “reports” on the version that he or she rejects.

- Statement of Fact v. Finding of Fact[10]

“Finding of fact” means statement of fact and not conclusion of law.[11]

A statement of fact in pleadings must be distinguished from statement of fact in decisions. In a pleading, only ultimate or essential facts need be pleaded. In a decision, not only the ultimate facts but the supporting evidentiary facts must be stated. The law solely insists that a decision state the essential ultimate facts upon which the court’s conclusion is drawn.[12]

- Statement of the Law[13]

- If the law is clear, a simple recitation will suffice.

- If the applicability of the law is arguable, then one must justify the choice of that law. The discussion may include the law’s history or may refer to analogous rulings of the Supreme Court or foreign courts. One may also invoke abstract concepts of justice and equity. Always remember that substance should not be sacrificed for style.

While the Constitution does not specify the form of decisions, the judge should still be mindful of style. The previous chapter discusses matters of style.

- Conclusive Notes

- The conclusion may include only an order.

- However, the conclusions may serve as a summation in order to guide the reviewing court, or the press, or the losing party on the essence of the analysis. Repeat the analysis, but in different words, and succinctly. Brevity is essential.

- The concluding section also provides an opportunity for judicial dicta – instruction to the Bar on related matters that are not logically essential to the case being decided.

- Dispositive Portion.

- In writing the dispositive portion, the following test of completeness may be applied. First, the parties should know their rights and obligations. Second, they should know how to execute the decision under alternative contingencies. Third, there should be no need for further proceedings to dispose of the issues. Fourth, the case should be terminated by granting the proper relief. The “proper relief” usually depends upon what the parties seek in their pleadings. It may declare their rights and duties, command the performance of positive prestations, or order them to abstain from specific acts. The disposition must also adjudicate costs.[14]

- A decision is composed of two parts: the body and the disposition. The more important part is the dispositive portion. It is the dispositive portion of a decision that finally invests rights upon the parties, sets conditions for the exercise of those rights, and imposes the corresponding duties or obligations.[15]

- The Rules prescribe that the dispositive portion of decisions follow a certain form. In particular, the dispositive

portion must contain the following:

- In criminal cases
- The judgment must be written in the official language,[16] personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the fact and the law upon which it is based.[17]
- If the judgment is of conviction, it shall state (1) the legal qualification of the offense constituted by the acts committed by the accused and the aggravating or mitigating circumstances which attended its commission; (2) the participation of the accused in the offense, whether as principal, accomplice, or accessory after the fact; (3) the penalty imposed upon the accused; and (4) the civil liability or damages caused by his wrongful act or omission to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate civil action has been reserved or waived.

In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist.[18]

- When two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose on him the penalty for each offense.[19]

- When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.[20]

- Indeterminate Sentence Law[21]

Under the Indeterminate Sentence Law, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense. On the other hand, if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum prescribed by the same.[22]

The dispositive portion of the decision must explicitly provide the specific minimum and maximum terms of the sentence.

The “minimum” sentence is merely a period at which, and not before, as a matter of grace and not of right, the prisoner may merely be allowed to serve the balance of his sentence outside of his confinement. It does not constitute the totality of the penalty since thereafter he still has to continue serving the rest of his sentence under set conditions. That minimum is only the period when the convict’s eligibility for parole may be considered.[23]

The Supreme Court has ruled that the requirement of imposing an indeterminate sentence in all criminal offenses whether punishable by the Revised Penal Code or by special laws, with definite minimum and maximum terms, as the Court deems proper within the legal range of the penalty specified by the law must, therefore, be deemed mandatory,[24] except only in cases under Section 2 of the same law.[25]

- Reclusion Perpetua v. Life Imprisonment

As early as 1948, in *People v. Mobe*, reiterated in *People v. Pilon* and in the concurring opinion of Justice

Ramon C. Aquino in *People v. Sumadic*, this Court already made it clear that reclusion perpetua is not the same as imprisonment for life or life imprisonment. Every Judge should take note of the distinction and this Court expects that, henceforth, no trial judge should mistake one for the other.[26]

The Court has discussed this distinction, thus: ‘life imprisonment’ is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed under the Revised Penal Code. Second, ‘life imprisonment,’ unlike reclusion perpetua, does not carry with it any accessory penalty. Third, ‘life imprisonment’ does not appear to have any definite extent or duration, while reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, although the maximum period thereof shall in no case exceed forty (40) years.”[27]

- In civil cases[28]

- A judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based.[29]

- Judgment may be given for or against one or more of plaintiffs, and for or against one or more of several defendants.[30]

- In an action against several defendants, the court may, when a judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others.[31]

- When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to that claim and the action shall proceed as to the remaining claims.[32]

- When judgment is rendered against two or more persons sued as an entity without juridical personality, the judgment shall set out their individual or proper names, if known.[33]

- Default judgment

A default judgment may be based either on the allegations of the pleadings or the evidence presented ex parte, but in no case shall it award a relief different from that prayed for or an amount in excess of that prayed for nor award unliquidated damages.

- Judgment in Summary Proceedings

When the defendant fails to answer the complaint within the period provided for or when the sole defendant fails to appear during the preliminary conference, the judge, motu proprio or on plaintiff’s motion, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein, unless the judge reduces the amount of damages and attorney’s fees for being excessive or unconscionable.[34]

- Judgment based on compromise

In a judgment approving the compromise agreement of the parties, the judge should state the matters agreed upon and write a disposition of the case.

A judgment based on compromise is no different from other judgments. It should also contain a body and a dispositive portion. The body may include the compromise agreement. On the other hand, the dispositive portion should clearly dispose of the issues and/or terminate the case.

- In special civil actions

- Declaratory Relief[35]

Rule 63 of the Rules of Court refers to two different proceedings. The first paragraph of Section 1 refers to declaratory relief proper. In this action, the subject matter is a deed, will, contract, or other written instrument, statute, executive order or regulation, or ordinance. The issue is the validity or construction of these documents. The relief sought is the declaration of the petitioner's rights and duties thereunder.[36] In the judgment, the relief to be properly granted is the declaration of the rights and duties of the parties under the instrument, although some exceptions have been recognized under certain situations.[37]

Paragraph 2, meanwhile, refers to actions for reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership. These actions follow the same procedure as declaratory relief proper.

- Quo Warranto[38]

When the respondent is found guilty of usurping, intruding into, or unlawfully holding or exercising a public office, position or franchise, judgment shall be rendered that such respondent be ousted and altogether excluded therefrom, and that the petitioner or relator, as the case may be, recover his costs. Such further judgment may be rendered determining the respective rights in and to the public office, position or franchise of all the parties to the action as justice requires.

- Expropriation[39]

- In expropriation proceedings, the court actually renders two decisions: first, to determine the propriety of the expropriation, and second, to settle the issue of just compensation.

The determination of the propriety of the expropriation is a decision or final order in itself because it can be appealed.[40] It is only upon the finality of such decision or order when the proceedings to determine just compensation can begin.

- The court may order the commissioners to report when any particular portion of the real estate shall have been passed upon by them, and may render judgment upon such partial report, and direct the commissioners to proceed with their work as to subsequent portions of the property sought to be expropriated, and may from time to time so deal with such property. The commissioners shall make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual until the court shall have accepted their report and rendered judgment in accordance with their recommendations.

- The court should not be content with merely approving the report but should make its own findings, if it adopts the report. The judge should see to it that the dispositive portion of the case clearly sets out the property by metes and bounds[41] and adequate description.

- The judgment in expropriation proceedings should provide for the payment of legal interest as a matter of law from the time the Government takes over the land until it pays the owner thereof.[42]

- There can be no action for expropriation of money.

- Foreclosure of Real Estate Mortgage[43]

- If after trial the court finds the facts in the complaint to be true, it shall render judgment in favor of the plaintiff for the amount due on the mortgage debt or obligation, including interest and other charges and for costs. It shall order that the same be paid to the court or to the judgment obligee within a period of not less than ninety (90) days nor more than one hundred twenty (120) days[44] from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

- If upon the sale of any real property there be a balance due to the plaintiff after applying the proceeds of the sale, the court, upon motion, shall render judgment against the defendant for any such balance for which, by the record of the case, he may be personally liable to the plaintiff, upon which execution may issue

immediately if the balance is all due at the time of the rendition of the judgment; otherwise, the plaintiff shall be entitled to execution at such time as the balance remaining becomes due under the terms of the original contract, which time shall be stated in the judgment.

- In determining the interest, the court must abide strictly by the terms of the contract.

- Partition[45]

- An action for partition involves two decisions: first, to determine the right to partition, and second, to order the partition of the property.

- If actual partition of property is made, the judgment shall state definitely, by metes and bounds[46] and adequate description, the particular portion of the real estate assigned to each party.

If the whole property is assigned to one of the parties upon his paying to the others the sum or sums ordered by the court, the judgment shall state the fact of such payment and of the assignment of the real estate to the party making the payment.

If the property is sold and the sale confirmed by the court, the judgment shall state the name of the purchaser or purchasers and a definite description of the parcels of real estate sold to each purchaser.

- If the parties are unable to agree on the partition, the court shall appoint three competent and disinterested persons as commissioners to make the partition. Upon submission of the commissioners' report, the court should not merely approve the report but should make its own findings, if it adopts the report. The judge should see to it that the dispositive portion of the case clearly sets out the boundaries of each of the partitioned property by metes and bounds and adequate description.

- Forcible Entry and Unlawful Detainer[47]

- In forcible entry, the possession of the land by the defendant is unlawful from the beginning because he acquires possession by force, intimidation, threat, strategy or stealth.

In unlawful detainer, the possession is lawful at its inception but becomes illegal by reason of the termination of the right to possession of the property under the contract with the plaintiff.[48]

- If after trial the court finds that the allegations of the complaint are true, it shall render judgment in favor of the plaintiff for the restitution of the premises, the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, attorney's fees, and costs. If it finds that said allegations are not true, it shall render judgment for the defendant to recover his costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party and award costs as justice requires.

- In unlawful detainer, the amount of damages is confined to the reasonable compensation for the use and occupation of the property, which are generally measured by its fair rental value and cannot refer to other damages which are foreign to the enjoyment or material possession of the property.[49]

- On the other hand, the amount of damages must be proven, not presumed.[50]

- Replevin[51]

- After trial of the issues, the court shall determine who has the right of possession to and the value of the property and shall render judgment in the alternative for the delivery thereof to the party entitled to the same, or for its value in case delivery cannot be made, and also for such damages as either party may prove, with costs.

- The judgment on who has the right to possess the property must be specifically provided in the dispositive

portion.

- In special proceedings[52]

- Adoption[53]

- If the supervised trial custody is satisfactory to the parties and the court is convinced from the trial custody report and the evidence adduced that the adoption shall redound to the best interests of the adoptee, a decree of adoption shall be issued which shall take effect as of the date the original petition was filed even if the petitioners die before its issuance.

- The decree shall:

- State the name by which the child is to be known and registered;

- Order:

- the Clerk of Court to issue to the adopter a certificate of finality upon expiration of the 15-day reglementary period within which to appeal;

- the adopter to submit a certified true copy of the decree of adoption and the certificate of finality to the Civil Registrar where the child was originally registered within thirty (30) days from receipt of the certificate of finality. In case of change of name, the decree shall be submitted to the Civil Registrar where the court issuing the same is situated.

- the Civil Registrar of the place where the adoptee was registered:

- to annotate on the adoptee's original certificate of birth the decree of adoption within thirty (30) days from receipt of the certificate of finality;

- to issue a certificate of birth which shall not bear any notation that it is a new or amended certificate and which shall show, among others, the following: registry number, date of registration, name of child, sex, date of birth, place of birth, name and citizenship of adoptive mother and father, and the date and place of their marriage, when applicable;

- to seal the original certificate of birth in the civil registry records which can be opened only upon order of the court which issued the decree of adoption; and

- to submit to the court issuing the decree of adoption proof of compliance with all the foregoing within thirty (30) days from receipt of the decree.

- If the adoptee is a foundling, the court shall order the Civil Registrar where the foundling was registered, to annotate the decree of adoption on the foundling certificate and a new birth certificate shall be ordered prepared by the Civil Registrar in accordance with the decree.

- If the court finds that the allegations of the petition are true, it shall render judgment ordering the rescission of adoption, with or without costs, as justice requires. The court shall order that the parental authority of the biological parent of the adoptee, if known, or the legal custody of the Department shall be restored if the adoptee is still a minor or incapacitated and declare that the reciprocal rights and obligations of the adopter and the adoptee to each other shall be extinguished.

The court shall further declare that successional rights shall revert to its status prior to adoption, as of the date of judgment of judicial rescission. Vested rights acquired prior to judicial rescission shall be respected.

It shall also order the adoptee to use the name stated in his original birth or foundling certificate.

The court shall further order the Civil Registrar where the adoption decree was registered to cancel the new

birth certificate of the adoptee and reinstate his original birth or foundling certificate.

- Declaration of Nullity of Void Marriage or Annulment of Marriage[54]

- If the court renders a decision granting the petition, it shall declare therein that the decree of absolute nullity or decree of annulment shall be issued by the court only after compliance with Articles 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

- Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties. If the parties have properties, the court shall observe the procedure prescribed in Section 21 of this Rule.

- Legal Separation[55]

- If the court renders a decision granting the petition, it shall declare therein that the Decree of Legal Separation shall be issued by the court only after full compliance with liquidation under the Family Code. However, in the absence of any property of the parties, the court shall forthwith issue a Decree of Legal Separation.

- The decision shall likewise declare that:

- The spouses are entitled to live separately from each other but the marriage bond is not severed;

- The obligation of mutual support between the spouses ceases; and

- The offending spouse is disqualified from inheriting from the innocent spouse by intestate succession, and provisions in favor of the offending spouse made in the will of the innocent spouse are revoked by operation of law.

- Change of name[56]

Upon satisfactory proof in open court on the date fixed in the order that such order has been published as directed and that the allegations of the petition are true, the court shall, if proper and reasonable cause appears for changing the name of the petitioner, adjudge that such name be changed in accordance with the prayer of the petition.

- Insolvency[57]

The court may approve a rehabilitation plan if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.[58]

- Other Requisites in Writing the Dispositive Portion

- What Reliefs May be Granted

- The body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading. The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable.[59]

The Supreme Court has construed this provision thus:

In the absence of a prayer for general relief, the moving party usually is confined to the relief asked for in the motion or specified in its notice; at most, relief necessarily incident to what was asked for may be granted. On the other hand, where notice of the motion asks for specific relief, or for such other relief as may be just, the

court may, under the alternative clause, afford any relief compatible with the facts presented. However, even under a prayer for general relief, only reliefs allied to, and not entirely distinct from, that specifically asked may be granted. This rule has also been applied to pleadings. Thus, where a party has prayed only for specific relief or reliefs as to a specific subject matter, usually no different relief may be granted. However, where a prayer for general relief is added to the demand of specific relief, the court may grant such other appropriate relief as may be consistent with the allegations and proofs.[60]

- This provision must be construed in the light of Rule 8,[61] which sets out the manner of making allegations in pleadings.

- Relevance of Pre-Trial

- Judgment is limited to the issues stated in the Pre-trial Order.[62]

In civil cases, the pre-trial order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice[63] or unless during trial, the court allows the trial of other issues for special reasons.

- When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they have been raised in the pleadings. Thus, these issues must be resolved in the judgment.[64]

- Pre-trial is likewise mandatory in criminal cases. A pre-trial conference shall be held to consider the following: (i) plea bargaining; (ii) stipulation of facts; (iii) marking for identification of evidence of the parties; (iv) waiver of objections to admissibility of evidence; (v) modification of the order of trial if the accused admits the charge but interposes a lawful defense; and (vi) such matters as will promote a fair and expeditious trial of the criminal and civil aspects of the case. After the pre-trial conference, the court shall issue an order reciting the actions taken, the facts stipulated, and evidence marked. Such order shall bind the parties, limit the trial to matters not disposed of, and control the course of the action during the trial, unless modified by the court to prevent manifest injustice.[65]

- In criminal cases, there are always two basic issues to be resolved:

- Whether or not a crime has been committed; and

- Whether or not the accused committed it.

- Reference to Commissioner[66]

If, after hearing, the court adopts or modifies the report of the commissioner, the judge shall state that it adopts or modifies the report and state the proper disposition of the case.

- Additional Points to Consider[67]

- Focus on the main issue or go for the jugular. Avoid being unnecessarily engrossed in side or minor issues.

- Identify the unavoidable side issues or subordinate, but important, issues. Avoid trivia or minutiae. Do not abet pro forma items by giving them importance.

- One may have to explain briefly why some arguments or issues are ignored or treated sub silencio.

- Do not handle attacks and personal criticism in the decision, e.g., 90% was given to the personal criticism and only 10% to the issues.

- Be aware of pitfalls in factual presentations and problems in sifting through the mass of testimony and exhibits, as for example, problems of suspicious litigants and lawyers who downgrade the court by looking for items that

can be criticized, or those who downgrade fellow lawyers.

- Always use the latest pronouncements, not law or regulation already repealed or amended, and not a decision already reversed or modified. Accuracy in citing a statute or decision is essential.[68] Check errors of the researcher or stenographer.

- If one is certain of the principle of law involved, exert efforts to look for it in primary sources.

Primary sources include the Constitution, codes, statutes, decisions found in the Reports, treaties, ordinances, administrative rules and regulations, rules of procedure, and amendments or modifications.

- Know how to use basic codes, compilation of statutes, compendiums, law dictionaries and careful use of textbooks, newspapers, and abstracts of decisions. Although the judge cannot be presumed to know all these, he or she should know where and how to look for them.

- Have appreciation for and willingness to approximate excellent decisions of the Supreme Court, Court of Appeals, of other judges, and foreign decisions.

- Some useful hints from experts in handling of evidence:

- Find the preponderant evidence or that which is beyond reasonable doubt.

- Give attention to the manner of testifying, intelligence, means of knowing the facts whereof they testify, probability or improbability of testimony, interest or want of interest, personal credibility, and number of witnesses.

- Separate the controverted from the uncontroverted. See the overall picture, not piece by piece. Look into self-contradictions, innocent mistakes, or deliberate falsehood.

- Reconcile any contradiction if it is proper to do so. Deal with inherently improbable testimony. Pass upon the demeanor, gestures, postures, nervousness, and movements of the hands or legs.

CHAPTER SIX

LOGIC AND LEGAL REASONING

A decision to be persuasive must be logical and reinforced by sound legal reasoning. One must be reminded that there are at least two parties to every case whose positions are opposed to each other. Woe to the judge whose decision is reversed on appeal because it has been successfully challenged and assailed for being illogical and fallacious.

A. Universal Logic[1]

- Every legal argument can be distilled to the same simple structure:

These facts (narrate facts)...

viewed in the context of this law/contract/regulation/precedent/section of the Constitution/principle of equity (choose one)...

lead to this conclusion (relief sought)

- The logic never varies. At trial, the judge's job is to discover this pattern of thought in the morass of facts, distortions, outright lies, genuine issues, and spurious arguments that the contending parties allege.

- Every case boils down to some combination of these three basic disputes; there are no others. In jurisprudence, only three arguments can occur:
- The litigants may contest factual allegations.
- They may claim that the other side has cited the wrong law.
- They may concede that the other side has cited the right law, but misinterpreted it.
- When several issues are involved, each must be resolved with the same logic: certain facts, considered in the context of a particular law, lead to an ineluctable conclusion.
- The logic of jurisprudence is the same in trial courts and courts of appeal. The only difference is that at trial, litigants are likely to argue about both facts and law, whereas in courts of appeal, arguments tend to focus on the law.

B. Legal Logic[2]

It is a demand of reason that conclusions be reasonably arrived at and, in law, this means that they have to be correctly and validly argued. Logically argued conclusions of courts of law contribute to public confidence in the Judiciary. After all, a well-written decision and a compellingly argued judgment need no further defense.

1. Structure of Legal Reasoning

- A proposition is an assertion that the court sets for the acceptance of the parties, their counsel, the Government, and society at large.

Illustration:

When the judge finds: “Wherefore, this Court finds the accused guilty of violating B.P. Blg. 22 and accordingly sentences him...,” the Court is making a proposition.

- Before reaching the dispositive portion of the decision, however, the Court would have stated the following, or some variant thereof:

Illustration:

On July 4, 1998, the accused issued PNB Check No. 12345, his personal check, in the amount of Twenty Thousand Pesos in payment of a watch purchased from the complaining witness. At the time he issued the aforementioned check, he had already long closed his checking account with the Philippine National Bank. Having been informed of the check’s dishonor, he has failed to pay the complaining witness the amount due.

This factual recital constitutes the ground for the judgment. Ground refers to specific facts relied on to support a given proposition.

A ground is a statement specifying particular facts about a situation that is invoked to establish the truth, the correctness or the soundness of the proposition.

- The judge must then make clear the law that allows him to draw the conclusion that the accused is guilty from the facts established in evidence.

A justification is what authorizes the drawing of a certain conclusion from a given set of facts. A justification is, therefore, a step-authorizing statement. In law, the justification of conclusions is the law or the relevant rule which authorizes that a conclusion be drawn from the facts adduced in evidence.

Illustration:

Ground:

Accused issued a check in payment of a debt, knowing fully well that at the time of issue, he had already closed his checking account.

Justification:

Sec. I of B.P. Blg. 22 renders punishable the issuance of such checks for which no sufficient funds exist, a fact which the issuer knows.

Proposition:

Therefore, the accused ABC is guilty of the crime punished by B.P. Blg. 22.

- When one invokes the body of experience that is relied on to establish the trustworthiness of one's way of arguing, then one makes use of a backing. Before a court of law, the question often will be whether or not the judge has correctly applied the law, properly made distinctions, and accurately recognized exceptions. Judicial precedent together with the doctrine of stare decisis comes to his aid. These supply the backing.
- The model of legal reasoning thus presented makes imperative the following demands on the judge:
- What is the plaintiff's proposition? What is the defendant's proposition? What does the court, after hearing (or upon perusal of the pleadings), posit to be its proposition?
- What are the facts? Which facts are key facts – those facts, which, if different, would engender a different result?

In law, "fact" should mean "what is judicially established" in conformity with the Rules on Evidence.

- Do the established facts ground the propositions? Do they ground some other possible proposition? In civil law, does the plaintiff state a cause of action? In criminal law, do the facts alleged constitute the offense of which the accused is charged?
- As to the justification, is the citation by the counsel of law and precedent accurate? Does the law or jurisprudence in fact warrant the conclusion that counsel would have the court draw from the facts? Aside from the justification already cited by the parties through counsel, is there some law or precedent that has not been considered and that may produce a different result?
- Which decision of the Supreme Court is on all fours with the present case? Is there any decision of the Supreme Court that supports the present court's interpretation and application of the law? Is there any reason to distinguish between the present case and that decided by the Supreme Court which supposedly lays down precedent? Is it really ratio decidendi that is relied on or obiter dictum?
- Where judicial precedent is lacking, what do foreign decisions suggest? What is suggested by legislative history or contemporaneous, executive construction? What conforms with the presumptions that the legislature intends that which is just and equitable?

2. Deductive Reasoning in Law

- This form of reasoning is the most commonly used form in law:

Illustration:

A contract is a meeting of minds.

Between A, who offered to sell a car without any servicing guarantee, and B who accepted to buy the car with a one-year servicing guarantee, there is no meeting of minds.

Therefore, between A and B, there is no contract.

- Major premise will be supplied by the law, supported by the judicial precedent involved.

It is only after the facts are considered that it can be determined which law controls. And then again it will be necessary to take note of exceptive clauses, exclusive clauses, the applicability provisions of the law, and other modifying variables.

- Minor premise – the key facts – must be so stated as to allow for an application of the law. The facts must be so stated as to put a middle term to exist between the statement of the law and the statement of fact. It must be, however, that the evidence adduced and admitted by the court, allows such a statement.

Illustration:

If one starts with the constitutional premise:

Every revenue measure must originate exclusively in the Lower House.

Then, one introduces the statement of fact:

The new tax law was passed on the basis of a bill produced by the Bicameral Conference Committee.

Then, hardly any conclusion can be drawn. Obviously, a question of fact (as well as interpretation of a legal term – “originate”) will be involved. Did the revenue measure originate in the Lower House?

Since the Supreme Court has ruled that “originate” simply means “initiated by,” one can then construct the syllogism thus:

A revenue measure that the Lower House initiates is valid. The E-VAT was initiated by the Lower House.
Therefore, the E-VAT is valid as to its origin.

3. Analogical Reasoning in Law

Analogizing is pointing out similarities and differences among cases. This involves selecting information from the case briefs and applying it to other similar cases, facts, or situations, at the same time considering new facts presented by the problem at hand.[3]

a. Steps in Applying Analogy

Precedent cannot be applied to the facts, however, unless the case is analogous in significant respects to the case it is compared with and the opinion in the earlier case is either binding upon the present case or persuasive to it.

To apply analogy, there are four (4) steps to be followed:

- Compare and contrast the key facts of the precedent cases with the facts of the present case.

Illustration:[4]

Based on the foregoing, the denial of a petition for relief from judgment can only be assailed before this Court via a special civil action under Rule 65 and not through a petition for review on certiorari under Rule 45. In availing of a petition for review on certiorari under Rule 45 to obtain the reversal of the Court of Appeals' Resolutions denying its petition for relief from judgment, petitioner certainly has made use of the wrong remedy.

Even if this Court was to treat the instant petition as a special civil action for certiorari under Rule 65, the same would still have to be dismissed.

In *Mercury Drug Corporation v. Court of Appeals*, the Court clarified the nature of a petition for relief from judgment:

A petition for relief from judgment is an equitable remedy that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. x x x.

This Court likewise ruled:

Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.

In the present case, petitioner posits that the Court of Appeals committed grave error when it failed to recognize the gross and palpable negligence, bordering on fraud, committed by Atty. A, whose negligence prevented petitioner from exhausting all the legal remedies available to it.

It is undisputed that the counsel of record of petitioner is the XYZ law firm. The law firm failed to notify petitioner of the adverse decision of the Court of Appeals to enable it to file a motion for reconsideration or to appeal from the said decision. The law firm's failure to inform petitioner of the decision is inexcusable negligence which cannot be a ground for relief from judgment. This is in line with jurisprudence that notice sent to counsel of record is binding upon the client, and the neglect or failure of counsel to inform his client of an adverse judgment resulting in the loss of right to appeal will not justify the setting aside of a judgment that is valid and regular on its face.

The negligence of Atty. A, the law firm's new associate, apparent in her mishandling of the cause of petitioner, likewise constitutes inexcusable negligence. Negligence, to be excusable, must be one which ordinary diligence and prudence could have not guarded against.

It must be pointed out that Atty. A's name did not appear in any of the pleadings filed by petitioner before the Labor Arbiter, the NLRC, and the Court of Appeals. It was only in the petition for relief filed before the Court of Appeals that the name of Atty. A appeared for the first time. In the petition for relief, Atty. A was blamed by petitioner and its counsel, the XYZ law firm, for squandering petitioner's opportunity to appeal the Court of Appeals' decision. What appears on the records is that the Comment and Memorandum of petitioner before the Court of Appeals were signed by Attys. C, D, and E.

From the foregoing, it is apparent that the handling lawyers of the law firm were putting the blame on Atty. A when they lost the case and forgot to file the appeal. Besides, if the case was, indeed, unloaded to Atty. A, the supervising lawyers would have detected the omission of the former considering that it is a common practice in a law firm that when it hires a new associate, his or her work is ordinarily reviewed by the more senior associate of the law firm. If the supervising lawyers of Atty. A, namely, Attys. C, D, and E, were not remiss in their duty to follow up the status of the case, they would have known that they have not received or reviewed any pleadings from Atty. A pertaining to the case under consideration. Simply, petitioner's counsel, the XYZ law firm itself, was guilty of inexcusable neglect in handling petitioner's case before the Court of Appeals.

Petitioner insists that its case is an exception to the general rule that the negligence of counsel binds the client.

Petitioner invokes this Court's ruling in *People's Homesite and Housing Corporation v. Workmen's Compensation Commission*, *Somoso v. Court of Appeals*, *Apex Mining, Inc. v. Court of Appeals*, *Salazar v. Court of Appeals*, *Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank*, and *Heirs of Pael v. Court of Appeals*, where this Court departed from the general rule that the client is bound by the mistakes of his lawyer considering that, in said cases, the lawyers were grossly negligent in their duty to maintain their client's cause and such amounted to a deprivation of their client's property without due process of law. In said cases, the petitions for relief from judgment were given due course. However, we find that the rulings in said cases do not apply in the instant case.

In *People's Homesite*, the counsel failed to apprise the petitioners therein of the hearing and the case was heard in their absence. The counsel also did not inform the petitioners that he had received a copy of the decision and neither did he file a motion for reconsideration or a petition to set aside judgment to protect the interests of his clients. When asked to explain, the counsel merely said that he did not inform the petitioners because the case escaped his attention. On account of these attendant facts, this Court found that there was "something fishy and suspicious" with the actions of counsel. The Court therein, in allowing the petition for relief from judgment and in remanding the case to the court of origin, had, in mind, the attending probability that petitioner's counsel colluded with the adverse party, which is utterly wanting in the present case.

In the case at bar, petitioner's counsel was able to actively defend its case before the Labor Arbiter, the NLRC and the Court of Appeals. In fact, the XYZ law firm was able to obtain a favorable decision for petitioner before the NLRC. The instant case is clearly at variance with the *People's Homesite* case.

In *Somoso*, the counsel of spouses *Somoso* informed them that he was withdrawing his appearance as counsel of the case. A decision dated 8 March 1985 was issued by the trial court against the spouses. The counsel received the decision on 15 August 1985, but the spouses came to know of the decision only on 27 September 1985, the day they received the letter from their counsel informing them of such decision. On 27 September 1985, the counsel belatedly filed in court his motion to withdraw as counsel which was dated 10 June 1985. This Court granted spouses' petition for relief from judgment as they were able to prove that they were entitled thereto considering that their counsel had earlier informed them of his intention to withdraw from the case, but belatedly filed the formal withdrawal.

In the present case, it has been Attys. C, D, and E who participated in the proceedings before the Court of Appeals. They did not notify the Court of Appeals that they had withdrawn from the case. There was completely no reason for them not to file an appeal, being the handling counsel of record during the pendency of the case before the Court of Appeals.

The case of *Apex Mining, Inc.* invoked by petitioner is not on all fours with the instant case. In *Apex*, petitioners' counsel did not attend the scheduled hearing for the reception of the evidence. The law firm did not even bother to inform its client of the scheduled hearing, as a result of which both counsel and petitioners were unable to attend the same. After the trial court issued an order declaring petitioners in default for having waived their right to present evidence, their counsel did not take steps to have the same set aside. In addition, the negligent counsel deliberately misrepresented in the progress report that the case was still pending with Court of Appeals when the same was dismissed months earlier. These circumstances are absent in the case under consideration because at no time was petitioner deprived of its right to submit evidence to support its argument.

Neither can the case of *Salazar* be applied in the case under consideration. In the former, petitioners were deprived of their right to present evidence at the trial through the gross and palpable mistake of their counsel who agreed to submit the case for decision without fully substantiating their defense. In the instant case, petitioner was able to

ventilate its defense through various pleadings and documentary evidence before the Labor Arbiter, the NLRC and the Court of Appeals.

In *Sarraga*, the petition for relief from judgment was granted due to the attending circumstance where the counsel of record was grossly negligent in defending the cause of the client. On the other hand, in the present case, petitioner is placing the blame on the alleged gross negligence of an attorney who has not even been shown to have participated in the proceedings of the case.

In *Heirs of Antonio Pael*, this Court found that there was a showing of “badges of fraud” displayed by the counsel of the unsuccessful party when he resorted to two clearly inconsistent remedies, namely appeal and motion for new trial. In contrast, the instant case merely illustrates a scenario where a counsel committed a simple and inexcusable negligence to the prejudice of the client.

In sum, this is not a case where the negligence of counsel is one that is so gross, palpable, pervasive and reckless which deprives the party of his or her day in court. For this reason, the Court need no longer concern itself with the propriety of the ruling of the Court of Appeals reinstating the decision of the Labor Arbiter. The Court is bound by the Court of Appeal’s ruling which had become final and executory due to the simple and inexcusable negligence of petitioner’s counsel in allowing the reglementary period to lapse without perfecting an appeal.[5]

- If the key facts are similar, extract from the earlier cases the legal principle/s upon which these cases were decided.
- Apply these principles to the present case.
- Arrive at a conclusion based upon the application of these principles to the present case.

Illustration:

The case before us is not of first impression. On all fours is Presidential Ad Hoc Fact Finding Committee on Behest Loans v. Desierto, also involving a complaint filed with the Office of the Ombudsman for an alleged behest loan obtained by the Philippine Seeds, Inc. during the Marcos administration. We ruled therein that since the law alleged to have been violated is Section 3 of Republic Act No. 3019, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, cited earlier. Under Section 2 of this Act, there are two (2) rules for determining when the period of prescription shall commence: First, on the day of the commission of the violation, if such commission is known. Second, if the commission of the violation is not known at the time, then, from discovery thereof and institution of judicial proceedings for investigation and punishment.

In this case, it was obviously impossible for the State, the aggrieved party, to have known when the questioned transactions took place. Clearly, the prescriptive period for the offense charged should be computed from the discovery of the commission thereof and not from the day of such commission.

It bears emphasis at this point that the Ombudsman summarily dismissed the complaint solely on the ground of prescription, without even requiring private respondents to submit their counter-affidavits.

Inasmuch as the computation of the running of the prescriptive period for the filing of the subject criminal action should commence from the discovery of the offense, not from the day of its commission, the filing with the Office of the Ombudsman by petitioner of the complaint in OMB Case No. 0-97-1740 has not yet prescribed. We, therefore, hold that the Ombudsman acted with grave abuse of discretion in dismissing outright OMB Case No. 0-97-1740.[6]

C. Judicial Precedent

1. Stare decisis et quia non movere

The principle stare decisis et quia non movere means “stand by the decision and disturb not what is settled.”

It simply means that a principle underlying the decision in one case will be deemed of imperative authority, controlling the decisions of like cases in the same court and in lower courts within the same jurisdiction, unless and until the decision in question is reversed or overruled by a court of competent authority. A single decision does not necessarily create a precedent to be followed.[7]

In applying this doctrine, some points need highlighting:

- Is the doctrine still maintained, or has it been abandoned or qualified?
- Is the doctrine uniformly stated by the court (considering that different divisions of the Supreme Court do sometimes produce different results on the same facts)?
- What are the factual similarities and differences that either warrant or do not warrant the application of precedent?
- Which is ratio and which is obiter dictum in any particular Supreme Court decision?
- It is obviously not necessary that all facts of the case correspond to the facts in the judicial precedent. It is of the essence though that the key facts be similar and the constellation of facts be also similar.

Key facts – facts that produce a result which, if otherwise, would yield a different result.

Constellation of facts – the arrangement of facts and their relations to each other.

- There are cases that indisputably call for the application of judicial precedent. In penumbral cases, however, the application or non-application of precedent will depend in large measure on whether or not the judge considers the differences significant enough to distinguish or similar enough to apply precedent. And whether or not the differences are significant or similar depends on considerations such as equity and fairness.
- Whether or not some differences are significant or not, however, does not always depend completely on the judge, but is itself circumscribed by certain rules, e.g., the rule that unless the law itself distinguishes, the courts should not; the rule that minor inconsistencies on the part of a witness' testimony strengthen, not detract from, the probative value of her testimony.[8]

2. Related Concepts

In applying judicial precedent, there are certain key concepts to know and understand.

a. Dictum v. Precedent

Dictum

Dictum is an observation or remark made concerning some rule, principle, or application of law suggested in a particular case, which observation or remark is not necessary to the determination of the case.[9]

The test of what dictum is depends on whether the statement made is necessary or unnecessary to the determination of the issues raised by the record and considered by the Supreme Court. If it was merely an illustration or argument, or a private view of the justice speaking, or superfluous and not needed for the full determination of the case, it was, so to speak, rendered without jurisdiction, or at least was extrajudicial. Official character attaches only to those utterances of the Supreme Court which bears directly upon the specific and limited questions which are presented to it for solution in the proper course of judicial proceedings.[10]

Precedent

A precedent is an adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law.[11]

b. Obiter Dicta v. Judicial Dicta

Obiter Dicta

A remark made, or opinion expressed, by a judge, in his decision upon a cause, incidentally or collaterally, and not directly upon the question before him, or upon a point not involved in the determination of the cause, is an obiter dictum and as such it lacks the force of an adjudication and is not to be regarded as such.[12]

Illustration:

“x x x the pronouncement made by the Court of Appeals that petitioner Ayala is barred from enforcing the deed of restrictions can only be considered as obiter dicta. As earlier mentioned, the only issue before the Court of Appeals at the time was the propriety of the annotation of the lis pendens. The additional pronouncement of the Court of Appeals that Ayala is estopped from enforcing the deed of restrictions even as it recognized that this said issue is being tried before the trial court was not necessary to dispose of the issue as to the propriety of the annotation of the lis pendens x x x”[13]

Judicial Dicta

Judicial dicta are conclusions that have been briefed, argued, and given full consideration even though admittedly unnecessary to decision.[14] A judicial dictum is entitled to much weight and should be followed unless found to be erroneous. With greater reason is this so in the case of an expression which is expressly declared by the Supreme Court to be announced as a guide for future conduct. Such a statement of a rule of practice for the guidance of inferior courts and of the Bar is not obiter dictum.[15]

Illustration:

“In fine, the supposed pronunciamento in said case regarding the necessity for the presentation of the master tapes of the copyrighted films for the validity of search warrants should at most be understood to merely serve as a guidepost in determining the existence of probable cause in copyright infringement cases where there is doubt as to the true nexus between the master tape and the pirated copies. An objective and careful reading of the decision in said case could lead to no other conclusion than that said directive was hardly intended to be a sweeping and inflexible requirement in all or similar copyright infringement cases. Judicial dicta should always be construed within the factual matrix of their parturition, otherwise a careless interpretation thereof could unfairly fault the writer with the vice of overstatement and the reader with the fallacy of undue generalization.”[16]

c. Res Judicata v. Law of the Case

Res Judicata

Res Judicata means “matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.”[17] The purpose of the doctrine is two-fold – to prevent unnecessary proceedings involving expenses to the parties and wastage of the court’s time which could be used by others; and to avoid stale litigations as well as to enable the defendant to know the extent of the claims being made arising out of the same single incident.[18]

There is res judicata where the following four essential conditions concur, viz: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter

and causes of action.[19]

Law of the Case

“Law of the Case” has been defined as the opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal.[20]

It is a rule of procedure and does not go to the power of the court and will not be adhered to where its application will result in an unjust decision. It relates entirely to questions of law, and is confined in its operation to subsequent proceedings in the same case.[21]

D. Case Synthesizing[22]

Case synthesis is a summary of two or more cases, describing their similarities and differences.

Through synthesis, it can be discovered why appellate courts sometimes reach similar conclusions in cases with seemingly different facts, as well as different conclusions in seemingly similar cases. Case syntheses also illustrate how legal rules are expanded, narrowed, or abandoned by court opinions.

In writing a case synthesis:

- Make an introductory statement broad enough to include all of the cases being compared, but narrow enough to exclude other cases.
- Show how the cases resemble each other and how they differ. That is, analogize and distinguish cases. In the analysis, discuss the following:
 - Causes of action;
 - Issues raised;
 - Holdings of the courts;
 - Rule/s formulated, applied, expanded, narrowed, or overturned; and
 - Reasoning of the courts.
- Come to some conclusion/s as a result of the analysis. For example, what legal rule/s would result from these decisions? What trend do the decisions indicate? Can one predict the outcome of similar cases? (That is, will the legal argument be retained intact, expanded, narrowed, or abandoned in subsequent cases?)

1. Outline of a Decision

In writing the decision of a particular case, it is also important for the judges to be familiar on the parts of the decision. Below are the parts of the decision with illustrations. Judges can adopt their own style in writing their decisions, as long as the requirements provided by law are complied with.

a. Caption and Title

The caption consists of the name of the court, title of the action, docket number, and names of all parties and their participation.

1. Civil Case

Illustration:

Republic of the Philippines

National Capital Judicial Region

Regional Trial Court

Branch 96

Quezon City

Sta. Lucia Realty and Development, Inc.

and DBH Development Corporation

Plaintiffs,

-versus- Civil Case No. Q-91-10084

Amelia D. Caballero, Editha M. Lumalag,

Remedita L. Cutillar, Imelda A. Bolo

and Natividad Beringuela,

Defendants.

2. Criminal Case

Illustration:

Republic of the Philippines

National Capital Judicial Region

Regional Trial Court

Branch 96

Quezon City

People of the Philippines,

Plaintiff,

-versus- Criminal Case No. Q-96-64678

For: MURDER

Meliton Ancheta y Manuel,

Accused.

b. Statement of the Case

“Statement of the Case” is the clear and concise statement of the nature of the action, a summary of the proceedings, the nature of the judgment, and any other matters necessary to an understanding of the nature of the controversy.

1. Civil Case

Illustration:

The case was commenced in September 1991 by the plaintiffs Sta. Lucia Realty and Development, Inc. and DBH Corporation to quiet their title over realty situated in Quezon City with an area of 133,280 square meters.

The realty consisted of four (4) contiguous parcels, each described and covered by Transfer Certificates of Title Nos. 45176, 45177, 45178 and 153940 of the Register of Deeds of Quezon City, to wit:

Transfer Certificate of Title No. 45176

x x x

Transfer Certificate of Title No. 45177

x x x

Transfer Certificate of Title No. 45178

x x x

Transfer Certificate of Title No. 153940

x x x

2. Criminal Case

Illustration:

The Charge

Meliton Ancheta was charged with murder by the Office of the City Prosecutor of Quezon City under the information which alleged:

“That on or about the 26[th] day of January, 1996, in Quezon City, the above-named accused, with intent to kill, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one JESUS BAUTISTA Y BOLUS, by then and there shooting the latter at the back of his head with a shotgun, thereby inflicting upon him a serious and mortal wound which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said victim.

“CONTRARY TO LAW.”

c. Finding of Fact

“Finding of fact” means statement of fact and not conclusions of law. Please refer to i. Facts on pages 42 to 44 for

the full discussion on this topic.

d. Statement of the Issues

“Statement of the Issues” shall present the issues of fact or of law.

1. Civil Case

Illustration:

Issue:

Which party, as between the plaintiffs and the defendants, owned the property?

2. Criminal Case

Illustration:

Issues:

1. Whether the accused is guilty of the crime of murder.

2. Was the accused insane at the time of the shooting?

e. Ruling of the Court

It contains the rulings of the court in a particular case. It is the application of the law to the facts established in the case.

For a discussion on the different kinds of judgment, please refer to pages 68 to 87.

f. Dispositive Portion

The dispositive portion states the adjudication of the case. It ends with the words SO ORDERED.[23]

1. Civil Case

Illustration:

WHEREFORE, in view of the foregoing considerations, judgment is rendered:

1. Declaring and holding plaintiffs STA. LUCIA REALTY & DEVELOPMENT, INC. and DBH DEVELOPMENT CORPORATION as the exclusive and absolute owners of the parcels of lands already registered, covered and technically described in Transfer Certificates of Title Nos. 45176, 45177, 45178 and 60523, all of the Register of Deeds of Quezon City, and their derivative certificates, if any;

2. Finding and decreeing that the defendants and the intervenors have and hold no rights of ownership or possession whatsoever to the parcels of land covered and technically described in Transfer Certificates of Title Nos. 45176, 45177, 45178 and 60523, all of the Register of Deeds of Quezon City, and their derivative certificates, if any, in derogation of or adverse to the plaintiffs' rights;

x x x

The counterclaim of the defendants is dismissed for lack of merit.

Costs of suit to be paid by the defendants.

SO ORDERED.

2. Criminal Case

Illustration:

WHEREFORE, judgment is hereby rendered finding accused Meliton Ancheta y Manuel guilty beyond reasonable doubt of the crime of homicide and sentencing him to suffer the indeterminate sentence of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months, of reclusion temporal, as maximum, with full credit for the period of his preventive imprisonment pursuant to Art. 29, Revised Penal Code; and ordering him to pay to the heirs of the late Jesus Bautista, represented by Adelaida Bautista, as follows: (1) P50,000.00 as death indemnity; (2) P149,827.80, as reimbursement for expenses for the burial plot, casket, vigil and wake prayers, funeral services, and other related expenses; (3) P1,200,000.00 as indemnity for the loss of earning capacity, and (4) P50,000.00, as moral damages.

Costs of suit to be paid by the accused.

SO ORDERED.

CHAPTER SEVEN

RULES OF GRAMMAR ON PUNCTUATIONS AND QUOTATIONS

The proper role of punctuation marks is to stress the relationships of words within sentences in order to control and emphasize meaning, while at the same time imbuing them with an “emotive” quality to better clarify their contextual content. Much of this chapter’s content is culled from the Manual of Judicial Writing, published by the Supreme Court “to provide a standardized form for the substance of Supreme Court decisions and resolutions.”

Clarity requires a sound superstructure of grammar, composition, and style. There are times when the rules of grammar are deliberately ignored. Below are some of the most basic and useful guidelines on punctuations and quotations.

A. Rules on Punctuations[1]

1. Period

- Place the period inside quotation marks. The same rule applies to single quotation marks.

Example:

Republic Act No. 6766 is otherwise known as the – “Organic Act for the Cordillera Autonomous Region.”

- Place the period outside parentheses or brackets that enclose a phrase or sentence fragment and inside parentheses or brackets that enclose a complete sentence.

Examples:

The lifeblood of livestock farms are the by-products of rice (rice-bran), coconut (copra meal), banana (banana pulp meal), and fish (fish meal).

The accused threatened the victim: – “Huwag kang papalag.” (Don’t resist.)

2. Comma

- Put a comma before coordinating conjunctions, such as and, but, or, nor, for, yet, or so, when joining two independent clauses. If two independent clauses are short and there is no danger of misreading, omit the comma.

Examples:

(correct) The company was not found liable for illegal dismissal, but it was ordered to pay nominal damages for non-compliance with the due process requirements.

(wrong) The company was not found liable for illegal dismissal but it was ordered to pay nominal damages for non-compliance with the due process requirements.

- Use a comma after a transitional word or phrase (except and or but), an introductory phrase (especially a long one), or a subordinate clause that precedes an independent clause.

Examples:

Transitional word:

Consequently, appellant withdrew his appeal.

Introductory phrase:

With respect to the issue of legal standing, the Court rules for petitioner.

Subordinate clause:

When the Court determines legislative intent, it looks into the records of the legislative proceedings.

- In a series of three or more items, place a comma between all items with the final comma before the conjunction and or or that concludes the series.

Examples:

The probate court ordered the administrator to submit the probable value of the decedent’s condominiums, houses, townhouses, and buildings.

An employee may be charged with dishonesty, oppression, or grave misconduct.

Defendant moved to strike out the testimony of the witness, requested leave to file a memorandum in support of her motion, and asked the court for continuance.

- Use a pair of commas to set off a parenthetical element that has a close logical and syntactic relation to the rest of the sentence. Long dashes (em-dashes) and parentheses may also be used. Long dashes indicate a more remote relation, and parentheses still more remote.

Examples:

A lawyer, who is an officer of the court, is expected to observe the highest of ethical standards.

The crime allegedly committed, estafa as defined in the Revised Penal Code, is one of the most frequently committed felonies.

- Use a comma to separate adjectives that each qualify a noun in parallel fashion, i.e., when the word and could appear between the adjectives without changing the meaning of the sentence, or it is possible to reverse the order of adjectives without affecting meaning.

Example:

The accused gave an improbable, unconvincing alibi.

- Do not use a comma between cumulative adjectives, i.e., those that do not modify the noun separately. Adjectives are cumulative if they cannot be connected with the word and.

Example:

Five burly men barged into the premises.

- Place a comma before Jr. and Sr. but not before II and III.

Examples:

Juan dela Cruz, Jr.

Juan dela Cruz III

3. Semicolon

- Use a semicolon to unite two short, closely connected sentences.

Examples:

There was no attempt to recognize the child; it would have been fruitless.

It was Christmas; furthermore, it was his birthday.

It was midnight; contrary to testimony, it was a moonlit night.

- Use a semicolon to substitute for the comma in a complex series when internal commas obscure the main divisions of any series.

Example:

The plaintiffs are Juan Santos of Iba, Zambales; Ricardo Castro of Virac, Catanduanes; Miguel Cruz of Makati City; and Maria Cruz of Malolos, Bulacan.

4. Colon

- Use a colon to link two clauses or phrases when you need to indicate a step forward from the first to the second, as when the second part explains the first part or provides an example.

Example:

An accused is presumed innocent: the burden rests on the prosecution to prove otherwise.

- Use a colon to introduce a wholly self-contained quotation, especially a long one.

Example:

In *Moya v. Del Fierro*, the Supreme Court held:

As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their constitution in the interest of good government and the common weal. Republicanism, insofar as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his Government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justifiable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality.

- Do not put a colon between (a) a verb and its object, (b) a verb and the rest of the sentence, or (c) a preposition and its object.

Examples:

(correct) We must subpoena Cruz, Santos, and Reyes.

(wrong) We must subpoena: Cruz, Santos, and Reyes.

(correct) The order of the judge is to subpoena Cruz, Santos, and Reyes.

(wrong) The order of the judge is: to subpoena Cruz, Santos, and Reyes.

(correct) We must serve a subpoena on Cruz, Santos, and Reyes.

(wrong) We must serve a subpoena on: Cruz, Santos, and Reyes.

5. Parentheses

- Use parentheses sparingly.

- Use parentheses to enclose explanations, discussions, and other interruptions.

Example:

Where the accused killed his spouse under exceptional circumstances (while in the act of sexual intercourse with another man), the penalty is destierro.

6. Apostrophe

- Form the possessive case of nouns by adding an apostrophe and s ('s); however, for plural nouns ending in s, simply add an apostrophe.

Examples:

woman's

children's

harness's

witnesses'

- To show joint possession, use 's or ' with the last noun only; to show individual possession, make all nouns

possessive.

Examples:

Juan and Maria's new car bumped into the pink fence. Juan's and Maria's cars are insured.

- Use 's to pluralize words used as words and letters used as letters.

Examples:

The no's have it.

Their seats were marked with large J's.

7. Hyphen

- Use a hyphen with compound words when necessary to prevent ambiguity or to connect the parts of a phrasal adjective, i.e., a phrase which modifies a noun.

Example:

(correct) She is a brilliant decision-maker. (compound word)

(wrong) She is a brilliant decision maker.

(correct) The investigator made an up-to-date report on the activities of the common-law husband. (phrasal adjectives)

(wrong) The investigator made an up to date report on the activities of the common law husband.

- Hyphenate abbreviations used as part of modifiers.

Example:

PHILJA-trained judges

- Hyphenate a suffix or prefix where it joins an abbreviation.

Examples:

Anti-SARS measure

MSG-free food

- Do not use a hyphen after a prefix unless

- the solid form might be confusing (e.g., anti-immigrant),

- the primary word is capitalized, as when it is a proper noun (e.g., pro-Filipino), or

- the unhyphenated form has a different meaning (e.g., prejudicial vs. pre-judicial).

8. Em-dash (or long dash)

- Use an em-dash to tack on an important afterthought.

Example:

The ordinance does not bear the imprimatur of the city mayor – a statutory requirement.

- Do not use more than two em-dashes in a sentence.

9. En-dash (or short dash)

Use an en-dash as an equivalent of to (as when showing a span of pages), to express tension or difference, or to denote a pairing in which the elements carry equal weight.

Examples:

101-10

hot-cold treatment

lessor-lessee relationship

B. The Use of Quotations[2]

1. Weave quotations deftly into the text. Tailor the lead-in to the quotation and let the quotation support what has been said.

Example:

The Civil Code provides when a contract exists:

ART. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established. (1261)

2. When quoting 49 words or less

- Keep the quote within the text with the use of quotation marks and do not use a comma or a colon if the quotation blends into the sentence.

Example:

According to the complainant, Mario's machinations "had cast dishonor, discredit, and contempt upon his person."

- Use single quotation marks for quoted words within quotations.

Example:

The victim tried to escape, but "the door was 'locked and barred,' trapping him inside."

3. When quoting 50 or more words

- Separate the quote from the rest of the text in a block without quotation marks.

- When the beginning of the quotation is also the beginning of the paragraph in the original text, indent the first line of the block quote.

- When the beginning of the quotation is not the beginning of the paragraph in the original text, do not indent the quote and do not use ellipsis.

- Indent block quotations equally on both sides. When quoting block quotations within block quotations, indent further equally on both sides. Use font size 12 and single space.

Examples:

In *Estrada v. Sto. Domingo*, the Court highlighted the confidentiality of decisions yet to be promulgated:

Decisions or orders of courts must be kept inviolate until they shall have been promulgated or released. Officials and employees of the courthouse must be strictly enjoined against giving any information in advance as to what will be done by the judge. No opportunity should be afforded the unscrupulous litigants, their lawyers, friends, relatives, sympathizers or those with power or influence to go to court and employees and by insidious means and even bribery acquire advance information on the desired judgment or order of the court. Employees should be made to understand that they are not to succumb to greed, to temptations for advancement in public service, that cause them to destroy the integrity of court proceedings or court records. A relaxation of this rule would embolden officials and employees of the courts to seek out interested parties in a case, give them the so-called “inside information” on the decision or order, or furnish them with copy of an unreleased decision or order, or hide, destroy or steal court records, or hold unserved a decision or resolution to promote a party’s cause – thereby to earn a quick peso. Some such occurrence as has happened in this case should be stamped out. A contrary proposition would breed graft and corruption and erode confidence in the administration of justice.

The facts, as found by the trial court, are as follows:

The plaintiff leased from defendant a parcel of land consisting of 546 square meters for a period of one (1) year.

The lease stipulated that

[A]fter termination of the lease x x x the lease shall be on a month to month basis in the absence of a written agreement to the contrary.

4. Lines of poetry that are normally set off from the text can be quoted in block regardless of length.

5. Place periods and commas inside quotation marks; colons and semicolons outside. Question marks and exclamation points may be inside or outside depending on whether they are part of the quotation.

Examples:

The witness stated that the accused looked “distraught,” and that he was “wringing his hands.”

The defendant objected to the presentation of the witness on the grounds that “she is the wife of the victim and therefore biased”; “she was not at the crime scene at the time of the incident”; and “she is mentally unstable.”

To clarify the statement of the accused, the judge asked, “Did you really write this letter by yourself?”

6. Use italics or boldface to emphasize specific words or phrases within the quotation. Add in parentheses words indicating that emphasis was supplied.

Example:

Sec. 2. Entry of plaintiff upon depositing value with unauthorized government depository – Upon filing of the complaint or any time thereafter and after due notice to the defendant the plaintiff shall have the right to take or enter upon the possession of the real property involved if he deposits with the authorized government depository an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court. (Emphasis added)

1. Ellipsis

- Use ellipsis (three x’s) with spaces in between to indicate deleted material from within a sentence.

Example:

All persons, whether citizen or alien without regard to any difference of race x x x, are protected under the guarantee of due process.

2. When omitting material at the end of a sentence, put a space followed by ellipsis and the original punctuation mark.

Example:

A void marriage is inexistent from the beginning x x x.

3. When omitting material following a sentence and the quotation continues, retain the punctuation mark followed by ellipsis.

Example:

Against whom can the Bill of Rights be enforced? x x x only against the state.

4. If the beginning of a subsequent paragraph in a block quotation has been omitted, indicate the omission by an indentation followed by ellipsis.

Example:

On the other hand, if he relied on a legal practitioner, it is quite probable that the one consulted, even if possessed of the requisite skill, did try to lend plausibility to what at bottom are essentially groundless charges by a rather strained reading of legal doctrines. What emerges clearly then is that the failing of inefficiency cannot be imputed to respondent Judge.

x x x As far as the behavior of a trial judge is concerned, however, it is not realistic to assume considering the nature and the burden laid on his shoulders, that he will at all times personify equanimity. It is understandable if there may be occasions when he is visibly annoyed or irked and that he would react accordingly.

5. If a subsequent paragraph or paragraphs in a block quotation are omitted, indicate the omission by inserting and indenting four x's on a new line.

Example:

Rule 130, Sec. 21. Disqualification by reason of mental incapacity or immaturity. – The following persons cannot be witnesses:

x x x x

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

2. Brackets

- Use a pair of brackets in a quotation to enclose an editorial comment, correction, explanation, substitution, addition, change, or translation that was not in the original text.

Example:

The trial court held that “[s]uch ruling finds no application to the present case because neither respondent Maria Cruz [the applicant in the land registration case] nor petitioner Juan de la Cruz [the oppositor in the cited case] was a holder of any certificate of title over the land intended for registration. x x x”

- When the quoted material contains mistakes that are not corrected by substituting bracketed language, indicate that the mistake appeared in the original by inserting “[sic]” after the mistaken language.

Example:

The Roll of Attorneys are [sic] updated.

3. Use brackets to enclose a parenthetical expression inside parentheses.

Example:

Petitioner failed to cite the only relevant section of the Bouncing Checks Law (assuming that the law [section 3] applies).

CHAPTER EIGHT

STYLE AND LITERARY ENHANCEMENT

Style is the art of creating a well-balanced writing that flows effortlessly and gives the reader the feeling that the writer knows the subject. It is personal to a writer and is said to be a window to one’s personality. It is a product of the writer’s experience and reflects the influence of many things, including reading habits, academic background, and knowledge of the rudiments of grammar.

Some writers have a style of writing peculiar to them to the extent that the reader can identify them just from the way their articles are written.[1] Judges usually exhibit their own individualities in their written decisions as each of them has a style of writing and expression.

There is a lot of room for a judge’s style as the Constitution does not specify the form of decisions and only requires that the facts and the law on which a decision is based be clearly and distinctly stated.[2]

Even as one adopts a style and uses a pattern, there should still be flexibility. Writing good decisions is an art. A judge should also enjoy reading his own decision and be able to take pride in it. A little editorializing or pontificating can be done if one knows how to do it.[3]

A. The Power of Words

The choice of words and the awareness of their denotation, as well as connotation, can be crucial and decisive in preparing the decision. When choosing from among competing synonyms, the judge must pick the better or the best for his purposes as words can aggravate, mitigate, modify, or intensify a situation.[4]

Thus, judges should take caution in the use and choice of words. High-sounding words are not necessarily appropriate for effective communication. The use of simple words, or words and terminology understandable to the ordinary laymen, is always better, if not also safer.[5]

Likewise, make it a habit to use the thesaurus.

B. Pointers on Style[6]

The following pointers will be useful when using words, phrases and clauses, and sentences.

1. Words

- Economy of words may be achieved through the following methods:

- Changing adjectives into nouns.

Faulty:

What impressed me most was the fact that the defendant was very frank. (13 words)

Better:

What impressed me most was the defendant's frankness. (8 words)

- Changing adjectives into adverbs.

Faulty:

The witness answered in a way that was nonchalant. (9 words)

Better:

The witness answered nonchalantly. (4 words)

- Changing verbs into nouns. Use gerunds.

Faulty:

Often the beauty of a decision lies in the way it is written. (13 words)

Better:

Often the beauty of a decision lies in the writing. (10 words)

- Changing verbs into adjectives. Use the suffixes “-able,” “-ed,” and “-ing” to change verbs into adjectives.

Faulty:

That was a pleading you could really enjoy reading. (9 words)

Better:

That was really an enjoyable pleading. (6 words)

- Using the infinitive phrase instead of a clause beginning with “that” or “so that.”

Faulty:

Hire a competent lawyer so that you can be represented. (10 words)

Better:

Hire a competent lawyer to represent you. (7 words)

- Removing words like “who has” or “which is” in relative clauses.

Faulty:

Our neighbor, who was the mayor of the town, was implicated in the murder case. (15 words)

Better:

Our neighbor, the town mayor, was implicated in the murder case. (11 words)

- Using a prepositional phrase to start a sentence instead of an adverbial phrase.

Faulty:

As soon as summer arrives, the Supreme Court will hold its sessions in Baguio City. (15 words)

Better:

Every summer, the Supreme Court holds its sessions in Baguio City. (11 words)

- Using a single adjective to do the work of a phrase.

For instance, a brave man for a man of bravery. There are cases, however, when the phrase is better than the single word, as when it yields emphasis or rhythm, e.g., a thing of beauty, instead of a beautiful thing.

- Deleting redundant or unnecessary words.

Faulty:

Prosecution lawyers were convinced in their minds that the accused's wife was lying. (unnecessary)

Better:

Prosecution lawyers were convinced that the accused's wife was lying.

Faulty:

Anthony is now employed at the Office of the Court Administrator working as a legal researcher. (redundant)

Better:

Anthony works at the Office of the Court Administrator as a legal researcher.

Faulty:

Justice Minita V. Chico-Nazario is presently the incumbent president of the Philippine Women Judges Association. (redundant)

Better:

Justice Minita V. Chico-Nazario is the incumbent president of the Philippine Women Judges Association.

True and correct, cease and desist, and null and void are some examples which may be sparingly used if emphasis is needed. However, completely avoid redundancies (e.g., present incumbent, past history, actual facts) and unnecessary phrases (e.g., needless to say, to be perfectly honest, before anything else, to stress the obvious).

- Using short words, which are usually clearer, crispier, and more exact.

Faulty:

We will file the appropriate charges in the event that he will not retract his statements and make a public apology.

Better:

We will file the appropriate charges if he will not retract his statements and make a public apology.

- Be accurate in the choice of words.

Faulty:

The suspect offered money to please the family of his victim.

Better:

The suspect offered money to appease his victim's family.

- State the points to be emphasized in concrete and specific terms. The minds of the readers respond more readily to the specific, the tangible, and the concrete.

Faulty:

A career in the Judiciary offers many things.

Better:

A career in the Judiciary offers many challenges.

- Do not use "while" in place of "although," and do not use "since" in place of "because."

Illustration:

Although he does not have all the answers, he does know the questions. (With "while," the sentence can mean during the time he does not have the answers.)

Illustration:

Because he has talked with the lawyer, we have decided he is serious. (With "since" instead of "because," the sentence can refer to time, i.e., "Since the day he talked with the lawyers...") "Since" should be used when it refers to time.

- To determine the subject, predicate, and object of a sentence, ask yourself the question: "Who is doing what to whom?" Then focus on these three key elements: the actor (who), the action (doing what), and the object (to whom).

Illustration:

who doing what object

The [prosecutor] [studies] the [forensic evidence] in the murder case.

C. Phrases and Clauses

- Adjectives, adverbs, phrases, and clauses should be placed close to what they modify and the relationship between these words and their antecedents should be clear and logical. Otherwise, you will have dangling modifiers.

Faulty:

Speeding along the expressway, the victim's car was accidentally hit by the truck.

Better:

Speeding along the expressway, the truck accidentally hit the victim's car.

Do not use a conjunction followed by a pronoun when linking a subordinate clause to a main clause. A conjunction can only be used when linking grammatical units of the same kind. A phrase cannot be joined to a clause.

- Put your minor ideas in subordinate clauses or phrases and your main ideas in the main clauses or phrases.

Illustration:

SC MC

[Before he gave his statement], [David Santos waited for his lawyer at the police station.]

- Avoid mixing metaphors. Mixed metaphors result when the writer uses incongruous words in comparing objects.

Faulty:

The long arm of the law smelt the criminals in their hideout.

Better:

The long arm of the law caught the criminals in their hideout.

D. Sentences

- Writing effective sentences involves matters such as unity, completeness, coordination, word order, and transition.

A sentence has unity when it contains a single thought or group of closely-related words. A sentence, to be complete, must have both a subject and a predicate. On the other hand, coordination is the placing of important thoughts in main clauses and minor ideas in subordinate clauses.

The usual word order of the elements of a sentence is: first, the subject; second, the predicate; and third, the object. Start the sentence with its subject. If the subject is placed at the end of the sentence, the reader will have to comprehend all the words that precede it before it appears. For emphasis, the elements of the sentence may be inverted with the predicate at the beginning and the subject at the end. This is the periodic sentence, where the full meaning is not initially apparent and appears only at the end. Therefore, the reader is kept in suspense. Keep the subject and the predicate closely together. The sense of the sentence cannot be understood unless the subject and the predicate are used as a unit.

Transition refers to the method by which writers bridge gaps in what has been covered once he reads them.

Faulty:

The latest jurisprudence on murder cases is being studied by the judge.

Better:

The judge studies the latest jurisprudence on murder cases.

- Express your thoughts in affirmative, not negative sentences. The reader can understand affirmative sentences more quickly and easily than negative ones except when it is more emphatic (e.g., not unaware, not unconstitutional).

Faulty:

The prosecution panel is not disagreeable to a re-cross examination of one of its witnesses by the defense lawyers.

Better:

The prosecution is agreeable to a re-cross examination of one of its witnesses by the defense lawyers.

- Avoid beginning or ending a sentence with weak and relatively unimportant words or ideas. This is where the

attention of the reader is most keen. Reserve the beginning position for the more emphatic word. There are times when a transitional word like “and” or “but,” ordinarily weak words, have to be placed at the beginning of a sentence for emphasis.

Faulty:

In my opinion, the victim candidly answered the questions propounded to her during the trial.

Better:

The victim candidly answered the questions propounded to her during the trial.

- Use the active voice rather than the passive unless there is no other way.

Faulty:

A shot was fired by the accused.

Better:

The accused fired the shot.

The use of non-sexist language is highly encouraged. See related Supreme Court issuance on pages 221 to 224.

CHAPTER NINE

SUMMING UP

One notes that, at first glance, the Constitution does not seem to be very helpful about its instructions to judges in writing their decisions and opinions. Beyond saying that “no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based,” it appears that judges are left to their own devices pertaining to issues of judicial draftmanship. His Honor, therefore, is afforded considerable leeway in crafting his decisions according to his own sense of form, style, content, and substance.

In reality, however, the Constitution says more than enough about how the architecture and building blocks of a well-written decision should be constructed. A good decision should reflect the personality, learning, and authority of its writer. Indeed, this is no easy task but one can take comfort in Napoleon’s observation: “Nothing is more difficult, and therefore more precious, than to be able to decide.” Putting that decision to paper, of course, makes it doubly difficult even as it becomes much more precious.

It is with this realization in mind that this instructional handbook and the “fundamentals” it imparts must be taken, and viewed from the context of how the Rule of Law is to be effectively communicated and well understood by the people who seek judicial relief from the nation’s courts.

As noted earlier, judges are relatively free to adopt their own formats and styles in crafting their decisions, the only caveat being the constitutional requirements that these be supported by proven facts and applicable law. Since there is no established template for decision writing, many judges have opted for the traditional method in composing their judgments. Others have adopted contemporary styles which are deemed to project a more modern approach to decision writing – with a few of them even going to the extent of experimenting with “plain English” by shunting “legalese,” ostensibly to better communicate the ratio decidendi of their judgments to a lay constituency. On the other hand, many judges are partial to long disquisitions by liberally quoting – sometimes in their entirety – ponderous Supreme Court ponencias that are believed to have a bearing, no matter how slightly, on the legal issues pending before them. A number of magistrates have adapted formulaic templates to hasten

their decisional output so that they do not run afoul of Supreme Court “deadlines.”

Regardless, it cannot be over-emphasized that substance must prevail over form or style. Each year, the highly exclusive Society for Judicial Excellence, now with retired SC Justice Bernardo P. Pardo at the helm, searches for and selects three outstanding lower court judges from each level, as well as the best decisions in civil law and criminal law. The specific criteria cited for these awards, applied to both categories, are culled from their written decisions, published works, as well as lectures and speeches. Thus, a judge’s demonstrated competence and contributions to law and jurisprudence are critically gleaned from his “legal knowledge, grasp of facts and logical reasoning, research, style, and grammar.”

In beginning with the basic concepts which are generally associated with judicial writing, the judge is encouraged to review and familiarize himself anew with the definitions of various legal terms and phrases so that he can be better acquainted with their linkage to established law and jurisprudence. It is hoped that through this fine-tuning of his linguistic awareness he can more effectively nuance his analysis of the law and the facts essential to a fair and balanced resolution of the issues being ventilated by the litigants in his court.

Next, he is reminded that there are constitutional and statutory standards, as well as the Rules of Court, to be complied with when he commits his conclusions to a written decision or order even as there are no court prescriptions on what writing style or form to adopt. Chief Justice Artemio V. Panganiban has a very simple formula which he has denominated as “the four C’s of Effective Decision Writing,” namely, completeness, correctness, clarity, and conciseness. The ABC of effective decision writing teaches us that accuracy, brevity, and clarity are the hallmarks of a well-crafted decision. It is to be noted that these standards are on all fours with Chief Justice Panganiban’s Four C’s.

The tried-and-tested techniques in writing decisions are treated in detail in the book, down to a parsing of its diverse parts, namely, (a) caption and title; (b) statement of the case; (c) finding of fact; (d) statement of the issues; (d) the court ruling; and (e) the dispositive portion. The SC Manual of Judicial Writing, as developed by another committee chaired by Justice Adolfo S. Azcuna, is extensively quoted for its value in ensuring that court decisions, from the Supreme Court down to the municipal court, achieve consistency of style in matters of form and citations without, however, encroaching on the individual writing styles of our judges.

To be sure, all of these factors and considerations have been adequately taken into account by the Committee, initially chaired by the late Court of Appeals Justice Ricardo P. Galvez and now by retired SC Justice Hugo E. Gutierrez. The members of the Committee are all established writers. CA Justice Lucas P. Bersamin, Society for Judicial Excellence Awardee for the Year 2000, for example, also enjoys the singular distinction of having been adjudged the Best Decision Writer in both Civil Law and Criminal Law that same year. Much of the materials for this PHILJA project have been sourced from the collective wisdom and expertise hewn by many of our judges from their actual experience on the bench in adjudicating thousands of cases over the years. Chief Justice Reynato S. Puno and Chief Justice Panganiban are proudly counted among them, including retired SC Justices Isagani A. Cruz and Camilo D. Quiason who have both written extensively on the subject.

End Notes

Chapter Two

[1] Puno, Decision Writing, 4 PHILJA Judicial J., No. 14, 1,3 (2002).

[2] Francisco v. Permskul, G.R. No. 81006, May 12, 1989, 173 SCRA 324 (1989).

[3] Gutierrez, Writing of Decisions and Resolutions, 4 PHILJA Judicial J., No. 14, 97, 101(2002), See SONCUYA v. National Investment Co., Inc., 69 Phil. 602 (1940) and Bacolod Murcia Milling Co. v. Henares, 107 Phil. 560 (1960), also Mendoza v. CFI, 51 SCRA 369 (1973), Avila v. Auditor General, 58 SCRA 7 (1974).

Chapter Four

[1] Garner, The Element of Legal Style, 7, 208 (1991), quoting Pierce, The Legal Profession, 30 The Torch 5, 8 (1957).

[2] Bersamin, Writing and Writing Style, 4 PHILJA Judicial J., No. 14, 72,77 (2002).

[3] Bersamin, *supra*.

[4] Bersamin, *supra* at 78.

[5] Bersamin, *supra*.

[6] Panganiban, The Four Cs of Effective Decision Writing, 4 PHILJA Judicial J., No. 14, 27,46 (2002).

[7] Panganiban, *supra* at 45.

[8] Bersamin, *supra* at 78.

[9] Bersamin, *supra* at 80.

[10] People v. Amondina, G.R. No. 75295, March 17, 1993, 220 SCRA 6.

[11] Bersamin, *supra*.

[12] People v. Francisco, G.R. No. 106097, July 21, 1994, 234 SCRA 333, 341, July 21, 1994.

[13] Bersamin, Writing and Writing Style, 4 PHILJA Judicial J., No. 14, 72,77 (2002), quoting Godbold, Twenty Pages and Twenty Minutes – Effective Advocacy on Appeal, 30 Sw. Law Journal, 801, 816 (1976).

[14] Garner, *supra* at 55.

[15] Bersamin, Appeal and Review in the Philippines, 2[nd] ed., 201, 205 (2000).

[16] Bersamin, *supra*, quoting Hicks, Materials and Methods of Legal Research, 3[rd] ed., 373 (1942).

[17] People v. De Leon, G.R. No. L-36443, March 8, 1984, 128 SCRA 121, 123 (1984).

[18] People v. De Leon, *supra*.

[19] People v. Banayo, G.R. No. L-64164, June 22, 1984, 129 SCRA 725, 731 (1984).

[20] Gutierrez, Writing of Decisions and Resolutions, 4 PHILJA Judicial J., No. 14, 97,109 (2002).

[21] Webster's Third New International Dictionary (Unabridged), 416 (1986).

[22] Panganiban, *supra* at 49.

[23] Black's Law Dictionary, 6[th] ed., 592 (1990).

[24] 2 Moran, Comments on the Rules of Court, 209,211 (1996).

[25] Moran, *supra*.

[26] Panganiban, *supra* at 50 (faulty and better examples also lifted from the same 49).

[27] Panganiban, *supra* at 47 (faulty and better examples also lifted from the same 48).

[28] Panganiban, *supra* at 50 (faulty and better examples also lifted from the same 50).

[29] Panganiban, *supra* at 47 (faulty and better examples also lifted from the same).

[30] Hacker, *A Writer's Reference*, 3[rd] ed., 73 (1995).

[31] Panganiban, *supra* at 50.

[32] Panganiban, *supra* at 51.

[33] *Manual of Judicial Writing*, at 9 (2005).

[34] *Manual of Judicial Writing*, *supra* at 9-10.

[35] *Manual of Judicial Writing*, *supra* at 10-17.

[36] *Manual of Judicial Writing*, *supra* at 17-18.

[37] *Manual of Judicial Writing*, *supra* at 18.

Chapter Five

[1] Bersamin, *Writing and Writing Style*, 4 PHILJA Judicial J., No. 14, 72,83 (2002).

[2] Raymond, "A Seven-Step Recipe for Organization" from *The Architecture of Argument*, 4 PHILJA Judicial J., No. 14, 117 (2002).

[3] *Ibid.*, at 118-122.

[4] *Ibid.*, at 122-124.

[5] *Ibid.*, at 124-125.

[6] *Rules of Court*, Rule 44, Sec. 13 (c).

[7] *Constitution*, (1987), Art. VIII, Sec. 14.

[8] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283 (2004).

[9] Puno, *Decision Writing*, 4 PHILJA Judicial J., No. 14, 5-6 (2002).

[10] The Supreme Court discussed the nature of a Memorandum Decision in the case of *Francisco v. Permskul*, G.R. No. 81006, May 12, 1989, 173 SCRA 324 (1989). The Court said that the distinctive features of the memorandum decision are, first, it is rendered by an appellate court, and second, it incorporates by reference the findings of fact or the conclusions of law contained in the decision, order or ruling under review. The reason for allowing the incorporation by reference is to avoid the cumbersome production of the decision of the lower court, or portions thereof, in the decision of the higher court. However, the Court also emphasized that the memorandum decision should be "sparingly used lest it become an addictive excuse for judicial sloth. It is an additional condition for its validity that this kind of decision may be resorted only in cases where the facts are in the main accepted by both parties or easily determinable by the judge and there are no doctrinal complications involved that will require an extended discussion of the laws involved." [emphasis supplied]

[11] 2 Moran, *Comments on the Rules of Court*, 210 (1996).

[12] 2 Moran, *supra* at 210-211.

[13] 2 Moran, *supra* at 6-7.

[14] Velarde v. Social Justice Society, *supra* note 8 at 313.

[15] Globe Telecom, Inc. v. Florendo-Flores, G.R. No. 150092, September 27, 2002, 438 Phil. 756, 765 (2002).

[16] Constitution, (1987), Art. XIV, Sec. 7 states: "For purposes of communication and instruction, the official languages of the Philippines are Filipino and, until otherwise provided by law, English. xxx."

[17] Rules of Court, Rule 120, Sec. 1.

[18] Rules of Court, Rule 120, Sec. 2.

[19] Rules of Court, Rule 120, Sec. 3.

[20] Rules of Court, Rule 120, Sec. 4.

[21] Act No. 4103, as amended.

[22] Act No. 4103, Sec. 1.

[23] People v. Simon, G.R. No. 93028, July 29, 1994, 234 SCRA 555 (1994).

[24] Argoncillo v. Court of Appeals, G.R. No. 118806, July 10, 1998, 292 SCRA 313 (1998).

[25] Argoncillo, *supra* at 330 citing Bacar v. De Guzman, Jr., A.M. No. RTJ-96-1349, April 18, 1997, 271 SCRA 328 (1997):

- Offenses punished by death or life imprisonment.
- Those convicted of treason (Art. 114), conspiracy or proposal to commit treason (Art. 115).
- Those convicted of misprision of treason (Art. 116), rebellion (Art. 134), sedition (Art. 139), or espionage (Art. 117).
- Those convicted of piracy (Art. 122).
- Habitual delinquents (Art. 62, par. 5).

Recidivists are entitled to an indeterminate sentence. (People v. Jaramillo, G.R. No. L-28547, Feb. 22, 1974, 154 Phil. 516). Offender is not disqualified to avail of the benefits of the law even if the crime is committed while he is on parole. (People v. Calreon, CA 78 O.G. 6701, Nov. 19, 1982).

- Those who escaped from confinement or those who evaded sentence.
- Those granted conditional pardon and who violated the terms of the same (Art. 159). (People v. Corral, 74 Phil. 357).
- Those whose maximum period of imprisonment does not exceed one year.

Where the penalty actually imposed does not exceed one year, the accused cannot avail himself of the benefits of the law, the application of which is based upon the penalty actually imposed in accordance with law and not upon that which may be imposed in the discretion of the Court. (People v. Hidalgo, C.A.-G.R. No. 00452-CR, Jan. 22, 1962).

- Those who are already, serving final judgment upon the approval of the Indeterminate Sentence Law.

[26] People v. Hernandez, G.R. No. 108027, March 4, 1999, 304 SCRA 186 (1999) citing People v. Penillos, G.R.

No. 65673, January 30, 1992, 205 SCRA 546 (1992), citing *People v. Baguio*, G.R. No. 76585, April 30, 1991, 196 SCRA 459 (1991).

[27] *People v. Fuertes*, G.R. Nos. 95891-92, February 28, 2000, 326 SCRA 382 (2000) citing *People v. Balasa*, GR Nos. 106357, 108601-02, September 3, 1998, 295 SCRA 49 (1998); *People v. Ballabare*, G.R. No. 108871, November 19, 1996, 264 SCRA 350 (1996); and *People v. Retuta*, G.R. No. 95758, August 2, 1994, 234 SCRA 645 (1994).

[28] Rules of Court, Rule 36.

[29] Rules of Court, Rule 36, Sec. 1.

[30] Rules of Court, Rule 36, Sec. 3.

[31] Rules of Court, Rule 36, Sec. 4.

[32] Rules of Court, Rule 36, Sec. 5.

[33] Rules of Court, Rule 36, Sec. 6.

[34] Revised Rules on Summary Procedure, Sections 6 and 7.

[35] Rules of Court, Rule 63.

[36] 1 Regalado, Remedial Law Compendium, 692 (1995).

[37] 1 Regalado, *supra* at 693.

[38] Rules of Court, Rule 66.

[39] Rules of Court, Rule 67.

[40] 1 Regalado, *supra*, citing *Uriarte v. Teodoro, Sr.*, G.R. No. L-2833, April 24, 1950, 86 Phil. 196 (1950).

[41] metes and bounds – n. a surveyor's description of a parcel of real property, using carefully measured distances, angles and directions, which results in what is called a "legal description" of the land, as distinguished from merely a street address or parcel number. Such a metes and bounds description is required to be recorded in official county records on a subdivision map and in the deeds when the boundaries of a parcel or lot are first drawn.

[42] 1 Regalado, *supra*, citing *Benguet Consolidated, Inc. v. Republic*, G.R. No. L-71412, August 15, 1986, 143 SCRA 467 (1986).

[43] Rules of Court, Rule 68.

[44] The exact period must be specified by the court in its judgment. (1 Regalado, *supra* at 751).

[45] Rules of Court, Rule 69.

[46] Definition of "metes and bounds," *supra*, note 41, Chapter Five.

[47] Rules of Court, Rule 70.

[48] 1 Regalado, *supra*, citing *Dikit v. Icasiano*, G.R. No. L-3621, May 23, 1951, 89 Phil. 44 (1951).

[49] *Aznar Brothers Realty Company v. Court of Appeals*, G.R. No. 128102, March 7, 2000, 327 SCRA 359 (2000) citing *De Laureano v. Adil*, No. L-43345, July 29, 1976, 72 SCRA 148, 155 (1976).

[50] Republic v. Tuvera, G.R. No. 148246, February 16, 2007, 156 SCRA 113 (2007) citing Art. 2199 of the Civil Code.

[51] Rules of Court, Rule 60.

[52] The Rules are set to be revised by the Supreme Court Committee on the Revision of Rules on Special Proceedings.

[53] Rule on Adoption (A.M. No. 02-6-02-SC).

[54] Rule on Declaration of Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC).

[55] Rule on Legal Separation (A.M. No. 02-11-11-SC).

[56] Rules of Court, Rule 103.

[57] Interim Rules of Procedure on Corporate Rehabilitation (A.M. No. 00-8-10-SC).

[58] Interim Rules of Procedure on Corporate Rehabilitation, Section 23.

[59] Rules of Court, Rule 7.

SEC. 2. The body. – The body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading. (n)

(a) Paragraphs. – The allegations in the body of a pleading shall be divided into paragraphs so numbered as to be readily identified, each of which shall contain a statement of a single set of circumstances so far as that can be done with convenience. A paragraph may be referred to by its number in all succeeding pleadings. (3a)

(b) Headings. – When two or more causes of action are joined, the statement of the first shall be prefaced by the words "first cause of action," of the second by "second cause of action," and so on for the others.

When one or more paragraphs in the answer are addressed to one of several causes of action in the complaint, they shall be prefaced by the words "answer to the first cause of action" or "answer to the second cause of action" and so on; and when one or more paragraphs of the answer are addressed to several causes of action, they shall be prefaced by words to that effect. (4)

(c) Relief. – The pleading shall specify the relief sought, but it may add a general prayer for such further or other relief as may be deemed just or equitable. (3a, R6)

(d) Date. – Every pleading shall be dated. (n)

[60] Casent Realty & Dev't Corp. v. Premiere Dev't Bank, G.R. No. 163902, January 27, 2006, 480 SCRA 426 (2006).

The case stemmed from proceedings in the trial court where both parties agreed to bring their dispute over payments of Casent's loan from Premiere Bank before an independent auditor. When the court chose the independent auditor, Casent Realty filed a Very Urgent Motion for Clarification contending that the independent auditors could not conduct a review of Premiere Bank's computations to determine whether these were in compliance with banking standards and regulations as this would involve a pronouncement on the merits of the case. As an alternative, it proposed that the function of the independent auditors be limited to a historical review of the payments made and to determining whether the payments were applied properly.

The prayer of Casent Realty's motion reads, viz.:

WHEREFORE, it is most respectfully prayed that the functions of the independent auditor appointed by the Honorable Court as stated in the Order dated 26 May 2003 be clarified to refer merely to making a historical review of the payments made by plaintiff Casent Realty and the application thereof by defendant Premiere Bank, for the sole purpose of assisting the parties for a possible compromise agreement, without making any determination on matters affecting the merits of the instant case.

Other reliefs just and equitable are likewise prayed for.

The Regional Trial Court denied Casent Realty's Very Urgent Motion for Clarification but allowed it to file a manifestation that it was uninterested in having independent auditors assist the parties in arriving at an amicable settlement of the case so that pre-trial would proceed. Premiere filed a motion for reconsideration of the order contending that the order was not within the scope of Casent's motion.

The Supreme Court held that the trial court did not commit grave abuse of discretion in issuing the assailed order.

[61] RULES OF COURT, RULE 8 – MANNER OF MAKING ALLEGATIONS IN PLEADINGS

SECTION 1. In general. – Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. (1)

If a defense relief on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated. (n)

SEC. 2. Alternative causes of action or defenses. – A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. (2)

SEC. 3. Conditions precedent. – In any pleading a general averment of the performance or occurrence of all conditions precedent shall be sufficient. (3)

SEC. 4. Capacity. – Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge. (4)

SEC. 5. Fraud, mistake, condition of the mind. – In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity. Malice, intent, knowledge or other condition of the mind of a person may be averred generally. (5a)

SEC. 6. Judgment. – In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. (6)

SEC . 7. Action or defense based on document. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. (7)

SEC. 8. How to contest such documents. – When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused. (8a)

SEC. 9. Official document or act. – In pleading an official document or official act, it is sufficient to aver that the document was issued or the act done in compliance with law. (9)

SEC. 10. Specific denial. – A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (10a)

SEC. 11. Allegations not specifically denied deemed admitted. – Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath. (1a, R9)

SEC. 12. Striking out of pleading or matter contained therein. – Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within twenty (20) days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may order any pleading to be stricken out or that any sham or false, redundant, immaterial, impertinent, or scandalous matter be stricken out therefrom. (5, R9)

[62] *Phil. Commercial and Industrial Bank v. Court of Appeals*, G.R. No. L-34959, March 18, 1988, 159 SCRA 24 (1988).

[63] Rules of Court, Rule 18, Sec. 7.

[64] Rules of Court, Rule 18, Sec. 5.

[65] Rules of Court, Rule 118.

[66] Rules of Court, Rule 32.

[67] Gutierrez, *Writing of Decisions and Resolutions*, 4 PHILJA Judicial J., No. 14, 97 (2002).

[68] It is important to indicate the date of the source cited to ensure that it is the prevailing law or jurisprudence at the time of the rendition of judgment.

Chapter Six

[1] Excerpted from the speech *The Architecture of Argument* delivered by Dr. James C. Raymond, Ph.D, at the Lecture on Judicial Writing on May 21, 2002 at PHILJA Conference Room, Manila.

[2] Aquino, *Legal Logic*, 4 PHILJA Judicial J., No. 14, 223 (2002).

[3] Feliciano, *Case Analysis and Legal Writing*, 4 PHILJA Judicial J., No. 14, 185,197 (2002).

[4] The names of the counsels in this case have been changed for purposes of this Manual.

- [5] *Trust International Paper Corp. v. Pelaez*, G.R. No. 164871, August 22, 2006, 499 SCRA 552 (2006).
- [6] *Presidential Commission on Good Government v. Desierto*, G.R. No. 135119, October 21, 2004, 441 SCRA 106 (2004).
- [7] Bersamin, *Appeal and Review in the Philippines*, 2[nd] ed., 216 (2000) citing Price and Bitner, *Effective Legal Research*, § 9.7.
- [8] Aquino, *supra*.
- [9] *Black's Law Dictionary*, 6[th] ed., 454 (1990).
- [10] Bersamin, *supra* at 227 citing Wambaugh, *Use of Decisions and Statutes*, p. 306.
- [11] *Black's Law Dictionary*, 6[th] ed., 1176 (1990).
- [12] *Morales v. Paredes*, G.R. No. 34428, December 29, 1930, 55 Phil. 565 (1930).
- [13] *Ayala Corporation v. Rosa-Diana Realty and Development Corp.*, G.R. No. 134284, December 1, 2000, 346 SCRA 663 (2000).
- [14] *Cerro Metal Prods. v. Marshall*, 620 F.2d 964, 978 n.39 (3d Cir. 1980).
- [15] Bersamin, *supra* at 231 citing 21 CJS, § 190, c. (Judicial Dicta).
- [16] *People v. Choi*, G.R. No. 152950, August 3, 2006, 497 SCRA 547 (2006).
- [17] Bersamin, *supra* at 390 citing *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, January 10, 1994, 229 SCRA 252 (1994).
- [18] Bersamin, *supra* at 391 citing S. Sime, *A Practical Approach to Civil Procedure*, p. 391.
- [19] *Dela Rama v. Mendiola*, G.R. No. 135394, April 29, 2003, 401 SCRA 704 (2003).
- [20] *Cucueco v. Court of Appeals*, G.R. No. 139278, October 25, 2004, 441 SCRA 290 (2004); *Magellan Capital Management Corporation v. Zosa*, G.R. No. 129916, March 26, 2001, 355 SCRA 157 (2001).
- [21] Bersamin, *supra* at 394.
- [22] Feliciano, *supra* at 199.
- [23] *Manual of Judicial Writing*, *supra* at 35.

Chapter Seven

- [1] *Manual of Judicial Writing*, at 19-26 (2005).
- [2] *Manual of Judicial Writing*, *supra* at 26-31.

Chapter Eight

- [1] Quiason, *Writing Style*, citing Fogiel, 4 PHILJA Judicial J., No. 14, 141 (2002).
- [2] Puno, *Decision Writing*, 4 PHILJA Judicial J., No. 14, 1,4 (2002).
- [3] Gutierrez, *supra* at 106.
- [4] Bersamin, *supra* at 64.

[5] Bersamin, *supra*.

[6] Quiason, *supra* *the whole section on Pointers on Style is taken from the same, pp. 144-151. However, the Committee on the Manual on Decision Writing for Judges modified the examples, as well as provided additional examples for the section on Pointers on Style.

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Appendices

A

2000 Judicial Excellence Awardee
Best Decision Award in Criminal Case
by JUDGE LUCAS P. BERSAMIN[*]

REPUBLIC OF THE PHILIPPINES
National Capital Judicial Region
REGIONAL TRIAL COURT
Branch 96
Quezon City, Metro Manila

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus- Criminal Case No. Q-96-64678

For: MURDER

MELITON ANCHETA y MANUEL,

Accused.

PROMULGATED: MARCH __, 1999

X ----- X

DECISION

THE CHARGE

Meliton Ancheta was charged with murder by the Office of the City Prosecutor of Quezon City under the information which alleged:

“That on or about the 26[th] day of January, 1996, in Quezon City, the above-named accused, with intent to kill, with evident pre-meditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one JESUS BAUTISTA Y BOLUS, by then and there shooting the latter at the back of his head with a shotgun, thereby inflicting upon him serious and mortal wound which was the direct and immediate cause of his untimely death to the damage and prejudice of the heirs of the said victim.

“CONTRARY TO LAW.”

After the arraignment was scheduled, Atty. Rene A. Elevazo of the Yulo, Torres, Tarriela and Bello Law Offices submitted on March 22, 1996 an urgent motion to defer the arraignment and to subject the accused to a mental examination, attaching thereto the medical certificate dated February 1, 1996 issued by Dr. Alice L. Anghad, Medical Officer IV/OIC-Psychiatry Department, Cagayan Valley Regional Hospital, Tuguegarao, Cagayan, which stated that Ancheta had been diagnosed to suffer from: “SCHIZO, PARANOID, RESTLESS.” Accordingly, on March 25, 1996, the Court indefinitely deferred the arraignment to enable Atty. Elevazo to present the “competent medical testimony in support of the motion” since the medical certificate was expressly issued for “general purposes.”[1]

In the Order of June 24, 1996, the Court fixed the arraignment anew on July 24, 1996, explicitly directing the Defense to exercise “the utmost diligence to see to the presentation of the (results of the) psychiatric evaluation” of the accused with a warning that unless such psychiatric evaluation was “validated in court” by the next setting, the accused would be compelled to enter his plea.

On July 24, 1996, after the Court rejected a motion to further defer the arraignment on the alleged ground that the results of the psychiatric evaluation were not yet completed, the accused, then assisted by Atty. Elevazo, was forthwith arraigned by reading and carefully explaining the information to him in Filipino, a language he understood. Since the accused stated, through counsel, that he was refusing to enter a plea, a plea of not guilty was entered for him.

Since Ancheta’s competence to stand trial was subsequently never questioned, trial proceeded with him being assisted and represented by the Quezon City Public Attorney’s Office (PAO).[2] That notwithstanding, the Court referred the accused to the National Center for Mental Health for monitoring of his mental condition and directed the submission of a report thereon. It was not until October 17, 1997 that the medical report – which expressly indicated that the accused was “deemed COMPETENT to stand the rigors of court trial”[3] – was filed in this Court.

EVIDENCE OF THE PROSECUTION

The evidence of the Prosecution showed that the late Jesus Bautista was shot in the back of the head at close range with a shotgun. He died instantly because his brain was blasted away due to the massive destruction of his cranial vault. The shooting was witnessed by several persons, including Mary Jane Romano, a resident of the MWSS Compound on Katipunan Road, Diliman, Quezon City, who later pointed to Meliton Ancheta, the security guard manning the north gate of the MWSS Compound in Diliman, Quezon City, as the culprit.

Romano was then walking towards the north gate of the MWSS Compound at around 9:00 o’clock in the morning of January 26, 1996 when she saw the late Bautista, who was holding a motorcycle tire, go towards Ancheta in the gate guardhouse. The two of them then conversed “in a normal manner” (“parang magkaibigan”),[4] but after a few moments, just as Bautista slightly turned (“patalikod pa lang”) “to move away to go back to his motorbike,” Ancheta pointed and fired his shotgun at Bautista, hitting him at the back of his head.[5] Romano was sure it was Ancheta because she was about 15 to 20 meters away and had a good look at his face.[6]

Ancheta left the scene after the shooting. Romano panicked and ran as fast as she could until she reached Glori’s Supermarket in Tandang Sora.[7] From there, she made a note to her uncle, Nicolas de Leon, who was in the MWSS compound, to ask him to come for her at Glori’s because she was afraid to return home to the MWSS Compound due to what she had witnessed. She asked the cook of the canteen of an MWSS contractor who happened to buy things in the market to deliver the note.[8] Her uncle came to fetch her at Glori’s only at around

12 noon.[9] Because word spread around about her having witnessed the incident, the police investigator came to interview her at around 3:00 pm later that day, but she refused to talk out of great fear of the gunman.[10] Her uncle was finally able to persuade her to tell what she had seen only on February 3, 1996 due to the persistent pleas of the victim's relatives.[11] Her written statement on the incident was thus immediately taken by the police investigator.[12]

Romano positively identified Meliton Ancheta in open court as the security guard who had shot Bautista on January 26, 1996.[13]

After the victim's father, Antonio E. Bautista, had positively identified his remains[14] and requested for an autopsy by the NBI[15] the autopsy was conducted at the La Funeraria Paz, Quezon City,[16] by Dr. Maximo L. Reyes, the NBI Medico-Legal Officer, who issued Autopsy Report No. N-96-179,[17] where he certified the shotgun wound in the head as the cause of death and rendered the following postmortem findings, to wit:

“Cyanosis, lips and fingernailbeds.

“Shotgun wound:

“Entrance: Four (4) in number, both located over the left side of the nape, the outer is 1.1 x 1.0 cm. in size with a contusion collar of 0.1 x 0.3 cm., widest at its inferior aspect; the inner is 0.9 x 1.3 cm. also with a contusion collar of 0.1 x 0.2 cm., widest at its medial aspect; the outer is 6.0 cm. from the posterior median line and 8.0 cm. behind, 2.0 cm. below the external auditory meatus; the inner is 10.0 cm. behind and 1.6 cm. below the left external auditory meatus, 4.0 cm. from the posterior median line and both are directed forwards and upon entering the posterior cranial cavity creating massive destruction of the cranial vault creating a compound comminuted fracture of the cranium with cerebellum and brain substance missing.

“Heart and all other visceral organs are congested.

“Stomach, 2/3 filled with partly digested food materials.”

Dr. Reyes also prepared an outline sketch where he delineated the locations of the wounds;[18] and executed the certificate of post-mortem examination.[19] Three (3) photographs of the frontal and back views of the victim were taken on the occasion of the autopsy by the assisting technician at Dr. Reyes' direction.[20]

EVIDENCE OF THE DEFENSE

Ancheta did not deny shooting Bautista but claimed he did so in self-defense. According to him, he was at his post at the guardhouse and was about to open the gate when Bautista (whom he knew only by the nickname Jessie) “tried to hit me with a gulong.” He was not actually hit by Bautista because he was able to shoot him first (“naunahan ko siya”); and that Bautista had resented Ancheta's citing him for wrongly parking his tricycle in the area.[21] After the shooting, he immediately presented himself to his commander,[22] who forthwith surrendered him to the police authorities.[23]

The records showed that Ancheta admitted in writing the shooting of Bautista with his service shotgun, a Squires Bingham 12-gauge shotgun bearing serial number 876557. This admission was made during the ensuing investigation of SPO2 Renato Resurreccion on January 27, 1996 at 4:00 pm after the accused was informed of his constitutional rights and in the presence of his assisting counsel, Atty. Merito Fernandez.[24]

DISCUSSION & RESOLUTION

I

THE ISSUES

As there was no issue about Ancheta being the shooter, it behooved him to explain why he had shot Bautista. Anent this, he claimed self-defense.

However, doubts about Ancheta's sanity at the time of the shooting were somehow raised because he has been shown herein to be suffering from psychosis or other mental disorder for some time prior to and in the period after the shooting. Despite self-defense being incompatible with insanity as a defense, resolving such doubts becomes necessary to definitively settle the issue of his mental competence. Needless to say, should his insanity at the time of the shooting be established, there might be no reason anymore to dwell on self-defense.

II

WAS THE ACCUSED INSANE AT THE TIME OF THE SHOOTING?

According to Art. 12. Revised Penal Code, an insane person shall be exempt from criminal liability unless he acted during a lucid interval.

To be adjudged insane under this law, the accused must be deprived completely of reason or discernment and freedom of the will at the time of committing the crime.[25] His insanity must completely deprive him of intelligence in committing the act, that is, that the accused be deprived of cognition; that he acts without the least discernment; that there be complete absence or deprivation of the freedom of the will.[26] Mere abnormality of the mental faculties will not exclude imputability.”[27]

What the Supreme Court stated in *People v. Dungo*[28] are cogent and relevant, to wit:

“One who suffers from insanity at the time of the commission of the offense charged cannot in a legal sense entertain a criminal intent and cannot be held criminally responsible for his acts. His unlawful act is the product of a mental disease or a mental defect. In order that insanity may relieve a person from criminal responsibility, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of cognition; that he acts without the least discernment; that there be complete absence or deprivation of the freedom of the will. (*People v. Puno*, 105 SCRA 151)

“It is difficult to distinguish sanity from insanity. There is no definite defined border between sanity and insanity. Under foreign jurisdiction, there are three major criteria in determining the existence of insanity, namely: delusion test, irresistible impulse test, and the right and wrong test. Insane delusion is manifested by a false belief for which there is no reasonable basis and which would be incredible under the given circumstances to the same person if he is of *compos mentis*. Under the delusion test, an insane person believes in a state of things, the existence of which no rational person would believe. A person acts under an irresistible impulse when, by reason of duress or mental disease, he has lost the power to choose between right and wrong, to avoid the act in question, his free agency being at the time destroyed. Under the right and wrong test, a person is insane when he suffers from such perverted condition of the mental and moral faculties as to render him incapable of distinguishing between right and wrong. (See 44 C.J.S. 2)

“So far, under our jurisdiction, there has been no case that lays down a definite test or criterion for insanity. However, we can apply as test or criterion the definition of insanity under Section 1039 of the Revised Administrative Code, which states that insanity is “a manifestation in language or conduct, of disease or defect

of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or by disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition.” Insanity as defined above is evinced by a deranged and perverted condition of the mental faculties which is manifested in language or conduct. An insane person has no full and clear understanding of the nature and consequence of his act.

“Thus, insanity may be shown by surrounding circumstances fairly throwing light on the subject, such as evidence of the alleged deranged person’s general conduct and appearance, his acts and conduct inconsistent with his previous character and habits, his irrational acts and beliefs, and his improvident bargains.

“Evidence of insanity must have reference to the mental condition of the person whose sanity is in issue, at the very time of doing the act which is the subject of inquiry. However, it is permissible to receive evidence of his mental condition for a reasonable period both before and after the time of the act in question. Direct testimony is not required nor the specific acts of derangement essential to establish insanity as a defense. The vagaries of the mind can only be known by outward acts: thereby we read the thoughts, motives and emotions of a person; and through which we determine whether his acts conform to the practice of people of sound mind. (People v. Bonoan, 64 Phil. 87)”

Was the accused legally insane at the time he shot Bautista?

Ancheta had been brought by his sister and admitted at the Cagayan Valley Regional Hospital (National Mental Hospital) in Tuguegarao, Cagayan, on March 3, 1995,[29] because he had been observed to be talking alone and irrelevantly and smiling to himself; and had reportedly have stabbed an old woman in the arm.[30] In the course of his treatment thereat, he was referred for psychological testing by Dr. Alice Anghad, his admitting and attending physician, to Psychologist II Felipa J. De Guzman of the same hospital,[31] whose resultant psychological report[32] states as follows:

“GENERAL OBSERVATION:

“Patient is a young adult male, married, and hails from Mabini Gamu, Isabela. He was properly kempt when referred for psychological testing.

“On interview, he was responsive, relevant and coherent in speech and had an adequate orientation as to time, place and person. Affect was restricted, had adequate insight of his illness at present although judgment was observed to be poor. He claimed that “nawawala siya sa sarili, may sinaksak na matandang babae, palakad lakad, hindi makatulog and could hear voices directing his thoughts and actions. He further expressed that people are talking against him.

“He was cooperative during the testing sessions.

xx xx xx

“TESTS RESULTS AND EVALUATION:

“Verbal Scale I.Q. = 71

“Performance Scale I.Q. 80

“Full Scale I.Q. 74

“He obtained a Full Scale I.Q. of 74 which places his Present Intellectual functioning at the BORDERLINE classification.

“Psychogram discloses that most of his cognitive faculties are very inadequate. His alertness to the world around him together with his judgment to reality testing is hampered.

“Protocol pictures an individual whose reality testing has weakened. Most of the time he experiences lapses in his judgment. His emotionality is rather poor. He has no control over his impulses. He aims high in life yet his innate resources are very limited to back up his dreams in life. Most of the time he tends to blame other people for his failures in life. He is inclined to easily give up even with small pressures in life.”

Ancheta was discharged on March 7, 1995 even if he was then diagnosed to be suffering “schizophrenia, paranoid type,” a mental disorder characterized by illusion and hallucination,[33] because he was already found to be “behaved, coherent and relevant.”[34] Dr. Anghad explained that she had ordered his discharge, subject to regular check-ups, since his condition was already improved and manageable that he could already be brought home. Moreover, according to her, the discharge was consistent with the hospital policy on decongestion.[35] When Ancheta returned for the scheduled check-up on March 24, 1995, he was found to be still “behaved, coherent and relevant.[36] At his next check-up on April 6, 1995, he was again “observed to be manageable, behaved, coherent, kempt and relevant.”[37]

Dr. Anghad further attested that Ancheta’s mental disorder was curable through medication but could recur and could also exacerbate from “smoking cigarette, drinking alcohol, physical and mental exhaustion, and non-intake of medication;” and that he might even look well externally.[38] Though still found to be psychotic during his check-ups on March 24, 1995 and April 6, 1995, his confinement was not ordered because he was not restless and also because of hospital congestion.[39]

In her opinion, Dr. Anghad said that Ancheta might interpret the raising by another person of a hand in salute as an act of aggression because he was paranoid, meaning, he was suspicious of his surroundings and exhibited delusions of grandeur;[40] and that he had poor judgment and poor sense of reality.[41] She testified:

“Court:

xx xx xx

“Q.

Basing on your experience, I told you about the recommendation on the mental condition, would you recommend to me today to let free this [accused] or submit him for further treatment?

“A. I recommend that he be treated, observed and given medication.

“Court:

“Q. Definitely, you could not consider him [an] out-patient?

“A. No, sir, he was confined six times and that he exhibited violent behavior.

“Q.

He knows that we are talking about him and sometimes as I look at him during your testimony, I observe there are toddlers near him. They are his children. Is this a normal behavior of a person?

“A. Even in the hospital, he can manage well.

“Q. He is not disguising anything?

“A. No, sir.

“Q. Assuming that he understands what we are talking about?

“A. Yes, sir.

“Q.

This accused is detained in the City Jail from January 1996 up to the present time, but I have not heard any complaint of violence or trouble against him?

“A. By medication, sir.”[42]

The foregoing diagnoses and findings coincided with those later rendered by Dr. Farida Fatima Flores of the NCMH, who stated, among others, in her report to the Court dated September 30, 1997, as follows:

xx xx xx

“PSYCHOLOGICAL TEST RESULTS AND EVALUATIONS:

xx xx xx

“Furthermore, he feels guilty for killing somebody but committing the same dreadful act is still being considered “ang aking pangamba minsan ay pumipilit sa aking para pumatay. Dahil sa nararamdaman ko e. Hindi mapigil.”

“Confabulated responses in the BPT are prominent.

“Ego functioning is poor.

“PSYCHIATRIC EVALUATION RESULTS:

“Evaluation shows that the patient is suffering from Psychosis classified under Schizophrenia. This is characterized by irrelevancies, auditory hallucinations, bizarre behavior, poor impulse control, physically violent, low frustration tolerance, faulty judgment and no insight to his illness. Likewise there is marked impairment in emotional, social and occupational functioning. In addition it runs a chronic course marked by periods of remissions and exacerbations.

“At present patient has shown improvement and is deemed COMPETENT to stand the rigors of court trial.”

xx xx xx

There is no question that Ancheta's mental disorder was curable through regular medication. However, evidence to show that he was affected with it at the time of the shooting was absolutely lacking. Nor was there anything in the record which indicates or even suggests, that his ailment had relapsed and recurred between March, 1995 – when he was admitted at and treated for the disorder in the Cagayan Regional Hospital – and September, 1997 – when he was brought for examination and treatment to the National Center for Mental Health at the initiative of this Court. What is indicated on the contrary, is that, during that interim period, or, at least, since September 1, 1995 until the shooting incident occurred in January, 1996, Ancheta continuously served under the Catalina Security Agency as a security guard assigned at the MWSS Compound, Barangay Pansol, Quezon City.[43] Since the law presumes sanity rather than insanity such uninterrupted service as security guard warranted the inference that he suffered no recurrence or relapse.

Ancheta's behavior in the moments preceding contemporaneous with, and subsequent to the shooting plainly demonstrated his being a normal and sane person. As he himself testified herein he was calm but Bautista was responding “in the wrong way” to his confronting him on the parking of his (Bautista's) motorcycle,[44] such that he decided to shoot Bautista even though the latter did not hit him with the gulong because: “I felt that he was disrespecting my uniform.”[45] Such conduct and actuation evinced an intelligent and perceptive discernment as

well as his composure and lucidity which are completely antithetical to exempting insanity.

That he was fully conscious and instantly aware of the consequences of his act of firing at Bautista was also evident. When asked what he felt after shooting Bautista, his answer was: “I was so sorry, sir.”[46] He further declared that he did not enjoy seeing Bautista fall but was “in fact terrified of what I did.”[47] Such awareness of the dire effects of his acts manifested a cognitive capacity associated with very normal individuals not with insane persons. It also showed that his act of shooting did not emanate from any perversion, inhibition, or disordered function of the sensory or of the intellectual faculties, but from his felt need to respond not only to the perceived threat of Bautista but also to the affront to him.

But was schizophrenia, which was diagnosed in Ancheta, not one of the recognized definitions of insanity as an exempting circumstance? Answering this query in *People v. Austria*,[48] the Supreme Court held that the extent of the schizophrenia, i.e., whether it was at the stage of being incurable, determined whether it was exempting or not, thus:

xx xx xx

“In the present case, the accused had been treated before for schizophrenia, paranoid type.

“Schizophrenia is defined as a chronic mental disorder characterized by inability to distinguish between fantasy and reality, and often accompanied by hallucinations and delusions.[49] (Italics supplied)

“A “Paranoid Type Schizophrenia” is described as follows:

“Frequently the prepsychotic personality of the paranoid schizophrenic is characterized by poor interpersonal rapport. Often he is cold, withdrawn, distrustful, and resentful of other persons. Many are truculent, have a chip-on-the-shoulder attitude, and are argumentative, scornful, sarcastic, defiant, resentful of suggestions or of authority, and given to caustic remarks. Sometimes flippant, facetious responses cover an underlying hostility.

“xxx. The patient’s previous negative attitudes become more marked, and misinterpretations are common. Ideas of reference are among the first symptoms. Disorders of association appear. Many patients show an unpleasant emotional aggressiveness. Through displacement, the patient may begin to act out his hostile impulses. His grip on reality begins to loosen. At first his delusions are limited, but later they become numerous and changeable xxx. Delusions of persecution are the most prominent occurrences in paranoid schizophrenia, but expansive and obviously wish-fulfilling ideas and hypochondriacal and depressive delusions are not uncommon. With increasing personality disorganization, delusional beliefs become less logical. Verbal expressions may be inappropriate and neologistic. The patient is subjected to vague magical forces, and his explanations become extremely vague and irrational. Imaginative fantasy may become extreme but take on the value of reality. Repressed aggressive tendencies may be released in a major outburst; some inarticulate paranoids may manifest an unpredictable assaultiveness. Many paranoid schizophrenics are irritable, discontented, resentful, and angrily suspicious and show a surly aversion to being interviewed. Some manifest an unapproachable, aggressively hostile attitude and may live in a bitter aloofness.”[50]

“Does schizophrenia therefore fall under the recognized definitions of insanity which would qualify it as an exempting circumstance? It depends.

“We have stated that when insanity of the defendant is alleged as a ground of defense or reason for his exemption from responsibility, the evidence on this point must refer to the time preceding the act under prosecution or at the very moment of its execution. In such case, it is incumbent upon defendant’s counsel to prove that his client was not in his right mind or that he acted under the influence of a sudden attack of insanity or that he was generally regarded as insane when he executed the act attributed to him.[51] In order to ascertain a person’s mental condition at the time of the act, it is permissible to receive evidence of his mental condition during a reasonable

period before and after. Direct testimony is not required nor are specific acts of disagreement essential to establish insanity as a defense. A person's mind can only be plumbed or fathomed by external acts. Thereby his thoughts, motives and emotions may be evaluated to determine whether his external acts conform to those of people of sound mind. To prove insanity, clear and convincing circumstantial evidence would suffice.[52]

"Under present-day American jurisprudence, the states have a variety of rules regarding who bears the burden of proof in insanity defense cases. Many states and the federal government have placed the burden on the defendant to prove legal insanity by preponderance of evidence. This is now the majority rule.[53]

"In *People v. Rafanan*,[54] the defense of insanity due to schizophrenia was rejected by the Court as the evidence presented showed that if there was impairment of the mental faculties, such impairment was not so complete as to deprive the accused of intelligence or the consciousness of his acts. Thus, accused Rafanan was charged with rape and the prosecution was able to prove that he was aware of the reprehensible moral quality of the sexual assault. In other words, there was no "complete loss of intelligence" that would have entitled the accused to the exempting circumstance of insanity.

"Likewise, in the earlier case of *People v. Puno*,[55] this Court held that the accused Puno was not legally insane when he killed his victim because he was not completely deprived of reason or will. It was the testimony of the three psychiatrists presented by the defense to the effect that Puno acted with discernment that ultimately led to his conviction.

"In the instant case, Dr. Della testified during cross-examination that appellant's long-standing illness cannot be cured by medication.

xx xx xx

"He also testified that when the crimes occurred, appellant was suffering auditory hallucinations and having a relapse.

xx xx xx

"The Court is convinced that the testimonial and documentary evidence marshalled in this case by acknowledged medical experts have sufficiently established the fact that appellant was legally insane at the time he committed the crimes. His previous confinements, as early as 1972, his erratic behaviour before the assaults and Dr. Della's testimony that he was having a relapse all point to a man deprived of complete freedom of will or a lack of reason and discernment that should thus exempt him from criminal liability, However, he is still civilly liable under Article 101 of the Revised Penal Code x x x"

The schizophrenia which afflicted Ancheta was not incurable. This conclusion is ineluctable from all the foregoing. Consequently, he was legally sane when he shot Bautista and was criminally liable therefor.

III

SELF-DEFENSE WAS NOT ESTABLISHED

Self-defense is provided for in Art. 11, 1, of the Revised Penal Code, thus:

"Art. 11. Justifying circumstances.— The following do not incur any criminal liability:

"1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

"First. Unlawful aggression;

"Second. Reasonable necessity of the means employed to prevent or repel it;

"Third. Lack of sufficient provocation on the part of the person defending himself."

XX XX XX

It is now settled that when an accused invokes self-defense, he admits the infliction of the injury and the burden of the evidence consequently shifts to him.[56] He must then prove the elements of self-defense by clear and convincing evidence. He could not then assail the weakness of the prosecution's evidence because his plea of self-defense had to rely on the strength of his own evidence to establish the claim.[57]

The decisive query is whether there was unlawful aggression on the part of Bautista.

According to Ancheta, after he confronted Bautista about the improper parking of his motorcycle, Bautista resented him and they had a verbal exchange. Bautista, who was brandishing a motorcycle spare tire, swung it at the accused but did not hit him because the accused already fired at him.

Ancheta's version is completely contradicted by eyewitness Romano, who recalled that the accused fired the shotgun just when Bautista had slightly turned his back at Ancheta. This turning around indicates in all likelihood that Bautista was already leaving Ancheta to avoid further heated discussions between them.

Between the two versions, Romano's was easily more credible and plausible for being fully corroborated by the results of the autopsy which established that the victim was shot at the back of his head. Such location of the fatal injury meant that Bautista had his back turned towards the accused when shot and proved that there was no aggression whatsoever, least of all unlawful, from the victim.

The accused utterly failed to discharge his burden of proof regarding self-defense. By his own admission, he was grossly affronted ("I felt that he was disrespecting my uniform") and so he fired at Bautista. That reason, and no other, was what impelled him to shoot. Given that the victim's back was towards the accused, the victim could not be mounting an attack sufficient to generate the well-grounded and reasonable belief that the accused was in imminent danger of great bodily harm unless he moved to repel the aggression of his attacker.

Further undermining the plea of self-defense was his claim during the ensuing police investigation that Bautista was shot during their struggle for possession of the shotgun which he tried to grab from Ancheta.[58] He did not iterate this claim in his court testimony, where he declared instead that he fired the shotgun because of Bautista's imminent threat to strike him with the motorcycle tire. Obviously, he incurred an incurable inconsistency, or a struggle for possession of the shotgun was not the same as striking with a motorcycle tire. Since he did not even attempt to render an explanation for the inconsistency, the foundations of his plea of self-defense were, indeed, weak. Proof of self-defense should be, as stated herein before, clear and convincing.

With unlawful aggression from Bautista not attendant during the shooting incident, there is no need to dwell on the remaining essential elements of self-defense. Needless to point out, the rationality of the means employed by the accused is tested and determined only in relation to the attendance of the unlawful aggression. Also, the absence of any provocation from the accused can no longer affect the outcome.

IV

WHAT CRIME WAS COMMITTED: MURDER OR HOMICIDE?

The crime charged herein is murder defined and penalized under Art. 248 of the Revised Penal Code, as amended by Republic Act No. 7659, as follows:

“Art. 248. Murder. – Any person who, not falling within the provisions of article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

“1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

“2. In consideration of a price, reward, or promise.

“3. By means of inundation, fire, poison, explosion, ship-wreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

“4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

“5. With evident premeditation.

“6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.”

The attendance of any of the foregoing circumstances qualifies the killing to murder. Alleged herein as the qualifying circumstances are evident premeditation and treachery, which are now discussed in that order.

For evident premeditation to be considered, the following requisites must concur, namely: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[59] It is accordingly decisive to determine when the intent to commit the crime was engendered in the mind of the accused, the motive which gave rise to it, the means which the accused had beforehand selected to carry out the criminal intention; in fine, all those facts and antecedents which, combined, show that the crime was knowingly premeditated, as required by law, or that the accused acted not only with a preexisting design, which is a condition ordinarily found in all crimes, but with that cold and deep meditation and tenacious persistence in the accomplishment of his criminal purpose, which is the distinctive characteristic of this circumstance, whether qualifying or generic.[60]

Premeditation cannot be appreciated if it is not shown when the accused conceived the determination to commit the crime nor consequently whether such determination was meditated and reflected upon and persisted in by the accused.[61] Apart from the determination of when the accused conceived to commit the crime, premeditation must also be evident, i.e., the intention to kill must be manifest and it must have been planned in the mind of the accused and carefully meditated upon. It is not enough that the intent to kill arose at the moment of the aggression.[62] The essence of evident premeditation consists in the execution of a criminal act preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment.[63]

From the established facts, the intent to kill arose instantly at the moment of the aggression. Accordingly, evident premeditation could not be attendant, since it became impossible for the accused to have any sufficient time to reflect upon the consequences of his criminal act before committing it.

Treachery, or *alevosia*, exists “when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure the execution, without risk to himself arising from the defense which the offended party might make.”[64] The concurrence of two conditions is necessary, to wit: (1) the employment of means, methods, or manner of execution which would

insure the offender's safety from any defensive or any retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate; and, (2) such means, method, or manner of execution was deliberately or consciously chosen.[65] It is essential that treachery must be proved as the crime itself.[66]

The State failed to establish that the accused consciously employed surprise and suddenness, or for that matter, any other means, in order to ensure that his assault succeeded without any risk to himself from any defense to be put up by the victim. Although the victim might have been completely unaware of the impending shooting due mainly to its suddenness, that fact alone did not warrant the appreciation of treachery in the shooting. Mere suddenness, it is already settled, is not treachery, since it was essential for the accused to resort to such suddenness consciously in order to ensure the execution of the crime without risks to himself.

Consequently, due to the failure of the Prosecution to establish any of the qualifying circumstances alleged in the information, the killing amounted only to homicide, which is defined and punished with reclusion temporal under Art. 249, Revised Penal Code.

Should the mitigating circumstance of voluntary surrender be appreciated in favor of Ancheta?

There is no denying that after Ancheta ran away from the scene of the shooting, he proceeded straight to his superior officer in the security agency, who, shortly thereafter, personally and voluntarily surrendered the accused to the police authorities for the shooting of Bautista. Even police investigator Resurreccion confirmed that the accused had arrived at the station prior to his (Resurreccion) return from his initial investigatory interviews. Such actuation and act of Ancheta manifested his intention to submit to the authorities and admit the shooting of Bautista. By surrendering, he voluntarily placed himself at the disposal of the police unconditionally.

The actuation and act of the accused were consistent with the requirements for this mitigating circumstance to be considered in his favor. Art. 13, 7, Revised Penal Code, states:

“Art. 13. Mitigating circumstances. – The following are mitigating circumstances:

xx xx xx

“7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.”

xx xx xx

For voluntary surrender to be appreciated in favor of the accused, it must be spontaneous in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his search and capture.[67]

Inasmuch as there was no offsetting aggravating circumstance, the penalty shall be imposed in the minimum period, which is twelve (12) years and one (1) day to fourteen (14) years and eight (8) months.

According to Sec. 1 of The Indeterminate Sentence Law, the maximum term of the indeterminate sentence shall be that which could be properly imposed under the Revised Penal Code in view of the attending circumstances, and the minimum term shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code. Pursuant thereto, the indeterminate sentence of the accused shall be eight (8) years of prision mayor as minimum, to fourteen (14) years and eight (8) months, of reclusion temporal, as maximum.

The accused shall be fully credited with the entire period of his preventive imprisonment pursuant to Art. 29,

Revised Penal Code.

V

Every person criminally liable for a felony shall also be civilly liable,[68] and his civil liability shall cover, among others, indemnification for consequential damages,[69] which includes not only the consequential damages caused to the injured party, but also those suffered by his family or by a third person by reason of the crime.[70] Art. 2202, Civil Code, stipulates that in crimes, the accused shall be liable for all the damages which are the natural and probable consequences of his act or omission complained of, whether foreseen or not.

To start with, the death indemnity shall be in the amount of P50,000.00, pursuant to the current judicial policy on the matter. No proof is required.[71]

As far as actual damages are concerned, they are damages which, by their nature, do not depend on the consent of the accused. It is also quite clear under the Civil Code that they shall consist of “adequate compensation xxx for pecuniary loss suffered [and] xxx duly proved xxx”;^[72] “value of the loss suffered”^[73] and “all damages which are the natural and probable consequences of the act or omission complained of.”^[74]

Adelaida Bautista, the victim’s widow, attested that they had been married for sixteen (16) years by the time he ‘was killed’;^[75] that due to his untimely death, she incurred various expenses and sustained different damages totalling P1,563,334.10 which she summarized in Exhibit M;^[76] that her husband’s death was painful and caused her to have sleepless nights;^[77] that they had only one child, Jestoni, then only four (4) years old;^[78] that as a plant equipment operator, her husband received a basic monthly salary of P8,000.00 and an aggregate monthly amount of P3,000.00 for overtime work;^[79] that her husband was only 37 years of age at the time of his death, was healthy, and could have earned more than the amount of P1,413,506.30 she had listed in Exhibit M as lost unearned income;^[80] that the expenses for food, drinks, and other things listed in the summary, particularly the anniversary commemoration of his death, were all incurred or spent according to custom; that, in her view, such commemoration was a fitting way to honor the memory of her late husband; and that she cried a lot during her testimony because she remembered her husband, whom she loved.^[81]

The indemnity for loss of earning capacity of Bautista is directly related to his actual income at the time of death and his probable life expectancy. Its assessment herein was a matter of duty by reason of the fact that he had an earning capacity at the time of death. There are two factors to be considered in determining it, namely: his life expectancy and his net earning capacity.

It is settled that life expectancy is 2/3 of the difference of 80 years over the victim’s age at the time of death or permanent incapacity.^[82] Based on this formula, his life expectancy was 28.66 years (80 minus 37 (full age at time of death) multiplied by 2/3). Considering, however, that conditions and hazards attendant to the nature of his occupation as a plant equipment operator, including illness, fatigue, pollution, and accidents, did affect his longevity, the realistic life expectancy, was only 25 years, even if he was healthy at the time of death, for such conditions and hazards reduced longevity.

His net earning capacity should represent “the losses or damages sustained by xxx dependents and intestate heirs of the deceased, and xxx consist, not of the full amount of his earnings, but of the support they received or would have received from him had he not died in consequence of the [criminal act] xxx.”^[83] Thus, net earning capacity is the capacity to acquire money, less the necessary expense for his own living, so that the amount recoverable is not loss of the entire earning but the loss of that portion of the earnings which the beneficiary would have received.^[84]

Since it was not disputed that P8,000.00 was Bautista’s gross basic monthly salary at the time of his death, it

should be from this gross amount that the “necessary expenses of his own living” should be deducted. In the absence of any evidence on how much such expenses actually were, the “necessary expenses of his own living” is hereby fixed at P4,000.00/month, it being established that prior to and at the time of his death he and his spouse were supporting only one child who was not yet of school age (i.e., had they had more children, there would be a proportionate increase of such expenses). Only P4,000.00 remained as his net monthly earning capacity, which, annually, adds up to P48,000.00.

It is clarified that his alleged overtime compensations could not be considered because the regularity of overtime work and the actual rate of the compensation therefor were not proved.

Applying the computation formula, indemnity for Jesus Bautista’s loss of earning capacity is equivalent to P1,200,000.00, based on a life expectancy of 25 years (i.e., 25 multiplied by P48,000.00).

The claim for actual damages has been well founded and established. This refers to the expenses totalling P149,827.80, as enumerated in Exhibit M specifically: P13,352.80 as the cost of the interment space or graveyard at the Himlayang Filipino; P7,800.00 as interment fee; P475 as cost of the grave marker or lapida; P75,000.00 as costs of the casket and funeral services by La Funeraria Paz; P3,400.00 as transportation expenses; P10,000.00 for the food, drinks and miscellaneous expenses during the five (5) days of the wake; P5,000.00, for the food, drinks and miscellaneous expenses on the 9[th] day padasal; P15,000.00, for the food, drinks and miscellaneous expenses for the 40[th] day padasal; and P19,800.00 for the food, drinks and miscellaneous expenses on the first anniversary of Jesus Bautista’s death on January 26, 1997. Such items, being undeniable, patently reasonable, and appropriate under the circumstances, are credible. They were incurred according to Filipino customs and in pursuit of Christian traditions. Being the natural consequences of the crime, the accused should be adjudged fully responsible for them.

The untimely and sudden killing of Bautista caused certain anxiety and mental anguish to his heirs because it deprived his widow and their only child his constant support and companionship. His death caused his family much uncertainty and sadness. The Court should assuage such sufferings through an award of P50,000.00 as moral damages.

No award of exemplary damages can be handed down because the records have not shown the attendance of any aggravating circumstance.

WHEREFORE, judgment is rendered finding accused MELITON ANCHETA y MANUEL guilty beyond reasonable doubt of the crime of homicide and sentencing him to suffer the indeterminate sentence of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months, of reclusion temporal, as maximum, with full credit for the period of this preventive imprisonment pursuant to Art. 29, Revised Penal Code; and ordering him to pay to the heirs of the late Jesus Bautista, represented by Adelaida Bautista, as follows: (1) P50,000.00, as death indemnity; (2) P149,827.80, as reimbursement for expenses for the burial plot, casket, vigil and wake, prayers, funeral services, and other related expenses; (3) P1,200,000.00, as indemnity for the loss of earning capacity; and, (4) P50,000.00, as moral damages.

Costs of suit to be paid by the accused.

SO ORDERED.

Given on this 22[nd] day of March, 1999, at Quezon City, Metro Manila, Philippines.

LUCAS P. BERSAMIN

Judge

[*] Now Justice of the Court of Appeals.

[1] Conformably with the Order of March 25, 1996, Dr. Nida Gacutan-Ramos, Chief of the Medical Section, Quezon City Jail, requested for and was granted authority to transport the accused for out-patient consultation and psychiatric evaluation at the National Center for Mental Health (NCMH) due to his being diagnosed on March 26, 1996 for “psychosis.” On April 22, 1996, the Court also directed the Director of the National Center for Mental Health “to conduct a psychiatric examination/evaluation of Meliton Ancheta” and “to render a written report” on such evaluation within fifteen (15) days from submission of the person of Ancheta to his care for that purpose. Subsequently, on May 22, 1996, Dr. Norma M. Lazaro, Chief, Forensic Psychiatry Service, NCMH, requested the Court for an extension of 45 days within which to submit the medical report on the accused.

[2] On September 25, 1996, the date of initial trial, Atty. Elevazo formally withdrew as counsel, with the written consent of the accused. The Quezon City Public Attorney’s Office (PAO) took over from him. The original PAO attorney was Atty. Job Mangente, but after his appointment to the Prosecution Service, he was replaced by Atty. Renato Lastica of the same office.

[3] The report, which was prepared by Dr. Farida Fatima Flores (Medical Officer III) of the NCMH under date of September 30, 1997, states:

xx xx xx

“PHYSICAL AND NEUROLOGICAL EXAMINATION:

“No gross physical and neurological signs.

“PSYCHOLOGICAL TEST RESULTS AND EVALUATIONS:

“A 25 point gap between the two major scales and the presence of test variabilities on the subtest scores signify inefficiency such that a much higher level, possibly along the average category can still be achieved when maximum effort is exerted.

“Analysis of the psychogram further reveals an adequate deductive and inductive know how. On the other hand, sensitivity to the details of the environment and discriminative ability are fair. Poorly functioning are his fund of practical information, span of attention including viso motor dexterity. The remaining areas of his mental faculties are impaired with his judgmental ability severely affected.

“Early parental separation left Meliton weak and always in search for somebody to lean on for guidance and support. He then focused his attention towards significant others but they too, proved ineffective” ang tandang-tandang kong karanasan noong kabataan ko ako ay pinang-gigilan ng auntie, galit sa akin”. And these painful and traumatic experiences he had gone through could be the reason why he turned out to be sensitive and in the process, limits his emotional expression so as the possibility of getting hurt will be lessened if not totally avoided. Difficulty in his social undertaking ensue but an egocentric facade is being utilize to offset for this.

“Stress-filled situations easily upsets him and noted to have poor control over his impulse, aggressive behavior is not remote from being displayed once provoked.

“He tends to overlook the totality of a problem as he appears to be more concern with its detailed aspect. By doing this, however, judgment and decisions become faulty.

“Sexual conflict is evident not only because he failed to recognize as to whom he should identify himself with but also because he is unable to discern the role he must assume. He regretted losing his father while expresses ambivalent feeling towards his mother.

“Furthermore, he feels guilty for killing somebody but committing the same dreadful act is still being considered “ang aking pangamba minsan ay pumipilit sa aking para pumatay. Dahil sa nararamdaman ko e. Hindi mapigil”.

“Confabulated responses in the BPT are prominent.

“Ego functioning is poor.

“PSYCHIATRIC EVALUATION RESULTS:

“Evaluation shows that the patient is suffering from Psychosis classified under Schizophrenia. This is characterized by irrelevancies, auditory hallucinations, bizarre behavior, poor impulse control, physically violent, low frustration tolerance, faulty judgment and no insight to his illness. Likewise there is marked impairment in emotional, social and occupational functioning. In addition it runs a chronic course marked by periods of remissions and exacerbations.

“At present patient has shown improvement and is deemed COMPETENT to stand the rigors of court trial”

xx xx xx

[4] tsn, October 28, 1996, pp. 3-5.

[5] Id. pp. 5-6; 9-10.

[6] Id. p. 7.

[7] Id. pp. 7-8.

[8] Id. pp. 11-13.

[9] tsn, November 19, 1996, pp. 8-9.

[10] Id. pp. 9-10.

[11] tsn, October 28, 1996, p. 16.

[12] Id. pp. 16-17; the written statement is Exhibit A.

[13] tsn, October 28, 1996, p. 8.

[14] The certificate of identification of dead body is Exhibit P.

[15] The request for autopsy is Exhibit O.

[16] tsn, July 22, 1997, p. 8.

[17] The autopsy report is Exhibit N.

[18] The outline sketch is Exhibit Q.

[19] The certificate of postmortem examination is Exhibit R.

[20] Exhibits R, R-1 and R-2.

[21] tsn, January 7, 1998, pp. 3-5.

[22] Id. p. 4.

[23] Id. p. 7.

[24] The written admission is Exhibit B; see also tsn, January 12, 1998, pp. 6-7.

[25] *People v. Formigones*, 87 Phil. 658, 660.

[26] *People v. Puno*, 105 SCRA 151.

[27] *People v. Austria*, G.R. No. 111517-19, July 31, 1996; 260 SCRA 106; J. Romero; citing *People v. Ambre*, G.R. No. 52688, October 17, 1980; *People v. Renegado*, 57 SCRA 275; *People v. Cruz*, 109 Phil. 288.

[28] G.R. No. 89420, July 31, 1991; 199 SCRA 860, 866-868.

[29] See Exhibits 1,2,3,5,6,7,12.

[30] tsn, May 4, 1998, pp. 6 and 13-14.

[31] The accused was tested on March 6, 1995 and administered by De Guzman four (4) tests, namely: the Weschler Adult Intelligence Scale; the Bender Visual Motor Gestalt Test; the Draw A Person Test; and the Sack's Sentence Completion Test.

[32] Exhibit 13.

[33] tsn, May 4, 1998, p. 7; see Exhibit: 4.

[34] See Exhibit 10, handwritten entry under date of "3-7-95."

[35] tsn, May 4, 1998, p. 13.

[36] Id. p. 7; see Exhibit 14.

[37] See Exhibit 14-A.

[38] tsn, May 4, 1993, pp. 7-8.

[39] Id. pp. 15-17.

[40] Id. p. 20.

[41] Id. p. 21.

[42] Id. pp. 25-26.

[43] tsn, January 12, 1998, pp. 2-3.

[44] tsn, January 7, 1998, p. 5.

[45] Id. p. 7.

[46] Id. p. 5.

[47] Id. p. 8.

[48] G.R. Nos. 111517-19, July 31, 1996; 260 SCRA 106, at pp. 115-119; J Romero; in this case, the accused was

charged with two counts of frustrated and one for murder committed on September 25, 1989; the accused presented a psychiatrist of the Baguio General Hospital who had examined and treated him on April 23, 1991 for which a psychiatric evaluation was issued on November 14, 1991 to the effect that the accused wound “found to be suffering from a long-standing illness classified as Schizophrenic Psychosis, Paranoid type;” after trial, he was convicted by the RTC of Lingayen, Pangasinan because the trial judge found him to be sane when he committed the crimes charged; on appeal, the Supreme Court reversed and ordered the accused committed immediately to the National Mental Hospital but declared him civilly liable to indemnify the heirs of the victims who died and the victims who survived.

[49] Quoting Encyclopedia and Dictionary of Medicine and Nursing, Miller-Keane, p. 860.

[50] Quoting Noyes’ Modern Clinical Psychiatry, Seventh Edition, pp. 380-381.

[51] Citing United States v. Jose Guevarra, 27 Phil. 547.

[52] Citing People v. Bonoan, 64 Phil. 87; People v. Renegado, 57 SCRA 275.

[53] Citing Clinical Handbook of Psychiatry and the Law, Paul S. Applebron and Thomas G. Gutheil (1982)

[54] 204 SCRA 65.

[55] 105 SCRA 151.

[56] People v. Quiño, 232 SCRA 400; J. Romero; see also People v. Molina, 213 SCRA 52; People v. Capisonda, 1 Phil. 575; People v. Baguio, 43 Phil. 683; People v. Silang Cruz, 53 Phil. 625; People v. Gutierrez, 53 Phil. 609; People v. Embalido 58 Phil. 152; People v. Dorico, 54 SCRA 172; People v. Caballero, 61 SCRA 180.

[57] People v. Tanduyan, 236 SCRA 433, J. Padilla.

[58] Ancheta’s extrajudicial statements, as contained in Exhibit B, were as follows:

xx xx xx

“Tanong: Maari mo bang sabihin sa akin kung ano ang nasabing insidente?

“Sagot:

May nabaril po akong tao na ang pangalan ay JESS na sa pagkakaalam ko ay empleyado din ng MWSS.

“Tanong: Bakit nabaril si JESS?

“Sagot: Ipinagtanggol ko lamang po ang aking sarili.

“Tanong: Ano ang ibig mong sabihin na ipinagtanggol mo lang ang iyong sarili?

“Sagot:

Kasi po ay kanya pong pinagtangkaang agawin ang akin service shotgun na hawak at sa pag-aaagawan namin ay nakalabit ko ang gatilyo ng shotgun at ito ay pumutok at tumama sa kanya.

“Tanong:

Mayroon bang namagitang naunang pangyayari sa inyo nitong si JESS bago naganap ang pagka-baril sa kanya?

“Sagot:

Bago nangyari ang insidente ay sinita ko ang parada niya ng motorcycle niya sa kalsada kasi ay baka ito mabundol ng dadaang service ng MWSS, nagalit siya sa akin, pinagmumura niya ako at inihampas niya sa akin ang dala niyang gulong ng motorsiklo niya, ang ginawa ko ay umikot ako sa guard house para makaiwas ako sa kanya. Tapos ay lumabas na siya para magpavulcanize. Pagbalik niya ay minura niya uli ako, hindi na ako nakatiis kaya hinarap ko siya, hawak ko ang aking shotgun sa kamay pero sa lupa ito nakatutok, bigla na niyang inagaw sa akin ang shotgun, kaya napagpambuno kami para hindi niya makuha ang shotgun ko, hanggang sa ito ay pumutok na tumama sa kanyang mukha.

“Tanong: Malubha ba ang naging tama ni JESS?

“Sagot: Opo. Namatay siya kaagad.

“Tanong: Ano ang ginawa mo pagkabaril mo ka JESS?

“Sagot:

Sa takot ko ay tumakbo akong palayo papuntang MWSS office at aking isinurrender ang aking shotgun kay Celso Dela Peña na Detachment Commander namin, tapos ay nagtuloy kami sa opisina namin sa main building at nagpasundo ako sa pulis. At dinala nga ako dito sa inyong himpilan.

xx xx xx

“Tanong: Sinadya mo bang barilin si JESS?

“Sagot:

Hindi po, dala na lang iyon ng agawan namin kaya nakalabit ko ang baril ko, kung sa akin nakatutok ang baril ay ako naman ang tatamaan.

xx xx xx

[59] People v. Dira, 23 SCRA 332; People v. Ardisa, 55 SCRA 245

[60] United States v. Cunanan, 37 Phil 777.

[61] People v. Orenciada, 47 Phil 970; People v. Amoroso, 5 Phil 466.

[62] People v. Diokno, 63 Phil 601; People v. Oyco, 109 Phil 415.

[63] People v. Durante, 53 Phil 363.

[64] Art. 14, Par. 16, Revised Penal Code.

[65] People v. Banayo, 129 SCRA 725; People v. Macariola, 120 SCRA 92; People v. Rhoda, 122 SCRA 909.

[66] People v. Durante, supra.

[67] Aquino, R., et al., The Revised Penal Code, 1997 Edition, Vol. 1, p. 286 (citing several cases).

[68] Art. 100, Revised Penal Code.

[69] Art. 104, Revised Penal Code.

[70] Art. 107, Revised Penal Code.

[71] Art. 2206, Civil Code.

[72] Art. 2199, Civil Code.

[73] Art. 2200, Civil Code.

[74] Art. 2202, Civil Code.

[75] tsn, March 11, 1997, p. 3.

[76] Id. p. 4.

[77] tsn, May 21, 1997, p. 3.

[78] Id. p. 3.

[79] Id. pp. 3-4.

[80] Id. p. 5.

[81] Ibid.

[82] Villa Rey Transit, Inc. v. Court of Appeals, 31 SCRA 511, 515-516.

[83] Id. p. 517.

[84] Id. to the same effect was People v. Balanag, 236 SCRA 474.

B

2005 Judicial Excellence Awardee

Best Decision Award in Criminal Case (2nd Level Court)

by JUDGE SIMEON P. DUMDUM, JR.

REPUBLIC OF THE PHILIPPINES

REGIONAL TRIAL COURT

7th Judicial Region

Branch 7

Cebu City

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus- CRIM. CASE NO. CBU-63502

For: ATTEMPTED ARSON

ALLAN K. VELAYO,

Accused.

X ----- X

DECISION

Emelda Velayo married Allan Velayo on October 20, 1986. They have three children, ages 16, 13 and 6. Emelda worked as a manager of EMCOR Appliance, Inc., and claimed to be the sole breadwinner of the family. Her husband had no work. Worse, he drank almost everyday, and whenever inebriated would beat her up.

Emelda narrated that on August 18, 2002, at around 2:45 in the afternoon, she was at home sleeping when her husband, who was drunk, entered their room and stirred up a ruckus. He punched the wall of their room and pulled out her clothes from the cabinet and threw them outside the window and down the stairs. Whatever he could put his hands on he broke or threw away. On top of this, he set some of her clothes on fire. The sight of the fire flaring up towards the ceiling frightened her, but she did what she could to stop it from spreading. She shouted at her husband, her voice full of anger and desperation, “Why don’t you just kill me?” This infuriated him even further – he took a knife and chased her.[1] Their six-year-old son saw everything. Her mother-in-law, who just lived nearby, asked for assistance from a patrol car, which just then was passing by. Emelda let the policemen inside the house and showed them the burnt clothes and broken glasses scattered on the floor. But the policemen considered it a family matter and would not interfere. Still she insisted that he be arrested. She had her bruises treated at the Cebu City Medical Center (CCMC), and had the incident blotted at the barangay hall and the Bureau of Fire Protection.

Emelda recalled that even before their wedding she already knew of her husband’s alcoholism. Despite this, she went ahead with the marriage in the hope that he would reform. Instead, their life together became a series quarrels.

Upon Emelda Velayo’s complaint, an Information was filed on August 19, 2002, by the Office of the Cebu City Prosecutor, charging Allan K. Velayo, with Attempted Arson as follows:

That on or about the 18[th] day of August, 2002, at around 2:45 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there set on fire his house located at A. Lopez St., this city, by lighting a torn calendar into an LPG (Gasul) tank and burned clothes of his wife inside said house, thus commencing the commission of the felony by overt acts but did not perform all the acts of execution which would have produced the crime of ARSON, as a consequence, due to causes or accidents other than his own spontaneous desistance, that is, by the timely putting out of said fire by the accused’s wife which prevented it to spread.

When arraigned on September 3, 2002, Allan Velayo, assisted by counsel, pleaded not guilty of the offense charged.

At the trial, Allan Velayo admitted burning some of the clothes of his wife out of anger. He averred that on August 18, 2002, just before lunch, he had a drink with Erwin, his wife’s younger brother. After they had finished one small bottle of Tanduay rum, Erwin left. Allan went up to their bedroom and lay down beside his wife who was then sleeping with their six-year-old son, Jason. As he began to touch and caress her, Emelda got irked. She did not want to be disturbed. He did not take her seriously and even joked with her, but Emelda, shouting, told him to leave. He felt insulted, but instead of hurting her he gave vent to his anger by taking out his wife’s clothes from inside the cabinet and setting them on fire.[2] This made his wife hysterical and throw whatever things she could find inside their house. While Emelda tried to put out the fire, he just sat on the stairs, regretting what he had done. He voluntarily gave himself up to the policemen who came on the scene and was detained at Precinct 10. Emelda was taken to the Cebu City Medical Center to have her bruises treated. Allan admitted having pushed her when she had blocked his way.[3]

Allan traced back their frequent fights to June 2002, when he complained about his wife’s lack of time for him

and their children. She was mostly in the office, reporting for work very early in the morning and coming home late at night. She worked even on Sundays. When he confronted her with this, she would only say that she had to work hard to support the family.

Allan admitted to being a drinker, but, contrary to Emelda's accusation, not a heavy one. He drank only moderately, usually after his work as a PUJ driver, to put himself to sleep.

The Court's ruling

Sec. 3(2) of Presidential Decree No. 1613 penalizes Arson as follows:

Other Cases of Arson. – The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:

xxx

2. Any inhabited house or dwelling xxx

The elements of the crime of Arson under Section 3 of P.D. No. 1613 are:

- (1) that there is intentional burning; and
- (2) that what is intentionally burned is an inhabited house or dwelling.[4]

The facts are clear: the accused burned the clothes of his wife to express his anger at having his sexual advances repulsed – a big blow to his manly pride (but he got his just deserts for coming to bed smelling of liquor). Fortunately for him, nowhere is it suggested by the evidence that it was the house that he wanted to burn down. Arson under Sec. 3 of P.D. No. 1613 requires an intention to burn a house or dwelling, and together with the intention an awareness or knowledge that the house or dwelling is inhabited. Obviously the awareness was there, but definitely not the intention. The object of Allan Velayo's animus was his wife, but he took it out on her clothes. The fact that he set them on fire inside the house does not necessarily mean that he intended to burn the conjugal dwelling, too. In fact, he did not stop his wife when she put out the fire.

The prosecution has failed to prove that the accused committed Arson. What its evidence has established is that the accused committed Malicious Mischief.

Art. 327 of the Revised Penal Code provides: "Any person who shall deliberately cause the property of another any damage not falling within the terms of the next preceding chapter[5] shall be guilty of malicious mischief."

The elements of the crime of Malicious Mischief are:

- The offender deliberately caused damage to the property of another;
- The damage caused did not constitute arson or crimes involving destructions.
- The damage was caused maliciously by the offender.[6]

The elements are all present in this case. The accused admitted causing damage to the clothes of his wife, by setting them on fire. The Civil Code considers the clothes of the wife as her own property.[7]

As has been discussed, the act of the accused did not constitute Arson, or, for that matter, a crime involving destructions.

Thirdly, as admitted by the accused, the damage was caused maliciously – out of anger for his wife's rejection of his sexual advances.

Under Sec. 4, Rule 120, Revised Rules of Criminal Procedure, the accused may be convicted of the offense proved which is included in the offense charged. The section provides, as follows:

When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information constitute the latter.[8]

There is no question that the elements of Malicious Mischief comprise some of the elements of Attempted Arson.

Under the circumstances, even though the charge is for Attempted Arson, the accused may be convicted for Malicious Mischief, the offense proved.

In this case, since no evidence was offered to show the value of the clothes burned, the mischief should be penalized, in accordance with Art. 329(3) of the Revised Penal Code, as follows: “By arresto menor or fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos: or cannot be estimated.”[9]

Wherefore, in view of the foregoing considerations, the Court hereby finds accused Allan K. Velayo guilty beyond reasonable doubt as principal of the crime of Malicious Mischief, penalized under Art. 329(3), in relation to Art. 327, of the Revised Penal Code, and sentences accused Allan K. Velayo to suffer the penalty of imprisonment for thirty (30) days of Arresto Menor, with all the accessory penalties attached by law.

The accused shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment, under the conditions set out in Article 29 of the Revised Penal Code.

The Court directs the accused to pay the costs.

SO ORDERED.

Given this 11[th] day of October 2004, at Cebu City, Philippines.

SIMEON P. DUMDUM

Judge

[1] Tsn-December 9, 2002, p. 9.

[2] Tsn-October 29, 2003, p. 8.

[3] Tsn-October 29, 2003, p. 12.-

[4] People v. Arbolante, G.R. No. 96713, October 17, 1991.

[5] Chapter Eight – ARSON AND OTHER CRIMES INVOLVING DESTRUCTIONS

[6] Caballas v. DAR, G.R. No. 78214, December 5, 1988.

[7] Art 180, Civil Code, with reference to the liquidation of the conjugal partnership: “The bed and bedding which the spouses ordinarily use shall not be included in the inventory. These effects, as well as the clothing for their ordinary use, shall be delivered to the surviving spouse.” (The Velayos were married in 1986, before the effectivity of The Family Code, and so, under Art. 119 of the Civil Code, it is presumed that their property relations were governed by the system of conjugal partnership of gains.)

[8] Sec. 5, Rule 120, Revised Rules of Criminal Procedure.

[9] Underscoring supplied.

C

2005 Judicial Excellence Awardee

Best Decision Award in Criminal Case (1st Level Court)

by JUDGE MA. THERESA DOLORES GOMEZ-ESTOESTA

Outstanding MeTC Judge

REPUBLIC OF THE PHILIPPINES

National Capital Judicial Region

METROPOLITAN TRIAL COURT

Branch 6

Manila

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus- Criminal Case No. 318643-SA

For: Qualified Trespass to Dwelling

DINO DIZON Y SALINAS,

Accused.

X ----- X

PEOPLE OF THE PHILIPPINES,

Plaintiff,

-versus- Criminal Case No. 318644-SA

For: Acts of Lasciviousness

DINO DIZON Y SALINAS,

Accused.

X ----- X

CONSOLIDATED JUDGMENT

At past midnight of August 10[th] 1999, an ominous banging was heard on the door of a simple abode at 230 Nepomuceno Street, San Miguel, Manila. While the pounding allegedly grew rapid and persistent, a compelling voice bid the lady of the house to open the door and let the intruder in. Stirred from her sleep, the lady of the house remained stupefied, refusing to yield to the stranger's call.

But when the door of the house was forcibly opened, the succession of events that took place thereafter became the subject of two (2) Informations for Qualified Trespass to Dwelling and Acts of Lasciviousness filed against accused Dino Dizon y Salinas ["accused"], as follows:

Criminal Case No. 318643

That on or about August 10, 2000, in the City of Manila, Philippines, the said accused, being then a private person and without justifiable cause, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously enter the dwelling place of one TERESITA YUTUC [y Barrera] located at 230 Nepomuceno St., San Miguel, this City, by then and there kicking the door, destroying its upper portion and once inside, accused took the youngest daughter of one Teresita Yutuc y Barrera from her arms, dropped the said child on the floor and then pushed said Teresita Yutuc y Barrera down on the bed and, thereafter, mashed her breast and touched the lower part of her stomach, against her will.

Contrary to law.

Criminal Case No. 318644

That on or about the 10[th] day of August, 1999, in the City of Manila, Philippines, the said accused, by means of force and intimidation with lewd designs did then and there willfully, unlawfully and feloniously commit an act of lasciviousness upon the person of TERESITA YUTUC y BARRERA, by then and there mashing her breasts, against her will.

Contrary to law.

Originally, the crime of Malicious Mischief was charged against the accused. On the basis of a Motion for Re-investigation filed by private complainant Teresita Yutuc y Barrera, however, which this Court granted by Order dated February 8, 2000 [issued by then Presiding Judge Leticia E. Sablan] the prosecution subsequently filed a Motion to Withdraw the Information for Malicious Mischief and in its stead, all Information for Qualified Trespass to Dwelling was filed.

Upon arraignment accused entered a plea of "not guilty" to each charge [Vide: Order dated November 8, 2000 issued by then Pairing Judge Ma. Ruby Bithao-Camarista]. To secure his provisional liberty accused posted a surety bond assured by the Philippine Phoenix Surety & Insurance, Inc.

Pre-trial was terminated on March 28, 2001 with no stipulation of fact entered into [Vide: Order dated March 28, 2001 issued by then Pairing Judge Ma. Ruby Bithao-Camarista].

Gauged from the evidence proffered by the prosecution, it appears that at around 1:30 in the early morning of August 10, 1999, private complainant Teresita Yutuc y Barrera has already drifted off to sleep, together with her

then 7-year old son and 2-year old daughter, when she was suddenly roused by a loud banging on the front door of her house located at 230 Nepomuceno Street, San Miguel, Manila (TSN dated June 17, 2002, pp. 3-4). A male voice bellowed an imperative, “Pagbuksan mo ako!” followed by a “Terry [referring to private complainant], buksan mo, mag-usap tayo” (ibid., pp. 4, 14). Private complainant immediately recognized the voice as belonging to accused, whom she knew as a “tambay” [loiterer] within the vicinity, having come to know him since he expressed his intentions to court her when she became a widow (ibid., pp. 8-9, 14-15, 17).

Frightened to her senses, private complainant instead opened the window of her room located at the 2[nd] floor and pleaded for help at her neighbor, Kagawad Evangeline Gamboa. The latter quickly gave heed and assured private complainant that she will come for assistance (ibid., p. 15; TSN dated September 25, 2000, p. 6).

However, before Kagawad Evangeline Gamboa could come, accused was already able to forcibly kick the door of the house, readily dismantling the upper section thereof since it was just made of “lawanit” [plyboard]. Although the two (2) door locks remained attached to their key hole, the damage made was enough for accused to gain entrance (TSN dated June 17, 2002, pp. 5-6; Exhibits “A” to “A-3”).

Once inside the room, private complainant instinctively grabbed her then wailing children. Accused, however, snatched the youngest from the arms of private complainant and dropped her on the floor. Meantime, although private complainant instructed her son to get help from his grandmother who just lived downstairs, he was not able to get out of the door (ibid., p. 7, 16).

Accused suddenly pressed private complainant to a nearby bed. His hands first cupped her breasts, then roamed down her stomach. Private complainant, however, was able to push the accused away and lost no time to elude her attacker as she seized her children, readily darting out of the front door. This time, the son of private complainant was able to proceed to his grandmother’s house for help (ibid., pp. 7-8).

Once daylight came, private complainant reported the incident to the barangay authorities which thereafter logged the same in the barangay blotter (ibid., pp. 12-13; TSN dated September 25, 2002, pp. 7-9; Exhibit “E”).

At the same time, private complainant went to the police authorities to formalize her complaint, executing her Sinumpaang Salaysay in the process (Exhibits “B” and “D”).

Later that day, at around 4:00 p.m. accused apparently surrendered himself to Barangay Chairman Raymundo Floro who thereafter brought him to the police authorities (Sinumpaang Salaysay executed by Barangay Chairman Raymundo Floro; Exhibit “F”).

With no other witness to present, the prosecution filed its Formal Offer of Exhibits on December 9, 2002, No comment having been filed by the accused, by Order dated February 20, 2003, Exhibits “A” to “F” were all admitted as part of the testimonial evidence offered by the prosecution and as proof of their contents thereof.

Despite the several opportunities given for accused to present his defense evidence, no such evidence was made. Hence, by Order dated June 14, 2004, accused’s right to present evidence was deemed waived and the cases submitted for judgment on the sole basis of prosecution evidence.

After a circumspect assessment of the same, this Court finds moral certainty to attribute to accused criminal liability of the crimes charged.

The elements of the crime of Qualified Trespass to Dwelling, as defined and penalized under Article 280 (2) of the Revised Penal Code are: (i) that the offender is a private person; (ii) that he enters the dwelling of another; (iii) that such entrance is against the latter’s will; and (iv) that the offense is committed by means of violence or intimidation.

All such elements are present in this case.

There is no question that accused Dino Dizon is a private person, he being an ordinary resident of Barangay 646, Zone 67, District 6, San Miguel, Manila, which is proximate to where the private complainant also lived. That he entered the dwelling of another against the latter's will by means of violence and intimidation is strongly exhibited by the fact that he forced his way into the house of private complainant by kicking and whacking the fragile plyboard door moments after he was refused entrance thereof by the same private complainant (Exhibits "A" to "A-3").

Despite the ungodly hour of 2:00 a.m. accused had displayed every ounce of audacity to go to private complainant's house and insist on the chance to talk to her. At first, he pleaded "Terry, buksan mo, mag-usap tayo" (TSN dated June 17, 2002, p. 14). The echo of his vocal persuasions, however, only rang through the darkness. Private complainant, by this time already stood her guard and refused entrance by silently not acceding to accused's vigorous request to get in. Soon, as it became evident that accused could not get his way in, the ebb of persuasion waned, and a new tide of compelling force surfaced.

At first, a heavy thud was heard on the front door, quickly followed by a succession of emphatic poundings that resonated. Thereafter, an intense whacking on the front door revealed that accused has kicked his way in, dismantling the upper section of the plyboard door. The interior of the house was then exposed as it now became easy for accused to gain entrance.

There is no doubt, therefore, that the elements of Qualified Trespass to Dwelling crept in once accused forcibly found his way inside the house against the wishes of the private complainant.

On the other hand, the elements of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code are: (i) that the offender commits any act of lasciviousness or lewdness; (ii) that it is done by (a) using force or intimidation or (b) when the offended party is deprived of reason or otherwise unconscious or (c) when the offended party is under 12 years of age; and (iii) that the offended party is another person of either sex (People v. Sagarino, Jr., G.R. No. 135356-58, September 4, 2001).

In this case, it has been concretely established by the prosecution that as soon as accused gained entrance to private complainant's house, he snatched the latter's children away from her, pushed her on the bed and began touching her body parts.

The essence of lewdness was manifested in the very act complained of. Accused had displayed no qualms to unveil what he intended all along – a libidinous hunger that replicated itself in nudging and fondling the body parts of private complainant.

Accused's use of force was mirrored in pushing private complainant to her bed, unmindful of the growing agitation he has caused on her children. Accused would have ravaged on and on but inevitably, it was private complainant's instinct for self-preservation and the protection of her children that made her repel the attack and escape the crime scene. Haplessly for accused, however, his unbridled lewd designs for private complainant were consummated by this time. A stigma already struck against a revered chastity, thereby casting a dent that private complainant had to live to from thence.

Nonetheless, it must be emphasized that accused's liability for Qualified Trespass to Dwelling was treated as separate and distinct from his liability for Acts of Lasciviousness. The former was not absorbed in the latter offense. This is because accused's criminal aberration for lewdness at the time he committed trespass to dwelling was not made manifest, having only intended to talk ["mag-usap"] to private complainant. If accused, once he forcefully gained entrance to the house, later committed acts of lasciviousness against private complainant, he

merely stepped into another zone of consummating the separate crime of Acts of Lasciviousness.

The mitigating circumstance of voluntary surrender pursuant to paragraph 7 of Article 13 of the Revised Penal Code, however, will be appreciated in favor of the accused, gauged from the Sinumpaang Salaysay executed by prosecution's Barangay Chairman Raymundo Floro who alleged that accused has voluntarily surrendered to him, in his capacity as an agent of a person in authority, at around 4:00 in the afternoon of August 10, 1999 (Exhibit "F").

WHEREFORE, in Criminal Case No. 318644-SA, this Court finds accused Dino Dizon y Salinas GUILTY beyond reasonable doubt of the crime of Qualified Trespass to Dwelling defined and penalized under Article 280 (2) of the Revised Penal Code, and, applying the indeterminate sentence law, with the mitigating circumstance of voluntary surrender appreciated in accused's favor, imposes upon him an indeterminate penalty of TWO (2) YEARS and FOUR (4) MONTHS of prison correccional in its minimum period as minimum to THREE (3) YEARS, SIX (6) MONTHS and TWENTY (20) DAYS of prison correccional in its medium period as maximum.

Likewise, in Criminal Case No. 318644-SA, this Court finds accused Dino Dizon y Salinas GUILTY beyond reasonable doubt of the crime of Acts of Lasciviousness defined and penalized under Article 336 of the Revised Penal Code and after applying the indeterminate sentence law, with the mitigating circumstance of voluntary surrender appreciated in his favor, imposes upon him an indeterminate penalty of SIX (6) MONTHS of arresto mayor as minimum to TWO (2) YEARS and FOUR (4) MONTHS of prison correccional as maximum.

For the grave anxiety caused to private complainant, accused is hereby directed to pay private complainant Teresita Yutuc y Barrera moral damages in the amount of FIFTY THOUSAND PESOS (P50,000.00), consonant to the ruling in *People v. Laguerta*, G.R. No. 132783, October 30, 2000, citing *People v. Larin*, 297 SCRA 309, 330-331 (1998).

SO ORDERED.

Manila, June 15, 2004.

MA. THERESA DOLORES C. GOMEZ-ESTOESTA

Presiding Judge

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/mtge

D

2004 Judicial Excellence Awardee
Best Decision Award in Civil Case (2[nd] Level Court)
by JUDGE SIXTO C. MARELLA, JR.[*]
Outstanding RTC Judge

REPUBLIC OF THE PHILIPPINES
National Capital Judicial Region
REGIONAL TRIAL COURT
Branch 138
Makati City

BANK OF THE PHILIPPINE ISLANDS,

Plaintiff,

-versus- CIVIL CASE NO. 99-707

USA GENERICS PHARMA, INC., et al.,
Defendants.

X ----- X

DECISION

Plaintiff came to this Court with a complaint that its right to be paid jointly and severally, by the defendants of P2,275,000.01 representing loan previously extended was violated when they failed to pay on June 2, 1998, the due date notwithstanding demands. Relief prayed for is for defendants to be directed to pay.

Defendant USA Generics Pharma, Inc. (USA) denied liability on ground that the complaint is premature because there are circumstances which were beyond its control. It claimed likewise that the interest demanded is “unconscionably exorbitant”.

Defendant Katipunan delos Reyes (delos Reyes) likewise denied liability because – a] the agreement with respect to the suretyship is that it shall be valid only while he remains a responsible officer of USA Generics and that it was terminated by virtue of the election of new set of officers and directors; b] he signed the agreement of the plaintiff as formality requirement; c] the complaint was premature because the whole obligation is not yet

matured; d] USA Generics has money to pay its existing obligation.

With prior leave, the Third-Party Complaint of delos Reyes against Icon Pharma, Inc. (Icon) was admitted. He prayed that Icon be instead ordered to pay plaintiff the loan of USA Generics because the loan was used to put up Icon. It subsequently conducted business using the physical and financial resources of USA Generics including its employees. The stockholders and directors of USA Generics and Icon are the same and that it was established a division of USA Generics for the purpose of conducting business on main or branded products.

Icon denied liability because – a] lack of privity to the transactions between plaintiff, USA Generics and delos Reyes; b] lack of factual basis to support the cause of action; c] it is a corporation separate and independent from USA Generics and has been operating its business as an entirely separate entity from USA Generics.

The sole issue to resolved is identity of the person or entity to be ordered to pay the loan.

The facts are –

On February 2, 1998, plaintiff and defendant USA Generics entered into a Loan Agreement whereby the latter was granted a medium term loan of P2,600,000.00 payable in two (2) years in equal monthly principal payment of P108,333.33 with interest at the prevailing market rates payable and reprisable every thirty days. Pursuant to the Loan Agreement, USA Generics executed the Promissory Note, Annex A, Complaint. Delos Reyes had earlier executed a Continuing Suretyship Agreement, Annex C, Complaint, whereby he agreed to pay plaintiff as primary obligor, any or all indebtedness of USA Generics up to P10,000,000.00. The loans became due and payable on June 2, 1998 but defendants failed to pay notwithstanding demands.

Given the foregoing, the liability of defendants USA Generics and de los Reyes in a joint and soledarily manner is to be pronounced. USA Generics admitted executing the Loan Agreement and Promissory Note and it failed to prove any circumstance that will exempt it from liability. Delos Reyes on the other hand admitted executing the Continuing Suretyship Agreement but he failed to raise in his Answer, the defense that the document does not reflect the true intent and agreement of the parties in the manner required by Rule 8, Section 8 of the 1997 Rules of Civil Procedure.

On the Third-Party Complaint, delos Reyes sought to prove by his testimony that Icon is a creation of USA Generics and it is a fully owned subsidiary of USA Generics (Tsn, page 14, April 4, 2002). In one of the meetings, the directors of USA Generics discussed the setting up of a brand division named Icon and the purpose is to segregate the brand products of USA Generics and place it under Icon to identify or separate them from the generic products (Ibid., pp. 27-28). A packing box, Exhibit 4, was submitted where the following entries appeared “Manufactured for Icon, a division of USA Generics Pharma, Inc.” followed by the address. Icon has no separate office.

Icon maintained that it is a corporation entirely separate and distinct from USA generics. In 1996, it did not pursue its purpose of incorporation and became non operational. (Tsn, p. 17, August 1, 2002), but in the meeting held on September 28, 1999, the stockholders decided to reactivate and the election of officers was done together with an increase in capitalization with USA Generics as a principal stockholder. Since then, they have operated separately from USA Generics.

The Court does not find the relief prayed for by de los Reyes that the corporate veil of Icon pierced and that the liability of USA Generics be considered as the liability of Icon, to be warranted.

Umali vs. Court of Appeals, 189 SCRA 529 [1990] impliedly recognized three (3) major classifications of cases where the veil of corporate entity can be pierced, viz:

- a] when the corporate entity is used to commit, fraud justify a wrong, or to defend a crime;
- b] when the corporate entity is used to defeat public convenience, or a mere farce, since the corporation is merely the alter ego, business conduit or instrumentality of a person or another entity; and
- c] when the piercing of the corporate fiction is necessary to achieve justice or equity.

Classification [a] is to be ruled out because delos Reyes made no intimation that the organization of Icon was one tainted in fraud or done to justify a wrong or defend a crime.

Classification [b] appears to be of significance since the claim of delos Reyes is that Icon is a mere instrumentality or division of USA Generics. The only evidence to support its position is that Icon was created for the purpose of handling brand products of USA Generics and that in the packing box, Exhibit 4, it was shown in the words “Icon Pharma, Inc. a division of USA Generics Pharma, Inc.”

The Court does not find the evidence of delos Reyes sufficient to justify the conclusion sought. The doctrine of piercing the corporate veil was transported into the Philippine legal system as part of the adoption of the American corporate practice. *United States vs. Milwaukee Refrigerator Transit Co.*, 142 Fed. 247 (1905) supplied the reason –

If any general rule can be laid down in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.”

Concept Builder, Inc. vs. NLRC, 257 SCRA 149 (1996) provides a road map in resolving issues of this nature that –

“The Court held that the “conditions under which the juridical entity may be disregarded vary according to the peculiar facts and circumstances of each case. No hard and fast rule can be accurately laid down, but certainly, there are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil.”

Liddel and Co. vs. Collector of Internal Revenue, 2 SCRA 632 (1961) states the ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation is not by itself a sufficient ground for disregarding the separate corporate personality. *Umali vs. Court of Appeals* (supra) held that the mere fact that the business of two (2) or more corporations are interrelated is not a justification for disregarding their separate personalities absent sufficient showing that the corporate entity was purposely used a shield to defraud creditors and third persons of their rights. *Tantuco vs. Kaisahan ng Manggagawa*, 106 Phil. 199 (195); *Del Rosario vs. NLRC*, 187 SCRA 777 (1990) enunciate the same doctrine.

As to Classification [c], the Court finds it to be inapplicable.

WHEREFORE, judgment is rendered ordering defendants to pay plaintiff jointly and severally P2,275,000.01 with interest at the rate of 28% per annum. The third-party complaint against Icon Pharma, Inc. is dismissed.

SO ORDERED.

Makati City, 18 August 2003.

SIXTO C. MARELLA, JR.

Judge

[*] Now Justice of the Court of Appeals.

E

2005 Judicial Excellence Awardee
Best Decision Award in Civil Case (1[st] Level Court)
by JUDGE FRANCISCO ROBERTO D. QUILALA
Outstanding MCTC Judge

REPUBLIC OF THE PHILIPPINES
First Judicial Region
MUNICIPAL TRIAL COURT
Bacarra, Ilocos Norte

PURIFICACION C. ANGELES,

assisted by her husband

ERNESTO ANGELES,

Plaintiff,

CIVIL CASE No. 534

-versus- For: Ownership and Damages

ELENA CALMA and

JUANITO CALMA,

Defendants.

X ----- X

DECISION

Do herein defendants, as grandchildren and heirs of deceased Liberato Viernes, have a right over a property he owned and subsequently sold during his lifetime to the parents of herein plaintiff? On this question hinges the resolution of the present case.

The Complaint prays that defendants be ordered to vacate the disputed property consisting of a parcel of land and the house thereon[1] and that plaintiff be declared the owner thereof. In their Answer, defendants countered that they were “the owners or at least co-owners of the property.” After the pre-trial conference, plaintiff and

defendant Elena Calma were presented as witnesses. Thereafter, the parties were given an opportunity to submit their respective Memorandum, but only defendants did.

At the witness stand, plaintiff testified that she was the owner of the disputed property because it was purchased by her parents Candelario Calma and Maria Castillo-Calma from Liberato Viernes, as evidenced by a Deed of Absolute Sale dated September 13, 1951.[2] After the death of plaintiff's parents (her father in 1978 and her mother in 1991), defendant Elena Calma stayed in the property. For her part, plaintiff went to live with her husband in Navotas.[3] Eventually, plaintiff asked defendants to vacate the house because she intended to renovate it. Defendants refused, claiming that it was owned by their grandfather Liberato Viernes.[4] According to the plaintiff, the property was declared for taxation purposes in the name of her mother Maria Calma, and that she herself had been paying the realty taxes thereon.[5]

For her part, defendant Elena Calma claimed that she had a right to own the disputed property because "it was owned by our grandparents." [6] According to her, the original owner of the property was Liberato Viernes.[7] She had been staying in it on the strength of the permission given by plaintiff's mother Maria Calma,[8] who before leaving for Hawaii told her to stay on the property as long as she (defendant) wanted.[9] When Maria Calma returned once to the Philippines, she reiterated that defendants could continue staying at the house. But on August 18, 1991, plaintiff asked defendants to vacate the property.[10] Defendant Elena Calma stated, however, that she had an interest over the property as an heir of Liberato Viernes.[11] She disclaimed knowledge of the sale allegedly made by Liberato Viernes in favor of spouses Candelario and Maria Calma, and claimed that neither vendor nor the vendees had told her about it.[12] For about twenty years, only she and her family had been staying in the property, regarding it as theirs.[13]

It may be noted that the relationships of the personalities in this case are undisputed.[14] Liberato Viernes had a lone child in the person of Eufemia, "who married Felix Castillo. Because Eufemia and Felix did not immediately beget a child, they "adopted" Maria Calma.[15] Subsequently, Eufemia did give birth to Josefina Castillo. After the death of her first husband Felix, Eufemia married Diego Calma, with whom she had four children including defendants Elena and Juanito. Eufemia's "adopted" daughter Maria Calma eventually married Candelario, with whom she had seven children including herein plaintiff Purificacion Angeles.

In the main, plaintiff claims ownership over the property because her parents had purchased it from the original owner Liberato Viernes. Defendants, on the other hand, claim ownership over it because they are the grandchildren and heirs of Liberato Viernes.

After considering the records of this case and the evidence presented, the Court finds the Complaint meritorious.

The notarized Deed of Sale clearly shows that the property was sold by Liberato Viernes to the plaintiffs parents on September 13, 1951. As a rule, notarized documents are presumed genuine and regular they are a prima facie evidence of the facts stated therein.[16] To overcome the presumption, the controverting evidence must be "clear, convincing, and more than merely preponderant." [17] Notable in this case, however, is the conspicuous failure of defendants to adduce evidence assailing the validity of the Deed of Sale. There was no allegation that the Deed of Absolute Sale resulted from force or fraud or was subsequently rescinded or annulled. Similarly, there was no allegation that Liberato Viernes had no right to sell the property. In fact, defendant Elena Calma admitted that the property was owned by Liberato Viernes,[18] who was necessarily vested with the right to dispose of it. In the same vein, there was no allegation that Liberato Viernes had an obligation to reserve the property for his heirs. Furthermore, there was no allegation that the Calma spouses conveyed the property back to Liberato Viernes. As it is, defendant Elena Calma merely claimed that she was not aware of the sale and was never informed about it by Liberato Viernes or by spouses Candelario and Maria Calma. It is scarcely necessary to point out that notice to

Elena Calma, the fifteen-year-old granddaughter of the vendor at the time of the sale,[19] is not a requisite to the validity of the Deed of Absolute Sale.

The effect of the Deed of Absolute Sale is clear: the property sold ceased to be a part of the estate of Liberato Viernes. Certainly, heirs have a right to inherit only the property owned by the deceased at the time of his death. In this case, the disputed property was no longer owned by Liberato Viernes, when he died in 1984,[20] having sold it to the plaintiffs' parents in 1951. Accordingly, the heirs of Liberato Viernes, including his grandchildren-defendants, had no more right to inherit it from him at the time of his death. As opined by a jurist, "the deceased having long divested himself of title to the said properties, they were properly excluded from the inventory of his estate." [21]

It must be pointed out that defendants cannot require the collation of the disputed property under Article 1061 of the Civil Code, which provides as follows:

"Art. 1061. Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition."

The collation mandated under the foregoing provision, which aims to attain equality among the compulsory heirs insofar as possible,[22] contemplates two conditions: (1) that a property was conveyed by the decedent inter vivos through donation or other gratuitous title, and (2) that it was conveyed to a compulsory heir.[23] These are absent in this case.

First, the Deed of Absolute Sale was not a donation or a gratuitous transfer of the disputed property in favor of plaintiff's parents; rather, it was a contract of sale perfected by Liberato Viernes during his lifetime. Significantly, the records are bereft of any allegation or proof that the Deed was in reality a donation or a gratuitous transfer.

Second, plaintiff's parents were not compulsory heirs of Liberato Viernes. Plaintiff's father Candelario was not related at all to Liberato Viernes, while her mother Maria was merely "adopted" by Liberato's daughter Eufemia. As there was no showing of the requisite judicial proceedings,[24] the adoption must be deemed invalid[25] and incapable of transforming Maria into Eufemia's lawfully adopted child. But even assuming that Eufemia had adopted her in accordance with law, Maria Calma did not become thereby a compulsory heir of Liberato Viernes. It is axiomatic that the relationship established by adoption "is limited to the adopting parent, and does not extend to his other relatives, except as expressly provided by law. Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have before or after the adoption x x x." [26]

It must be stressed that the sale did not deprive the heirs of Liberato Viernes of their legitimes. As held in *Manongsong v. Estimo*, [27] "[a]s opposed to a disposition inter vivos by lucrative or gratuitous title, a valid sale for valuable consideration does not diminish the estate of the seller. When the disposition is for valuable consideration, there is no diminution of the estate but merely a substitution of values; that is, the property sold is replaced by the equivalent monetary consideration."

For these reasons, defendants can neither claim the disputed property as heirs of Liberato Viernes nor demand that it be subjected to collation as part of his estate.

Furthermore, it should be pointed out that defendants, as children of Diego Calma whose brother was the husband of Maria Calma, cannot claim any interest over the property as heirs of Maria or her husband. As earlier noted, the judicial decree of Maria's adoption by Eufemia was not proven. More important, defendants as collateral relatives

of the Calma spouses can inherit from them only if the spouses had no children or ascendants.[28] As the Calma spouses had seven children including herein plaintiff, defendants cannot succeed to the disputed property as the collateral relatives of the Calma spouses. As it is, the lawful heirs of the spouses are their seven children including herein plaintiff, not herein defendants.

Also noteworthy is the admission of defendant Elena Calma that she stayed in the property with the permission of Maria Calma.[29] If defendants claim that they had a right to stay in the property as heirs of Liberato Viernes, why did they have to ask the permission of plaintiff's mother? If they had to ask permission from Maria Calma, how could defendants subsequently consider the property as their own?[30] Verily, in seeking the permission of Maria Calma, defendant Elena Calma effectively recognized the ownership of the former over the property to the exclusion of other persons.

The Court also notes the claim of defendant Elena Calma that she and her family had been staying in the property for about twenty years.[31] This testimony by itself is devoid of legal significance, bestowing upon defendants no title over the disputed property by acquisitive prescription. She admitted having sought Maria Calma's permission to stay there, and she never alleged having repudiated Maria's title. Indeed, defendants did not allege that they have been in peaceful, public and uninterrupted possession of the property during that period in the concept of owners.

In their Memorandum, defendants asked for the dismissal of the Complaint for two reasons only. Both cannot be sustained. First, defendants invoked the failure of plaintiff to prove compliance with the conciliation requirement under the Katarungang Pambarangay Law, as originally embodied in PD 1508 and now in Republic Act No. 7160. According to defendant, their Answer had denied the allegation in the Complaint that there was such compliance but plaintiff still failed to present evidence on this point. Thus, they conclude that "the complaint becomes afflicted with the vice of pre-maturity; the controversy there alleged is not ripe for judicial determination." [32]

The argument is not meritorious. After participating in the trial and presenting their own evidence on the merits of the case, defendants can no longer invoke at this stage the non-compliance with the conciliation requirement. Thus, in *Abalos v. CA*, [33] where the private respondents alleged a similar defense in their Answer but participated in the trial without raising the issue, the Supreme Court held:

"x x x. No rule is more settled than that once a party to a case submits to the jurisdiction of the court and participates in the trial on the merits of the case, he cannot thereafter, upon a judgment unfavorable to his cause, take a total turn about and say that the condition precedent of compliance with PD No. 1508 had not been met. One cannot have the cake and eat it too."

The fact that non-compliance with the conciliation requirement was raised therein only after the rendition of an unfavorable judgment does not render *Abalos* inapplicable to this case, in which herein defendants invoked a similar ground for dismissal only in their Memorandum before the rendition of judgment. The fact remains that herein defendants, like the private respondents in *Abalos*, participated in the trial without invoking that defense. Obviously, after having presented their own evidence, defendants can no longer claim that the present Complaint was premature.

It bears emphasis that barangay conciliation is not a jurisdictional requirement in the sense that its absence deprives the court of its jurisdiction, either over the subject matter or over the person of the defendant. Nonetheless, such non-compliance must be seasonably raised.[34] Herein defendants failed to do so.[35]

Second, defendants contended that the "parties are members of the same family [their fathers are brothers] and again, there is the absence of proof that earnest efforts to compromise was resorted to by plaintiff." [36] The argument is evidently premised on Article 151 of the Family Code, which substantially reiterates Article 222 of

the Civil Code and provides that “no suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed.”

This too must fail. In *Esquivias v. CA*,^[37] which was decided before the effectivity of the Family Code, it was held that the requirement under Article 222 of the Civil Code “applies only to suits between or among members of the same family. The phrase ‘between members of the same family’ should be construed in the light of Art. 217 of the Civil Code under which ‘family relations’ include only those (a) between husband and wife, (b) between parent and child, (c) among other ascendants and their descendants, and (d) among brothers and sisters.” Because the relations between first cousins, like herein plaintiff and defendants, are not included in the enumeration of family relations, Article 151 of the Family Code finds no application in this case.

One more point. The Court concludes that plaintiff has an interest over the property as one of the children of the spouses Candelario and Maria Calma, but it cannot hold that she alone is the owner thereof. She admitted that she had six siblings, who had allegedly “entrusted” the property to her.^[38] No evidence, however, was presented to show that there has been a partition among the seven siblings, or that the others have waived their rights in her favor. In fact, her six other siblings were not impleaded in this case. In that light, while plaintiff as a co-owner “may bring an action in ejectment” pursuant to Article

487 of the Civil Code which has been observed to include ejectment and reivindicatory actions,^[39] the present suit must be deemed to have been instituted for the benefit of all the seven children of spouses Candelario and Maria Calma.

Thus, under the rubric of the prayer for “such reliefs as may be just and equitable,” the present judgment is rendered in favor not only of herein plaintiff but also of her six other siblings. Because defendants premised their right over the disputed property to their claim as “owners or at least co-owners” thereof without invoking a prior authorization from plaintiff or her siblings, their supposed right is necessarily bereft of legal basis. Clearly, defendants have no interest or right over the disputed property and perforce must vacate the same.

Plaintiff also alleges that “defendants are liable for attorney’s fees and damages all in the amount of P20,000.00.” The Court finds no basis for such award. It must be stressed that as a rule, attorney’s fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.^[40] Corollarily, the award of attorney’s fees is the exception and not the rule.^[41] In this case, plaintiff has not shown any basis to entitle her to such an award, or to any other damages.

WHEREFORE, judgment is hereby rendered in favor of the plaintiff. Plaintiff and her six siblings, as heirs of spouses Candelario and Maria Calma, are hereby declared owners of the disputed property. Defendants are directed to VACATE the disputed property upon the finality of this Decision. Costs against defendants.

SO ORDERED.

Bacarra, Ilocos Norte; October 25, 2004.

FRANCISCO R. D. QUILALA

Acting Presiding Judge

[1] The disputed property is described in the Complaint as follows: “Residential lot with a house thereon, located in Brgy. No. 16, Bacarra, Ilocos Norte, bounded on the North by Baltimore Street, on the East by National Road, on the South by Josefa Bolosan, and on the West by a Street, with an area of 132 square meters, more or less, and is assessed at P790.00 under Tax No. 786155, while the house is assessed at P700.00 per Tax No. 696508 in the name of the plaintiff.”

[2] TSN, January 21, 2002, pp. 2-3; records, p. 120.

[3] TSN, January 21, 2002, p. 3.

[4] TSN, January 21, 2002, p. 5.

[5] TSN, January 21, 2002, pp. 5-6.

[6] TSN, April 5, 2004, p. 6.

[7] TSN, October 20, 2003, p. 5.

[8] TSN, October 20, 2003, pp. 4-5.

[9] TSN, October 20, 2003, p. 7.

[10] TSN, October 20, 2003, p. 10.

[11] TSN, October 20, 2003, p. 12.

[12] TSN, October 20, 2003, p. 11.

[13] TSN, October 20, 2003, pp. 11-12.

[14] See Pre-trial Order dated November 19, 2001, records, pp. 79-82; TSN, July 21, 1999, pp. 4-5. See also Pre-trial Brief for Defendants, records, p. 23.

[15] TSN, October 20, 200, p. 3.

[16] Plaintiff’s Position Paper, p. 2; records, p. 35; citing Section 23 of Rule 132.

[17] Agdeppa v. Ibe, G.R. No. 96770, March 30, 1993; Alcantara-Daus v. Deleon, G.R. No. 149750, June 16, 2003.

[18] TSN, October 20, 2003, p. 5.

[19] TSN, April 5, 2004, p. 4.

[20] TSN, April 5, 2004, p. 3.

[21] Teehankee’s concurring opinion, Valero vda. De Rodriguez v. CA, G.R. No. L-39532, July 20, 1979.

[22] Visconde v. CA, G.R. No. 118449, February 11, 1998.

[23] See Sanchez v. CA, G.R. No. 108947, September 29, 1997.

[24] See TSN, October 20, 2003, p. 3; TSN, August 26, 2002, p. 4.

[25] Lazatin v. Campos, G.R. No. L-43955-56, July 30, 1979.

[26] Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, Vol. I (2003 Reprint), p.

564.

[27] G.R. No. 136773, June 25, 2003.

[28] Article 1003 of the Civil Code provides that “if there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.”

[29] TSN, October 20, 2003, pp. 5, 8-9.

[30] TSN, October 20, 2003, p. 13.

[31] TSN, October 20, 2003, pp. 11-12.

[32] Defendant’s Memorandum, p. 4. Emphasis found in the original.

[33] G.R. No. 94436, April 30, 1991.

[34] See *Junson v. Martinez*, G.R. No. 141324, July 8, 2003. See also Administrative Circular No. 14-93, dated July 15, 1993.

[35] In fact, a Certificate to File Action dated July 23, 1998 is attached to the records (p. 31). As it was not offered as evidence by the parties, it cannot be considered pursuant to Section 34 of Rule 132. Nonetheless, the argument of defendants and the fact that there is such a document attached to the records raise the possibility of duplicating previously terminated conciliation proceedings before the barangay lupon.

[36] Defendant’s Memorandum, p. 4. Emphasis found in the original.

[37] G.R. No. 119714, May 29, 1997. Although *Esquivias* was decided under the regime of the Civil Code, it is still effective and applicable because Articles 222 and 217 of the Civil Code that it had relied upon were substantially reproduced in Articles 151 and 150 respectively of the Family Code.

[38] TSN, August 26, 2002, pp. 9,11.

[39] Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. II (1983 ed.), p. 157.

[40] See *Morales v. CA*, G.R. No. 117228, June 19, 1997; *Espiritu v. CA*, G.R. No. L-50248, June 19, 1985.

[41] *Inter-Asia Investments v. CA*, G.R. No. 125778, June 10, 2003.

F

2005 Judicial Excellence Awardee

Best Decision Award in Pre-Trial (2nd) Level Court)

by JUDGE EDUARDO I. TANGUANCO

Outstanding RTC Judge

REPUBLIC OF THE PHILIPPINES

Fourth Judicial Region

REGIONAL TRIAL COURT

Branch 189

Bacoar, Cavite

**SUN PACK CONTAINER
& PACKAGING CORPORATION,**

Plaintiff,

-versus- BCV 2000-89

SPOUSES EDMUNDO DE MATA and

CONCORDIA DE MATA; SPS. FERMIN

DE MATA and MEDIAL PALMA; SPS.

MANOLITO DE MATA, and ANGELINA

TOLENTINO; SPS. MARIO DE MATA and

LUCENA MERCADO and MERCILITA DE MATA,

Defendants.

X ----- X

PRE-TRIAL ORDER

When this case was called for pre-trial this morning, Atty. Jose Benjamin Panganiban appeared for the plaintiff, while Atty. Julita Escueta-Gonzales appeared for the defendants. Considering the manifestation of the parties that they could not settle this case amicably, the pre-trial proceeded and in the course of which, the parties entered into the following

STIPULATIONS:

- The genuineness and due execution of the Memorandum of Agreement dated April 12, 1995 (Annex A of Complaint);
- Genuineness and due execution of the Memorandum of Agreement dated July 12, 1996 (Annex B of Complaint);
- Existence of Cash Voucher dated July 11, 1996 (Annex C of Complaint);
- Defendant Edmundo de Mata admitted that the late Fermin de Mata actually received the amount of P4,634,500.00 from the plaintiff;
- Genuineness and due execution of the Deed of Absolute Sale of Real Estate dated July 18, 1996 (Annex D of Complaint);
- That Civil Case No. 1375-96 was filed by Lorinda V. Estrada against the Heirs of Sps. Mario de Mata and Salud Ligaya- De Mata, as represented by their son Edmundo De Mata, and the Register of Deeds for the Province of Cavite, before Branch 20 of the Regional Trial Court, Imus, Cavite, which case was decided on July 24, 1998 in favor of the plaintiff. However, the decision of the Regional Trial Court was reversed by the Court of Appeals in a

decision dated January 14, 2002. Entry of Judgment was recorded on August 8, 2002;

- At the time the two memoranda of agreement were signed, Mr. Edmundo de Mata was in constructive possession of the land subject of the case;
- Defendant Edmundo de Mata received copy of the demand letter dated February 10, 2000 (Annex G of Complaint);
- Marcelita de Mata received copy of the demand letter dated February 10, 2000 (Annex G-1 of Complaint);
- Manolito de Mata received the demand letter dated February 10, 2000 (Annex G-2 of Complaint);
- Fermin de Mata received the demand letter dated February 10, 2000 (Annex G-3 of Complaint);
- The existence of the demand letter dated February 10, 2000, addressed to Mario de Mata, Sr.

ISSUES

FACTUAL

- Whether or not there were squatters present on the lot in question during the time that the deed of absolute sale of real estate was entered into between the parties.
- Whether or not defendants registered an adverse claim over the subject property during the time of the execution of the memoranda of agreement and the deed of absolute sale of real estate.

LEGAL

- Whether or not the plaintiff has legal ground to have the memoranda of agreement and deed of absolute sale of real estate rescinded, and if so, whether or not plaintiff is entitled to damages and attorney's fees.
- Whether or not defendants are entitled to moral damages, exemplary damages, attorney's fees and costs of litigation.

EXHIBITS

FOR THE PLAINTIFFS:

- Exh. A – Memorandum of Agreement dated April 12, 1995;
- Exh. B – Memorandum of Agreement dated July 12, 1996;
- Exh. C – Cash Voucher dated July 11, 1996;
- Exh. C-1 – Receipt dated July 11, 1996 signed by Fermin de Mata;
- Exh. D – Deed of Absolute Sale of Real Estate dated July 18, 1996;
- Exh. E – Complaint in Civil Case No. 1375-96 dated August 15, 1996;
- Exh. F – The decision in said Civil Case dated July 24, 1998;
- Exh. G – Demand Letter dated February 10, 2000 addressed to Edmundo de Mata;
- Exh. G-1 – Demand letter dated February 10, 2000 addressed to Marcelita de Mata;
- Exh. G-2 – Demand letter dated February 10, 2000 addressed to Manolito de Mata;

Exh. G-3 – Demand letter dated February 10, 2000 addressed to Fermin de Mata;

Exh. G-4 – Demand letter dated February 10, 2000 addressed to Mario de Mata;

Plaintiff reserved the right to present other exhibits in the course of the proceedings.

FOR THE DEFENDANTS:

Exh. 1 – Transfer Certificate of Title No. T-569229;

Exh. 2 – Transfer Certificate of Title No. (A-2410) RT-3532;

Exh. 3 – Transfer Certificate of Title No. (T-813) RT-3531;

Exh. 4 –

Decision of the Court of Appeals dated January 11, 2002 attached to defendants second manifestation;

Exh. 5 – Entry of Judgment dated August 8, 2002 in decision dated January 11, 2000.

Defendants reserved the right to present additional exhibits in course of the proceedings.

WITNESSES

FOR THE PLAINTIFF:

- Mr. Charles Hsieh – Molave St., Ceris II, Canlubang, Laguna;
- Mrs. Lampen Hsieh – Molave St., Ceris II, Canlubang, Laguna;
- Florinda V. Estrada and her successors-in-interest – 15 Matipid St., Sikatuna Village, Quezon City.

Plaintiff reserved the right to present other witnesses in the course of the trial.

FOR THE DEFENDANTS:

- Edmundo de Mata – Tyler St., Filinvest Homes, Brgy. Tubigan, Biñan, Laguna.
- Mercelita de Mata – Tulay Bato, Biñan, Laguna;
- Register of Deeds for the Province of Cavite.

TRIAL DATES

May 6, 13, 27, June 3, 22, 29, August 8, 17, 26, September 2, 9, 6 & 23, 2004, all at 8:30 in the morning.

The pre-trial is now deemed terminated. The parties are given five (5) days from receipt of this Pre-Trial Order within which to suggest correction/s should they find any error/s therein. After said period, no amendment shall be allowed and this Pre-Trial Order shall control the proceedings in this case. The parties and their respective counsel are notified of the scheduled dates of hearing in open court which are hereby considered non-transferable.

SO ORDERED.

Bacoor, Cavite, 25 March 2004.

EDUARDO ISRAEL TANGUANCO

Executive Judge

G**SC ADMINISTRATIVE CIRCULAR NO. 82-2006**

To: All Justices, Judges, and Employees of the Judiciary

Subject:

Civil Service Commission Memorandum Circular No. 12, s. 2005 (USE OF NON-SEXIST LANGUAGE IN ALL OFFICIAL DOCUMENTS, COMMUNICATIONS AND ISSUANCES)

Quoted hereunder is Memorandum Circular No. 12, s. 2005 of the CSC.

“Pursuant to CSC Resolution No. 050433 dated March 30, 2005, government officials and employees are encouraged to use non-sexist language in all official documents, communications, and issuances.

In line with the government’s efforts to integrate women’s concerns in its plans and programs through the years, the Civil Service Commission continuously undertakes gender mainstreaming activities, taking extra efforts in promoting gender-sensitivity in the bureaucracy. Beginning June 2000, gender and development (GAD) perspectives have been integrated in the conduct of civil service examinations partly through the use of non-sexist language in the test items. This has led to the Commission’s active campaign on the use of gender-fair language.

Language is a very essential tool in communication. It articulates consciousness, reflects culture, and affects socialization. Hence, the need to recognize the importance of transforming language from traditional usage to a more liberating one, that which is gender-sensitive.

Since government employees and officials encounter gender issues everyday, the use of non-sexist language in preparing letters, memoranda, and other issuances, will encourage them to make a conscious effort to avoid implicit and explicit discriminatory language against women or men. This, in turn, will help promote gender-sensitivity in the bureaucracy.

Attached are some suggestions on how to use non-sexist language.

Please be guided accordingly.

(Sgd.) KATRINA CONSTANTINO-DAVID

Chairperson”

31 March 2005.

SOME SUGGESTIONS ON HOW TO USE NON-SEXIST LANGUAGE

1. Eliminate the generic use of he, his, or him unless the antecedent is obviously male by:

a. using plural nouns

Traditional: The lawyer uses his brief to guide him.

Suggested: The lawyers use their brief to guide them.

b. deleting he, his, and him altogether, rewording if necessary

Traditional: The architect uses his blueprint to guide him.

Suggested: The architect uses a blueprint as a guide.

c. substituting articles (a, an, the) for his; using who instead of he

Traditional: The writer should know his readers well.

Suggested: The writer should know the readers well.

d. using one, we, or you

Traditional: As one grows older, he becomes more reflective.

Suggested: As one grows older, one becomes more reflective.

e. using the passive voice

Traditional: The manager must submit his proposal today.

Suggested: The proposal must be submitted by the manager today.

2.

Eliminate the generic use of MAN. Instead, use people, person(s), human(s), human being(s), humankind, humanity, the human race.

Traditional: ordinary man, mankind, the brotherhood of man

Suggested: ordinary people, humanity, the human family

3. Eliminate sexism in symbolic representations of gender in words, sentences, and texts by:

a.

taking the context of the word, analyzing its meaning, and eliminating sexism in the concept

Traditional: feelings of brotherhood, feelings of fraternity

Suggested: feelings of kinship, solidarity

Traditional: the founding fathers

Suggested: the founders, the founding leaders

Traditional: the Father of relativity theory

Suggested:

the founder of relativity theory, the initiator of relativity theory

b.

finding precise words to delineate the thing itself from supposedly sex-linked characteristics

Traditional: Titanic was a great ship, but she now rests at the bottom of the sea.

Suggested: Titanic was a great ship, but it now rests at the bottom of the sea.

Traditional:

“Don’t let Mother Nature rip you off! She’s out to kill your car’s new finish... Stop her...”

Suggested:

“Don’t let Nature rip you off” It’s out to kill your car’s finish... Stop it...”

4. Eliminate sexual stereotyping of roles by:

a. using the same term for both genders when it comes to profession or employment

Traditional: salesman, stewardess

Suggested: sales agent, flight attendant

b. using gender fair terms in lexical terms

Traditional: sportsmanship

Suggested: highest ideals of fair play

c. treating men and women in a parallel manner

Traditional: I now pronounce you man and wife.

Suggested: I now pronounce you husband and wife.

d. avoiding language that reinforces stereotyping images

Traditional: a man’s job, the director’s girl Friday

Suggested: a big job, the director’s assistant

e. avoiding language that catches attention to the sex role of men and women

Traditional: working mothers, spinsters or old maids

Suggested: wage-earning mothers, unmarried women

Traditional: busboys, chauvinist pigs

Suggested: waiter's assistants, male chauvinists

5. Eliminate sexism when addressing persons formally by:

a. using Ms. Instead of Mrs.

Traditional: Mrs. dela Cruz

Suggested: Ms. dela Cruz

b. using a married woman's first name instead of her husband's

Traditional: Mrs. Juan dela Cruz

Suggested: Ms. Maria Santos-dela Cruz

c. using the corresponding titles for females

Traditional: Dra. Concepcion Reyes

Suggested: Dr. Concepcion Reyes

d. using the title of the job or group in letters to unknown persons

Traditional: Dear Sir

Suggested: Dear Editor, Dear Credit Manager, Dear Colleague"

For the information and guidance of all concerned.

September 19, 2006.

(Sgd.) ARTEMIO V. PANGANIBAN

Chief Justice

Rules on Philippine Citations

The Manual of Judicial Writing's policy to spell out laws, names, etc., after the first usage is adopted. For subsequent citations, the following standard abbreviations are as follows:

A. Sources of Law

1. Statutes

a. Constitution

Cited by reference to the article, section and the paragraph. For both manuals, the year is placed in parentheses when the Constitution is no longer in force.

Const. (1935), Art. VIII, Sec. 1

Const. (1973), Art. X, Sec. 1

Const. (1987), Art. VIII, Sec. 1

b. Statutes proper

Laws passed by the Legislative Department from 1901 to present are cited as follows:

- Public Laws 1901-1934

Act No. 136 (1901)

- Commonwealth Acts, 1935-1945

Com. Act No. 35 (1935)

- Republic Acts, 1946-1972, 1987 - present

Rep. Act No. 88 (1946)

- Presidential Decrees, September 21, 1972 - February 1986

Pres. Decree No. 442 (1972)

- Batas Pambansa, January 1979 - February 1, 1986

Batas Blg. 129 (1980)

c. Treaties

Cited by the name of the treaty and the date when the treaty was signed. Philippines Extradition Treaty with the United States, November 27, 1981, 8 PTS 978

The source represents the volume number of the Philippine Treaty Series and 978 is the page where the treaty was found.

d. Executive/Presidential Issuances

Presidential issuances are cited by the number of the issuance and followed by the date of issuance. The date is important for each year, the number starts with the first number (No. 1).

- Executive Orders

Exec. Order No. 200 (1986)

- Proclamations

Proc. No. 1081 (1972)

- Administrative Orders

Adm. Order No. 200 (2005)

- There are special presidential issuances under Martial law as follows:

- General Orders

Gen. Order No. 1 (1972)

- Letters of Instructions

L.O.I. No. 2 (1972)

- Letters of Implementation

L.O. Impl. No. 1 (1972)

- Letters of Authority

L.O.A. No. 1 (1972)

e. Administrative Rules and Regulations

Government offices and agencies promulgate their own rules and regulations. They are cited by the abbreviation of the name of each agency, followed by the name of the specific rule or regulation.

Examples:

Administrative Order No. 1 promulgated by the Department of Energy on January 5, 2006 is thus cited as:

DOE Adm. Order No. 1 (2006)

SC Adm. Order No. 1 (2005) is the citation for Supreme Court Administrative Order No. 1 adopted in 2005.

f. Ordinances

Laws passed by the city, municipal or provincial government (local government) are in the form of ordinances. They are cited by providing the name of the city, municipality or the province, followed by the ordinance number and the date.

Example:

City ordinance No. 1 of the city of Manila passed on June 21, 2004 is cited as:

Manila Ordinance No. 1, June 21, 2004.

g. Court Rules

The Rules of Court is cited like any ordinary code by its name, followed by the rule number and section.

Example:

Rule of Court, Rule 14, sec. 1.

The Supreme Court through the proposal of the Committee of Revision of Rules Courts has amended the Rules of Court by subject, such as Civil Procedure, Criminal Procedure, Evidence, Special Proceedings. They are now cited by said amendments as follows:

Criminal Procedure, Rule 115, Sec. 1 (2000)

Civil Procedure, Rule 70, Sec. 1 (1997)

2. Court Decisions

a. Court decisions are cited by the family name of the parties, the volume number, Court Report title, page of the court report, and the year of promulgation in parenthesis.

Ong v. People, 399 Phil. 686 (2000)

Mactan-Cebu International Airport Authority v. Chiongbian, 399 Phil. 695 (2000)

Exception to this the general rule are Islamic, Chinese names which are cited in full. Those with Christian first names follow the general rule.

Example:

Sy Chin v. Tang Ching Heng & Co., 399 Phil. 442 (2000)

Court decisions from the Supreme Court down to the lower courts can be identified through their case number cited as follows:

- Supreme Court decisions – G.R. No. _____, date of promulgation
- Court of Appeals decisions – C.A.-G.R. No. _____-R, CV, CR or SP, date of promulgation
- Sandiganbayan decisions – Sandiganbayan Crim Case No. _____, date of promulgation
- Metropolitan Trial Courts – MeTC (Place & Branch No.) Civil or Criminal Case No. _____, date of promulgation

People v. Santiago, MeTC (Quezon City, Branch II) Crim. Case No. 4444, May 10, 2005

- Municipal Trial Courts and Municipal Circuit Trial Courts decisions MTC or MCTC (Place) Criminal or Civil Case No. _____, date of promulgation
- Shari’a District and Circuit Courts – Shari’a Dist/Circ. Ct. (Place) Case No. _____, date of promulgation

b. Administrative decisions

They are cited by the name of the agency (abbreviated form), case number and date of promulgation.

Example:

Santos v. Dizon, CSC Adm. Case No. 12345, January 6, 2006

3. Electronic citations

One of the Blue Book Aids of the Harvard Law School Library Legal Citations and Abbreviations Lists is the article of Peter W. Martin, Introduction to Basic Legal Citations provides a section on 2-100 “How to Cite Electronic Sources.” Other law schools in the United States adopt the basic citations provided in Peter Martin’s article.

Examples:

http://www.law.harvard.edu/library/services/research/guides/united_states/basics/citation_guides.php;

www.law.cornell.edu/citation

This article provides that:

Citations making specific reference to an electronic source are necessary only when the cited material is not widely available from multiple sources and when identifying the electronic source is likely significantly to aid reader’s access to it.

If the printed material is available, the electronic source is provided as a parallel citation for quick retrieval. The electronic source is provided when there is no printed source or if the printed source is not readily available.

a. Statutes

Rep. Act No. 9262 (2004), 100 O.G. No. 26, 4037 (June 28, 2004); www.ops.gov.ph/records/ra_no9262.htm

b. Court Decisions

Ong v. People, 399 Phil. 686 (2000); <http://elibrary.supremecourt.gov.ph/searchfolders/index.php>

Civil Service Commission v. Salas, G.R. No. 123708, June 19, 1997, 274 SCRA 414;
<http://elibrary.supremecourt.gov.ph/searchfolders/index.php>

c. Law Reviews/Periodicals

Provost, Rene. Emergency Judicial Relief for Human Rights Violations in Canada and Argentina. 23 U. Miami Inter-Am. L. Rev. 693 (Spring/Summer, 1992); www.westlaw.com

Page, Michael H. Judging Without Facts: A Schematic for Reviewing State Secrets Privilege Claims. 93 Cornell L. Rev. 1243 (September 2008); www.westlaw.com

Rempillo, Jay B. SC Approves Rules on the Writ of Amparo viewed November 4, 2008, [www.google.com.ph; www.supremecourt.gov.ph/publication/benchmark/2007/09/090101php](http://www.google.com.ph/www.supremecourt.gov.ph/publication/benchmark/2007/09/090101php)

d. Newspapers

Author, Title of the Article, Name of the Newspaper, Date, page number (if given) viewed, Day, Month, Year, URL

Example:

Salaverria, Leila. The writ of habeas data, according to the chief justice. Philippine Daily Inquirer, 19:57:00, February 2, 2008 viewed November 5, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080202-116428/The-writ-of-habeas-data-according-to-the-chief-justice>

e. E-mail

Name of the sender, e-mail address, Subject of the Message if available, name of recipient, email address and date of the message.

Example:

Juan de la Cruz, jdelacruz08@yahoo.com; How to register to the SC E-Library, Maria de la Cruz, sclib@supremecourt.gov.ph, November 5, 2008

f. Profile/Bio-Data/Biography

To search for the profile of Chief Justice Reynato S. Puno, there are several sources. All can be cited separated by semi-colon (;)

Profile of Chief Justice Reynato S. Puno

Examples:

en.wikipedia.org/wiki/Reynato_Puno –; www.supremecourt.gov.ph/justices/cj.puno.php;

www.gmanews.tv/htmlfiles/Puno__Reynato.htm;; www.glphils.org/rpuno.htm;

www.en.wikipilipinas.org/index.php?title=Reynato_Puno

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