

BENCHBOOK FOR TRIAL COURT JUDGES

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PART ONE ORDINARY CIVIL ACTIONS

I. CASE BEGINS WITH THE FILING OF COMPLAINT

A. Preliminary

1. Definition of complaint

A complaint is a pleading alleging a plaintiff's cause or causes of action. The names and residences of the plaintiff and defendant must be stated in the complaint.[1]

2. Requirements

2.1 Verification

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading.[2] Absence of verification when required is not a jurisdictional defect. It is just a formal defect which can be waived.[3] The verification by a lawyer is sufficient.[4]

2.2 Certificate against forum-shopping

An important component of a complaint or any initiatory pleading is the certificate of non-forum shopping. The rule requires that the plaintiff or principal party certifies under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:

1)

that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein;

2)

if there is such other pending action or claim, a complete statement of the present status thereof; and

3)

if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been

filed.[5]

2.2.1

Nature

(a)

The required certificate of non-forum shopping is mandatory but not jurisdictional.[6]

(b)

Initiatory pleadings are the complaint, permissive counterclaim, cross-claim, third-party (fourth-party, etc.), complaints and complaints-in-intervention. The certificate of non-forum shopping should be signed by the plaintiff (permissive counterclaimant, cross-claimant, third-party, etc. – plaintiff and plaintiff-in-intervention) and not the counsel.[7]

(c)

There is forum shopping when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in other fora, or when he repetitively avails himself of "several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same issue or transactions involving the same essential facts and circumstances, and all raising substantially the same issues either pending in or resolved adversely by some other court." [8] Elsewise stated, forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other.[9] Where judgment has already become final and executory, *res judicata* and not forum shopping should be pleaded as a defense. Forum shopping applies only when two (2) or more cases are still pending.[10]

(d)

Failure to comply with the requirement of a certificate of non-forum shopping may not be cured by mere amendment of the complaint or other initiatory pleading. The initiatory pleading should be dismissed without prejudice, unless otherwise provided, upon motion and after hearing. However, even if there is a certificate of non-forum shopping, if the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice of the initiatory pleading and shall constitute direct contempt, as well as a cause for administrative sanctions against the former.[11]

B. Filing of Complaint

1. Manner

Filing of the complaint is the act of presenting it to the Clerk of Court.[12] This may be done by presenting the original copy plainly indicated as such, personally to the clerk of court or by sending it by registered mail to the clerk of court. In personal filing, the date and hour of receipt by the clerk of court as indicated on the face of the complaint is the date and hour of filing. In filing by registered mail, the date of posting appearing on the envelope

shall be considered the date of filing.[13]

Filing of a complaint by mail other than through registry service of the government postal agency is not authorized. Thus, if a complaint is mailed through any private letter-forwarding agency, the date of receipt by the clerk of court is the date of filing.[14]

Filing of the complaint should be distinguished from service of pleadings subsequent to the filing of the complaint.[15] In service of pleadings, priorities in modes of service must be strictly observed.[16]

2. Payment of docket and other lawful fees

Ballatan v. Court of Appeals,[17] summarizes the rules on payment of docket fees:

1)

The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees.

2)

In real actions, the docket and filing fees are based on the value of the property and the amount of damages claimed, if any, which must be specified in the body and prayer of the complaint. Note that in Tacay v. RTC of Tagum Davao del Norte, the Supreme Court opined that a real action may be commenced or prosecuted without an accompanying claim for damages.[18]

3)

If the complaint is filed but the fees are not paid at the time of filing, the court acquires jurisdiction upon full payment of the fees within a reasonable time as the court may grant, barring prescription.

4)

Where the fees prescribed for the real action have been paid but the fees of certain related damages are not, the court, although having jurisdiction over the real action, may not have acquired jurisdiction over the accompanying claim for damages.[19]

5)

Accordingly, the court may expunge those claims for damages, or allow, on motion, a reasonable time for amendment of complaint so as to allege the precise amount of damages and accept payment of the requisite legal fees.[20]

6)

If there are unspecified claims, the determination of which may arise after the filing of the complaint or similar pleading, the additional filing fee thereon shall constitute a lien on the judgment award. [21]

7)

The same rule also applies to third-party claims and other similar pleadings.[22]

Note: Even if the value of a property is immaterial in the determination of the court's jurisdiction, it should however be considered in the determination of the amount of docket fee.[23]

II. COURT ACQUIRES JURISDICTION OVER THE PARTIES

While the court acquires jurisdiction over the plaintiff by the latter's voluntary submission to said jurisdiction with the filing of the complaint, the court acquires jurisdiction over the defendant by his voluntary submission to said jurisdiction or the service of summons and a copy of the complaint upon him.

A. Modes of Service of Summons

There are four (4) modes of serving summons:

a)

personal service;

b)

substituted service;

c)

constructive (by publication) service; and

d)

extraterritorial service.

1. Personal Service

Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.[24] If there are two (2) or more defendants, each one of them should be served a copy of the summons and the complaint.[25]

2. Substituted Service

If, for justifiable causes, the defendant cannot personally be served with summons within a reasonable time, service may be effected:

(1)

by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or

(2)

by leaving the copies at the defendant's office or regular place of business with some competent person in charge

thereof. [26]

In substituted service, it is immaterial that the defendant does not in fact receive actual notice. This will not affect the validity of the service.[27]

There must be strict compliance with the requirements of substituted service.[28] For substituted service to be valid, the return must show:

1)

the efforts exerted by the sheriff to effect personal service within a reasonable period of time; impossibility of service should be shown by stating the efforts made to find the defendant;

2)

that such personal service cannot be effected for justifiable reasons;

3)

the service of summons was made at the defendant's residence or office or regular place of business at the time of the service, the address of the defendant to whom summons was supposed to have been served must be indicated in the return; and

4)

the service was made with some person of suitable age and discretion residing therein, if effected at defendant's residence, or with some competent person in charge thereof, if effected at defendant's office or regular place of business, at the time of the service. [29]

Impossibility of personal service for justifiable reasons must be shown.[30] Otherwise, the service is invalid.[31] The sheriff's certification that he duly served summons on a defendant does not necessarily mean that he validly served the summons. Impossibility of personal service must be established either by the return or by evidence to that effect.[32]

2.1 Service on Domestic Private Juridical Entity

Service on an agent of the corporation is not permitted. The designation of persons or officers who are authorized to accept summons for a domestic corporation is limited and more clearly specified. The rule states 'general manager' instead of only 'manager,' 'corporate secretary' instead of 'secretary' and 'treasurer' instead of 'cashier.'

Accordingly, the Court ruled that the service of summons upon the Branch Manager of petitioner at its branch office in Cagayan de Oro City instead of upon the general manager at its principal office in Davao City is

improper. Consequently, the trial court did not acquire jurisdiction over the person of the petitioner. The Court stressed the purpose of the strict enforcement of the rule on summons by providing that under Section 20 of Rule 14, the inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance. Any proceeding undertaken by the trial court will consequently be null and void.[33]

2.2 Service on foreign private juridical entity may be allowed only if there are well-pleaded allegations of having transacted or doing business in the Philippines.[34]

The fact of doing business in the Philippines must be established by appropriate allegations in the complaint. The court need not go beyond the allegations of the complaint in order to determine whether it has jurisdiction.[35] A determination that the foreign corporation is doing business is only tentative and is made only for the purpose of enabling the local court to acquire jurisdiction over the foreign corporation through service of summons pursuant to Rule 14, Section 12. Such determination does not foreclose a contrary finding should evidence later show that it is not transacting business in the country.[36]

3. Constructive Service (By Publication)

Service upon defendant whose identity or whereabouts are unknown. — In any action where the defendant is designated as an unknown owner, or the like, or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication in a newspaper of general circulation and in such places and for such time as the court may order.[37]

When the defendant is a resident of the Philippines, service of summons by publication is allowed in any action.

4. Extraterritorial Service, When Allowed

Extraterritorial service of summons is allowed where the action is against a non-resident defendant who is not found in the Philippines and the action:

1)

affects the personal status of plaintiffs;

2)

relates to or subject of which is property in the Philippines (real or personal), in which the defendant has claim, lien or interest, actual or contingent; or

3)

in which relief demanded consists wholly, or in part, in excluding the defendant from any interest therein; or

4)

property of defendant has been attached in the Philippines.[38]

Thus, extraterritorial service of summons is proper only in actions in rem or quasi-in-rem. The remedy against a

non-resident defendant who cannot be served with summons in the Philippines is to locate real or personal property and attach the property. The action becomes in rem or quasi-in-rem[39] in which case, service by publication is permissible. Where, however, the attachment is invalid, the service by publication is void.[40] To be effective, extraterritorial service of summons must be with leave of court and only through any of the following means:

1)

Personal service;

2)

By publication (and copy of the summons and order of the court must be sent by registered mail to the last known address);

3)

By publication (and copy of summons and order of the court) must be sent by registered mail at last known address; Any other manner which the court may deem sufficient.[41]

Notes: Service of summons on husband is not binding on wife who is a non-resident.[42] However, substituted service[43] or extraterritorial service of summons by leave of court on a resident defendant who is temporarily outside of the Philippines is valid.[44]

B. Effect of Lack of Summons

The trial court does not acquire jurisdiction and renders null and void all subsequent proceedings and issuances in the actions from the order of default up to and including the judgment by default and the order of execution.[45] However, lack of summons may be waived as when the defendant fails to make any seasonable objection to the court's lack of jurisdiction over the person of the defendant.[46]

III. INCIDENTS AFTER COURT HAS ACQUIRED JURISDICTION OVER THE PARTIES

1. Preliminary

After the court has acquired jurisdiction over the parties, but before the defendant files his responsive pleading, the parties may file the following notice, motions and pleadings:

1. Plaintiff

1.1

notice of dismissal of the complaint under Rule 17, Section 1;

1.2

amended complaint under Rule 10, Section 2;

1.3

motion for leave to file a supplemental complaint under Rule 10, Section 6;

1.4

motion for leave of court to take the deposition upon oral examination or written interrogatories of any person, whether party or not under Rule 23, Section 1;

1.5

motion for leave of court to serve written interrogatories upon defendant under Rule 25, Section 1;

1.6

motion for production or inspection of documents of things under Rule 27, Section 1;

1.7

motion to declare defendant in default under Rule 9, Section 3.

2. Defendant

2.1

motion to set aside order of default under Rule 9, Section 3;

2.2

motion for extension of time to file responsive pleading under Rule 11, Section 11; and

2.3

motion for bill of particulars under Rule 12.

2.4

notice of dismissal of the complaint under Rule 17, Section 1.

B. Rules on the Specific Incidents

1. Notice of Dismissal of Complaint

A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment.[47]

As a general rule, the dismissal of the complaint under this rule is without prejudice. However, the following are the recognized exceptions:

1)

where the notice of dismissal so provides;

2)

where the plaintiff has previously dismissed the same case in a court of competent jurisdiction;

3)

even where the notice of dismissal does not provide that it is with prejudice but it is premised on the fact of payment by the defendant of the claims involved.[48] For the notice of dismissal to be effective, there must be an order confirming the dismissal.[49]

2. Amended Complaint

A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.[50]

The filing by the defendant of a motion to dismiss does not affect the plaintiff's right to amend his complaint without first securing leave of court because a motion to dismiss is not a responsive pleading.[51] Leave of court is necessary after the filing of a responsive pleading. However, even substantial amendments may be made under this Rule. But such leave may be refused, if it appears to the court that the motion was made with intent to delay.[52]

3. Supplemental Complaint

Upon motion of a party the court may upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented.[53]

The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.[54] The answer to the complaint shall serve as the answer to the supplemental complaint if no new or supplemental answer is filed.[55]

A supplemental pleading incorporates matters arising after the filing of the complaint. A supplemental pleading is always filed with leave of court. It does not result in the withdrawal of the original complaint.

4. Deposition (Rule 23)

A deposition is not generally supposed to be a substitute for the actual testimony in open court of a party or witness. If the witness is available to testify, he should be presented in court to testify. If available to testify, a party's or witness' deposition is inadmissible in evidence for being hearsay.[56] The exceptions however to the inadmissibility of such deposition are provided for in Rule 23, Section 4, as follows:

(a)

Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness;

(b)

The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association which is a party may be used by an adverse party for any purpose;

(c)

The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or (2) that the witness resides at a distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition; or (3) that the witness is unable to attend to testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used; and

(d)

If only part of a deposition is offered in evidence by a party, the adverse party may require him to introduce all

of it which is relevant to the part introduced, and any party may introduce any other parts.

5. Written Interrogatories upon Defendant (Rule 25, Section 1)

A judgment by default may be rendered against a party who fails to serve his answer to written interrogatories.[57]

If a party fails to avail of written interrogatories as a mode of discovery, the effect is provided for in Rule 25, Section 6, to wit:

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party not served with written interrogatories may not be compelled by the adverse party to give testimony in open court, or to give a deposition pending appeal.

6. Request for Admission

At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.[58]

Unless thereafter allowed by the court for good cause shown and to prevent a failure of justice, a party who fails to file and serve a request for admission on the adverse party of material and relevant facts which are, or ought to be within the personal knowledge of the latter, shall not be permitted to present evidence on such facts.[59]

7. Production or Inspection of Document or Things (Rule 27, Section 1)

This mode of discovery does not mean that the person who is required to produce the document or the thing will be deprived of its possession even temporarily. It is enough that the requesting party be given the opportunity to inspect or copy or photograph the document or take a look at the thing.

8. Physical and Mental Examination of a Party (Rule 28, Section 1)

In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may, in its discretion, order him to submit to a physical or mental examination by a physician.

9. Consequences of Refusal (Rule 29)

A trial court has no discretion to determine what the consequences of a party's refusal to allow or make discovery should be; it is the law which makes that determination; it is grave abuse of discretion for the court to refuse to recognize and observe the effects of that refusal as mandated by law.[60]

10. Default (Rule 9, Section 3)

If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.[61]

Another ground to declare a defending party in default is when he fails to furnish a copy of the answer to the claiming party.[[62]][]

A declaration of default cannot be made by the court *motu proprio*; there must be a motion to that effect.[63] If no motion to declare defendant in default is filed, the complaint should be dismissed for failure to prosecute.

10.1 Rules on Default

10.1.1

Effect of Order of Default

(a)

A party in default loses his standing in court. He cannot appear therein, adduce evidence and be heard nor take part in trial.[64] He cannot file a motion to dismiss without first filing a motion to set aside the order of default.⁶⁵ He loses his right to present evidence, control the proceedings and examine the witnesses or object to plaintiff's evidence.⁶⁶

(b)

A motion to declare the defending party in default should be served upon him. A party in default, however, shall be entitled to notice of subsequent proceedings but not to take part in the trial.[67]

(c)

Being declared in default does not constitute a waiver of all rights. What is waived is only the right to be heard and to present evidence during trial while default prevails. A party in default is still entitled to notice of final judgments and orders and proceedings taken subsequent thereto.[68] He may be cited and testify as a witness.[69]

10.1.2

Summary of the Remedies in Default[70]

(a)

From notice of the order of default but before judgment, motion to set aside order of default; and, in a proper case, petition for certiorari under Rule 65.

(b)

After judgment but before its finality:

(i)

motion for reconsideration under Rule 37, Section 1;

(ii)

motion for new trial under Rule 37, Section 1; and

(iii)

appeal under Rule 41, Section 1.

(c)

After finality of judgment:

Within the prescribed period, petition for relief from judgment under Rule 38, Section 1; in a proper case and within the prescribed period, petition for certiorari under Rule 65; and in a proper case and within the prescribed periods, petition for annulment of judgment under Rule 47.

10.1.3

Actions where Default is Not Allowed

(a)

Action for declaration of the nullity of marriage; action for annulment of marriage; and, action for legal separation.

Note: If the defending party fails to answer, the court shall order the prosecuting attorney to investigate whether or not a collusion exists between the parties, and if there is no collusion, to intervene for the State in order to see to it that the evidence submitted is not fabricated;[71]

(b)

Before expiration of period to answer as when there is a pending motion for extension;[72]

(c)

In actions governed by the Rule on Summary Procedure, a motion to declare defendant in default is not allowed.[73]

10.1.4

Two (2) Kinds of Proceedings after Declaration of Default and the Extent of Relief that may be Granted

(a)

Without Hearing

The Court may immediately render judgment granting the claimant such relief as his pleading may warrant. Such relief however shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.[74]

(b)

With Hearing

The court may, in its discretion, allow or require the claimant to submit evidence. Such reception of evidence may be delegated to the Clerk of Court. After the reception of claimant's evidence, the court may render judgment granting the reliefs prayed as established by the evidence. It may also award unliquidated damages without exceeding the amounts prayed for.[75]

11. Extension of Time to file Responsive Pleading (Rule 11)

The granting of a motion to extend the time to plead is addressed to the sound discretion of the court.[76] The court can extend but not shorten the period to plead as fixed by the Rules.

12. Bill of Particulars (Rule 12, Section 1)

Before responding to a pleading, a party may move for a definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details

desired.

The Court need not wait for the date set for hearing of the motion. Upon the filing of the motion, the clerk of court must immediately bring it to the attention of the court which may either grant or deny it or hold a hearing therein.[77]

If the order directing the plaintiff to submit a bill of particulars is not complied with, the court may order the striking out of the pleading or the portion thereof to which the order was directed or make such orders as it deems just.[78]

13. Motion to Dismiss

13.1. Grounds (Rule 16, Section 1)

Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

(a)

That the court has no jurisdiction over the person of the defending party;

(b)

That the court has no jurisdiction over the subject matter of the claim;

(c)

That venue is improperly laid;

(d)

That the plaintiff has no legal capacity to sue;

(e)

That there is another action pending between the same parties for the same cause;

(f)

That the cause of action is barred by a prior judgment or by the statute of limitations;

(g)

That the pleading asserting the claim states no cause of action;

(h)

That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;

(i)

That the claim on which the action is founded is unenforceable under the provisions of the Statute of Frauds; and

(j)

That a condition precedent for filing the claim has not been complied with.

It is a decisional rule that in a motion to dismiss on the ground that the complaint states no cause of action, the movant hypothetically admits the truth of the allegations of the complaint which are relevant and material to plaintiff's cause of action. This admission does not include inferences or conclusions drawn from the alleged facts nor to matters of evidence, surplusage or irrelevant matters nor to allegations of fact the falsity of which is subject to judicial nature.[79]

Formal Requisite: The motion must comply with Rule 15. The court is without authority to act on the motion without proof of service of the notice of hearing.[80]

13.2. Discussion of Individual Grounds

13.2.1

Court has no jurisdiction over the person defending party.

13.2.2

Court has no jurisdiction over the subject matter of the claim.⁸¹

13.2.3

Venue is improperly laid.

(a)

Venue of an action depends upon the:

a.1

nature of the action;

a.2

residence of the parties;

a.3

stipulation of the parties; and

a.4

law.

(b)

Test to Determine Nature of Action

The nature of the action is determined from the allegations of the complaint, the character of the relief, its purpose and prime objective. When the prime objective is to recover real property, it is a real action.[82]

(c)

Rule that Stipulations as to Venue may Either Be Permissive or Mandatory

Written stipulations are either mandatory or permissive. In interpreting stipulations as to venue, inquiry must be made as to whether or not the agreement is restrictive in the sense that the suit may be filed only in the place agreed upon or merely permissive in that the parties may file their suits not only in the place agreed upon but also in the places fixed by the rules.[83]

Qualifying or restrictive words are 'must,' 'only,' and 'exclusively' as cited in *Philippine Banking Corporation v. Tensuan*,[84] 'solely,' 'in no other court,' 'particularly,' 'nowhere else but except', etc.[85]

(d)

Waiver by Failure to File Motion to Dismiss Based on Improper Venue:

Improper venue may now be pleaded as an affirmative defense in the answer.[86] Improper venue may only be deemed waived if it is not pleaded either in a motion to dismiss or in the answer.[87]

13.2.3

Plaintiff Has No Legal Capacity to Sue

(a)

Meaning

Legal capacity to sue means that a party is not suffering from any disability such as minority, insanity, covertures, lack of juridical personality, incompetence, civil interdiction[88] or does not have the character or representation which he claims[89] or with respect to foreign corporation, that it is doing business in the Philippines with a license.[90]

(b)

Decisional Rules

In *Pilipinas Shell Petroleum Corporation v. Dumlao*,[91] the Supreme Court held that a person who has no interest in the estate of a deceased person has no legal capacity to file a petition for letters of administration. With respect to foreign corporations, the qualifying circumstances of plaintiff's capacity to sue being an essential element must be affirmatively pleaded.[92] The qualifying circumstance is an essential part of the element of the plaintiff's capacity to sue.[93] The complaint must either allege that it is doing business in the Philippines with a license or that it is a foreign corporation not engaged in business and that it is suing in an isolated transaction.

13.2.4 Litis Pendentia

(a)

Rationale of the Rule: Like *res judicata* as a doctrine, *litis pendentia* is a sanction of public policy against multiplicity of suits.[94] The principle upon which a plea of another action pending is sustained is that the latter action is deemed unnecessary and vexatious.[95]

(b)

Requisites of Litis Pendentia: To prevail as a ground for a motion to dismiss, the following elements must be present:

b.1

Identity of parties, or at least such as representing the same interest in both actions;

b.2

Identity of rights asserted and prayed for, the relief being founded on the same facts; and

b.3

The identity on the preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[96]

(c)

Which of the Two Cases Should be Dismissed?

The Rules do not require as a ground for dismissal of a complaint that there is a prior pending action. They provide that there is a pending action, not a pending prior action. Given, therefore, the pendency of two actions, the following are the relevant considerations in determining which action should be dismissed:

c.1

the date of the filing, with preference generally given to the first action filed to be retained;

c.2

whether the action sought to be dismissed was filed merely to preempt the later action or to anticipate its filing and lay the basis for its dismissal; and

c.3

whether the action is the appropriate vehicle for litigating the issues between the parties.[97]

13.2.5 Res Judicata

(a)

Statement of the Doctrine

The doctrine of res judicata is a rule which pervades every well-regulated system of jurisprudence and is founded upon two grounds embodied in various maxims of the common law, namely:

a.1

public policy and necessity which make it to the interest of the state that there should be an end to litigation – interest reipublicae ut sit finis litium, and

a.2

the hardship on the individual that he should be vexed twice for the same cause – nemo debet bis vexari et eadem causa. [98]

(b)

The requisites of res judicata are the following:

b.1

the former judgment or order must be final;

b.2

it must be a judgment or order on the merits;

b.3

the court which rendered it had jurisdiction over the subject matter and the parties; and

b.4

there must be, between the first and second actions, identity of parties, of subject matter and of cause of action.[99]

(c)

Two Aspects of Res Judicata

c.1

Bar by Former Judgment – when, between the first case where the judgment was rendered, and the second case

where the judgment is invoked, there is identity of parties, subject matter and cause of action.

c.2

Conclusiveness of Judgment – when there is an identity of parties but not cause of action, the judgment being conclusive in the second case only as to those matters actually and directly controverted and determined, and not as to matters invoked thereon.[100]

(d)

Decisional Rules

A judicial compromise has the effect of res judicata and is immediately executory and not appealable.[101] The ultimate test in ascertaining the identity of causes of action is said to be to look into whether or not the same evidence fully supports and establishes both the present cause of action and the former cause of action.[102] Only substantial, and not absolute, identity of parties is required for res judicata.[103]

13.2.6 Statute of Limitation (Prescription of Action)

An action prescribes by the lapse of time fixed in the Civil Code (Articles 1139 to 1155).

ART. 1139. Actions prescribe by the mere lapse of time fixed by law.

ART. 1140. Actions to recover movables shall prescribe eight years from the time the possession thereof is lost, unless the possessor has acquired the ownership by prescription for a less period, according to article 1132, and without prejudice to the provisions of articles 559, 1505, and 1133.

ART. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

ART 1142. A mortgage action prescribes after ten years.

ART 1143. The following rights, among others specified elsewhere in this Code, are not extinguished by prescription:

- To demand a right of way, regulated in article 649;
- To bring an action to abate a public or private nuisance.

ART. 1144. The following actions must be brought within ten years from the time the right of action accrues:

- Upon a written contract;
- Upon an obligation created by law;
- Upon a judgment.

ART. 1145. The following actions must be commenced within six years:

- Upon an oral contract;

- Upon a quasi-contract.

ART. 1146. The following actions must be instituted within four years:

- Upon an injury to the rights of the plaintiff;
- Upon quasi-delict.

However, when the action arises from or out of any act, activity, or conduct of any public officer involving the exercise of powers or authority arising from Martial Law including the arrest, detention and/or trial of the plaintiff, the same must be brought within one (1) year.[104]

Art. 1147. The following actions must be filed within one year:

- For forcible entry and detainer;
- For defamation.

ART. 1148. The limitations of action mentioned in articles 1140 to 1142, and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce and in special laws.

ART. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

ART. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

ART. 1151. The time for the prescription of actions which have for their object the enforcement of obligations to pay principal with interest or annuity runs from the last payment of the annuity or of the interest.

ART. 1152. The period for prescription of actions to demand the fulfillment of obligation declared by a judgment commences from the time the judgment became final.

ART. 1153. The period for prescription of actions to demand accounting runs from the day the persons who should render the same cease in their functions.

The period for the action arising from the result of the accounting runs from the date when said result was recognized by agreement of the interested parties.

ART. 1154. The period during which the obligee was prevented by a fortuitous event from enforcing his right is not reckoned against him.

ART. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

(a) Decisional Rules

Prescription and estoppel cannot be invoked against the State.[105] If the defense of prescription has not been raised in a motion to dismiss or an answer, if the plaintiff's complaint or evidence shows that the action had prescribed, the action shall be dismissed.[106] Prescription cannot be invoked as a ground if the contract is alleged to be void ab initio[107] but where prescription depends on whether the contract is void or voidable, there must be a hearing.[108]

13.2.7 Pleading Asserting Claim States No Cause of Action

(a)

Elements of a Cause of Action

A cause of action exists if the following elements are present, namely:

a.1

a right in favor of the plaintiff by whatever means and under whatever law it arises or is created;

a.2

an obligation on the part of the named defendant to respect or not to violate such right; and

a.3

an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.[109]

(b)

Hypothetical Admission of Allegations of Fact in the Complaint

It is axiomatic that a defendant moving to dismiss a complaint on this ground is regarded as having admitted all the averments thereof, at least hypothetically, the test of the sufficiency of the facts found in a petition, as constituting a cause of action, being whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer thereof. In determining the sufficiency of the statements in the complaint as setting forth a cause of action, only those statements in the complaint, to repeat, may properly be considered, and it is error for the Court to take cognizance of external facts, or hold a preliminary hearing to determine their existence.[110]

(c)

The following Allegations are not Deemed Hypothetically Admitted:

c.1

allegations of which the court will take judicial notice are not true; neither allegations of conclusions nor allegations of fact the falsity of which the court may take judicial notice are deemed admitted;[111]

c.2

legally impossible facts;

c.3

facts inadmissible in evidence; and

c.4

facts which appear by record or document included in the pleadings to be unfounded;^[112]

c.5

When other facts may be considered;

c.6

Where the motion to dismiss was heard with the submission of evidence or if documentary evidence admitted by stipulation discloses facts sufficient to defeat the claim^[113] or admitted during hearing on preliminary injunction,^[114] the facts therein adduced may be considered;

c.7

All documents attached to a complaint, the due execution and genuineness of which are not denied under oath by the defendant, must be considered as part of the complaint without need of introducing evidence thereon;^[115]

c.8

In resolving a motion to dismiss, every court must take cognizance of decisions the Supreme Court has rendered because they are proper subjects of mandatory judicial notice as provided by Section 1 of Rule 129 of the Rules of Court. The said decisions, more importantly, 'form part of the legal system,' and failure of any court to apply them shall constitute an abdication of its duty to resolve a dispute in accordance with law, and shall be a ground for administrative action against an inferior court magistrate;^[116]

c.9

Exhaustion of Administrative Remedies. Where plaintiff has not exhausted all administrative remedies, the complaint not having alleged the fact of such exhaustion, the same may be dismissed for lack of cause of action.^[117]

(d) Claim or Demand Set Forth in the Plaintiff's Pleading Has Been Paid, Waived, Abandoned or Otherwise Extinguished

ART. 1231. Obligations are extinguished:

(i)

by payment or performance;

(ii)

by the loss of the thing due;

(iii)

by the condonation or remission of the debt;

(iv)

by the confusion or merger of rights of debtor and creditor;

(v)

by compensation; and

(vi)

by novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutive condition, and prescription, are governed elsewhere in this Code.

e) Statute of Frauds

(f) The Civil Code enumerates in Art. 1403 the contracts falling under the Statute of Frauds.

ART. 1403. The following contracts are unenforceable, unless they are ratified:

1. Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;
2. Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases, an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or secondary evidence of its contents:
 - a. An agreement that by its terms is not to be performed within a year from the making thereof;
 - b. An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and

entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

c. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein;

d. A representation as to the credit of a third person.

3. Those where both parties are incapable of giving consent to a contract.

(g) Some Decisional Rules

Absence of compliance with the Statute of Frauds may be proved in a motion to dismiss.[118] Plaintiff must produce all notes or memorandum during the hearing of the motion to dismiss. A motion invoking the Statute of Frauds may be filed even if the same does not appear on the face of the complaint. That the claim is unenforceable under the Statute of Frauds may be shown and determined during the hearing of the motion to dismiss on said ground.[119] Under Sec. 2, Chapter 6 of RA 8792 (E-Commerce Law) where the law requires a writing or document, that requirement is met by an electronic document which maintains its integrity and reliability and can be authenticated so as to be useable for subsequent reference.

The Civil Code on cases where compromise is not allowed:

Art. 2035. No compromise upon the following questions shall be valid:

- (1) The civil status of persons;
- (2) The validity of a marriage or a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts;
- (6) Future legitime.

13. Resolution of the Motion.

After the hearing, the court may dismiss the action or claim, deny the motion, or order the amendment of the pleading.

The court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable.

In every case, the resolution shall state clearly and distinctly the reasons therefor.[120]

IV. JOINDER OF ISSUES

A. Filing of Answer

1. Time to Plead

1.1 Answer to Complaint and Third-Party (Fourth-Party, etc.) Complaint – fifteen (15) days after service of summons, unless a different period is fixed by the court.[121]

However, under Rule 16, Section 4, if a motion to dismiss is denied, the movant shall file his answer within the balance of the period provided by Rule 11 to which he was entitled at the time of serving his motion, but not less than five (5) days in any event, computed from his receipt of the notice of the denial. If the pleading is ordered to be amended, he shall file his answer within the period prescribed by Rule 11 counted from service of the amended

pleading, unless the court provides a longer period.

1.2 Answer of a defendant foreign private juridical entity

1.2.1 when summons is served upon a resident agent – fifteen (15) days after service of summons.[122]

1.2.2 when summons is served on the government official designated to receive the same – thirty (30) days from receipt by the latter of the summons.[123]

1.3 Answer to Amended Complaint, Amended Counterclaim, Amended Cross-claim and Amended Third-Party (Fourth-Party, etc.) Complaint:

1.3.1 amended complaint was filed as a matter of right (Rule 10, Section 2) – fifteen (15) days after being served with a copy thereof;[124] and

1.3.2 amended complaint was filed with leave of court (Rule 10, Section 3) – ten (10) days from notice of order admitting the amended complaint.[125]

1.4 Answer to counterclaim or cross-claim - within ten (10) days from service.[126]

1.5 Reply - within ten (10) days from service of the pleading responded to.[127]

1.6 Answer to supplemental complaint - within ten (10) days from notice of the order admitting the same, unless a different period is fixed by the court.[128]

1.7 Answer to Complaint-in-Intervention - within fifteen (15) days from notice of the order admitting the same unless a different period is fixed by the court.[129]

2. Strict Observance of the Period

While the rules are liberally construed, the provisions on reglementary periods are strictly applied for they are deemed indispensable to the prevention of needless delays and necessary to the orderly and speedy discharge of judicial business.[130]

Strict compliance with said periods is mandatory and imperative.[131]

3. Effect of Failure to Plead (Rule 9)

Sec. 1. Defenses and objections not pleaded.—Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by Statute of Limitations, the court shall dismiss the claim.

B. Counterclaim

1. Definition

A counterclaim is any claim which a defending party may have against an opposing party.[132]

There are two (2) kinds, the compulsory and the permissive. A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, the counterclaim may be considered compulsory regardless of the amount.[133]

A counterclaim which is not compulsory is a permissive counterclaim.

2. Difference Between Permissive and Compulsory Counterclaim

In a permissive counterclaim, the docket and other lawful fees should be paid and the same should be accompanied by a certificate against forum shopping and certificate to file action issued by the proper Lupon Tagapamayapa. It should also be answered by the claiming party. It is not barred even if not set up in the action.

In a compulsory counterclaim, no docket fee is paid and the certificates mentioned above are not required.[134] If it is not raised in the answer, it shall be barred.[135]

A compulsory counterclaim that merely reiterates special defenses which are deemed controverted even without a reply, or raises issues which are deemed automatically joined by the allegations of the complaint need not be answered.[136] However, a compulsory counterclaim which raises issues not covered by the complaint should be answered.[137]

If the counterclaim is based on an actionable document attached to or copied in the counterclaim, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party specifically denies under oath its genuineness and due execution.[138]

3. Cognate Rules

3.1 A cross-claim which is not set up in the action is barred.[139]

3.2 The dismissal of the complaint carries with it the dismissal of the cross-claim which is purely defensive, but not a cross-claim seeking affirmative relief.[140] It does not also carry with it a dismissal of the counterclaim that has been pleaded by the defendant prior to service to him of the notice of dismissal,[141] or to a dismissal due to the fault of the plaintiff.[142]

3.3 A party cannot, in his reply, amend his cause of action nor introduce therein new or additional causes of action.[143]

3.4 A third-party complaint need not arise out of or be entirely dependent on the main action as it suffices that the former be only "in respect" of the claim of the third-party plaintiff's opponent.[144]

V. PRE-TRIAL

A. Concept of Pre-Trial

1. Concept of Pre-Trial

Pre-trial is a procedural device by which the Court is called upon after the filing of the last pleading, to compel the parties and their lawyers to appear before it, and negotiate an amicable settlement or otherwise make a formal statement and embody in a single document the issues of fact and law involved in the action, and such other matters as may aid in the prompt disposition of the action, such as the number of witnesses the parties intend to present, the tenor or character of their testimonies, their documentary evidence, the nature and purpose of each of them, and the number of trial dates that each will need to put on his case. One of the objectives of pre-trial procedure is to take the trial of cases out of the realm of surprise and maneuvering.[145] Pre-trial also lays down the foundation and structural framework of another concept, that is the continuous trial system.[146]

Pre-trial is mandatory but not jurisdictional.[147]

2. Purpose of Pre-Trial

The purpose of the pre-trial is for the court to consider:

(a)

the possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;

(b)

the simplification of the issues;

(c)

the necessity or desirability of amendments to the pleadings;

(d)

the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;

(e)

the limitation of the number of witnesses;

(f)

the advisability of a preliminary reference of issues to a commissioner;

(g)

the propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefore be found to exist.

(h)

the advisability or necessity of suspending the proceedings; and

(i)

such other matters as may aid in the prompt disposition of the action.[148]

3. Administrative Circular No. 3-99 (January 15, 1999) on Pre-Trial

A. Pre-Trial

1. Within five (5) days after the last pleading joining the issues has been filed and served, the plaintiff must move ex parte that the case be set for pre-trial conference.

2. The parties shall submit, at least three (3) days before the conference, pre-trial briefs containing the following:

- A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof, or to submit the case to any of the alternative modes of dispute resolution;
- A summary of admitted facts and proposed stipulation of facts;
- The issues to be tried or resolved;
- The number and names of the witnesses to be presented, and abstract of their testimonies, and the approximate number of hours that will be required by the parties for the presentation of their respective evidence;
- Copies of all documents intended to be presented with a statement of the purposes of their offer;
- A manifestation of their having availed or their intention to avail themselves of any discovery procedure, or of the need of referral of any issues to commissioners;
- Applicable laws and jurisprudence;
- The available trial dates of counsel for complete presentation of evidence, which must be within a period of three months from the first day of trial.

3. Before the pre-trial conference, the judge must study the pleadings of every case, and determine the issues thereof and the respective positions of the parties thereon to enable him to intelligently steer the parties toward a possible amicable settlement of the case, or, at the very least, to help reduce and limit the issues.

The judge should avoid the undesirable practice of terminating the pre-trial as soon as the parties have indicated that they cannot settle the controversy. He must be mindful that there are other important aspects of the pre-trial that ought to be taken up to expedite the disposition of the case.

4. At the pre-trial conference, the following shall be done:

- The judge with all tact, patience and impartiality shall endeavor to persuade the parties to arrive at a settlement of the dispute; if no amicable settlement is reached, then he must effectively direct the parties toward the achievement of the other objectives or goals of pre-trial set forth in Section 2, Rule 18, 1997 Rules of Civil Procedure.
- If warranted by the disclosures at the pre-trial, the judge may either forthwith dismiss the action, or determine the propriety of rendering a judgment on the pleadings or a summary judgment.
- The judge shall define the factual issues arising from the pleadings and endeavor to cull the material issues.
- If only legal issues are presented, the judge shall require the parties to submit their respective memoranda and thereafter render judgment.
- If trial is necessary, the judge shall fix the trial dates required to complete presentation of evidence by both parties within ninety (90) days from the date of initial hearing.

5. After the pre-trial conference, the judge should not fail to prepare and issue the requisite pre-trial order, which shall embody the matters mentioned in Section 7, Rule 18 of the 1997 Rules of Civil Procedure.

6.. Failure of the plaintiff to appear at the pre-trial shall be a cause for dismissal of the action. A similar failure

of the defendant shall be a cause to allow the plaintiff to present his evidence ex-parte and the court to render judgment on the basis thereof.

7. Failure to file pre-trial briefs shall have the same effect as failure to appear at the pre-trial. The judge should encourage the effective use of pre-trial discovery procedures.[149]

4. The Pre-Trial Order

Where the case proceeded to trial with the petitioners actively participating therein without raising their objections to the pre-trial, they are bound by the stipulations at the pre-trial.[150]

Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised, and the determination of issues at a pre-trial conference bars the consideration of other questions on appeal.[151]

4.1 Exceptions

4.1.1

To prevent manifest injustice;[152]

4.1.2

Issues that are impliedly included or necessarily connected to the expressly defined issues and denser parts of the pre-trial order.[153]

4.1.3

Issues not included in the pre-trial order but were tried expressly or impliedly by the parties.[154]

VI. TRIAL (Rule 30)

A. Administrative Circular No. 3-99, Jan. 15, 1999

To insure speedy disposition of cases, the following guidelines must be faithfully observed:

I. The session hours of all Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts shall be from 8:30 A. M. to noon and from 2:00 P. M. to 4:30 P. M. from Monday to Friday. The hours in the morning shall be devoted to the conduct of trial, while the hours in the afternoon shall be utilized for (1) the conduct of pre-trial conferences; (2) writing of decisions, resolutions, or orders; or (3) the continuation of trial on the merits, whenever rendered necessary, as may be required by the Rules of Court, statutes, or circulars in specified cases.

However, in multi-sala courts in places where there are few practicing lawyers, the schedule may be modified upon request of the Integrated Bar of the Philippines such that one-half of the branches may hold their trial in the morning and the other half in the afternoon.

Except those requiring immediate action, all motions should be scheduled for hearing on Friday afternoons, or if Friday is a non-working day, in the afternoon of the next business day. The unauthorized practice of some judges of entertaining motions or setting them for hearing on any other day or time must be immediately stopped.

II. Judges must be punctual at all times.

III. The Clerk of Court, under the direct supervision of the Judge, must comply with Rule 20 of the 1997 Rules of Civil Procedure regarding the calendar of cases.

IV. There should be strict adherence to the policy on avoiding postponements and needless delay.

Sections 2, 3 and 4 of Rule 30, 1997 Rules on Civil Procedure on adjournments and postponements and on the requisites of a motion to postpone trial for absence of evidence or for illness of a party or counsel should be faithfully observed.

Lawyers as officers of the court, are enjoined to cooperate with judges to ensure swift disposition of cases.

V. The mandatory continuous trial system in civil cases contemplated in Administrative Circular No. 4 dated 22 September 1988, and the guidelines provided for in Circular No. 1-89, dated 19 January 1989, must be effectively implemented. For expediency, these guidelines in civil cases are hereunder restated with modifications, taking into account the relevant provisions of the 1997 Rules of Civil Procedure:

B. Trial

- Unless the docket of the court requires otherwise, not more than four (4) cases shall be scheduled for trial daily.

- The Presiding Judge shall make arrangements with the prosecutor and the Public Attorney's Office (PAO) so that a relief prosecutor and a PAO attorney are always available in case the regular prosecutor or PAO attorneys are absent.

- Contingency measures must likewise be taken for any unexpected absence of the stenographer and other support staff assisting in the trial.

- The issuance and service of subpoena shall be done in accordance with Administrative Circular No. 4 dated 22 September 1988.

- The judge shall conduct trial with utmost dispatch, with judicious exercise of the court's power to control trial proceedings to avoid delay.

- The judge must take notes of the material and relevant testimonies of witnesses to facilitate his decision-making.

- The trial shall be terminated within ninety (90) days from initial hearing. Appropriate disciplinary sanctions may be imposed on the judge and the lawyers for failure to comply with the requirement due to causes attributable to them.

- Each party is bound to complete the presentation of his evidence within the trial dates assigned to him. After the lapse of said dates, the party is deemed to have completed the presentation of evidence. However, upon verified motion based on compelling reasons, the judge may allow a party additional trial dates in the afternoon; provided that said extension will not go beyond the three-month limit computed from the first trial date except when authorized in writing by the Court Administrator, Supreme Court.

I. All trial judges must strictly comply with Circular No. 38-98, entitled 'Implementing the Provisions of Republic Act No. 8493' ('An Act to Ensure a Speedy Trial of All Cases Before the Sandiganbayan, Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, and Municipal Circuit Trial Court, Appropriating Funds Therefore, and for Other Purposes') issued by the Honorable Chief Justice Andres R. Narvasa on 15 September 1998.

II.

- As a constant reminder of what cases must be decided or resolved, the judge must keep a calendar of cases submitted for decision, noting therein the exact day, month and year when the 90-day period is to expire. As soon as a case is submitted for decision, it must be noted in the calendar of the judge; moreover, the records shall be duly collated with the exhibits and transcripts of stenographic notes, as well as the trial notes of the judge, and placed in the judge's chamber.

2. In criminal cases, the judge will do well to announce in open court at the termination of the trial the date of the promulgation of the decision, which should be set within 90 days from the submission of the case for decision.

3. All Judges must scrupulously observe the period prescribed in Section 15, Article VIII of the Constitution.

This Circular shall take effect on February 1, 1999, and the Office of the Court Administrator shall ensure faithful compliance therewith.

City of Manila, 15 January 1999.

B. Some Rules

1. The order of trial stated above is followed in ordinarily contested cases. However, if the defendant in his answer admits the obligation alleged in the complaint but raises special defenses, then the plaintiff is relieved of the duty to present evidence in chief and so the defendant should start the proceeding by presenting his evidence to support his special defenses.[155]

2. When Case Deemed Submitted for Decision in Trial Court

Under Administrative Circular No. 28 dated July 3, 1989:

xxx

(3)

A case is considered submitted for decision upon the admission of the evidence of the parties at the termination of the trial. The ninety (90) day period for deciding the case shall commence to run from submission of the case for decision without memoranda; in case the Court requires or allows its filing, the case shall be considered submitted for decision upon the filing of the last memorandum or the expiration of the period to do so, whichever is earlier. Lack of transcript of stenographic notes shall not be a valid reason to interrupt or suspend the period for deciding the case unless the case was previously heard by another judge not the deciding judge in which case the latter shall have the full period of ninety (90) days from the completion of the transcripts within which to decide the same.

(4)

The court may grant extension of time to file memoranda, but the ninety (90) days period for deciding the case

shall not be interrupted thereby.

(5)

The foregoing rules shall not apply to Special Criminal Courts under Circular 20 dated August 7, 1987, and to cases covered by the Rule on Summary Procedure in which memoranda are prohibited.

xxx

Under Rule 30, Section 5(g), upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

As a general rule, no additional evidence may be presented at the rebuttal stage. Subject to the discretion of the court, additional evidence may be submitted:

- 1) If it is merely discovered;
- 2) omitted through mistake or inadvertence; or
- 3) when the purpose is to correct evidence previously offered.[156]

Under Administrative Matter No. 00-2-01-SC amending the Rule 141 of the Rules of Court on Legal Fees, it is provided in Sec. 2(b) that a fee shall be paid for motions for postponements, to wit:

For motions for postponement after completion of the pre-trial stage, one hundred (Php100) pesos for the first, and an additional fifty (Php50) pesos for every postponement thereafter based on that for the immediately preceding motion: Provided, however, that no fee shall be imposed when the motion is found to be based on justifiable and compelling reason.

VII. ADJUDICATION (Rule 36)

A. Concept and Requirements

Adjudication is the rendition of a judgment or final order which disposes of the case on the merits.

Under the Rules of Civil Procedure, judgment is used in its generic term and therefore synonymous to decision. 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.[157]

B. Kinds of Judgment and Definitions

1. Without Reception of Evidence

1.1 Judgment on the Pleading

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 that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.[158]

1.2 Summary Judgment

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.[159]

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.[160]

2. With Partial Reception of Evidence

2.1 Judgment by Default

If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.[161]

2.2 Judgment on Demurrer to Evidence:

After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed, he shall be deemed to have waived the right to present evidence.[162]

Notes: A demurrer to evidence is differentiated from a motion to dismiss in that the former can be availed of only after the presentation of plaintiff's evidence while the latter is instituted as a general rule before a responsive pleading is filed.

When the motion for a demurrer to evidence is granted, the judgment of the court is considered on the merits and so it has to comply with Rule 36, Section 1, regarding the requirement that judgment should clearly and distinctly state the facts and the law on which it is based. If the motion is denied, the order is merely interlocutory.[163]

C. Cases on Summary Judgment

1. The test for the propriety of a motion for summary judgment is whether the pleadings, affidavits and exhibits in support of the motion are sufficient to overcome the opposing papers and to justify the findings that, as a matter of law, there is no defense to the action or the claim is clearly meritorious.[164]

2. Summary judgment may include a determination of the right to damages but not the amount of damages.[165] The court cannot also impose attorney's fees in a summary judgment in the absence of proof as to the amount thereof.[166]

3. Mere denials, unaccompanied by any fact which would be admissible in evidence at a hearing, are not sufficient to raise a genuine issue of fact sufficient to destroy a motion for summary judgment even though such issue was formally raised by the pleadings.[167] Where all the facts are within the judicial knowledge of the court, summary judgment may be granted as a matter of law.[168]

4. Courts are without discretion to deny a motion for summary judgment where there is no genuine issue as to a material fact. Summary judgment is available even if the pleadings ostensibly show genuine issue which by depositions or affidavits are shown not to be genuine.[169]

5. Distinction between summary proceedings under Rule 34 (Judgment on the pleadings) and the summary proceedings under Rule 35 (Summary Judgment)

A different rationale operates in the latter for it arises out of facts already established or admitted during the pre-trial held beforehand, unlike the former where the judgment merely relies on the merits of the movant's allegations.[170]

6. Discretion of Court To Render Judgment on the Pleadings

Under the Rules, if there is no controverted matter in the case after the answer is filed, the trial court has the discretion to grant a motion for judgment on the pleadings filed by a party. Where there are actual issues raised in the answer, such as one involving damages, which require the presentation of evidence and assessment thereof by the trial court, it is improper for a judge to render judgment based on the pleadings alone.[171]

7. A partial summary judgment may be rendered,[172] but the same is interlocutory and not appealable.[173]

D. Ordinary Judgment

1. No judge should decline to render judgment by reason of the silence, obscurity, or insufficiency of the law.[174]

2. The court is not required to state in its decision all the facts found in the records. It is enough that the court states the facts and law on which its decision is based.[175]

Trial courts should not, however, merely reproduce everything testified to by the witnesses no matter how unimportant and immaterial it may be, even if this might lighten their work. By such indolent process, they only complicate and lengthen their decisions, beclouding and possibly misreading the real issues in their tiresome narration of the facts, including even those without bearing in the case. Judges should make an effort to sift the record and relieve it of all inconsequential matters, to give them a clearer view of how the real question is to be resolved and a better idea of how this resolution should be done.[176]

2.1 Need to Particularize Facts

Without the concrete relation or statement in the judgment of the facts alleged and proved at the trial, it is not possible to pass upon and determine the issue raised in litigation, inasmuch as when the facts held to be proved are not set forth in a judicial controversy, it is impossible to administer justice, to apply the law to the points argued, or to uphold the rights of the litigant who has the law on his side.

It is not sufficient that the court or trial judge take into account the facts brought out in an action the circumstances of each question raised, and the nature and conditions of the proofs furnished by the parties. He must also set out in his decision the facts alleged by the contending parties which he finds to have been proven, the conclusions deduced therefrom and the opinion he has formed on the issues raised. Only then can he intelligently set forth the legal grounds and considerations proper in his opinion for the due determination of the case.[177]

2.2 Reason for Award of Attorney's Fees Must be Stated in the Body of the Decision

The exercise of judicial discretion in the award of attorney's fee under Article 2208 (ii) of the New Civil Code demands a factual, legal, and equitable justification. Without such justification, the award is a conclusion without

a premise, its basis being improperly left to speculation and conjecture.[178]

3. The case should be decided in its totality, resolving all interlocutory issues in order to render justice to all concerned and to end litigation once and for all.[179]

4. To be binding, a judgment must be duly signed and promulgated during the incumbency of the judge who signed it.[180] However, it is not unusual for a judge who did not try a case to decide on the basis of the records for the trial judge might have died, resigned, retired, or transferred.[181]

5. The 90-day period to decide a case shall be reckoned with from the date said case is submitted for decision despite the non-availability of the stenographic notes.[182] In the same manner, the judge should decide the case even if the parties failed to submit memoranda within the given periods.[183]

VIII. REMEDIES AGAINST JUDGMENT AND FINAL ORDERS

A. Kinds of Remedies

1. Before Finality of Judgments or Final Orders:

1)

Motion for Reconsideration;

2)

Motion for New Trial; and

3)

Appeal.

2. After Finality of Judgments or Final Orders:

1) Relief for Judgments or Final Orders;

2) Petition for Certiorari; and

3)

Annulment of Judgment.

B. Motion for Reconsideration and New Trial

1. Common Rules

1.1 Time to File

A motion for reconsideration or new trial may be filed within the period for taking appeal. Note that a pro forma motion for new trial or reconsideration shall not toll the reglementary period. A pro forma motion for reconsideration or new trial is one which does not comply with the requirements of Rule 37 and does not toll the reglementary period to appeal.[184]

1.2 No motion for extension of time to file motion for reconsideration or new trial is allowed.[185]

1.3 A motion for reconsideration or new trial suspends the running of the period to appeal but if denied, the movant has only the balance of the reglementary period within which to take his appeal.[186]

1.4 Resolution of motion

A motion for new trial or reconsideration shall be resolved within thirty (30) days from the time it is submitted for resolution. An order denying a motion for new trial or reconsideration is not appealable, the remedy being an appeal from the judgment or final order.[187]

2. Motion for Reconsideration

Grounds:

- 1) damages awarded are excessive;
- 2) evidence is insufficient to justify the decision or final order; and
- 3) decision or final order is contrary to law.[188]

2.1 A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.[189]

2.2 No party shall be allowed a second motion for reconsideration.[190]

3. Motion for New Trial

3.1 Grounds

Any of the following causes materially affecting the substantial rights of an aggrieved party:

3.1.1 Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

3.1.2 Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.[191]

3.2 Fraud, as a ground for new trial, must be extrinsic or collateral, that is, it is the kind of fraud which prevented the aggrieved party from having a trial or presenting his case to the court, or was used to procure the judgment without fair submission of the controversy. Instances of collateral fraud are acts intended to keep the unsuccessful party away from the court by a false promise of compromise, or purposely keeps him in ignorance of the suit, or where the attorney fraudulently pretends to represent a party and connives at his defeat, or corruptly sells out his client's interest.[192] It is to be distinguished from intrinsic fraud which refers to the acts of a party at the trial which prevented a fair and just determination of the case[193] and which could have been litigated and determined at the trial or adjudication of the cases, such as falsification, false testimony and so forth, and does not constitute a ground for new trial.[194]

3.3 Mistake generally refers to mistakes of fact but may also include mistakes of law where, in good faith, the defendant was misled in the case. Thus, a mistake as to the scope and extent of the coverage of an ordinance,¹⁹⁵ or a mistake as to the effect of a compromise agreement upon the need for answering a complaint,[196] although actually constituting mistakes of law, have been considered sufficient to warrant a new trial.

3.4 Negligence must be excusable and generally imputable to the party but the negligence of counsel is binding on the client just as the latter is bound by the mistakes of his lawyer.[197] However, negligence of the counsel may

also be a ground for new trial if it was so great such that the party was prejudiced and prevented from fairly presenting his case.[198]

3.5 To warrant a new trial, newly discovered evidence:

1)

must have been discovered after trial;

2)

could not have been discovered and produced at the trial despite reasonable diligence; and

3)

if presented, would probably alter the result of the action.[199] Mere initial hostility of a witness at the trial does not constitute his testimony into newly discovered evidence.[200]

3.6 A motion for new trial shall be supported by affidavits of merits which may be rebutted by affidavits. An affidavit of merits is one which states:

1)

the nature or character of the fraud, accident, mistake or excusable negligence on which the motion for new trial is based;

2)

the facts constituting the movant's good and substantial defenses or valid causes of action;[201] and

3)

the evidence which he intends to present if his motion is granted.

An affidavit of merits should state facts and not mere opinions or conclusions of law.[202] An affidavit of merits is required only if the grounds relied upon are fraud, accident, mistake or excusable negligence.[203] Affidavits of merits may be dispensed with when the judgment is null and void as where the court has no jurisdiction over the defendant or the subject matter,[204] or is procedurally defective as where judgment by default was rendered before the reglementary period to answer had expired,[205] or where the defendant was unreasonably deprived of his day in court[206] as when no notice of hearing was furnished him in advance.[207] Affidavits of merits are not required in motions for reconsideration.[208]

3.7 Effect of Granting of Motion For New Trial

If a new trial is granted in accordance with the provisions of this Rule, the original judgment or final order shall be vacated, and the action shall stand for trial de novo; but the recorded evidence taken upon the former trial, in so far as the same is material and competent to establish the issues, shall be used at the new trial without retaking the same.[209]

3. Appeal

Note: This subject shall be limited to appeal from first level courts to the Regional Trial Court[210] and appeals from the Regional Trial Court.[211] Trial courts are not concerned with the other kinds and modes of appeals.

1. General Principles

1.1 An appeal is a statutory right and part of due process. Perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional.[212]

1.2 Only parties can appeal from a decision. A surety on a bond to insure execution of judgment becomes a party when notice was served upon it for execution of the judgment and may appeal from the order of execution.[213]

1.3 A party cannot change the theory on appeal. Only issues pleaded in the lower court and properly raised may be resolved by the appellate court.²¹⁴ However, issues which are inferred from or necessarily connected with the issue properly raised and pleaded may be resolved by the appellate court.[215]

1.4 Those which cannot be appealed:

1)

An order denying a motion for new trial or reconsideration;

2)

An order denying a petition for relief or any similar motion seeking relief from judgment;

3)

An interlocutory order;

4)

An order disallowing or dismissing an appeal;

5)

An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

6)

An order of execution;

7)

A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

8)

An order dismissing an action without prejudice.

In all of the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.[216]

1.5 Difference between final order and an interlocutory order

A final order is one that completely disposes of a case or of a particular matter. An interlocutory order is one that does not finally dispose of a case and does not end the court's task of adjudicating the parties' contentions and determining the rights and liabilities as regards each other but obviously indicates that other things remain to be done by the court.[217]

It does not, however, necessarily mean that an order is not final simply because there is something more to be done in the merits of the case. It is settled that a court order is final in character if it puts an end to the particular matter resolved, leaving thereafter no substantial proceeding to be had in connection therewith except its execution; and contrariwise, that a given court order is merely of an interlocutory character if it is provisional and leaves substantial proceedings to be had in connection with its subject in the court by whom it was issued.[218]

Thus, the issue whether an order is a final order is its effect on the rights of the parties. A final judgment, order or decree is one that finally disposes of, adjudicates or determine the rights, or some rights of the parties, either on the entire controversy or some definite and separate branch thereof, and which concludes them until it is reversed or set aside.[219] This is best exemplified in actions where there are two stages, such as expropriation,[220] partition[221] and in special proceedings where there are several stages.[222]

D. The Modes of Appeal

The three (3) modes of appeal are:

1)

ordinary appeal;[223]

2)

petition for review;[224] and

3)

appeal by certiorari (petition for review on certiorari).[225]

E. Cognate Rules

1. As a general rule, in ordinary appeals, execution is stayed unless the rule or law provides otherwise. Among these are:

1)

Decision in Forcible Entry and Unlawful Detainer, unless appellant stays immediate execution by filing a notice of appeal, supersedeas bond and depositing in court a monthly rental or compensation for the occupation as fixed by the court which rendered the decision;[226]

2)

Decision of the Metropolitan, Municipal or Municipal Circuit Trial Court or the Regional Trial Court where execution pending appeal has been granted by the court of origin or in a proper case by the appellate court upon good reasons to be stated in the order;[227]

3)

Decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction on cases tried and decided by the court of origin under Summary Procedure;[228]

(4)

Decision of Quasi-Judicial Agencies under the Rules of Court, Rule 43, Section 12, unless otherwise provided for by the Court of Appeals;

(5)

Decision in Cases of Injunction, Receivership, Support and Accounting.[229]

2. Difference Between Question of Fact and Question of Law

When the question is the correctness or falsity of an alleged fact, the question is a question of fact. When the question is what law is applicable in a given set of facts, the question is a question of law.[230]

3. Notice of Appeal

It need not be approved by the Court which rendered the decision. The court however may deny it due course if on its face, it was filed out of time or the appellate docket and other lawful fees have not been paid. The court which rendered the decision cannot however deny due course to the Notice of Appeal on the ground that the appeal is frivolous or dilatory.[231]

4. Record on Appeal

A Record on Appeal is required in: (a) Special Proceedings; (b) Other cases of multiple or separate appeals where the law or the Rules so require.[232]

5. Perfection of appeal

A party's appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon the approval of the record on appeal filed in due time.

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

In appeals by record on appeal, the court loses jurisdiction only over the subject matter thereof upon the approval of the records on appeal filed in due time and the expiration of the time to appeal of the other parties.[233]

6. Effect of Perfection of Appeal

The court which rendered the appealed decision loses its jurisdiction over the case. However, it may still do the following:

1)

issue an order for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal;

2)

approve compromise of the parties prior to the transmittal of the record on appeal to the appellate court;

3)

permit the prosecution of indigent appeals;

4)

order execution pending appeal in accordance with Section 2, Rule 39; and

5)

approve withdrawal of appeal.[234]

7. Period of time to appeal must be strictly enforced on considerations of public policy. The period is mandatory and jurisdictional[235] and the failure to do so renders the questioned decision final and executory that deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal[236] or motion for new trial.[237] The decision of the Court of Appeals after expiration of the period to appeal is null and void.[238]

IX. EXECUTION OF JUDGMENTS AND FINAL ORDERS (Rule 39)

A. Basic Concepts and Doctrines

1. Execution is a legal remedy for the enforcement of a judgment.[239]

2. Kinds of Execution

There are two (2) kinds of execution: discretionary execution and ministerial execution. Discretionary execution, which is also called execution pending appeal, is the execution of a judgment or final order before it attains

finality. The court which rendered the decision can grant an execution pending appeal if it still retains jurisdiction over the case and is in possession of the records at the time of the filing of the motion; otherwise, the motion shall be acted upon by the appellate court.[240] To be valid, there should be a good reason to justify the execution of the judgment pending appeal, the same to be stated in the order granting it.[241]

On the other hand, execution as a matter of right or ministerial execution is execution of a final judgment or final order which has attained finality. When a judgment or order has become final, the court cannot refuse to issue a writ of execution except:

1)

When subsequent facts and circumstances transpire which render such execution unjust, or impossible, such as a supervening cause like the act of the Commissioner of Civil Service finding the plaintiff administratively guilty and which constituted a bar to his reinstatement as ordered by the trial court in a civil case;[242] or where the defendant bank was placed under receivership;[243]

2)

On equitable grounds, as when there has been a change in the situation of the parties which makes execution inequitable;[244]

3)

Where the judgment has been novated by the parties;[245]

4)

When a petition for relief or an action to enjoin the judgment is filed and a preliminary injunction is prayed for and granted;[246]

5)

Where the judgment has become dormant, the five (5) year period under Rule 39, Section 6 having expired without the judgment having been revived;[247] or

6)

Where the judgment turns out to be incomplete[248] or is conditional[249] since, as a matter of law, such judgment cannot become final.

3. When writ of execution may be quashed

1)

when it was improvidently issued;

2)

when it is defective in substance;

3)

when it is issued against the wrong party;

4)

where the judgment was already satisfied;

5)

when it was issued without authority;

6)

when a change in the situation of the parties renders execution inequitable; and

7)

when the controversy was never validly submitted to the court.[250]

4. Execution of final judgments and orders

There are two (2) ways of securing execution of final judgments and orders: execution by motion and execution by action. Execution by motion is an execution obtained through a motion for execution filed within five (5) years from the date of its entry.[251] Execution by action is obtained through the substitution of an action to enforce a judgment or order after the lapse of five (5) years from its entry and before it is barred by the statute of limitations.[252]

5. Specific Rules

1. Execution of judgment can only be issued against a party to the action[253] and their privies who are those between whom an action is deemed binding although they are not literally parties to the said action[254] or to an intervenor.[255]

2. A judgment becomes final and executory by operation of law, not by judicial declaration. The prevailing party is entitled as a matter of right to a writ of execution, and the issuance thereof is a ministerial duty and compellable by mandamus.[256] There must, however, be a motion.[257]

3. Rule on execution in case of the death of a party

If the judgment debtor dies after entry of judgment, execution depends upon the nature of the judgment. Thus: (a) For recovery of real or personal property or the enforcement of a lien thereon, execution may be done against executor, administrator or successor-in-interest; (b) For money judgments, the judgment should be presented as claim for payment against the estate in a special proceeding. Such a claim need no longer be proved, since the judgment itself is conclusive.[258]

4. When the property subject of the execution contains improvements constructed or planted by the judgment debtor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon petition of the judgment creditor after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.[259]

The special order of demolition may be granted only upon petition of the plaintiff after due hearing, and upon the defeated party's failure to remove the improvements, within reasonable time given him by the court.[260]

The notice required before demolition of the improvements on the property subject of the execution is notice to the judgment debtor, and not to a stranger or third party to the case.[261] The order of demolition is not appealable.[262]

The sheriff and the issuing party should carry out the demolition of the improvement of the defeated party on the premises in dispute in a manner consistent with justice and good faith.[263]

Where the premises was padlocked and no one was therein at the time execution was carried into effect, there was no need for the sheriffs and the plaintiff to secure a 'break-open' order inasmuch as the character of the writ in their hands authorized them to break open the said premises if they could not otherwise execute its command.[264]

6. Levy and Garnishment

Levy is the seizure of property, personal and/or real, belonging to the judgment debtor for subsequent execution sale to satisfy judgment. Garnishment is the process of notifying a third person called the garnishee to retain and attach the property he has in his possession or under his control belonging to the judgment debtor, to make disclosure to the court concerning the same, and to dispose of the same as the court shall direct to satisfy the judgment.[265]

6.1. Decisional Rules on Levy

6.1.1 A valid levy is essential to the validity of an execution sale, and levy is invalid if the notice of levy of real property is not filed with the office of the register of deeds, the purpose of which is to notify third parties who may be affected in their dealings with respect to such property.[266] Where a parcel of land levied upon execution is occupied by a party other than a judgment debtor, the procedure is for the court to order a hearing to determine the nature of said adverse possession.[267]

1.2 To effect a levy upon real property, the sheriff is required to do two specific things:

a)

file with the register of deeds, a copy of the order and description of the attached property and notice of attachment; and

B)

leave with the occupant of the property a copy of the same order, description and notice.[268]

Note that notice to the owner who is not the occupant does not constitute compliance with the statute.[269]

1.3 Real property, stocks, shares, debts, credits and other personal property, may be levied on [270]

1.4 The levy on execution shall create a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens and encumbrances then existing.[271]

1.5 Levy or attachment over properties themselves is superior than levy on the vendor's equity of redemption over said properties.[272]

6.2 Decisional Rules on Garnishment

2.1 The garnishment of property to satisfy a writ of execution operates as an attachment and fastens upon the property a lien by which the property is brought under the jurisdiction of the court issuing the writ. It is brought into custodia legis, under the sole control of such court.[273] It is also known as attachment execution.

2.2 Money judgments are enforceable only against property unquestionably belonging to the judgment debtor. One man's goods shall not be sold for another man's debts, as the saying goes.[274]

2.3 The prohibition against examination or an inquiry into a bank deposit under Rep. Act No. 1405 does not preclude its being garnished to insure satisfaction of judgment.[275]

2.4 Government-owned-and-controlled corporations have a personality of their own, separate and distinct from the government; their funds, therefore, although considered to be public in character, are not exempt from garnishment.[276]

7. Rules on redemption

7.1. Who may redeem

7.1.1 Judgment debtor;

7.1.2 Successor-in-interest such as a person to whom the debtor has conveyed his interest in the property; person to whom a statutory right of redemption has been transferred; person who succeeds to the interest of the debtor by operation of law; one or more joint owners of the property; wife as regards her husband's homestead; and attorney who agreed to divide the property in litigation;[277] and

7.1.3 Redemptioner, which is a creditor having a lien by virtue of an attachment, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold.[278]

2. Amounts to be paid in case of redemption

7.2.1 Purchase price with 1% per month interest;

7.2.2 Assessments or taxes paid with 1% interest:

7.2.3 Amount of prior lien if also a creditor having a prior lien to that of redemption other than the judgment under which purchase was made with interest. Note that the foregoing does not apply if the one who redeems is the judgment debtor unless he redeems from a redemptioner in which case, he must make the same payments as redemptioner.[279]

8. Rules in deed of possession

8.1. After the deed of sale has been executed, the vendee therein is entitled to a writ of possession but the same shall issue only where it is the judgment debtor or his successors-in-interest who are in possession of the premises. Where the land is occupied by a third party, the court should order a hearing to determine the nature of his adverse possession.[280] The writ shall issue when the period of redemption has expired.

8.2. A writ of possession may be issued only in a land registration proceeding, in extrajudicial foreclosure of a real estate mortgage and in judicial foreclosure if the debtor is in possession and no third person, not a party to the suit, had intervened.[281] It has been held, however, that a writ of possession is a complement of the writ of execution. Hence, if under a final judgment the prevailing party acquires absolute ownership over the real property involved, the writ may be issued for him to obtain possession without the need of filing a separate action against the possessor.[282] A writ of possession may also be sought from and issued by the court unless a third party is holding the property adversely to the judgment debtor.[283]

PART TWO PROVISIONAL REMEDIES

I. Common Rules

1. Provisional remedies are:

1)

Those to which parties litigant may resort for the preservation or protection of their rights or interest, and for no other purpose during the pendency of the action.

2)

They are applied to a pending litigation, for the purpose of securing the judgment or preserving the status quo, and in some cases after judgment, for the purpose of preserving or disposing of the subject matter.[284]

2. The provisional remedies are

1)

Attachment (Rule 57);

2)

Preliminary Injunction (Rule 58);

3) Receivers (Rule 59);

4) Replevin (or delivery of private property) (Rule 60); and

5) Alimony Pendente Lite (Rule 61).

Affidavits are required to support the issuance of any of these remedies and, with the exception of alimony pendente lite, a bond to answer for damages by reason of the improvident issuance of the writ. Recovery of damages from the bond is governed by Rule 57, Section 20.[285]

A. Attachment

1. Definition

A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant.[286]

2. Concept and Purpose.

Attachment is a juridical institution which has for its purpose to secure the outcome of the trial, that is, the satisfaction of the pecuniary obligation really contracted by a person or believed to have been contracted by him, either by virtue of a civil obligation emanating from contract or from law, or by virtue of some crime or misdemeanor that he might have committed, and the writ issued, granted it, is executed by attaching and safely keeping all the movable property of the defendant, or so much thereof as may be sufficient to satisfy the plaintiff's demands.[287]

The chief purpose of the remedy of attachment is to secure a contingent lien on defendant's property until plaintiff can, by appropriate proceedings, obtain a judgment and have such property applied to its satisfaction, or to make some provision for unsecured debts in cases where the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[288]

3. Nature and Scope: Attachment Purely Statutory

Attachment is not a distinct proceeding in the nature of an action in rem but it is a proceeding to an action of law, designed to secure the payment of any judgment the plaintiff may obtain.

Attachment, as a provisional remedy, is purely a statutory one. It does not exist unless expressly granted by the statute. It is therefore not available except in those cases where the statute expressly permits.[289] For this purpose, the party seeking an attachment must show that a sufficient cause of action exists and that the amount due him as much as the sum for which the order of attachment is sought.[290]

4. Strict Compliance with the Rule

The rule on the issue of a writ of attachment must be construed strictly in favor of the defendant. If all the requisites for the issuance of the writ are not present, the court, which issues it acts in excess of jurisdiction.[291] It should be issued only on concrete and specific grounds.[292]

5. Attachment to Acquire Jurisdiction Over the Res

Attachment is intended to confer jurisdiction by the court over the res. When real property of a non-resident defendant located in Philippines is attached to answer for the claim of the plaintiff, the court acquires jurisdiction over the res and in that event, the jurisdiction over the person of said defendant is not essential.[293]

6. Stages in the Issuance of the Writ

The grant of the provisional remedy of attachment practically involves three (3) stages: first, the court issues the order granting the application; second, the writ of attachment issues pursuant to the order granting the writ; and third, the writ is implemented. For the initial two stages, it is not necessary that jurisdiction over the person of the defendant should first be obtained. However, once the implementation commences, it is required that the court must have acquired jurisdiction over the defendant for without such jurisdiction, the court has no power and

authority to act in any manner against the defendant. Any order issuing from the court will not bind the defendant.[294]

A preliminary attachment is a rigorous remedy which exposes the debtor to humiliation and annoyance, such that it should not be abused to cause unnecessary prejudice. It is, therefore, the duty of the court, before issuing the writ, to ensure that all the requisites of the law have been complied with; otherwise, the judge acts in excess of its jurisdiction and the writ so issued shall be null and void.[295]

The affidavit must establish that:

1)

a sufficient cause of action exists;

2)

the case is one of those mentioned in Rule 57, Section 1;

3)

there is no sufficient security for the claim sought to be enforced by the action;

4)

the amount due to the applicant is as much as the sum for which the order is granted above all legal counterclaims.

Failure of the affidavit to show that there is no other sufficient security for the claim sought to be enforced by the action, that the said amount due to the plaintiff above all legal set-offs or counterclaim is as much as the sum for which the order is sought renders that application fatally defective.[296]

Whether or not the affidavit sufficiently established facts therein stated is a question to be determined by the court in the exercise of sound discretion. The mere filing of an affidavit reciting the facts required by the above provision is not sufficient to compel the judge to grant the writ. It all depends upon the amount of credit given it by the judge who may accept or reject it in the exercise of his discretion.[297]

7. Orders granting or denying provisional remedies are merely interlocutory and cannot be the subject of an appeal. They may however be challenged before a superior court through a petition for certiorari under Rule 65.

8. Important Jurisprudential Rules

8.1

The purposes of preliminary attachment are:

1)

to seize the property of the debtor in advance of final judgment and to hold it for purposes of satisfying the said judgment; or

2)

to enable the court to acquire jurisdiction over the action by the actual or constructive seizure of the property in those instances where personal service of summons on the creditor cannot be effected.[298]

Thus, a proceeding in attachment is in rem where the defendant does not appear, and in personam where he appears in the action.[299] Where a lien already exists, e.g. a maritime lien, the same is equivalent to an attachment, [300] just like that under a real estate mortgage.

8.2 Rule on Prior or Contemporaneous Jurisdiction

Although a writ of preliminary attachment may be issued ex-parte or even before service of summons on the defendant, it cannot however be implemented until the court has acquired jurisdiction over the person of the defendant.[301]

8.3 When the ground relied upon in asking for preliminary attachment is impending fraudulent removal, concealment and disposition of defendant's property under paragraphs (d) and (e) of Section 1, Rule 57, the court should either conduct a hearing or require the submission of counter-affidavits from the defendant to gather facts in support of the allegations of fraud.[302]

8.4 Preliminary attachment may be granted in an action for a specified amount even when the claim is unliquidated other than for moral and exemplary damages.[303]

8.5 If a property has been levied upon by virtue of a writ of preliminary attachment, it becomes one under custodia legis and a subsequent extrajudicial foreclosure of said property by a third-party mortgagee does not affect the lien created by the attachment.[304]

8.6 A foreign corporation duly licensed to do business in the Philippines is not a non-resident within the meaning of Section 1(f), Rule 57; hence, its property here may not be attached on the mere ground that it is a non-resident.[305] Insolvency of the defendant debtor is not a ground for the issuance of a writ of preliminary attachment.[306] Section 1(f), concerning summons by publication, refers to those cases in Sections 14 and 16 of Rule 14.

8.7 Property exempt from execution is also exempt from preliminary attachment or garnishment.[307] Garnishment does not lie against the funds of the regular departments or offices of the Government, but funds of public corporations are not exempt from garnishment.[308]

B. Preliminary Injunction and Temporary Restraining Order

There is no power the exercise of which is more delicate which requires greater caution, deliberation, and sound discretion, or (which is) more dangerous in a doubtful case than the issuing of an injunction, it is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.[309]

1. Two (2) kinds of Preliminary Injunction

1.1 Preliminary Prohibitory Injunction which requires a person to refrain from a particular act; and

1.2 Preliminary Mandatory Injunction which requires a person to perform a particular act.

Caveat: Administrative Circular 07-99 To all judges of all lower courts: Re Exercise of Utmost Caution, Prudence, and Judiciousness in Issuance of Temporary Restraining Orders and Writs of Preliminary Injunction

2. Purpose

To prevent future injury and maintain the status quo — the last actual, peaceable, uncontested status which preceded the pending controversy.[310]

The sole object of preliminary injunction is to maintain the status quo until the merits can be heard.[311]

Suspension of orders is equivalent to injunction.[312]

A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interest and for no other purpose during the pendency of the principal action.[313]

3. Definition of status quo

The status quo is the last actual peaceable uncontested status that preceded the pending controversy.[314]

When parties are ordered to maintain the status quo in a TRO, but the prevailing condition at the time of its issuance is already that resulting from acts of usurpation by one of the parties, which acts of usurpation are clearly established in the pleadings, that TRO amounts to a perpetuation of the injurious effects of such acts of usurpation; such a state of things cannot clearly be allowed, for the office of the writ of injunction is to restrain the wrongdoer, not to protect him.[315]

4. Independent action merely to obtain preliminary injunction is not allowed. Some substantive relief must be sought.[316]

A writ of preliminary injunction, as an ancillary preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interest and for no other purpose during the pendency of the principal action.[317]

5. Essential Requisites for Issuance of Preliminary Injunction

5.1 There must be right in esse or the existence of a right to be protected.

5.2 The act against which the injunction is to be directed is a violation of such right.[318]

6. Rulings

6.1 A writ of preliminary injunction, as an ancillary or preventive remedy, may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the action.[319] It should only be granted if the party asking for it is clearly entitled thereto.[320]

6.2 An injunction will not issue to protect a right not in esse and which may never arise or to restrain an act which does not give rise to a cause of action. There must exist an actual right.[321]

7. Summary denial without adequate hearing improper

While in the issuance of preliminary injunction, the courts are given sufficient discretion to determine the necessity for the grant of the relief prayed for as it affects the respective rights of the parties, with the caveat that extreme caution be observed in the exercise of such discretion, it is with an equal degree of care and caution that courts ought to proceed in the denial of the writ. It should not just summarily issue an order of denial without an adequate hearing and judicious evaluation of the merits of the application. A perfunctory and improvident action in this regard would be a denial of procedural due process and could result in irreparable prejudice to a party.[322]

8. When hearing on the merits unnecessary

xxx If the ground is the insufficiency of the complaint, the same is apparent from the complaint itself. Preliminary injunction in such a circumstance may be refused outright, with or without notice to the adverse party. In fact, under Section 6 of Rule 58, the court may also refuse an injunction on other grounds on the basis

of affidavits which may have been submitted by the parties in connection with such application. xxx

xxx (Section 7 of Rule 58) merely specifies the actions that the court may take on the application for the writ if there is a hearing on the merits. It does not declare that such hearing is mandatory or prerequisite thereof. Otherwise, the courts will be forced to conduct a hearing even if from a consideration of the pleadings alone it can readily be ascertained that the movant is not entitled to the writ. xxx

It would be different xxx if there is a prima facie showing on the face of the motion or pleadings that the grant of preliminary injunction may be proper, in which case notice to the opposing party would be necessary since the grant of such writ on an ex parte proceeding is now proscribed.xxx

(If there is a prima facie showing that preliminary injunction is proper) a hearing should be conducted, since under such circumstance, only in cases of extreme urgency will the writ issue prior to a final hearing. Such requirement for prior notice and hearing underscores the necessity that a writ of preliminary injunction is to be dispensed with circumspection and both sides should be heard whenever possible. But it does not follow that such a hearing is indispensable where right at the outset the court is reasonably convinced that the writ will not lie. What was then discouraged and is now specifically prohibited is the issuance of the writ without notice and hearing. xxx[323]

9. Cases where Injunction was held improper

9.1 To restrain collection of taxes[324] except where there are special circumstances that bear the existence of irreparable injury.[325]

9.2 To restrain the sale of conjugal properties where the claim can be annotated on the title as a lien such as the husband's obligation to give support.[326]

9.3 To restrain a mayor proclaimed as duly elected from assuming his office.[327]

9.4 Against consummated acts.[328]

9.4.1 Against disposing of the case on the merits.[329]

9.4.2 Writ of injunction is not proper to stop the execution of judgment where the judgment was already executed.[330]

9.4.3 The CFI has no power to issue a writ of injunction against the Register of Deeds if its effect is to render nugatory a writ of execution issued by the National Labor Relations Commission.[331]

9.4.4 A writ of injunction is not proper to stop the execution of judgment where the judgment was already executed.[332]

But where the lower court enforced its judgment before a party against whom the execution was enforced could elevate her appeal in an injunction suit, which was instituted to prevent said execution, an independent petition for injunction in the Court of Appeals is justified.[333]

9.5 Not Allowed To Transfer Possession

A court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto.[334[]] The function of injunction is to preserve the status quo ante.[335]

This is more particularly applicable where the legal title is in dispute and the party having possession asserts ownership in himself.[336]

10. Exceptions

10.1 Forcible entries in which the Court may issue preliminary mandatory injunction[337] and by Section 20 thereof involving leases in which the court may, on appeal, grant similar mandatory injunctive relief. The exception applies only to ejectment cases exclusively cognizable by the municipal court.[338]

10.2 Property covered by Torrens Title when there is a clear finding of ownership and possession of the land or unless the subject property is covered by a Torrens Title pointing to one of the parties as the undisputed owner.[339]

11. Cases where injunction prohibited

11.1

Injunction against courts or tribunals of co-equal rank prohibited.[340]

11.2

Injunction orders are prohibited in the labor cases.³⁴¹

11.3

No injunction beyond prayer in complaint.³⁴²

11.4

To enjoin the prosecution of criminal proceedings.[343]

12. Cases where Criminal Prosecutions were Enjoined[344]

1)

For the orderly administration of justice;

2)

To prevent the use of the strong arm of the law in an oppressive and vindictive manner;

3)

To avoid multiplicity of actions;

4)

To afford adequate protection of constitutional rights;

5)

In proper cases because the statute relied upon is unconstitutional or was held invalid;[345]

6)

Where the constitutionality of the Chinese Book Keeping Law was questioned;[346]

7)

Where the hearing of the libel case was enjoined by permanent injunction after the Supreme Court in a separate case found the communication alleged to be libelous as privileged and not libelous;[347]

8)

Where a traffic ordinance was found to be invalid;[348] and

9)

Where the fiscal was restrained from further proceeding with criminal case found to be civil in nature.[349] Note: This was later on reconsidered.[350]

13. Mandatory Injunction

13.1 Requisites

A mandatory injunction is granted only on a showing that:

1)

The invasion of the right is material and substantial;

2)

The right of a complainant is clear and unmistakable;

3)

There is an urgent and permanent necessity for the writ to prevent serious damage.[351]

14. Cases where Mandatory Injunction not Granted

Mandatory injunction was not granted in the following instances:

1)

to compel cohabitation;[352]

2)

in cancellation of attachment;[353]and

3)

in release of imported goods pending hearing before Commissioner of Customs.[354]

4)

Injunctions are also not available to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established.[355] The office of the writ of injunction is to restrain the wrongdoer [356] not to protect him.[357]

15. Injunction against courts or tribunals of co-equal rank is prohibited

15.1 A court may not interfere by injunction with the judgments or orders of another court of coordinate and concurrent jurisdiction.[358]

The principle applies regardless of whether it is an ordinary action or a special civil action.

15.2 No writ may be issued by the Regional Trial Court against quasi-judicial bodies of equal rank such as Social Security Commission, Securities and Exchange Commission,[359] Intellectual Property Office, Commission on Elections, or Workmen's Compensation Commission.[360]

15.3 Inferior courts may issue writs of preliminary injunction only in forcible entry and unlawful detainer cases. The exclusive original jurisdiction of the inferior court in civil cases now includes the grant of provisional remedies in proper cases.[361]

16. Statutory Prohibitions against the Issuance of a Writ of Preliminary Injunction

Injunction orders are prohibited in the following cases:

16.1 Under Batas Pambansa Blg. 227 amending Art. 255 (Labor Code), no temporary or permanent injunction in cases growing out of labor dispute shall be issued by a court or other entity except as otherwise provided in Articles 281 and 264 of this Code.[362]

Under Presidential Decree No. 218, it is the National Labor Relations Commission (NLRC) that issues an injunction in labor disputes.[363]

16.2 Rep. Act No. 8735

Prohibition of issuance of temporary restraining orders, preliminary injunctions, or preliminary mandatory

injunctions against government infrastructure projects.

The law expressly repeals Presidential Decree No. 605 (prohibiting injunction involving concessions, licenses and other permits issued by public administrative office or bodies for the exploitation of natural resources) and Presidential Decree No. 1818 (prohibiting injunction in cases involving infrastructures and natural resources development and public utilities)[364].

16.3 Presidential Decree No. 385

Prohibition to issue injunction against any government financing institution in any action taken by such institution in connection with the mandatory foreclosure where arrears amount to at least 20% of the total outstanding obligations including interest and other charges as appearing in the book of accounts and/or related records of the financial institutions concerned.[365]

Presidential Decree No. 385 cannot however, be applied where the extent of the loan actually received by the borrower is still to be determined.[366]

It is not also applicable to properties already foreclosed. The prohibition found in Presidential Decree No. 385 against the issuance of injunctions by lower courts, unless certain conditions are met, applies only to foreclosure proceedings initiated by government financing institutions like the Development Bank of the Philippines.[367]

16.4 No restraining order or preliminary injunction against the Presidential Agrarian Reform Council (PARC)

No court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against PARC or any of its duly authorized or designated agencies in any case, dispute or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform.[368]

16.5 Prohibition to issue injunction against the Asset Privatization Trust (APT)[369]

16.6 A court should issue a writ of preliminary injunction only when the petitioner assailing a statute or administrative order has made out a case of unconstitutionality aside from showing a clear legal right to the remedy sought.[370]

16.7 Presidential Decree No. 605 which prohibits courts from exercising jurisdiction to issue preliminary injunction in a case involving the issuance or approval by administrative officials of public grants in connection with the exploitation of natural resources, does not apply in a case where the complaint does not put in issue the legitimacy of the defendant's claim of being holders of mining lease contracts, but asserts that defendants had rights.[371]

17. Injunctions not issued where act sought to be prevented had been committed

An injunction suit becomes moot and academic after the act sought to be enjoined had already been consummated.[372] A prohibitory injunction cannot be issued when the act sought to be enjoined has already been committed.[373]

18. No injunction beyond prayer in complaint

Courts should not issue orders or injunctions beyond those prayed for in the complaint.[374]

19. Temporary Restraining Order

The procedural guidelines in the issuance of TRO and Preliminary Injunction in a Multiple Sala Court are provided for in Supreme Court Administrative Circular No. 20-95.

When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall proceed as follows:

- (a) Verified application and bond for preliminary injunction or temporary restraining order;
 - (b) Determination from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice.
 - (c) If the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance;
 - (d) In either case, even if no TRO had been issued because there is no extreme urgency, the case shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied, by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.
- However, (1) where the summons could not be served personally or by substituted service despite diligent efforts, or (2) the adverse party is a resident of the Philippines temporarily absent therefrom or is a nonresident thereof, the requirement of prior or contemporaneous service of summons shall not apply.
- (e) If no TRO has been issued because there is no extreme urgency, the application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records are received by the branch selected by raffle and to which the records shall be transmitted immediately.
 - (f) Within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.
 - (g) Determination within twenty days from service of the TRO on the party sought to be enjoined whether a preliminary injunction shall issue or not.
 - (h) The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued. Another restraining order may, therefore, be issued provided it is not based on the same ground.

D. Receivership

1. Appointment of a Receiver

The general rule is that neither party to the litigation should be appointed as a receiver without the consent of the other because a receiver is supposed to be an impartial and disinterested person.[375] A clerk of court should not be appointed as a receiver as he is already burdened with his official duties.[376]

2. Specific situations when a receiver may be appointed

2.1 Family Code, Article 101

If a spouse without just cause abandons the other or fails to comply with his/her obligations to the family, the aggrieved spouse may petition the court for receivership.

2.2 Rules of Court, Sec. 41, Rule 39

The court may appoint a receiver of the property of the judgment obligor; and it may also forbid a transfer or other disposition of, or any interference with, the property of the judgment obligor not exempt from execution.

2.3 After the perfection of an appeal, the trial court retains jurisdiction to appoint a receiver of the property under litigation since this matter does not touch upon the subject of the appeal.[377]

2.4 After final judgment, a receiver may be appointed as an aid to the execution of judgment.[378]

2.5 Appointment of a receiver over the property in custodia legis may be allowed when it is justified by special circumstances as when it is reasonably necessary to secure and protect the rights of the real owner.[379]

E. Replevin

1. Steps in the Issuance and Implementation of a Writ of Replevin

1.1 A party praying for the recovery of possession of a personal property files with the court at the commencement of the action or before answer in application for a writ of replevin.[380]

To accompany the application is the affidavit which should state that:

- 1) that the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;
- 2) that the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief;
- 3) that the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under custodia legis, or if so seized, that it is exempt from such seizure or custody; and
- 4) the actual market value of the property.

2. Notes

- 1) The applicant of a writ of replevin need not be the owner for it is enough if he has a right to possess it.[381]
- 2) Replevin cannot be availed of if the property is in custodia legis as where it is under attachment or was seized under a search warrant[382] except:
 - a. when the seizure is illegal;[383] and
 - b. where there is reason to believe that the seizure will not anymore be followed by the filing of the criminal action in court or there are conflicting claims.[384]

3. The defendant is entitled to the return of the property taken under a writ of replevin if the following requisites are met:

1)

S/he posts a redelivery bond and

2)

S/he furnishes the plaintiff of a copy of the undertaking within five (5) days from taking and

3)

the bond is sufficient and in proper form.[385]

F. Support Pendente Lite

1. Notes and Cases

1.1 Support pendente lite can be granted by the court in two (2) instances:

(1) civil action for support; and

(2) criminal action where civil liability includes support for the offspring as a consequence of the crime.

1.2 Where the right to support is put in issue by the pleadings or the fact from which the right to support arises is in controversy or has not been established, the court cannot grant support pendente lite.[386]

1.3 The amount of support pendente lite is not final in character in the sense that it can be the subject of modification depending on the changing conditions affecting the ability of the obligor to pay the amount fixed for support.[387]

1.4 If an application for support pendente lite is denied, the remedy is certiorari.

1.5 Mere affidavits or other documents appearing in the record are sufficient basis for the court to determine amount of support pendente lite.[388]

1.6 Support pendente lite are allowed in criminal actions where the civil liability includes support for the offspring as a consequence of the crime and the civil aspect thereof has not been waived, reserved or instituted prior to its filing.[389]

PART THREE SPECIAL CIVIL ACTIONS

The special civil actions are:

1)

Interpleader (Rule 62);

2)

Declaratory Relief (Rule 63);

3)

Certiorari, Prohibition and Mandamus (Rule 65);

4)

Quo Warranto (Rule 66);

5)

Expropriation (Rule 67);

6)

Foreclosure of Real Estate Mortgage (Rule 68);

7)

Partition (Rule 69);

8)

Forcible Entry and Unlawful Detainer (Rule 70); and

9)

Contempt (Rule 71).

I. THE DIFFERENT SPECIAL CIVIL ACTIONS

1. Interpleader

1. Requisites

1)

The plaintiff claims no interest in the subject matter or his claim is not disputed;

2)

There must at least be two (2) or more conflicting claimants;

3)

The parties to be interpleaded must make effective claims; and

4)

The subject matter must be one and the same.

2. Decisional Rules

Interpleader was found to be a proper action in an action of a lessee who does not know to whom to pay rentals due to conflicting claims on the property;³⁹⁰ and in an action by a bank where the purchaser of a cashier's check claims it was lost and another has presented it for payment.³⁹¹ It was however found to be improper in an action where defendants have conflicting claims against the plaintiff;³⁹² and an action where one of the defendants had earlier sued the plaintiff and secured a judgment against him which has already become final. The action is barred by laches or unreasonable delay.³⁹³

3. Procedural Peculiarities

3.1 Upon the filing of the complaint, the court shall issue an order requiring the conflicting claimants to interplead with one another.³⁹⁴

3.2 The court may direct in the same order mentioned in the preceding paragraph that the subject matter of the suit be paid or delivered to the court.³⁹⁵

3.3 The summons shall be accompanied by copies of the complaint and order mentioned in No. 1.

3.4 The defendants may file a motion to dismiss on the ground of the impropriety of the interpleader action or on other appropriate grounds specified in Rule 16.

3.5 The defendants shall serve a copy of the answer not only to the plaintiff but also to their co-defendants who may file their reply thereto.

3.6 The effect of a failure to plead within the prescribed period is that, upon motion, the defendant will be declared in default and thereafter renders judgment barring him from any claim in respect to the subject matter.

B. Declaratory Relief and Similar Remedies

1. Requisites

1)

There must be a justiciable controversy;^[396]

2)

The controversy must be between persons whose interest is adverse;

3)

The parties must have legal interest in the controversy;

4)

The controversy must be ripe for judicial determination;^[397] and

5)

The petition must be filed before there is a breach or violation.[398]

2. Procedural Peculiarities

2.1 The petition must be filed before there is a breach of contract or violation of the statute or ordinance.[399]

2.2 Third-party complainant is not allowed.[400]

2.3 Except in actions for quieting of title, the court action on an action for declaratory relief is discretionary. Thus, the court motu proprio or upon motion may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action or in any case where the declaration or construction is not necessary under the circumstances.[401]

2.4 When a statute, executive order or any government regulation or ordinance is alleged to be unconstitutional, the Solicitor-General should be notified by the party assailing the same.[402] If the validity of a local government ordinance is in question, the prosecutor or attorney of the local government should be notified.[403]

3. Declaratory Relief Improper in the Following Cases

1)

(to obtain judicial declaration of citizenship;[404])

2)

to seek relief on moot questions or to resolve hypothetical, abstract or theoretical questions, or to decide claims which are uncertain;[405]

3)

(to resolve political issues or questions;[406])

4)

to test the correctness or validity of a court decision;[407]

5)

to determine hereditary rights;[408]

6)

when the petition is based upon the happening of a contingent event;

7)

when the petitioner is not the real party in interest;[409] and

8)

when administrative remedies have not yet been exhausted.[410]

3. Certiorari

1. Requisites

1)

A tribunal, board or officer exercises judicial or quasi-judicial function;

2)

It or s/he acts without or in excess of jurisdiction or with grave abuse of discretion; and

3)

There is no appeal nor plain, speedy and adequate remedy in the ordinary cause of law.

2. Terminology

1)

Without jurisdiction – absence of a legal power to determine a case.

2)

Excess of jurisdiction – the court has jurisdiction but fails to comply with the conditions prescribed for its exercise.[411]

3)

Grave abuse of discretion – judicial power is exercised capriciously, arbitrarily or despotically due to passion or personal hostility.[412]

3. Certiorari is not a proper remedy if appeal is available or it is lost through the fault of the petitioner,[413] except:

1)

appeal is not a speedy and adequate remedy;[414]

2)

order is issued without or in excess of jurisdiction;[415]

3)

in consideration of public welfare and for the advancement of public policy;[416]

4)

order is a patent nullity;[417]

5)

to avoid future litigation;[418]

6)

to avoid a miscarriage of justice;[419]

7)

in furtherance of the broader interest of justice and equities.[420]

4. Before certiorari can be availed of, petitioner should first file a motion for reconsideration of the challenged order, resolution or decision,[421] except in the following cases:

1)

in the interest of justice and public welfare and advancement of public policy;[422]

2)

order was issued without or in excess of jurisdiction;[423]

3)

order is a patent nullity[424] as when petitioner's right to due process was denied in the lower court[425] or petitioner has been unlawfully deprived of his right to appeal;[426]

4)

when relief is extremely urgent, there is no more need to wait for the resolution of a motion for reconsideration;[427]

5)

when the questions raised and passed upon in the lower court are the same as those to be passed upon in the certiorari case;[428] and

6)

question is purely of law.[429]

5. Requirements Regarding the Extrinsic Sufficiency of the Petition

1)

1) it must be verified;[430]

2)

2) accompanied by a certificate of non-forum shopping;[431]

3)

accompanied with certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto;[432]

4)

proof of service pursuant to Rule 13, Section 1; and

5)

if not filed and served personally, then, it should be accompanied by a written explanation why personal service was not resorted to.[433]

6. Time to File

Within sixty (60) days from notice of decision, resolution or order sought to be assailed, or from the denial of petitioner's motion for reconsideration or new trial filed in due time after judgment.[434]

7. Decisions

7.1 As a general rule, certiorari is not a proper remedy to assail the order of the trial court denying a demurrer to evidence in a civil case.⁴³⁵ Motion for reconsideration and, in case of denial, appeal, are the proper remedy.

D. Prohibition

1. Requisites

1)

a tribunal, corporation, board, officers or person unlawfully neglects the performance of an act which the law

specifically enjoins as a duty arising from an office, trust, or station or unlawfully excludes another from the use or enjoyment of a right or office to which the plaintiff is entitled; and

2)

there is no other plain, speedy and adequate remedy in the ordinary course of law.

2. Decisional Rules

2.1 Mandamus is an appropriate remedy to compel a corporation to grant its monthly salaried employees holiday pay.[436]

2.2 Mandamus is not proper to compel a school to enroll a student for academic deficiencies because this involves the exercise by the school of discretion under academic freedom.[437]

2.3 Mandamus will not lie against the President or Congress because of the principle that the judiciary is a co-equal department of the latter.[438]

2.4 Failure to exhaust administrative remedies is generally fatal to an action for mandamus.[439] The exception is when the question is purely of law.[440]

E. Quo Warranto

1. Definition

A quo warranto is a prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise.[441]

2. Quo Warranto as distinguished From Election Contest

If the dispute is as to the counting of votes or on matters connected with the conduct of the election, quo warranto is not the proper remedy but an election protest.[442] When the dispute is on the ineligibility of a person sought to be ousted, quo warranto is the proper action.[443]

3. Peculiarities of Proceedings

3.1 When the Solicitor General or a public prosecutor commences the action at the instance of another person, leave of court must first be secured.

3.2 The motion for leave must be set for hearing with notice to the respondent so that he may be heard; and

3.3 The court issues the order allowing the filing of the action within the period fixed therein.

F. Expropriation

1. Requisites For Exercise of Right

1)

due process of law – compliance with the rules set down (Rule 67);

2)

payment of just compensation; and

3)

taking must be for public use.[444]

2. Two (2) Stages in Expropriation Proceedings

2.1 Determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts. This stage is terminated by either an order of dismissal of the action or order of the condemnation declaring that expropriation is proper and legal. These orders are final and therefore appealable.[445]

2.2 Determination of just compensation

This is done with the assistance of not more than three (3) commissioners. The order fixing just compensation is also final and appealable.[446] Just compensation is to be determined as of the date of the taking of the propriety or the filing of the complaint, whichever comes first.

G. Foreclosure of Real Estate Mortgage

1. The judgment in a judicial foreclosure proceeding should:

1)

make a finding of the amount due the plaintiff including interest, cost and other charges approved by the court;

2)

order defendant to pay said amount within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from entry of judgment; and

3)

if the defendant defaults, the court should order the sale at public auction of the mortgaged property.

2. Distinction Between Right of Redemption and Equity of Redemption

Equity of Redemption is the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the amount fixed in the decision of the court within ninety (90) to one hundred twenty (120) days after entry of judgment or even after the foreclosure sale but prior to its confirmation.[447] On the other hand, right of redemption is the right granted to the debtor-mortgagor, his successor-in-interest or any judicial creditor of said debtor-mortgagor or any person having a lien in the property subsequent to its mortgage or deed of trust under which the property is sold to redeem the property within one (1) year from the registration of the sheriff's certificate of foreclosure sale.[448]

For as long as the sale have not been validly confirmed, the equity of redemption may be exercised by the mortgagor or his successors-in-interest.[449]

3. Writ of Possession in Judicial Foreclosure

After the foreclosure sale is confirmed, the court, upon motion, may issue a writ of possession to install the buyer at auction into possession of the property sold.

4. Deficiency Judgment

Some rules on deficiency judgment are:

1)

A motion for deficiency judgment may be made only after the sale and after it becomes known that a deficiency exists.[450]

2)

Deficiency judgment cannot be rendered against a non-resident defendant.[451]

3)

No deficiency judgment may be rendered against the owner who is not a mortgagor and has not assumed personal liability for the debt. The remedy is an ordinary action against the debtor.[452]

4)

If the debtor dies, the deficiency may be filed as a claim against his estate.[453]

H. Partition

1. Two Stages of the Action

1.1 First Stage – Determination of the propriety of partition

This involves a determination of whether the subject property is owned in common and whether all the co-owners are made parties in the case. The order may also require an accounting of rents and profits recovered by the defendant. This order of partition is appealable.[454] If not appealed, then the parties may partition the common property in the way they want. If they cannot agree, then the case goes into the second stage. However, the order of accounting may in the meantime be executed.[455]

1.2 Second Stage – The actual partitioning of the subject property

This is also a complete proceeding and the order or decision is appealable.

2. Prescription of Action

Action for partition is unprescriptible for as long as the co-owners expressly or impliedly recognize the co-ownership.[456] However, if a co-owner repudiates the co-ownership and makes known such repudiation to the other co-owners, then partition is no longer a proper remedy of the aggrieved co-owner. S/he should file an accion reivindicatoria which is prescriptible.[457]

3. Some Decisions

3.1 When there was a prior partition, the fact that the share of each co-heir has not been technically described and the title over the whole lot remains uncanceled does not negate such partition. There can be no partition again

because there is no more common property.[458]

3.2 Oral partition of land when the same is fully consummated is valid and binding upon the parties thereto.[459]

I. Forcible Entry and Unlawful Detainer

1. Nature of Accion Interdictal

It is:

1)

a special civil action involving a realty;

2)

subject to the Rules on Summary Procedure;

3)

under the original exclusive jurisdiction of first level courts;

4)

nature of the action is determined by the allegation of the complaint and the character of the relief sought;[460] and

5)

one co-owner may institute the action.

2. Immediate Execution and How to Stay It

A decision ejecting the defendant in a forcible entry or unlawful detainer case is immediately executory. But the judge should not order immediate execution in his decision.[461] There must be notice of the judgment[462] and a motion with notice to the adverse party.[463]

To stay execution, the defendant should:

A

1)

perfect his appeal in due time;

2)

files a sufficient supersedeas bond, approved by the Municipal Trial Court; and

3)

during the pendency of the appeal, s/he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court on or before the tenth (10th) day of each succeeding month.[464] But upon motion of the plaintiff within ten (10) days from the perfection of the appeal to the Regional Trial Court, the court may still issue a preliminary mandatory injunction to restore the plaintiff in possession if the court is satisfied that the defendant's appeal is frivolous or dilatory, or that the appeal of the plaintiff is prima facie meritorious.[465]

3. Important Decisional Rules on Unlawful Detainer

3.1 A covenant to renew a lease contract which makes no provision as to the renewal or extension implies an extension or renewal upon the same terms as provided in the original lease contract.[466]

3.2 An action for ejectment is not abated by the death of the defendant.[467] The heirs become the substitute defendants.[468]

3.3 Where there is a defense of tenancy, there must be a preliminary hearing on the question of tenancy relations.[469] If there is a prima facie showing of tenancy, the court should dismiss the case for lack of jurisdiction (jurisdiction belongs to the DARAB).[470]

3.4 The lessee is not permitted to deny the lessor's title.[471]

3.5 A person who occupies the land of another at the latter's tolerance or permission, without any contract between them is necessarily bound by an implied promise that he will vacate upon demand, failing which an action for unlawful detainer may be instituted against him.[472]

This rule as to tolerance does not hold true in a case where there was forcible entry at the start, but the lawful possessor did not attempt to oust the intruder for over one (1) year, and only thereafter filed forcible entry suit following demand to vacate.[473]

Elsewise stated, the tolerance must be presented right from the start of possession sought to be recovered to categorize a cause of action as one of unlawful detainer.[474]

3.6 Demand upon a tenant may be oral.[475] If demand is made upon the person found on the premises, it must be done by serving upon him notice of such demand or by posting such notice on the premises if no person be found thereon.[476]

3.7 When failure to pay rent or comply with the condition of lease is the ground for ejectment, plaintiff should give two (2) demands:

A

1)

demand to pay rental or comply with conditions of the lease and if this is not complied with,

2)

demand to vacate within fifteen (15) days in case of land or five (5) days in case of buildings from notice thereof. The two (2) demands may be embodied in one (1) letter.[477] Demand to pay or comply makes lessee a deforciant while demand to pay and vacate is a requirement for filing the action for unlawful detainer.

3.8 When the lease has expired, there is no need of prior demand to vacate. The lessor can immediately file an action for ejectment. Demand is necessary only when the ground for ejectment is failure to pay rent or comply with the conditions of the lease.[478]

Notice and demand to vacate is, however, required on a lease on a month-to-month period to render effective the termination of the lease upon the expiration of the month, and prevent an implied renewal of the lease.[479]

The notice provision is the one given after the expiration of the lease period for the purpose of aborting an implied renewal of the lease.[480]

3.9 An alternative demand to either renew the expired lease contract at a higher rental rate or vacate is not a definite demand to vacate and therefore, insufficient basis for the filing of an action for unlawful detainer.[481]

3.10 When there is no definite period for a lease but rental is paid from month to month, then under Article 1687 (Civil Code), the period is fixed which is from month to month. When the lessor gave the lessee a demand to vacate at the end of the month and he fails to do so, an action for unlawful detainer may be filed against him.[482]

3.11 Refusal to collect or accept rentals is not a defense. There must be consignation.[483] Acceptance of back rentals after demand to vacate does not legitimize possession.[484] Consignation must be where Sec. 5(b) provides either in court or in bank, in the name of and with notice to the lessor and not elsewhere.[485]

J. Contempt

Contempt of court 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 of, to interfere with, or prejudice parties litigant or their witnesses during litigation. It is defined as a disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience to the court's order but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice.[486]

1. Two (2) kinds of Contempt

(Refer to the Table of Differences Between Direct and Indirect Contempt, *infra*)

2. Two (2) Aspects of Contempt

2.1 Civil Contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein.[487]

2.2 Criminal Contempt is conduct directed against the authority and dignity of a court or of a judge, as in unlawfully assailing or discrediting the authority and dignity of a court or a judge or in doing a forbidden act.[488]

Note: A criminal contempt proceeding is in the nature of a criminal or quasi-criminal action and, therefore, punitive in nature. A civil contempt proceeding is remedial and civil in nature.

3. Decisions

3.1 The violation of a TRO issued by the SEC or any quasi-judicial tribunal is criminal contempt so that acquittal of the respondents is unappealable.[489]

3.2 A writ of execution issued by a court after five (5) years from entry of final judgment is void and disobedience thereto does not constitute indirect contempt.[490]

4. Necessity of Hearing

Previous hearing is required under Rule 71, Section 3 of the Revised Rules of Court, where an arrest and the subsequent detention of petitioner for her failure to appear at a hearing set by the trial judge is based on the commission of an indirect contempt. Without that hearing, the order violated the rules and deprived the petitioner of her liberty without due process.[491]

Where a lawyer fails to obey a subpoena and likewise committed direct contempt for having disturbed the preliminary examination being conducted by the judge by repeatedly driving his jeep and honking its horn in the vicinity of the court session hall for which the lawyer was ordered arrested and confined in jail, the judge should issue a separate order for such direct contempt, and another order requiring the lawyer to show cause why he should not be punished for disobedience to its process, to give the lawyer a chance to explain his failure to appear as a witness.[492]

5. Contempt by non-party

Generally, no contempt is committed by one not a party to the case. The remedy against such person is either a civil or criminal action.[493] However, persons who are not parties in a proceeding may be declared guilty of contempt for willful violation of an order issued in a case if said persons are guilty of conspiracy with any one of the parties in violating the Court's order.[494]

6. Power to punish for contempt to be exercised in preservative not vindictive principle; what constitutes disobedience

Only in cases of clear and contumacious refusal to obey should the power be exercised. A bona fide misunderstanding of the terms of the order or of the procedural rules should not immediately cause the institution of contempt proceedings. The power to punish for contempt of court should be exercised on the preservative and not on the vindictive principle. Only occasionally should the court invoke its inherent power in order to retain the respect without which the administration of justice must falter or fail. Such power being drastic and extraordinary in its nature xxx should not be resorted to xxx unless necessary in the interest of justice.[495]

[1] Rules of Court, Rule 6, Sec. 3.

[2] Rules of Court, Rule 7, Sec. 4, as amended by A. M. No. 002-10-SC.

[3] Philippine Bank of Commerce v. Macadaeg, 109 Phil. 981 [1960]; Buenaventura v. Uy, No. L-28156, March 31, 1987, 149 SCRA 22.

[4] Uy v. Workmen's Compensation Commission, L-43389, April 28, 1980, 97 SCRA 255.

[5] Rules of Court, Rule 7, Sec. 5.

[6] Robern Development Corp. v. Quitain, G.R. No. 135042, September 23, 1999, 315 SCRA 150.

[7] Five-Star Bus Company v. Court of Appeals, G.R. No. 127064, August 31, 1999, 313 SCRA 367.

- [8] *Spouses Diu v. Ibajan*, G. R. No. 132657, January 19, 2000.
- [9] *Buan v. Lopez*, No. L-75349, October 13, 1985, 145 SCRA 34.
- [10] *Employees Compensation Commission v. Court of Appeals*, G.R. No. 115858, June 26, 1996, 257 SCRA 717.
- [11] Rules of Court, Rule 7, Sec. 5.
- [12] Rules of Court, Rule 13, Sec. 2.
- [13] *Ibid.*, Sec. 3.
- [14] *Benguet Electric Cooperative, Inc v. National Labor Relations Commission*, G. R. No. 89070, May 18, 1992, 209 SCRA 55.
- [15] Rules of Court, Rule 13, Sec. 4.
- [16] *Ibid.*, Sec. 11.
- [17] G. R. No. 125683, March 2, 1999 304 SCRA 34.
- [18] *Tacay v. Regional Trial Court of Tagum*, G. R. Nos. 88075-77, December 20, 1989, 180 SCRA 483.
- [19] *Original Development and Construction Corporation v. Court of Appeals*, G. R. No. 94677, October 15, 1991, 202 SCRA 753.
- [20] *Ibid.*
- [21] *Ibid.*
- [22] *Sun Insurance Office Ltd. v. Asuncion*, G. R. Nos. 79937-38, February 13, 1989, 170 SCRA 274.
- [23] *Tacay v. Regional Trial Court of Tagum*, *supra*, note 18.
- [24] Rules of Court, Rule 14, Sec. 6.
- [25] *Bello v. Ubo*, No. L-30353, September 30, 1982, 117 SCRA 91.
- [26] Rules of Court, Rule 14, Sec. 7.
- [27] *Montalban v. Maximo*, No. L-22997, March 15, 1968, 22 SCRA 1070.
- [28] *Filmerco Commercial Co., Inc. v. Intermediate Appellate Court*, No. L-70661, April 9, 1987, 149 SCRA 194.
- [29] Rules of Court, Rule 14, Sec. 7.
- [30] Administrative Circular No. 59.
- [31] *Venturanza v. Court of Appeals*, No. L-77760, December 11, 1987, 156 SCRA 305.
- [32] *Keister v. Navarro*, No. L-29067, May 31, 1977, 77 SCRA 209, *Filmerco Commercial Co., Inc. v. Intermediate Appellate Court*, *supra*, note 28.
- [33] *E. B. Villarosa & Partner Co., Ltd. v. Benito*, G. R. No. 136426, August 4, 1999, 312 SCRA 65.
- [34] Rules of Court, Rule 14, Sec. 12.
- [35] *Litton Mills, Inc. v. Court of Appeals*, G. R. No. 94980, May 15, 1996, 256 SCRA 696; *Signetics*

Corporation v. Court of Appeals, G. R. No. 105141, August 31, 1993, 225 SCRA 737.

[36] Ibid.

[37] Rules of Court, Rule 14, Sec. 14.

[38] Banco Español-Filipino v. Palanca, 37 Phil 921 [1918]; Perkins v. Dizon, 69 Phil 186 [1939]; Sahagum v. Court of Appeals, G. R. No. 78328, June 3, 1991, 198 SCRA 44.

[39] Filmerco Commercial Co., Inc. v. Intermediate Appellate Court, *supra*, note 28.

[40] Obaña v. Court of Appeals, G. R. No. 87635, April 27, 1989, 172 SCRA 886.

[41] Rules of Court, Rule 14, Sec. 17.

[42] Valmonte v. Court of Appeals, G. R. No. 108538, January 22, 1996, 252 SCRA 92.

[43] Montalban v. Maximo, *supra*, note 27.

[44] Rules of Court, Rule 14, Sec. 16.

[45] Toyota Cubao, Inc. v. Court of Appeals, G. R. No. 126321, October 23, 1997, 281 SCRA 198.

[46] Baticano v. Chu, Jr., L-58036, March 16, 1987, 148 SCRA 541.

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

[48] Serrano v. Cabrera, 93 Phil 774 [1953].

[49] Rules of Court, Rule 17, Sec. 1; Minute Resolution, Gordon v. Payumo, G. R. No. 134071, July 7, 1998.

[50] Rules of Court, Rule 10, Sec. 2.

[51] Paeste v. Jarique, 94 Phil 179 [1953].

[52] Rules of Court, Rule 10, Sec. 3.

[53] Rules of Court, Rule 11, Sec. 7.

[54] Ibid.

[55] Ibid.

[56] Dasmariñas Garments, Inc. v. Reyes, G. R. No. 108229, August 24, 1993, 225 SCRA 622.

[57] Rules of Court, Rule 29, Sec. 3 (3).

[58] Rules of Court, Rule 26, Sec. 1.

[59] Ibid, Sec. 5.

[60] Diman v. Alimbres G. R. No. 131466 November 27, 1998, 299 SCRA 459.

[61] Rules of Court, Rule 9.

[62] Gonzalez v. Francisco, 49 Phil 747 [1926]; Ramirez v. Court of Appeals, G. R. No. 76366, July 3, 1990, 187 SCRA 153.

[63] The Philippine British Co., Inc. v. De los Angeles, Nos. L-33720-1, March 10, 1975, 63 SCRA 50.

- [64] Cavili v. Florendo, No. L-73039, October 9, 1987, 154 SCRA 610.
- [65] Santos v. Samson, No. L-46371, December 14, 1981, 110 SCRA 215.
- [66] Cavili v. Florendo, *supra*, note 64.
- [67] Rules of Court, Rule 9, Sec. 3(a).
- [68] Garcia v. Court of Appeals, G. R. No. 83929, June 11, 1992, 209 SCRA 732.
- [69] Cavili v. Florendo, *supra*, note 64.
- [70] Rules of Court, Rule 9, Sec. 3 (b), Lina v. Court of Appeals, No. L-63397, April 9, 1985, 135 SCRA 637; Circle Financing Corporation v. Court of Appeals, G. R. No. 77315, April 22, 1991, 196 SCRA 166; Malanyaon v. Suñga, G. R. No. 49463, May 7, 1992, 208 SCRA 436; Omico Mining and Industrial Corporation v. Vallejos, No. L-38974, March 25, 1975, 63 SCRA 285; Matute v. Court of Appeals, L-26571, January 31, 1969, 26 SCRA 768; Akut v. Court of Appeals, G. R. No. L-45472, August 30, 1982, 116 SCRA 213.
- [71] Rules of Court, Rule 9, Sec. 3 (e).
- [72] Joesteel Container Corporation v. Commonwealth Financing Corporation, No. L-25778, September 30, 1982, 117 SCRA 43; Denso (Phils.), Inc. v. Intermediate Appellate Court, No. L-75000, February 27, 1987, 148 SCRA 280; Continental Cement Corporation v. Court of Appeals, G. R. No. 88586, April 27, 1990, 184 SCRA 728.
- [73] Rules of Court, Rule 70, Secs. 13 and 19.
- [74] Rules of Court, Rule 9, Sec. 3 (d).
- [75] Rules of Court, Rule 9, Sec. 3 (d).
- [76] Naga Development Corporation v. Court of Appeals, G. R. No. 28173, September 30, 1971, 41 SCRA 105.
- [77] Rules of Court, Rule 12, Sec. 2.
- [78] *Ibid.*, Sec. 4.
- [79] De Dios v. Bristol Laboratories (Phil.), Inc., G. R. No. 25530, January 29, 1974, 55 SCRA 349.
- [80] Rules of Court, Rule 15, Sec. 6.
- [81] *Ibid.*
- [82] Fortune Motors, Inc. v. Court of Appeals, G. R. No. 76431, October 19, 1989, 178 SCRA 564.
- [83] Rules of Court, Rule 4, Sec. 4 (b), Polytrade v. Blanco, No. L-27033, October 31, 1969, 30 SCRA 187; Unimasters Conglomeration, Inc. v. Court of Appeals, G. R. No. 119657, February 7, 1997, 267 SCRA 759.
- [84] G. R. No. 106920, December 10, 1993, 228 SCRA 385; Bautista v. Borja, G. R. No. 20600, October 28, 1966, 18 SCRA 474.
- [85] Unimasters Conglomeration, Inc. v. Court of Appeals, *supra*, note 83.
- [86] Rules of Court, Rule 1, Sec. 6.
- [87] Rules of Court, Rule 9, Sec. 1.
- [88] Calano v. Cruz, 91 Phil. 247 [1952].

- [89] 1 Moran 174-177 [1979].
- [90] Corporation Code, Sec. 133.
- [91] G.R. No. 44888, February 7, 1992, 206 SCRA 40.
- [92] Leviton Industries v. Salvador, No. L-40163, June 19, 1982, 114 SCRA 420.
- [93] Bulakhidas v. Navarro, No. L-49695, April 7, 1986, 142 SCRA 4; Antam Consolidated, Inc. v. Court of Appeals, No. L-61523, July 31, 1986, 143 SCRA 288.
- [94] Investors' Finance Corporation v. Ebarle, No. L-70640, June 29, 1988, 163 SCRA 60.
- [95] Victronics Computers, Inc. v. Logarta, G. R. No. 104019, January 25, 1993, 217 SCRA 517; Arceo v. Oliveros, No. L-38257, January 31, 1985, 134 SCRA 308; Andresons Groups, Inc. v. Court of Appeals, G. R. No. 114928, January 21, 1997, 266 SCRA 423.
- [96] Lamin Ents. v. Lagamon, No. L-57250, October 30, 1981, 108 SCRA 740; FEU-Dr. Nicanor Reyes Medical Foundation v. Trajano, No. L-76273, July 31, 1987, 152 SCRA 725; Suntay v. Aquiluz, G. R. No. L-28883, June 3, 1992, 209 SCRA 500; Valencia v. Court of Appeals, G. R. No. 111401, October 17, 1996, 263 SCRA 275; Cokaliong Shipping Lines, Inc. v. Amin, G. R. No. 112233, July 31, 1996, 260 SCRA 122.
- [97] Allied Banking Corporation v. Court of Appeals, G. R. No. 95223, July 26, 1996, 259 SCRA 371.
- [98] Linzag v. Court of Appeals, G. R. No. 122181, June 26, 1998, 291 SCRA 304.
- [99] Casil v. Court of Appeals, G. R. No. 121534, January 28, 1998, 285 SCRA 204.
- [100] Islamic Directorate of the Philippines v. Court of Appeals, G. R. No. 117897, May 14, 1997, 272 SCRA 454.
- [101] Republic v. Court of Appeals, G. R. No. 110020, September 25, 1998, 296 SCRA 171.
- [102] Bachrach Corporation v. Court of Appeals, G. R. No. 128349, September 25, 1998, 296 SCRA 487.
- [103] Sempio v. Court of Appeals, G. R. No. 124326, January 22, 1998, 284 SCRA 580.
- [104] As amended by PD No. 1755, December 24, 1980.
- [105] Delos Reyes v. Court of Appeals, G. R. No. 121468, January 27, 1998, 285 SCRA 81.
- [106] Rules of Court, Rule 9, Sec. 1; Ferrer v. ERICTA, No. L-41767, August 23, 1978, 84 SCRA 705; Aznar v. Bernad, No. L-81190, May 9, 1988, 161 SCRA 276.
- [107] Ruiz v. Court of Appeals, No. L-29213, October 21, 1977, 79 SCRA 525; Castillo v. Heirs of Vicente Madrigal, G. R. No. 62650, June 27, 1991, 198 SCRA 556.
- [108] Landayan v. Bacani, No. L-30455, September 30, 1982, 117 SCRA 117.
- [109] Dulay v. Court of Appeals, G. R. No. 108017, April 3, 1995, 243 SCRA 220 cited in Parañaque Kings Enterprises, Inc. v. Court of Appeals, G. R. No. 11538, February 16, 1997.
- [110] D. C. Crystal, Inc. v. Laya, G.R. No. 53597, February 28, 1989, 170 SCRA 734; Del Bros. v. Court of Appeals, G. R. No. 87678, June 16, 1992, 210 SCRA 33; Rava Development Corporation v. Court of Appeals, G. R. No. 96825, July 3, 1992, 211 SCRA 144; Merrill Lynch Futures, Inc. v. Court of Appeals, G. R. No. 97816, July 24, 1992, 211 SCRA 824.

[111] Mathay v. Consolidated Bank and Trust Company, No. L-23136, August 26, 1974, 58 SCRA 560; U. Bañez Electric Light Company v. Abra Electric Cooperative, Inc., No. L-59480, December 8, 1982, 119 SCRA 90; Dalandan v. Julio, No. L-19101, February 29, 1964, 10 SCRA 400; Marcopper Mining Corporation v. Garcia, No. L-55935, July 30, 1986, 143 SCRA 178.

[112] Tan v. Director of Forestry, No. L-24548, October 27, 1983, 125 SCRA 302.

[[113]] Ibid.

[114[]] Santiago v. Pioneer Savings and Loan Bank, G. R. No. 77502, January 15, 1988, 157 SCRA 100.

[115] Asia Banking Corporation v. Walter E. Olsen and Co., 48 Phil. 529 [1925].

[116] Peltan Development, Inc. v. Court of Appeals, G. R. No. 117029, March 29, 1997, 270 SCRA 82.

[117] Pineda v. Court of First Instance of Davao, 111 Phil. 643 [1961]

[118] Yuvienco v. Dacuycuy, No. L-55048, May 27, 1981, 104 SCRA 668.

[119] Ibid.

[120] Rules of Court, Rule 16, Sec. 3.

[121] Rules of Court, Rule 11, Secs. 1 and 5.

[122] Rules of Court, Rule 14, Sec. 12.

[123] Rules of Court, Rule 11, Sec. 2.

[124] Rules of Court, Rule 11, Sec. 3.

[125] Ibid.

[126] Rules of Court, Rule 11, Sec. 4.

[127] Ibid., Sec. 6.

[128] Ibid., Sec. 7.

[129] Rules of Court, Rule 19, Sec. 7.

[130] Alvero v. De La Rosa, 76 Phil. 428 [1946]; Valdez v. Ocumen, 106 Phil. 929 [1960]; Mangali v. Court of Appeals, L-47296, August 21, 1980, 99 SCRA 236; Legaspi-Santos v. Court of Appeals, G. R. No. 60577, October 11, 1983, 125 SCRA 22.

[131] FJR Garments Industries v. Court of Appeals, L-49320, June 29, 1984, 130 SCRA 216.

[132] Rules of Court, Rule 6, Sec. 6.

[133] Ibid., Sec. 7.

[134] Santo Tomas University v. Surla, G. R. No. 129718, August 17, 1998, 294 SCRA 382.

[135] Rules of Court, Rule 9, Sec. 2.

[136] Lama v. Apacible 79 Phil. 68 [1947]; Navarro v. Bello, 102 Phil. 1019 [1958]; Gojo v Goyala, G. R. No. 26768, October 30, 1970, 35 SCRA 557.

[137] Feria, Annotated 1997 Rules of Court, 41.

- [138] Rules of Court, Rule 8, Sec. 8.
- [139] Rules of Court, Rule 9, Sec. 2.
- [140] *Torres v. Court of Appeals*, L-25889, January 12, 1973, 49 SCRA 67.
- [141] Rules of Court, Rule 17, Sec. 2.
- [142] *Ibid.*, Sec. 3.
- [143] *Anaya v. Palaroan*, L-27930, November 26, 1970, 36 SCRA 97.
- [144] *Pascual v. Bautista*, L-21644, May 29, 1970, 33 SCRA 301.
- [145] *Permanent Concrete Products, Inc. v. Teodoro*, G. R. No. 29776, November 29, 1968, 26 SCRA 332.
- [146] Circular No. 1-89; Administrative Circular No. 4, September 4, 1988.
- [147] *Martinez v. de la Merced*, G. R. No. 82309, June 20, 1989, 174 SCRA 182.
- [148] Rules of Court, Rule 18, Sec. 2.
- [149] Administrative Circular No. 1 dated 28 January 1988.
- [150] *Macaraeg v. Court of Appeals*, G. R. No. 48008, January 20, 1989, 169 SCRA 259 citing *Lucenta v. Court of First Instance of Bukidnon*, G. R. No. L-39789, June 20, 1988, 162 SCRA 197.
- [151] *Son v. Son*, G. R. No. 73077, December 29, 1996, 251 SCRA 556.
- [152] *Sese v. Intermediate Appellate Court*, No. L-66186, July 31, 1987, 152 SCRA 585.
- [153] *Velasco v. Apostol*, G. R. No. 44588, May 9, 1989, 173 SCRA 228 cited in *Son v. Son*, *supra*, note 151.
- [154] *Son v. Son*, *supra*, note 151.
- [155] *Yu v. Mapayo*, No. L-29742, March 29, 1972, 44 SCRA 163.
- [156] *Lopez v. Liboro*, 81 Phil. 429 [1948].
- [157] Rules of Court, Rule 36, Sec. 1.
- [158] Rules of Court, Rule 34, Sec. 1.
- [159] Rules of Court, Rule 35, Sec. 1.
- [160] *Ibid.*, Sec. 2.
- [161] Rules of Court, Rule 9, Sec. 3.
- [162] Rules of Court, Rule 33, Sec. 1.
- [163] *Nepomuceno v. Commission on Elections*, G. R. No. 60601, December 29, 1983, 126 SCRA 472.
- [164] *Estrada v. Consolacion*, No. L-40948, June 29, 1976, 71 SCRA 523.
- [165] *Jugador v. de Vera*, 94 Phil. 704 [1954].
- [166] *Warner, Barnes & Co., Ltd. v. Luzon Surety Co., Inc.*, 95 Phil. 924 [1954].
- [167] *Fletcher v. Krise*, 4 Fed. Rules Service, 765, March 3, 1941.

- [168] Fletcher v. Evening Newspaper Co., 3 Fed. Rules Service, 539, June 28, 1940; Miranda v. Malate Garage & Taxicab, Inc., 99 Phil. 670 [1956].
- [169] Diman v. Alumbres, G. R. No. 131466, November 27, 1998, 299 SCRA 459.
- [170] Velasquez v. Court of Appeals, G. R. No. 124049, June 30, 1999, 309 SCRA 539.
- [171] Spouses Hontiveros v. Regional Trial Court of Iloilo, Br. 25, G. R. No. 125465, June 29, 1999, 309 SCRA 340.
- [172] Rules of Court, Rule 35, Sec. 4.
- [173] Guevarra v. Court of Appeals, Nos. L-49017 and L-49024, August 30, 1983, 124 SCRA 297.
- [174] Civil Code, Art. 9.
- [175] People v. Derpo, Nos. L-41040 and 43908-10, December 14, 1988, 168 SCRA 447.
- [176] People v. Molina, G. R. No. 70008, April 26, 1990, 184 SCRA 597.
- [177] People v. Escobar, No. L-69564, January 29, 1988, 157 SCRA 541.
- [178] Mirasol v. dela Cruz, No. L-32552, July 31, 1978, 84 SCRA 337.
- [179] National Housing Authority v. Court of Appeals, L-50877, April 28, 1983, 121 SCRA 777.
- [180] Lao v. To-Chip, No. L-76597, February 26, 1988, 158 SCRA 243.
- [181] People v. Escalante, No. L-37147, August 22, 1984, 131 SCRA 237.
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COMPARISON OF PROVINSIONAL REMEDIES

TABLE 1

DIFFERENCES AMONG PROVISIONAL REMEDIES

DEFINITION

GROUND S

PURPOSE

COURT WHICH CAN GRANT

1. Preliminary Attachment (Rule 57)

A provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the adverse party therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching party against the adverse party

a. In an action for the recovery of a specified amount or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;

b. In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of duty;

c. In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has been concealed, removed or disposed of to prevent its being found or taken by the applicant or an authorized person;

d. In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;

e. In an action against a party who has removed or disposed of his property, or is about to do so, with intent to

defraud his creditors;

f. In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication (Section 1)

As security for the satisfaction of any judgment that may be recovered by the claimant

Supreme Court, Court of Appeals, Regional Trial Court, Family Court, Metropolitan, Municipal and Municipal Circuit Trial Courts

2. Preliminary Injunction (Rule 58)

An 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 a 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 (Section 1)

a. That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

b. That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

c. That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual (Section 3)

To preserve the status quo or to resolve the last uncontested status quo

Supreme Court, Court of Appeals, Regional Trial Court, Family Court, Metropolitan, Municipal and Municipal Circuit Trial Courts

3. Temporary Restraining Order (TRO)

An order which may issue upon the filing of an application for preliminary injunction forbidding the defendant to do the threatened act until a hearing on the application can be had

a. Matter is of extreme urgency; and

b. The applicant will suffer grave injustice and irreparable injury before the matter can be heard on notice

To prevent grave injustice and irreparable injury to the applicant before the application for a writ of preliminary injunction can be acted upon

Supreme Court, Court of Appeals, Regional Trial Court, Family Court, Metropolitan, Municipal and Municipal Circuit Trial Courts

4. Receivership

Provisional remedy by which the court appoints a receiver as its representative and in behalf of all the parties to an action for the purpose of preserving and conserving the property in litigation and to prevent possible wastage or dissipation or otherwise to carry the judgment into effect

a. When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action

or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;

b. When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

c. After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

d. Whenever in other cases, it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering or disposing of the property in litigation.

During the pendency of an appeal, the appellate court may allow an application for the appointment of a receiver to be filed in and decided by the court of origin and the receiver appointed to be subject to the control of said court.

To preserve the property during the pendency of the litigation or to dispose of it according to the judgment when it is finally rendered or otherwise to carry the judgment into effect

Supreme Court, Court of Appeals, Regional Trial Court, Family Court, Metropolitan, Municipal and Municipal Circuit Trial Courts

5. Replevin

Court orders the seizure of chattels or goods claimed by a party as his which are allegedly wrongfully taken or detained by another person and to be delivered to the former to be retained by him during the pendency of the action

a. Applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof;

b. The property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information and belief;

c. The property has not been distrained or taken of a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under custodia legis, or if so seized, that it is exempt from such seizure or custody;

d. The actual market value of the property.

To prevent the subject property from being disposed of during the pendency of the case

Regional Trial Court, Family Court, Metropolitan, Municipal, and Municipal Circuit Trial Courts

6. Support Pendente Lite

Order issued by a court in which an action for support has been filed fixing an amount of support to be given by the adverse party to the applicant during the pendency of the case

When equity and justice may require having due regard to the probable outcome of the case and such other circumstances as may suggest the reasonability of granting support pendente lite

To answer the material needs of the applicant during the pendency of the case

Family Court

TABLE 2 BASIC CHARACTERISTICS OF PROVISIONAL REMEDIED**WHEN AVAILABLE****HOW GRANTED****EFFECTIVITY****HOW DISSOLVED/DISCHARGED****1. Preliminary Attachment**

At any stage of the action but before entry of final judgment

Ex-parte/or upon motion and hearing

During the pendency of the case unless earlier discharged or quashed by the court

By order of the court after notice and hearing on the ground that the preliminary attachment was improperly or irregularly issued or enforced or the bond is insufficient and when the adverse party makes a cash deposit or files a counterbond executed to the attaching party with the clerk of court where the application is made in an amount equal to that fixed by the court in the order of attachment, exclusive of cost

2. Preliminary Injunction

At any stage of the action but before judgment or final order

Upon motion and hearing

During the pendency of the case unless earlier discharged or quashed by the court

By order of the court upon affidavit of the party enjoined or if it appears after hearing that although the applicant is entitled to the injunction or restraining order, the issuance or continuance thereof would cause irreparable damage to the party or person enjoined while the applicant can be fully compensated for such damages as he may suffer and the former files a counterbond

3. Temporary Restraining Order (TRO)

During the pendency of the application for a writ of preliminary injunction

General Rule: Inter-partes

(Summary hearing)

Exception: TRO granted by Judge for 72 hours – Ex-parte

Not more than 20 days from service upon the person sought to be enjoined

a. Upon resolution by the court of the application for a writ of preliminary injunction or the expiration of the 20-day period from service of the writ upon the party, whichever comes first;

b. Upon affidavit of the party enjoined or after hearing if it appears that although the applicant is entitled to a TRO, the issuance or continuance thereof, would cause irreparable damage to the party enjoined while the applicant can be fully compensated for such damage as he may suffer upon the applicant's filing of a counterbond

4. Receivership

At any stage of the proceeding and even after finality of judgment

Inter-partes

Until discharged by the court

- a. Filing by the adverse party of a counterbond;
- b. If it is shown that the appointment of a receiver was obtained without sufficient cause;
- c. The court motu proprio or on motion shall determine that the necessity of a receiver no longer exists

TABLE 3

DIFFERENCES OF BONDS IN PROVISIONAL REMEDIES

PROVISIONAL REMEDY

WHETHER REQUIRED

AMOUNT

UNDERTAKINGS UNDER THE COUNTERBOND

1. Preliminary attachment

Required

Discretionary with the court but not exceeding the applicant's claim

To pay:

1. All costs which may be adjudged to the adverse party; and
2. All damages which the adverse party may sustain by reason of the attachment if the court shall finally adjudge that the applicant was not entitled thereto

2. Preliminary injunction

Required

Discretionary with the court

To pay all damages which the adverse party may sustain by reason of the injunction if the court shall finally decide that the applicant was not entitled thereto

3. Temporary Restraining Order (TRO)

Required but the court may exempt

When required, discretionary with the court

To pay all damages which the adverse party may sustain by reason of the injunction, if the court shall finally decide that the applicant was not entitled thereto

4. Receivership

Required

Discretionary with the court

To pay damages the adverse party may sustain by reason of the appointment of a receiver in case the applicant shall have procured such appointment without sufficient cause

5. Replevin

Required

Double the value of the property

- a. For the return of the property or its value to the adverse party if such be adjudged; and
- b. To pay to defendant such damages as he may recover from the applicant in the action

6. Support pendente lite

Not required

Not applicable

Not applicable

TABLE 4 DIFFERENCES OF COUNTERBONDS IN PROVISIONAL REMEDIES

PROVISIONAL REMEDY

WHETHER IT MAY BE FILLED

AMOUNT

UNDERTAKINGS UNDER THE COUNTERBOND

1. Preliminary attachment

Yes

Equal to that fixed by the court in the order of attachment

Payment of any judgment that the attaching party may recover in the action

2. Preliminary injunction

Yes

Discretionary with the court

Pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order

3. Temporary Restraining Order (TRO)

Yes. If a bond was filed by the claimant, then a counterbond may be filed by the adverse party; but if no bond is filed by the former, what the adverse party can file is a bond

Discretionary with the court

Pay all damages which the applicant may suffer by the denial or the dissolution of the injunction or restraining order

4. Receivership

Yes

Discretionary with the court

To pay all damages which the applicant may suffer by reason of the acts, omissions, or other matters specified in the application or ground for such appointment

5. Replevin

Yes

Double the value of the property as stated in the plaintiff's affidavit

a. The delivery of the property or its value to the plaintiff if so adjudged; and

b. To pay such damages which the plaintiff may recover against the defendant

6. Support pendente lite

No

Not applicable

Not applicable

TABLE 5 DIFFERENCES AMONG THE THREE (3) MODES OF APPEAL

ORDINARY APPEAL

PETITION FOR REVIEW

APPEAL BY CERTIORARI

1. How appeal is initiated

Ordinary appeal by notice of appeal or record on appeal

By filing a petition for review

By filing a petition for review on certiorari

2. Where to appeal

a. From the Metropolitan, Municipal and Municipal Circuit Trial Courts to the Regional Trial Courts, and from the Regional Trial Courts to the Court of Appeals in decisions of the Regional Trial Court rendered in the exercise of their respective original jurisdictions

b. From the Metropolitan, Municipal and Municipal Circuit Trial Courts to the Court of Appeals for decisions rendered by the said courts in the exercise of their delegated jurisdiction, in which case the Metropolitan, Municipal and Municipal Circuit Trial Courts act as Regional Trial Courts

From the Regional Trial Court to the Court of Appeals, a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction

From the Regional Trial Court to the Supreme Court on a pure question of law, a decision of the Regional Trial Court rendered in the exercise of its original jurisdiction

3. Nature of appeal

Matter of right

Matter of appellate court's discretion

Matter of appellate court's discretion

4. To whom appellate docket and other lawful fees should be paid

Clerk of Court whose decision is being appealed

Clerk of Court of the Court of Appeals

Clerk of Court of the Supreme Court

5. Payment of appellate docket and other lawful fees as a requirement of perfection of appeal

Not a requisite for perfection of appeal but a ground for dismissal if not paid on time

A requirement for perfection of appeal

A requirement for perfection of appeal to be paid to the Clerk of Court of the Appellate Court

7. Requirement of record on appeal

In special proceedings and other cases of multiple or separate appeals

Not required

Not required

9. Perfection of appeal as to appellant

Upon filing of the notice of appeal in due time or if record on appeal is required, upon approval of the record on appeal in due time

Upon timely filing of a petition for review and payment of corresponding docket and other lawful fees

Upon timely filing of the petition for review on certiorari and payment of docket and other lawful fees

10. When court whose decision is being appealed loses jurisdiction

a. In appeal by notice of appeal – upon perfection of the appeal filed in due time and the expiration of the time to appeal of the other parties

b. In appeal by record on appeal – upon approval of the records on appeal filed in due time and the expiration of its time to appeal of the other parties

Upon the perfection of the appeals filed in due time and the expiration of the time to appeal by the other parties

Upon the perfection of the appeals filed in due time and the expiration of the time to appeal by the other parties

11. As to questions which may be raised

Question of fact, question of law and question of fact and law

Question of fact, question of law, question of fact and law

Only question of law

12. How parties are referred to

Appellant – party appealing

Appellee – adverse party

Petitioner – party appealing

Respondent – adverse party

Petitioner – party appealing

Respondent – adverse party

TABLE 6 DIFFERENCES BETWEEN CERTIORARI, PROHIBITION AN MANDAMUS

CERTIORARI

PROHIBITION**MANDAMUS**

1. Purpose of the writ

To annul or modify an act performed by respondent

To prevent commission or carrying out the act

Compel the performance or act desired

2. Act sought to be controlled

Judicial or quasi-judicial functions

Judicial, quasi-judicial or ministerial functions

Legal duty

3. Respondent

Persons exercising judicial or quasi-judicial functions

Persons exercising judicial, quasi-judicial and ministerial functions

Persons having legal duty

4. Nature of the remedy

Corrective remedy and refers to acts already consummated

Preventive remedy and refers to acts still to be done

Directory remedy commanding a person to do a legal duty

TABLE 7 DIFFERENCES BETWEEN PROHIBITION AND INJUNCTION**PROHIBITION****INJUNCTION**

1. Respondent

Generally a court, tribunal or person exercising judicial or ministerial functions

Generally against a party in an action for injunction

2. Court's jurisdiction

Lack or excess of jurisdiction may be a ground

Jurisdiction of the court is not questioned

3. Nature of the remedy

Always a main action with preliminary injunction as a provisional remedy

Can be a main action with preliminary injunction as a provisional remedy

TABLE 8

DIFFERENCES BETWEEN FORCIBLE ENTRY AND UNLAWFUL DETAINER

FORCIBLE ENTRY

UNLAWFUL DETAINER

1. Nature of defendant's possession

Unlawful from the beginning

Initially lawful, then it becomes unlawful

2. Demand to vacate

No need

There is a need

3. Proof of prior possession

Plaintiff must prove it

Not necessary for plaintiff to prove it

4. From what point is the one (1) year period to file action counted

From forcible entry

From demand to vacate

TABLE 9 DIFFERENCES BETWEEN DIRECT CONTEMPT AND INDIRECT CONTEMPT

DIRECT CONTEMPT

INDIRECT CONTEMPT

1. Where the act is committed

In the presence of or so near the court or judge as to obstruct or interrupt proceedings thereon

Out of or not in the presence of the court but which tends to impede, obstruct or degrade the administration of

justice

2. Necessity of a charge

Not necessary

A written charge or a show cause order is necessary

3. Necessity of a hearing

No need – the court can summarily impose a sanction upon the respondent

There is a need of a hearing

4. Appealability of judgment

Not appealable – but may be challenged in a petition for certiorari

Appealable

5. Sanctions

a. Fine not exceeding Php 200.00 in the Municipal, Metropolitan and Municipal Circuit Trial Court and not exceeding Php 2,000.00 in the Regional Trial Court, Court of Appeals and Supreme Court

b. Imprisonment not exceeding one (1) day in the Municipal, Metropolitan and Municipal Circuit Trial Courts and not exceeding ten (10) days in the Regional Trial Court, Court of Appeals and Supreme Court

c. Both fine and imprisonment

a. Fine not exceeding Php 5,000.00 in the Municipal, Metropolitan and Municipal Circuit Trial Courts and not exceeding Php 30,000.00 in the Regional Trial Court, Court of Appeals and Supreme Court

b. Imprisonment not exceeding one (1) month in the Municipal, Metropolitan and Municipal Circuit Trial Courts and not exceeding six (6) months in the Regional Trial Court, Court of Appeals and Supreme Court

c. Both fine and imprisonment

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