

CIVIL PROCEDURE<sup>1</sup>

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<sup>1</sup> The contents of this note were lifted from Justice Florenz Regalado's book [Remedial Law Compendium], some were transcribed from the audio lectures of Dean Willard Riano [San Sebastian- Recolletos], Dean Tranquil Salvador III [Ateneo].

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**Important principles to consider:**

1. No one can stop me from becoming a lawyer! The Supreme Court cannot, all that it can do is to delay me 4 times!
2. Remedial law is based on human experience. It was based on the "civilized" reaction of a person when confronted with certain situations. E.g. Pag hinabla ang isang tao, the natural reaction would be denial (defense) or ihahabla din iyong naghabla sa kanya (counterclaim).

**Concept of Remedial Law**

- + Remedial law is that branch of law which prescribes the method of enforcing rights or obtaining redress for their invasion (*Bustos vs. Lucero, 81 Phil. 640*).
- + It is also known as **procedural law**.
- + Another name is **adjective law**, for it describes the manner by which a person may enforce his rights (*American concept*).

SUBSTANTIVE LAW	REMEDIAL LAW
<ol style="list-style-type: none"> <li>1. Creates, defines and regulates rights and duties regarding life, liberty or property which when violated gives rise to a cause of action.</li> <li>2. Declares what acts are crimes and prescribes the punishment for committing them.</li> <li>3. Makes vested rights possible</li> <li>4. Prospective application</li> <li>5. Cannot be enacted by the Supreme Court</li> </ol>	<ol style="list-style-type: none"> <li>1. Prescribes the methods of enforcing those rights and obligations created by substantive law by providing a procedural system for obtaining redress for the invasion of rights and violations of duties and by prescribing rules as to how suits are filed, tried and decided by the courts.</li> <li>2. Provides or regulates the steps by which one who commit a crime is to be punished.</li> <li>3. No vested rights</li> <li>4. Retroactive: governs acts and transactions which took place</li> <li>5. SC is expressly empowered to promulgate procedural rules</li> </ol>

**Civil Procedure**

- + The body of law usually rules enacted by legislature or courts governing the methods and practice use in civil litigation.

**Cases not covered by the Rules of Court**

1. Election Cases
2. Land registration proceedings
3. Cadastral proceedings
4. Naturalization proceedings
5. Insolvency proceedings
6. Court marshal proceedings
7. Administrative proceedings.
8. Quasi-judicial

**Note:** The tribunal may adopt the rules of court by analogy in case there is no prescribe rules for its proceedings.

**What is a court?**

- ✚ It is an organ of government belonging to the judicial department the function of which is the application of the laws to the controversies brought before it as well as the public administration of justice.
- ✚ The entity in the government organized for the proper administration of justice at the time and place prescribed by law. It is an entity in which a portion of the judicial power is vested.
- ✚ It is a board or tribunal which decides a litigation or contest.

COURT	JUDGE
<ol style="list-style-type: none"> <li>1. A tribunal officially assembled under authority of law</li> <li>2. A being in imagination comparable to a corporation</li> <li>3. An entity</li> <li>4. Possesses the elements of stability and permanency</li> </ol>	<ol style="list-style-type: none"> <li>1. Simply an officer of such tribunal</li> <li>2. A physical person</li> <li>3. A person appointed to the court</li> <li>4. May come and go anytime</li> </ol>

**What is a constitutional court?**

- ✚ A court created by a direct constitutional provision.
- ✚ E.g. Supreme Court

**What is a statutory court?**

- ✚ Created by law other than the constitution.
- ✚ E.g. Sandiganbayan. It was not created by the constitution but only by law pursuant to a constitutional mandate.

**What is a court of law?**

- ✚ It is a court which decides a case according to the existing laws.

**What is a court of equity?**

- ✚ It is a court which adjudicates a controversy according to the common precepts of what is right and just without inquiring into the terms of the statute.

**Are Philippine courts, courts of law and equity?**

- ✚ Yes, hence both Legal and equitable jurisdiction is dispensed with in the same tribunal (*US vs. Tamparong, 31 Phil. 321*).
- ✚ However, it must be noted that equity comes in when there is no law applicable to the case. If there is a law, apply the law, even if it is unfavorable to the one asking for relief (*Dura lex, sed lex*).

**Liberal Construction Rule (Interpretation of the Rules)**

- ✚ Applicable when there is a conflict between the interest of justice and technicalities. Interest of justice prevails because the reason for the rules is to perpetuate justice.
- ✚ **Rule 1, Section 6-** "The Rules shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding."

**Do the Rules have retroactive effect?**

- ✚ **Gen. Rule:** Prospective application.
- ✚ **Exception:** It can be applied retroactively on pending cases.
- ✚ **Exception to the exception:** Retroactive application will not apply if it will cause injustice.

**Who has the power to amend and suspend the rules?**

- ✚ **Only the Supreme court**, in the following instances:

1. When compelling reasons so warrant or when the purpose of justice requires it.
2. To relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure and the mere invocation of substantial justice is not a magical incantation that will automatically compel the Court to suspend procedural rules.
3. Where substantial and important issues await resolution.
4. When transcendental matters of life, liberty or state security are involved.
5. The constitutional power of the Supreme Court to promulgate rules of practice and procedure necessarily carries with it the power to overturn judicial precedents on points of remedial law through the amendment of the Rules of Court.

#### Can the Legislature amend the Rules of Court?

- ✚ Yes, because the powers of the legislature is plenary in nature. It extends to all matters, unless it is a matter prohibited by the Constitution. There is no specific provision prohibiting the Legislature in amending the Rules of Court and there is also no specific provisions allowing the Legislature in doing the same.

#### Limitations on the rule making power of the Supreme Court

1. The rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases;
2. They shall be uniform for all courts of the same grade;
3. They shall not diminish, increase, or modify substantive rights;
4. The power to admit attorneys to the Bar is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice or personal hostility, but is the duty of the court to exercise and regulate it by a sound and judicial discretion.

#### Role of the Judiciary: are the provisions of the Rules of Court self-executing?

- ✚ No, kahit nakita kayo ng judge na nag-aaway at nagpapatayan, hindi niya pwedeng sabihin na pumunta kayo sa korte for him to decide your case. All that he can do is to wait for a complaint to be filed in court. *The rules will only have life upon the institution of a civil action!*

#### What is a judicial inquiry?

- ✚ It is a stage where the court decides **constitutional questions** that crop up in the process.
- ✚ These are the **requisites** of judicial inquiry:
  - a. Actual case in controversy- there is a case filed in court which is ripe for judicial adjudication.
  - b. Proper party- the one who raised the question is the one who was injured or is in imminent danger of sustaining an injury.
  - c. The question must be raised at the earliest opportunity.
  - d. There is a need for deciding constitutional question.

#### Some Condition Precedents before Filing a Case in Court:

1. In a case for collection of money- there must be demand to pay
2. In cases of unlawful detainer- there must be a demand to pay rent and to vacate the premises.
3. Where the case concerns family members it must first be settled among them before a civil action is filed in court.
4. **Katarungang Pambarangay Conciliation Procedure (Sections 399-422 of LGC)**

##### **Rules in the Lupon:**

1. All actions, except those falling within the exceptions, shall be referred to the LUPON before it must be instituted in court.
2. No lawyer is allowed to appear as counsel in the barangay.
3. Only natural persons can appear in the barangay.

##### **Illustration:**

Don Santiago died. He left a mass of properties. There was a conflict among the heirs. One heir immediately brought the case to the court without going first to the Lupon. The other heirs move to dismiss the case. Can the motion to dismiss prosper?

**Answer:** No! Because, upon the death of a person his estate acquires a legal personality. Under the rules, referring a case to the Lupon is only viable if there is no juridical person involved. The estate of Don Santiago is considered by law as a juridical person. Ergo, referral to the Lupon is not necessary.

**NOTE:**

1. Decisions of the LUPON becomes final and executory after 10 days from pronouncement of judgment. Ergo, any repudiation thereto must be done within the 10 day period.
2. The decision must be enforced within 60 days from the DATE of PAYMENT stated in the settlement judgment; otherwise plaintiff may file a civil action in court.
3. If settlement is not possible, plaintiff can obtain a certification to file action in court which is to be attached to the civil action. However, if settlement was made but the decision of the Lupon was not enforced and the 60 day period of enforcement had lapsed, the plaintiff may file a civil action in court for ENFORCEMENT OF BARANGAY DECISION as its cause of action.
4. When a case is referred to the lupon, prescription of action is suspended. However the duration of the said suspension only last for 60 days from the referral of the case to the Lupon.
5. Settlement of the civil aspect does not compromise the criminal aspect. But the criminal case maybe dismissed upon the motion of the defendant because of lack of evidence since the complainant desisted.

**What is the effect if these condition precedents were not complied with?**

✚ A MOTION TO DISMISS can be filed on the ground of LACK of a CAUSE of ACTION. The case is premature and not yet ripe for judicial adjudication!

**What is the primordial consideration before one may file a civil action?**

✚ One must have a CAUSE of ACTION! (*Section 1, Rule 1*)

**CAUSE OF ACTION**

**Rule on Causes of Action:**

✚ A plaintiff may state as many causes of actions in the alternative or otherwise, but such actions may also be joined.

- 1 COA= 1 civil action
- 2 or more COA= 1 civil action

**Concept of a Cause of Action**

✚ The act or omission by which a party violates the rights of another

**ELEMENTS:** (*Ma-ao Sugar Central v. Barrios, 76 P 666*)

1. Plaintiff has a right
2. Defendant has the obligation to respect the right
3. Defendant violates the right
4. The violation of the right causes damages to the plaintiff

**Do you need to prove damages for you to have a cause of action?**

✚ NO! Under the law, it suffice that your right is violated.

### Cause of Action contra Civil Action

- ✚ *Civil actions-* Purpose is either to protect a right or prevent or redress wrong.

### Cause of Action contra Right of Action

- ✚ Before you can file a complaint, you must have the right to file such complaint. The right to file the complaint is called Right of Action, and a right of action must be based on a Cause of Action.
- ✚ *Right of Action-* Remedial right or right to relief granted by law to a party to institute an action against a person who has committed a delict or wrong against him.

### Limitations on Joinder of Causes of Action

- ✚ There must be a common question of **fact or law** common to both parties joined arising out of the same or series of transactions. [Section 6, Rule 3].
  1. **Jurisdiction** (applicable to MTC)
    - ✚ MTC is a court of limited jurisdiction.
  2. **Venue**
    - ✚ Joinder may be allowed in the RTC provided one of the causes of action falls within the jurisdiction of the said court and the venue lies therein.
  3. **Joinder should not include special civil actions.**

### Failure to state a Cause of Action

- ✚ **Indications:** Plaintiff's allegations are insufficient for the court to know that the rights of the plaintiff were violated by the defendant.

#### Remedies:

##### Defendant

1. Files a motion to dismiss on the ground of failure to state a cause of action.
2. An answer alleging the failure to state a cause of action as affirmative defense.

**Comment:** This second remedy can be availed of in practice, para mas maraming kita, kasi pag pinadismis mo kaagad ang kaso- wala ng susunod na bayad...file an answer with affirmative defense and ask for preliminary hearing, as such, as if a motion to dismiss was filed.....count it, tatlong bayaran na yon!

**Plaintiff-** amend the complaint, before the other party served a responsive pleading (matter of right for the plaintiff) or after a responsive answer was filed (discretion of the court)

#### Question: What if a motion to dismiss was filed; can the plaintiff amend his complaint as a matter of right?

- ✚ YES! A motion to dismiss is not a responsive pleading.

### Splitting a single Cause of Action- not allowed by the rules

- ✚ It is the practice of dividing one cause of action into different parts and making each part the subject of a separate complaint.

#### Remedies:

**Defendant-** Motion to dismiss on the ground of LITIS PENDENTIA, if the complaint is still pending or RES JUDICATA, if any of the complaint is terminated by final judgment.....OR.....file an answer alleging either of the above cited grounds as affirmative defense.

**Plaintiff-** amend the complaint, before the other party served a responsive pleading (matter of right for the plaintiff) or after a responsive answer was filed (discretion of the court)

### Misjoinder of Causes of Action, effect

- ✚ It is not a ground for dismissal of an action.

- ✚ A misjoined cause of action may, on motion of a party or on the initiative of the court be severed and proceeded with separately.

**Illustration:**

**BAR 2002 [jurisdiction; cause of action]**

**Question:** P sued A in the RTC-Manila to recover the following sums: (1) P200,000.00 on an overdue promissory note, (2) P80,000.00 on the purchase price of a computer, (3) P150,000.00 for damages to his car and (4) P100,000.00 for attorney's fees and litigation expenses. Can A move to dismiss the case on the ground that the court has no jurisdiction over the subject matter? Explain.

**Answer:** No, because the RTC-Manila has jurisdiction over the subject matter. P may sue A in one complaint asserting as many causes of action as he may have and since all the claims are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction. [Rule 2, sec. 5(d)]. The aggregate amount claimed is P450,000.00, exclusive of the amount of P100,000.00 for attorney's fees and expenses of litigation. Hence, the RTC-Manila has jurisdiction. (Totality Principle)

**BAR 1999 (Splitting Cause if Action)**

- a) What is the rule against splitting a cause of action and its effect on the respective rights of the parties for failure to comply with the same?
- b) A purchased a lot from B for P1,500,000.00. He gave a down payment of P500,000, signed a promissory note payable thirty days after date, and as a security for the settlement of the obligation, mortgaged the same lot to B. When the note fell due and A failed to pay, B commenced suit to recover from A the balance of P1,000,000.00. After securing a favorable judgment on his claim, B brought another action against A before the same court to foreclose the mortgage. A now files a motion to dismiss the second action on the ground of bar by prior judgment. Rule on the motion.

**Suggested Answer:**

- a. The rule against splitting a cause of action and its effect are that if two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others. (Sec. 4, Rule 2)
- b. The motion to dismiss should be granted. When B commenced suit to collect on the promissory note, he waived his right to foreclose the mortgage. B splitted his cause of action.

**BAR 2002: Cause of Action**

**Question:** Rolando filed a petition for declaration of the nullity of his marriage to Carmela because of the alleged psychological incapacity of the latter. After trial, the court rendered judgment dismissing the petition on the ground that Rolando failed to prove the psychological incapacity of his wife. The judgment having become final, Rolando filed another petition, this time on the ground that his marriage to Carmela had been celebrated without a license. Is the second action barred by the judgment in the first? Why?

**Suggested answer:** No, the second action is not barred by the judgment in the first because they are different causes of action. The first is for annulment of marriage on the ground of psychological incapacity under Article 36 of the Family Code, while the second is for declaration of nullity of the marriage in view of the absence of a basic requirement, which is a marriage license. [Arts, 9 & 35(3), Family Code]. They are different causes of action because the evidence required to prove them are not the same. [Pagsisihan v. Court of Appeals, 95 SCRA 540]



- ✚ **Etymology:** *Juris + dico*, means "I speak of the law"
- ✚ Refers to the power or authority of the court to hear, try and decide a case (*Zamora vs. CA, 183 SCRA 279*). It includes the court's power to execute its decision (*People vs. Echegaray*).
- ✚ Jurisdiction is either appellate or original. An original jurisdiction is either exclusive or concurrent.

### Principle of Judicial Hierarchy

- ✚ Applies when there is an exercise of concurrent jurisdiction of the courts.
- ✚ A higher court will not entertain direct resort to it unless the redress cannot be obtained in the appropriate courts.
- ✚ This is an ordained sequence of recourse to courts vested with concurrent jurisdiction, beginning from the lowest, on to the next highest and ultimately to the highest. This hierarchy is determinative of the venue of appeals, and is likewise determinative of the proper forum for petitions for extraordinary writs. This is an established policy necessary to avoid inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to preclude the further clogging of the Court's docket.
- ✚ However, by way of exception cases which involve **transcendental importance or paramount interest** can be filed directly to the Supreme Court.

### Doctrine of Primary Jurisdiction

- ✚ Courts will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demand the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.

### Doctrine of Adherence of Jurisdiction

- ✚ Once a court has acquired jurisdiction, that jurisdiction continues until the court has done all that it can do in the exercise of that jurisdiction.
- ✚ Once jurisdiction has attached, it cannot be ousted by subsequent happenings or events, although of a character which would have prevented jurisdiction from attaching in the first instance. The court will decide on the case until it disposes it.

#### Illustration:

Suppose in an action for a sum of money (1 million), was filed in the RTC. During the trial of the case it was convincingly established that the liability of the defendant was only 100, 000 cognizable by the MTC. Can the defendant move to dismiss on the ground of lack of jurisdiction? No, the court already acquired jurisdiction by virtue of the allegations of a valid complaint. Its jurisdiction will not be ousted by contrary evidence. The court should continue with the case and render judgment for 100, 000. This is adherence of jurisdiction doctrine.

### Doctrine of Non-interference or Doctrine of Judicial Stability

- ✚ Courts of equal and coordinate jurisdiction cannot interfere with each other's orders.
- ✚ The principle also bars a court from reviewing or interfering with the judgment of a co-equal court over which it has no appellate jurisdiction or power of review.

#### Are Jurisdiction and Venue the same in civil cases?

- ✚ NO! In civil cases Jurisdiction and Venue are different. In Criminal Cases venue is jurisdictional. Such that when a criminal case is filed in an improper venue, the court does not acquire jurisdiction over the case.

VENUE refers to the location of the court where the case is to be filed.

#### Can jurisdiction be agreed upon by the Parties?

- ✚ Never! Jurisdiction is conferred by law. **Also it is not waivable.**

### Is there a jurisdiction by estoppel?

- None. Estoppel does not confer a court's jurisdiction, but it can bar a party from assailing such jurisdiction.

### How is Jurisdiction acquired over the Subject Matter?

- Conferred by law** and is determined **by the allegations of the parties!**
- General Rule:** Jurisdiction over the subject matter may be raised at any stage of the proceedings, even for the first time on appeal.
- Exception:** when one is declared as **estopped- estoppel by laches** (*Tijam vs. Sibonghanoy*).

#### Illustration of allegations:

- Pay **and** vacate -> unlawful detainer (MTC)
- Pay **or** vacate -> action for a sum of money (depends upon the amount)
- Comply with the conditions of the lease **and** to vacate -> UD (MTC)
- Comply **or** vacate -> specific performance (RTC)
- UD:** there is a need to demand to vacate
- FE:** no such need
- Amount claimed or damages-* complaint for damages; totality rule not applicable
- Amount claimed and damages-* collection; apply totality rule

**Note: Effect of estoppel on objections to jurisdiction:** The active participation of a party in a case is tantamount to recognition of that court's jurisdiction and will bar a party from impugning the court's jurisdiction.

### How is jurisdiction over the issues determined?

- Jurisdiction over the issues is conferred and determined by the pleadings of the parties. The pleadings present the issues to be tried and determine whether or not the issues are of fact or law.
- Jurisdiction over the issues may also be determined and conferred by stipulation of the parties as when in the pre-trial, the parties enter into stipulations of facts and documents or enter into agreement simplifying the issues of the case.
- It may also be conferred by waiver or failure to object to the presentation of evidence on a matter not raised in the pleadings. Here the parties try with their express or implied consent issues not raised by the pleadings. The issues tried shall be treated in all respects as if they had been raised in the pleadings.

### How is jurisdiction over the parties acquired?

- Plaintiff-** by filing of a complaint
- Defendant-** thru valid service of summons or thru his voluntary appearance (filing of an answer).
- Jurisdiction over the res-** acquired thru summons by publication or seizure.

#### Jurisdiction contra Exercise of jurisdiction

Jurisdiction	Exercise of Jurisdiction
The power or authority of a court to hear, try and	The exercise of the authority to decide a case. It is the process by which the authority to decide a case is put

decide a case.	into action. It is, unless otherwise provided by the law itself, governed by the Rules of Court or by orders which are, from time to time, issued by the Supreme Court.
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### Error of Jurisdiction contra Error of Judgment

Error of Jurisdiction	Error of Judgment
<p>One where the act complained of was issued by the court without or in excess of jurisdiction. It occurs when the court exercises a jurisdiction not conferred upon it by law, or when the court or tribunal although with jurisdiction, acts in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction.</p> <p><b>Remedy:</b> Correctible only by the extraordinary writ of <i>certiorari</i>.</p>	<p>One which the court may commit in the exercise of its jurisdiction. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment.</p> <p><b>Remedy:</b> Correctible by appeal</p>

### JURISDICTION OF COURTS

SUPREME COURT	<p><b>Civil Cases</b></p> <p><b>I. Exclusive original jurisdiction</b> Petitions for <i>certiorari</i>, prohibition and <i>mandamus</i> against the CA, COMELEC, COA, CTA and <i>Sandiganbayan</i>.</p> <p><b>II. Concurrent jurisdiction</b></p> <ol style="list-style-type: none"> <li><b>1. With Court of Appeals</b> In petitions for <i>certiorari</i>, prohibition and <i>mandamus</i> against the RTC, CSC, Central Board of Assessment Appeals, NLRC, Quasi-judicial agencies, and writ of <i>kalikasan</i>, all subject to the doctrine of hierarchy of courts.</li> <li><b>2. With the CA and RTC</b> In petitions for <i>certiorari</i>, prohibition and <i>mandamus</i> against lower courts and bodies and in petitions for <i>quo warranto</i>, and writs of <i>habeas corpus</i>, all subject to the doctrine of hierarchy of courts.</li> <li><b>3. With CA, RTC and Sandiganbayan</b> For petitions for writs of <i>amparo</i> and <i>habeas data</i>.</li> <li><b>4. Concurrent original jurisdiction with the RTC</b> In cases affecting ambassadors, public ministers and consuls.</li> </ol> <p><b>III. Appellate jurisdiction</b></p> <ol style="list-style-type: none"> <li><b>1.</b> By way of petition for review on <i>certiorari</i> against CA, <i>Sandiganbayan</i>, RTC on pure questions of law and CTA in its decisions rendered <i>en banc</i>.</li> <li><b>2.</b> In cases involving the constitutionality or validity of a law or treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance or regulation, legality of a tax, impost, assessment, toll or penalty, jurisdiction of a lower court; and</li> <li><b>3.</b> All cases in which the jurisdiction of any court is in issue;</li> <li><b>4.</b> All cases in which an error or question of law is involved</li> </ol>
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<b>COURT OF APPEALS</b>	<p><b>CIVIL CASES</b></p> <p><b>I. Exclusive original jurisdiction</b> Actions for the annulment of the judgments of the RTC.</p> <p><b>II. Concurrent original jurisdiction</b></p> <p><b>1. With SC</b></p> <ul style="list-style-type: none"> <li>- To issue writs of <i>certiorari</i>, prohibition and <i>mandamus</i> against the RTC, CSC, CBAA, other quasi-judicial agencies mentioned in Rule 43, and the NLRC, and writ of <i>kalikasan</i>.</li> </ul> <p><b>2. With the SC and RTC</b></p> <ul style="list-style-type: none"> <li>- To issue writs of <i>certiorari</i>, prohibition and <i>mandamus</i> (CPM) against lower courts and bodies and writs of <i>quo warranto</i>, <i>habeas corpus</i>, whether or not in aid of its appellate jurisdiction, and writ of continuing <i>mandamus</i> on environmental cases.</li> </ul> <p><b>3. With SC, RTC and Sandiganbayan</b></p> <ul style="list-style-type: none"> <li>- For petitions for writs of <i>amparo</i> and <i>habeas data</i> where the action involves public data or government office.</li> </ul> <p><b>III. Exclusive appellate jurisdiction</b></p> <ol style="list-style-type: none"> <li>1. By way of ordinary appeal from the RTC and the Family Courts.</li> <li>2. By way of petition for review from the RTC rendered by the RTC in the exercise of its appellate jurisdiction.</li> <li>3. By way of petition for review from the decisions, resolutions, orders or awards of the CSC, CBAA and other bodies mentioned in Rule 43 and of the Office of the Ombudsman in administrative disciplinary cases.</li> <li>4. Over decisions of MTCs in cadastral or land registration cases pursuant to its delegated jurisdiction.</li> </ol>
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<b>Sandiganbayan</b>	<p>(1) Original jurisdiction in all cases involving</p> <ol style="list-style-type: none"> <li>a) Violations of R.A. 301958</li> <li>b) Violations of R.A. 137959</li> <li>c) Sequestration cases</li> <li>d) Bribery where one or more of the principal accused are occupying the following positions in the government, whether in permanent, acting or interim capacity at the time of the commission of the offense: <ol style="list-style-type: none"> <li>i. Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989</li> <li>ii. Members of Congress and officials thereof classified as G-27 and up under R.A. 6758</li> <li>iii. Members of the Judiciary</li> <li>iv. Chairmen and Members of the Constitutional Commissions</li> <li>v. All other national and local officials classified as Grade 27 and higher under R.A. 6758.</li> </ol> </li> <li>e) Other offenses or felonies committed by the public officials and employees mentioned in Sec. 4(a) of R.A. 7975 as amended by R.A. 8249 in relation to their office</li> <li>f) Civil and criminal cases filed pursuant to and in connection with EO Nos. 1, 2, 14-A.</li> </ol> <p>(2) Concurrent original jurisdiction with SC, CA and RTC for petitions for writs of <i>habeas data</i> and <i>amparo</i>.</p>
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RTC	<p><b>Civil Cases</b></p> <p><b>Exclusive original jurisdiction</b></p> <ol style="list-style-type: none"> <li>1. The action is incapable of pecuniary estimation</li> <li>2. Title to, possession of, or interest in real property with assessed value exceeding P20,000 outside Metro Manila, or exceeds P50,000 in Metro Manila;</li> <li>3. If the amount involved exceeds P300,000 outside MM or exceeds P400,000 in MM in the following cases:             <ol style="list-style-type: none"> <li>A. Damages (apply <b>totality rule</b>).</li> <li>B. Collection of sum of money, exclusive of damages claimed and interests.</li> <li>C. Admiralty and maritime cases</li> <li>D. Matters of Probate</li> <li>E. Other actions involving property</li> </ol> </li> <li>4. Cases not falling within the jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions. All actions involving the contract of marriage and family relations.</li> <li>5. To hear and decide intra-corporate controversies:             <ol style="list-style-type: none"> <li>A. Cases involving devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the SEC.</li> <li>B. Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation , partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity</li> <li>C. Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations</li> <li>D. Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee.</li> </ol> </li> </ol>
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RTC	<p><b>Concurrent jurisdiction</b></p> <ol style="list-style-type: none"> <li>1. With the Supreme Court             <ul style="list-style-type: none"> <li>- in actions affecting ambassadors, other public ministers and consuls</li> </ul> </li> <li>2. With the SC and CA             <ul style="list-style-type: none"> <li>- in petitions for <i>certiorari</i>, prohibition and <i>mandamus</i> against lower courts and bodies in petitions for <i>quo warranto</i>, <i>habeas corpus</i>, and writ of continuing <i>mandamus</i> on environmental cases</li> </ul> </li> <li>3. With the SC, CA and <i>Sandiganbayan</i> <ul style="list-style-type: none"> <li>- in petitions for writs of <i>habeas data</i> and <i>amparo</i></li> </ul> </li> <li>4. With Insurance Commissioner – claims not exceeding P100, 000.</li> </ol> <p><b>Appellate jurisdiction</b></p>
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	<p>Over cases decided by lower courts in their respective territorial jurisdictions except decisions of lower courts in the exercise of delegated jurisdiction.</p> <p><b>Special jurisdiction -</b> SC may designate certain branches of RTC to try exclusively criminal cases, juvenile and domestic relations cases, agrarian cases, urban land reform cases not falling within the jurisdiction of any quasi-judicial body and other special cases in the interest of justice.</p>
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<p>MTC, MeTC MCTC</p>	<p><b>Civil actions</b></p> <p><b>Exclusive original jurisdiction</b></p> <ol style="list-style-type: none"> <li>1. If the amount involved does not exceed P300,000 outside MM or does not exceed P400,000 in MM in the following cases: <ol style="list-style-type: none"> <li>A. Actions involving personal property</li> <li>B. Probate Proceeding based on gross value of the estate</li> <li>C. Admiralty and maritime cases</li> <li>D. Demand for collection of money, exclusive of damages claimed and interests.</li> <li>E. damages</li> </ol> </li> <li>2. Actions involving title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed P20,000 outside MM or does not exceed P50,000 in MM;</li> <li>3. Inclusion and exclusion of voters</li> <li>4. Those governed by the Rules on Summary Procedure: <ol style="list-style-type: none"> <li>A. Forcible entry and unlawful detainer</li> <li>B. Other civil cases, except probate proceeding, where the total amount of the plaintiff's claim does not exceed P200, 000 in MM, exclusive of interests and costs.</li> </ol> </li> </ol> <p><b>Special jurisdiction</b></p> <ul style="list-style-type: none"> <li>- Over petition for writ of <i>habeas corpus</i> or application for bail in criminal cases in the absence of all RTC judges in the province or city.</li> </ul> <p><b>Delegated jurisdiction</b></p> <ul style="list-style-type: none"> <li>- To hear and decide cadastral and land registration cases where there is no controversy over the land or in case of contested lands, the value does not exceed P100, 000.</li> </ul>
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<p>Cases covered in the LUPON</p>	<p><b>The Lupon of each barangay shall have the authority to bring together the parties actually residing in the same municipality or city for amicable settlement of all disputes <u>except</u>:</b></p> <ol style="list-style-type: none"> <li>1. Where one party is the government or any subdivision or instrumentality thereof;</li> <li>2. Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;</li> <li>3. Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding P5,000;</li> <li>4. Offenses where there is no private offended party;</li> <li>5. Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate <i>lupon</i>;</li> <li>6. Disputes involving parties who actually reside in barangays of different cities or municipalities, except where such barangay units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate <i>lupon</i>;</li> <li>7. Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice;</li> <li>8. Any complaint by or against corporations, partnerships, or juridical entities;</li> <li>9. Disputes where urgent legal action is necessary to prevent injustice from being committed or further continued, specifically: <ol style="list-style-type: none"> <li>A. A criminal case where the accused is under police custody or detention;</li> </ol> </li> </ol>
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	<p>B. A petition for <i>habeas corpus</i> by a person illegally detained or deprived of his liberty or one acting in his behalf</p> <p>C. Actions coupled with provisional remedies, such as preliminary injunction, attachment, replevin and support <i>pendent lite</i>;</p> <p>D. Where the action may be barred by statute of limitations;</p> <p>10. Labor disputes or controversies arising from employer employee relationship;</p> <p>11. Where the dispute arises from the CARL;</p> <p>12. Actions to annul judgment upon a compromise which can be directly filed in court.</p>
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### Jurisdiction contra Venue

JURISDICTION	VENUE
<p>1. Jurisdiction is the power of the court to hear, try and decide cases.</p> <p>2. Jurisdiction is a matter of substantive law.</p> <p>3. Jurisdiction establishes a relation between the court and the subject matter.</p> <p>4. Jurisdiction is fixed by law.</p> <p>5. Jurisdiction is a ground for motu proprio dismissal of the action.</p>	<p>1. Venue is the place or the geographical area where an action is to be filed and tried.</p> <p>2. Venue establishes relation between plaintiff and defendant; petitioner and respondent.</p> <p>3. It is a matter of procedural law.</p> <p>4. It is conferred to the parties.</p> <p>5. Not a ground for motu proprio dismissal of the case.</p>

#### Illustrations

##### BAR 2002 [jurisdictional amount; separate cause of action]

**Question:** P sued A and B in one complaint in the RTC-Manila, the cause of action against A being on an overdue promissory note for P300,000.00 and that against B being on an alleged balance of P300,000.00 on the purchase price of goods sold on credit. Does the RTC-Manila have jurisdiction over the case? Explain. (3%)

**Suggested answer:** No, the RTC-Manila has no jurisdiction over the case. A and B could not be joined as defendants in one complaint because the right to relief against both defendants do not arise out of the same transaction or series of transactions and there is no common question of law or fact common to both. (*Rule 3, sec. 6*). Hence, separate complaints will have to be filed and they would fall under the jurisdiction of the Metropolitan Trial Court. [Flores v. Mallare-Philippis, 144 SCRA 377 (1986)].

##### BAR 2000 [incapable of pecuniary estimation]

**Question:** A files an action in the Municipal Trial Court against B, the natural son of A's father, for the partition of a parcel of land located in Taytay, Rizal with an assessed value of P20,000.00. B moves to dismiss the action on the ground that the case should have been brought in the RTC because the action is one that is not capable of pecuniary estimation as it involves primarily a determination of hereditary rights and not merely the bare right to real property. Resolve the motion. (2%)

**Suggested Answer:** The motion should be granted. The action for partition depends on a determination of the hereditary rights of A and B, which is not capable of pecuniary estimation. Hence, even though the assessed value of the land is P20,000.00, the Municipal Trial Court has no jurisdiction. (Russell v. Vestil, 304 SCRA 738).

### VENUE [Rule 4]

**Venue** is the place or the geographical area where an action is to be filed and tried.

#### Can venue be stipulated upon by the parties?

- ✚ YES! As long as it is
  - (1) put in mandatory terms,

- (2) Put in writing
- (3) prior to the institution of a civil action
- (4) Exclusive of venue (specified venue to the exclusion of others).

**Note:**

- ✚ The court may declare agreements on venue as contrary to public policy if such stipulation unjustly denies a party a fair opportunity to file suit in the place designated by the rules.

**Important Concepts in Relation to Venue:**

Real Actions

- ✚ It is based on privity of real estates. It includes ownership, possession, foreclosure of mortgage, partition of co-owned real property, & condemnation of a real property.
- ✚ A REAL ACTION is a LOCAL ACTION; its VENUE depends upon the location of the property involved in litigation. Actions affecting title to or possession of a real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property is involved, or a portion thereof is situated (*Section 1, Rule 4 RoC*).

Personal Actions

- ✚ It is based on privity of contracts or for the recovery of sums of money.
- ✚ A PERSONAL ACTION is a TRANSITORY ACTION; its venue depends upon the residence of the plaintiff or the defendant at the option of the plaintiff. A personal action may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case on a non- resident defendant, where he may be found, at the election of the plaintiff (*Section 2, Rule 4*).

**What are considered as Real Actions?**

1. **Foreclosure of a real estate mortgage.**  
**Venue (V):** proper court where the real property is located.  
**Jurisdiction (J):** RTC, incapable of pecuniary estimation.
2. **Ejectment and unlawful detainer cases** [always real action regardless the amount of damages]  
**V:** proper court where the real property is located.  
**J:** MTC, covered by summary procedure.
3. ***Accion Reivindicatoria*/ Recovery of ownership over a real property**
4. ***Accion Publiciana*/ recovery of possession of a real property**
5. **Action for partition of real property**
6. **Action for a condemnation of a real property**

**What are considered as Personal Actions?**

1. **Action to annul a foreclosure sale [extrajudicial or judicial].**  
**V:** place of plaintiff or defendant at the option of the former.  
**J:** RTC, the action is incapable of pecuniary estimation.
2. **Action to annul a contract of loan and annul foreclosure of mortgage**
3. **Actions to recover the purchase price of the land or for recovery against the assurance fund.**  
**V:** place of plaintiff or defendant at the option of the former.  
**J:** Depends on the amount.
4. **An action for the annulment of the cancellation of the award of a lot in favor of the plaintiff, which he was prepared to pay pursuant to said amount.**  
**V:** place of plaintiff or defendant at the option of the former.  
**J:** RTC, the action is incapable of pecuniary estimation.
5. **Action for the review of an administrative decision involving property.**  
**V:** place of plaintiff or defendant at the option of the former.



J: RTC, the action is incapable of pecuniary estimation.

6. **An action to compel the mortgagee to accept payment and for the consequent cancellation of a real estate mortgage.**

V: place of plaintiff or defendant at the option of the former.

J: RTC, the action is incapable of pecuniary estimation.

**When is a specific performance in relation to a real property a real action?**

✚ Look at the ultimate purpose of the action

✚ If the ultimate purpose is to acquire possession or ownership of said property- it is a **real action**.

✚ If the ultimate purpose is not to acquire ownership or possession because the plaintiff has possession or ownership over the property and what he requires from the defendant is to deliver the deed of sale or conveyance- it is **personal action**.

**Ergo**, if the problem involves conveyance of a real property check who is in possession of the property at the time the case was filed.

**Plaintiff in possession or delivery [tradition] was effected in favor of plaintiff- real action.**

**Defendant in possession or did not deliver the property in favor of plaintiff- personal action.**

**Venue against Non-residents:**

\* **Resident + A non-resident defendants (both: principal parties & in the Philippines) - personal action**

✚ VENUE is where the defendant resides or where the non-resident maybe found OR the residence of the principal plaintiff.

\* **Plaintiff is a non-resident**

✚ Permitted to sue in the Philippines, the VENUE is the place where the defendant reside, or in REAL ACTIONS, where the real property or part thereof is situated.

\* **Non-resident defendant & not found in the Philippines**

✚ Civil actions are proper only when the action affects the personal status of the plaintiff or property of the defendant.

✚ VENUE, residence of the plaintiff.

**Venue for Third Party Complaint**

✚ *Third party complaint* yields to the jurisdiction and venue of the main action even if said third-party complaint is based on a separate agreement which specifies a different venue for suits arising from said agreement.

**PARTIES TO A CIVIL ACTION [Rule 3]**

**General Principle:**

✚ **All civil actions** must be prosecuted in the name of the real parties in interest.

**Note:** If a civil action was not prosecuted in the name of the real parties in interest it is dismissible on the ground of lack of cause of action.

**Who can be parties to a civil action?**

1. Natural person
2. Juridical person
3. Entities authorized by law, such as:
  - > Estate of a deceased person
  - > political party incorporated under Act 1459
  - > registered labor union

#### Who is a Party in Interest?

- ✚ Is the primary party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

**Note:** agent is not the real party in interest if it concerns the property or rights of his principal.

#### Juridical Persons as Real Party in Interest

- ✚ **As Plaintiff-** must indicate the one representing it or the one authorize by its board to represent it.
- ✚ **As Defendant-** statement of the name of the juridical entity is sufficient.

#### Entity without Juridical Personality

##### As Defendants

- ✚ If they enter into a transaction, they may be sued under the name by which they are generally or commonly known.

##### As Plaintiff

- ✚ They must state their individual names and not the name of the undertaking or business commonly known.

#### What is the rule on several parties not a member of a juridical entity?

##### General Rule:

- ✚ All of their names must be put in the complaint if they are impleaded as defendants or as plaintiffs.

##### Exception:

- ✚ **CLASS SUIT-** not all parties in a class suit maybe put in the complaint.

#### **CLASS SUIT**

- ✚ One where the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to bring them all before the court.
- ✚ Usually applicable in environmental complaint.

##### Elements of a Class Suit:

1. Common good/general interest among all the members (focal point in the BAR).
2. So numerous so it is impossible to bring them all in court.
3. The representatives sue or defend for the benefit of all

##### Illustrations:

- I. A plane crashed. All passengers were dead. The family members filed a class suit against the Airline Company. The Airline Company move to dismiss the complaint on the ground of lack of cause of action. Resolve the motion.

**The motion should be denied.** Under the law, a class suit is premised on the common interest of all the members. In this case the injury suffered by one family is different from the injury suffered by another family. "Ang iyak mo sa GF mong namatay sa pagbagsak ng eroplano ay interest mo lang...iba naman ang interest ko sa kapatid kong namatay lulan sa parehong eroplano."

- II. Represented by the mayor, the people of Baguio filed a class suit against Wakas Group of Companies for their ailment that they obtained due to the smoke coming from the company.

Wakas Group of Companies filed a motion to dismiss on the ground of lack of cause of action. Resolve the motion.

**The motion should be denied.** Under the law, the primordial consideration for a class suit is the **presence of common interest among all the members**. In this case there was no common interest because the ailment that one resident obtained is not the interest of the other residents.

III. The residence of Santiago filed a Class suit against Petron for the destruction of marine life due to an oil spill from their oil pipes. Petron filed a motion to dismiss. Resolve the motion.

**The motion should be granted.** Under the law, for a class suit to prosper there must be a common interest among the members. In this case there was a common interest among the members because their action was based on the destruction of the environment. However it would be different if the resident based their claim on the damage to their own and separate fish pens.

### Foreign Corporation as a Real Party in Interest

For purposes of venue, make distinction if:

1. Legally engage in business in the Philippines.  
✚ can sue and be sued
2. Illegally engage in business in the Philippines.  
✚ Cannot sue but can be sued.
3. Not engage in business in the Philippines.  
✚ Can sue on an isolated transaction. In its complaint it must state that it is a foreign corporation not engaged in business in the Philippines.

### Who can be sued in a Co-ownership?

- ✚ Any or all of the co-owners, because every co-owner does not know the specific part of his share in the co-ownership. Thus when he institutes a suit without including other co-owners, it is allowed for he is protecting his interest.

### Spouses as real party in interest

#### General rule:

They shall be sued jointly.

#### Exception:

Except as provided by law:

1. If it concerns their profession/ own business.
2. If they are judicially separated/ legal separation
3. Separation de facto for at least 1 year.
4. If it concerns their own paraphernal properties.
5. In quasi- delict cases.

**Note:** a wife must be assisted by the husband- E.g. in the caption- "wife assisted by H, husband."

### Kinds of Parties

#### I. Indispensable Parties

- ✚ Those without whom no final determination can be had of an action.
- ✚ Those with such interest in the controversy that a final decree would necessarily affect their rights so that the court cannot proceed without their presence.

#### II. Necessary Parties

- ✚ Those which are not indispensable but ought to be parties if complete relief is to be accorded as to those already parties or for a complete determination or settlement of the claim subject of the action.

### III. Pro-forma Parties

- ✚ Those which are required to be joined as co-parties in suits by or against another party as may be provided by the applicable substantive law or procedural rules.
- ✚ They are required to **file an answer** in cases where their personality is being attacked. Such as when they are alleged to be in cahoots with the opposing party.

### IV. Quasi- Parties

- ✚ Those which in whose behalf a class or representative suit is brought.

### V. Indigent Party

- ✚ A litigant who has no money or property **sufficient and available** for food, shelter and basic necessities for himself and his family.
- ✚ Supported by documents such as ITR, certificates from the assessor's office

#### Can a person claim that he is an indigent party by mere affidavits and certificates?

- ✚ No! There must be judicial intervention. One can only qualify as an indigent party if the court upon an ex-parte application and hearing, is satisfied that the party has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

#### What are the fees an indigent party is exempt to pay?

1. Docket and other lawful fees (sheriff fee not included)
2. Transcript of stenographic notes which the court may order to be furnished him.

#### Note:

- ✚ As a rule these fees becomes a lien on any judgment favorable to the indigent.  
**Exception:** Unless the court provides otherwise.

#### Can an adverse party question the qualification of a party as an indigent litigant?

- ✚ YES! A party may contest the grant of such authority (**WHEN?**) at any time before judgment is rendered by the trial court.

#### Note:

- ✚ Questioning the qualification of a party as an indigent litigant is **crucial especially if you are the counsel for the opposing party.**
- ✚ FIRST, an indigent party is exempt from paying filing fees/docket fees. Ergo, if you had proven that he had sufficient income to pay the filing fees (not an indigent litigant), the court may require him to pay the same.
- ✚ SECOND, if he does not pay the assessed filing fees, you can file a motion to dismiss because **payment of docket/ filing fee is jurisdictional!** When filing fees are not paid the case is dismissible on the ground of lack of jurisdiction over the subject matter.

#### Rules on the inclusion of Necessary parties

1. It must be impleaded in the complaint. Non inclusion can only be excused on meritorious grounds.
2. If not included in the pleading, the court shall order the inclusion of the same. If the plaintiff **unjustifiably fails or refuses** to include the necessary party he has deemed waive his claim against said party.

### Can there be joinder of parties?

- + Yes! As long as:
  1. The right to relief arises out of the same transaction or series of transactions.
  2. There is a question of law or fact common to all the plaintiffs or defendants.
  3. Such joinder is not otherwise proscribed by the provision of the rules on jurisdiction and venue.

### What is the effect of misjoinder & non-joinder of parties?

#### General rule:

- + Non-joinder of parties does not warrant dismissal of the case.

#### Exception:

- + If the case was dismissed on the same ground and the adverse party did not object to the dismissal on time, the same is valid and binding.

### What is the rationale why misjoinder & non-joinder of parties does not warrant dismissal?

- + Joinder is only permissive and misjoinder of parties does not involve **questions of jurisdiction**, thus not a ground for dismissal.

### What is the remedy against unwilling co-plaintiff?

- + If the consent of any party who should be joined as plaintiff cannot be obtained, he may be made a defendant and the reason therefor shall be stated in the complaint (*Sec. 10, Rule 3*).

### Rules on initiating actions on representative capacity

- + A representative maybe a trustee of an express trust, guardian, executor or administrator, or a party authorized by the rules of court or by laws.
- + **General rule:**
  - + The beneficiary must be impleaded because he is considered the real party in interest.
- × **Exception:**
  - + An agent acting in his own name and for the benefit of an undisclosed principal may sue and be sued without joining the principal.
- × **Exception to exception:**
  - + When the contract involves things belonging to the principal.

### Can a plaintiff implead defendants in the alternative?

- + YES! Where the plaintiff is uncertain against who of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative although a right to relief against one may be inconsistent with a right of relief against the other.

### What if the identity or name of defendant is unknown?

- + He may be sued as the unknown owner, heir, devisee, or by such other designation as the case may require; when his identity or true name is discovered, the pleading must be amended accordingly.

### What if one party dies?

- + Counsel has the duty to inform the court of the fact thereof within 30 days after the death.

#### How?

1. File a notice of death with motion for substitution.
2. Give the name and address of his legal heirs.

### Actions that survive against the decedent's representative:

1. Actions to recover real and personal property against the estate.
2. Actions to enforce liens thereon.

3. Actions to recover for an injury to person or property by reason of tort or delict committed by the deceased.

**Note:**

- ✳ Where a right is transferred before the institution of the action, the suit should be brought in the name of the assignee; where the transfer is made *pendente lite*, the assignee should be substituted for the original plaintiff.
- ✳ The failure to effect such formal substitution however will not prevent the court from rendering judgment in favor of the assignee. If judgment was rendered in favor of the assignor because substitution was not duly effected, the assignor shall hold the proceeds of the judgment in trust for the assignee.

**What are the effects of death?**

- ✚ Determine the subject matter of the action and who died.

1. **Purely personal obligations-** extinguished
2. **Collection of sum of money**

**Plaintiff dies-** the action survives

**Defendant dies (BEFORE TRIAL)** - action not survive; convert it to money claims against the estate of the defendant in the probate proceedings. **DURING TRIAL-** action survive; judgment will not be executed; convert it to money claims, but plaintiff is now a preferred creditor. **AFTER TRIAL BUT NO WRIT OF EXECUTION-** convert it to money claims. **AFTER TRIAL BUT WITH WRIT OF EXECUTION-** proceed to execution.

3. **Damages**

**Defendant dies-** Same rule in the preceding number. However, if the defendant dies before institution of the action, the same will still survive.

4. **Real Actions**

Action survives, either the plaintiff or defendant dies.

**Illustration:**

**BAR 2000 [death of a party]**

**Question:** PJ engaged the services of Atty. ST to represent him in a civil case filed by OP against him which was docketed as Civil Case No. 123. A retainer agreement was executed between PJ and Atty. ST whereby PJ promised to pay Atty. ST a retainer sum of P24, 000.00 a year and to transfer the ownership of a parcel of land to Atty. ST after presentation of PJ's evidence. PJ did not comply with his undertaking. Atty. ST filed a case against PJ which was docketed as Civil Case No. 456. During the trial of Civil Case No. 456, PJ died.

- Is the death of PJ a valid ground to dismiss the money claim of Atty. ST in Civil Case No. 456? Explain. (2%)
- Will your answer be the same with respect to the real property being claimed by Atty. ST in Civil Case No. 456? Explain (2%)

**Suggested Answer:** No. Under Sec. 20, Rule 3, 1997 Rules of Civil Procedure, when the action is for recovery of money arising from contract, express or implied, and the defendant dies before entry of final judgment in the court in which the action is pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner especially provided in the Rules for prosecuting claims against the estate of a deceased person.

Yes, my answer is the same. An action to recover real property in any event survives the death of the defendant. (Sec. 1, Rule 87, Rules of Court). However, a favorable judgment may be enforced in accordance with Sec. 7(b) Rule 39 (1997 Rules of Civil Procedure) against the executor or administrator or successor in interest of the deceased.

### General Principles:

1. The Counsel of the adverse party must be furnished with a copy of all pleadings, except those initiatory pleadings (complaint) because it is the court that will serve them together with the summons.
2. Service of pleading to counsel is service to client, but service to client is not service to counsel, except if the counsel was given another copy aside from that given to the client.

### What is a Pleading?

- ✚ Written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment.
- ✚ Includes all papers filed excluding evidentiary matters.
- ✚ It aims to define the issues and foundation of proof to be submitted during the trial, and to apprise the court of the rival claims of the parties.

#### Kinds

1. *Complaint*- filed by the plaintiff
2. *Answer*- done by the defendant
3. *Counterclaim*- availed by the defendant; usually attached to the answer.
4. *Cross claim*- availed by a defendant against a co-defendant
5. *Reply* - made by the plaintiff.

### Parts of a Pleading

#### I. Caption- it contains

- ✚ Name of the court
- ✚ Title of the action
- ✚ Docket number if assigned

#### Original Complaint

- ✚ It must include the names of all the parties.

#### Subsequent Pleadings

- ✚ Suffice that the name of the first party on each side be stated with an appropriate indication when there are other parties.

#### II. Text or Body

- ✚ The body of the pleading sets forth its designation, the allegations of the party's claims or defenses, the relief prayed for, and the date of the pleading.

##### ✘ Paragraphs

- ✚ It should be numbered for easy reference.
- ✚ The allegations in the body of a pleading shall be divided into paragraphs so numbered as to be readily identified, each of which shall contain a statement of a single set of circumstances so far as that can be done with convenience.

##### ✘ Headings of two or more causes of action

- ✚ When two or more *causes of action* are joined the statement of the first shall be prefaced by the words "first cause of action" of the second, "second cause of action", and so on for others.
- ✚ When one or more paragraphs in the *answer* are addressed to one of several causes of action in the complaint, they shall be prefaced by the words, "answer to the first cause of action" or "answer to the second cause of action" and so on; and when one or more paragraphs of the answer are addressed to several causes of action, they shall be prefaced by words to that effect.

✘ **Relief/ Prayer**

- ✚ The pleading shall specify the relief sought but it may add a general prayer for such further or other relief as may deemed just or equitable.

**NOTE:** the prayer in a pleading does not constitute an essential part of the allegations determinative of the jurisdiction of a court.

✘ **Date**

- ✚ Every pleading shall be dated.

**III. Signature and Address**

- ✚ *Who will sign?* The party and his counsel, but they should state their address and not post office box.

**What is the effect of an unsigned pleading?**

✘ **Gen. Rule:**

- ✚ An unsigned pleading produces no legal effect.

✘ **Exception:**

- ✚ The court may in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay.

**What does the signature of the counsel implies?**

- ✚ Signature of counsel constitutes a certificate by him that he has read the pleading, that to the best of his knowledge, information, and believe that there is good ground to support it, and that it is not interposed for delay.

**IV. Verification**

- ✚ All initiatory pleadings must be verified.

- ✚ A pleading is verified by an affidavit, which declares that:

- The affiant has read the pleading.
- The allegations therein are true and correct to his own personal knowledge or based on authentic records.

**What is the effect of an unverified pleading?**

- ✚ It does not necessarily render the pleading defective. It is only a formal and not jurisdictional requirement. Ergo, not a ground for dismissal.

**Remedy of an unverified pleading**

- ✚ The absence of verification may be corrected by requiring an oath.

**Pleadings that need not be verified**

- Petition for relief from judgment or order.
- Petition for review from the RTC to the CA.
- Petition for review from CA and quasi-judicial agencies to the SC.
- Appeal by certiorari from the CA to the SC.
- Petition for annulment of judgments or final orders and resolutions.
- Compliant for injunction
- Application for appointment of receiver.
- Application for support pendite lite.
- Petition for certiorari against the judgments, final orders, or resolutions of constitutional commissions.



10. Petitions for certiorari
11. Petitions for prohibition.
12. Petitions for mandamus.
13. Petitions for quo warranto
14. Complaint for expropriation.
15. Complaint for unlawful detainer and forcible entry.
16. Petition for indirect contempt.
17. Petition for appointment of a general guardian.
18. Petition for the declaration of competency of a ward.
19. Petition for habeas corpus.
20. Petition for change of name.
21. Petition for voluntary judicial dissolution of a corporation.
22. Petition for cancellation or correction of entries in the civil registry.

**Pleadings that should be under oath**

1. Denial of the genuineness and due execution of an actionable document.
2. Denial of allegation of usury
3. Motion to set aside a default order.
4. Answer to written interrogatories.
5. Answer to request for admission.

**Affidavits or Affidavits of Merits are required in the following:**

1. Motion for postponement for absence of evidence.
2. Motion to postpone for illness of a party or counsel.
3. Motion for summary judgment or opposition thereto.
4. Petition for relief from judgment or order.
5. Third-party claim.
6. Proof required of redemption.
7. Motion for preliminary attachment.
8. Motion for dissolution of preliminary injunction.
9. Application for writ of replevin.
10. Claim against the estate of decedent.
11. Motion for new trial on the ground of newly discovered evidence in criminal cases.

**Note:** *Pleadings filed in the inferior courts in cases covered by the Rule on summary Procedure are all required to be verified.*

**V. Certification of Non-forum Shopping**

✚ **Impt. Principle:** Under the law, certificate of non-forum shopping is *mandatory but not jurisdictional*.

**Forum Shopping**

✚ Exist when two or more actions involve the same transactions, essential facts and circumstance, and raise identical causes of action, subject matter and issues.

**Who will sign?**

✚ The party who filed the complaint and not the counsel

✚ **If many petitioners:** All should sign the certification of non-forum shopping

**Exception:** Co-owners; husband and wife with respect to the conjugal property- husband alone may sign.

**What if it was the counsel who signed the certification of non-forum shopping?**

- ✚ It is defective certification and is a valid cause for dismissal. A certification by counsel and not the principal party himself is no certification at all. *Except* in the case of a corporation where the counsel is the in-house counsel and at the same time authorized by the corporation to do the same.

**Contents of a Certification of non-forum shopping: sworn statement certifying the following matters:**

1. The party has not commenced 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.
2. If there is such other pending action or claim, a complete statement of the present status thereof.
3. If he should therefore learn that the same or similar action or claim has been filed or is pending, he shall report the fact within 5 days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

**What is the effect of non-compliance with the requirements of certification of non- forum shopping?**

- ✚ Non- compliance with the foregoing requirements shall not be curable by mere amendment of the compliant or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and hearing.
- ✚ **REMEDY:** during the hearing if the dismissal is with prejudice. Convince the judge by presenting your reason for non-compliance so that if your reason is admissible, the judge may order belated submission (*Section 5, Rule 7*).

**Possible violations on Certification of Non Forum-shopping [As per Dean Riano]**

1. *Non- compliance with the undertaking*
  - ✚ Dismissal **without** prejudice
2. *False certification*
  - ✚ Indirect contempt, administrative and criminal sanction
3. *Willful and deliberate forum shopping*
  - ✚ Ground for summary dismissal **with** prejudice without motion and hearing; it has administrative but no criminal sanctions.

**What are the remedies if the case is dismissed on the ground of noncompliance with the certification of non-forum shopping? (*Section 1, Rule 41*)**

1. *Dismissal without prejudice-* remedy is certiorari via rule 65.
2. *Dismissal with prejudice-* remedy is appeal, since the order is final and disposes of the case.

**What if it is a CORPORATION that is executing verification or certification of non forum-shopping?**

- ✚ It may be executed by properly authorized persons.
- ✚ This person may be the lawyer of a corporation. As long as he is duly authorized by the corporation and has personal knowledge of the facts required to be disclosed in the certification against forum shopping, the certification may be signed by the authorized lawyer.

**What is the manner of making allegations in the pleading?**

**General Principle:**

- ✚ Every pleading shall contain in a mathematical and a logical form, a plain, concise and direct statement of the **ultimate facts** on which the party relies for his claim and defense, as the case may be, containing the statement of mere evidentiary facts.

**Ultimate facts**

- ✚ They are the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant.

**Evidentiary facts**

- ✚ They are those which are necessary to prove the ultimate fact or which furnish evidence of the existence of some other facts.

**What is meant by filing of pleading? What is meant by service of pleadings?**

FILING	SERVICE
The act of presenting the pleading or other paper to the <i>clerk of court</i> .	The act of providing a party with a copy of the pleading or paper concerned.

**What is the manner of filing?**

- ✚ Under the law it may be done through **personal service** or by **registered mail**. The filing of pleadings, appearances, motions, notices, orders, judgments and all other papers shall be made by presenting the original copies thereof, plainly indicated as such, personally to the clerk of court or by sending them by registered mail (Registry Service). In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second case, the date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment, or deposit in court. The envelope shall be attached to the record of the case (*Sec. 3, Rule 13*).

**What are the modes of service of pleadings?**

- ✚ Under the law there are two modes of service of pleadings, judgments, motions, notices, orders, judgments and other papers:
  - a) Personally, or
  - b) By mail.
- ✚ However, if personal service and service by mail cannot be made, service shall be done by substituted service. *Substituted service* is complete at the time of delivery of the copy to the clerk of court.

**What is meant by personal service?**

- ✚ It is the preferred mode of service.
- ✚ If another mode of service is used other than personal service, the service must be accompanied by a written explanation why the service of filing was not done personally. Exempt from this explanation are papers emanating from the court.
- ✚ A violation of this explanation requirement may be a cause for the paper to be considered as not having been filed (*Sec. 11, Rule 13*).

**Personal service is made by:**

- a. Delivering a copy of the papers served personally to the party or his counsel, or
- b. By leaving the papers in his office with his clerk or a person having charge thereof, or
- c. If no person is found in the office, or his office is not known or he has no office, then by leaving a copy of the papers at the party's or counsel's residence, if known, with a person of sufficient age and discretion residing therein between eight in the morning and six in the evening (*Sec. 6, Rule 13*).

**What is meant by service by registered mail?**

- ✚ Registered mail is the preferred service by mail.
- ✚ Service by ordinary mail may be done only if no registry service is available in the locality of either the sender or the addressee.

**Can there be substituted service of pleadings? When?**

- ✚ Availd of only when there is failure to effect service personally or by mail. This failure occurs when the office and residence of the party or counsel is unknown.

**How judgments, final orders or resolutions are serve?**

- ✚ Final orders or judgments shall be served either personally or by registered mail.
- ✚ When *a party summoned by publication* has failed to appear in the action, final orders or judgments against him shall be served upon him also by publication at the expense of the prevailing party.

**When is service deemed complete?**

<b>Personal service</b>	- upon actual delivery
<b>Service by registered mail</b>	- Upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier.
<b>Service by ordinary mail</b>	- Upon the expiration of ten (10) days after mailing, unless the court otherwise provides.
<b>Substituted service</b>	- At the time of delivery of the copy to the clerk of court.

What are the proofs of filing? What are the Proofs of service?

<b>Proof of Filing</b>	<b>Proofs of Service</b>
<p><b>By its existence in the record.</b></p> <p><b>If it is not in the record -</b></p> <p><b>a) If filed personally:</b> By the written or stamped acknowledgement of its filing by the clerk of court on a copy of the same; or</p> <p><b>b) If filed by registered mail:</b> By the registry receipt and the affidavit of the person who did the mailing with a full statement of:</p> <ul style="list-style-type: none"> <li>i. the date and place of depositing the mail in the post office in a sealed envelope assessed to the court;</li> <li>ii. with postage fully paid; and</li> <li>iii. with the instructions to the postmaster to return the mail to the sender after 10 days if undelivered</li> </ul>	<p><b>a) Personal service:</b></p> <ul style="list-style-type: none"> <li>i. The written admission of the party served; or</li> <li>ii. The official return of the server; or</li> <li>iii. The affidavit of the party serving, containing full information of the date, place and manner of service.</li> </ul> <p><b>b) Registered mail -</b> By the affidavit of the mailer showing compliance with Sec. 7, Rule 13 and the registry receipt issued by the mailing office.</p> <p><b>c) Proof of service of ordinary mail</b> By affidavit of the mailer showing compliance with Sec. 7, Rule 13.</p>

#### Periods of Filing of Pleadings

##### I. Answer to the complaint

- ✚ *General rule:* within 15 days after service of summons
- ✚ *Exception:* unless a different period is fixed by the court.

##### II. Answer of a defendant foreign private juridical entity.

###### 1. If it has a resident agent

- ✚ Within 15 days after service of summons to such agent.

###### 2. If it has no resident agent but it has an agent or officer in the Phils.

- ✚ Within 15 days after service of summons to said agent or officer.

###### 3. If it has no resident agent, agent or officer, the service of summons shall be made on the proper government office which will then forward it by registered mail.

- ✚ Within 10 days to the corporation's office.
- ✚ The answer must be filed within 30 days from the receipt of the summons by home office.

###### 4. When the service of summon was made by publication

- ✚ Within the time specified in the order granting leave to serve summons by publication which shall not be less than 60 days after notice.

###### 5. When the defendant is a non-resident on whom extraterritorial service is made.

- ✚ Within 60 days from such service.
6. **Answer to an amended complaint**
    - A. **Amendment is a matter of right**
      - ✚ Within 15 days from the service of amended complaint.
    - B. **Amendment is not a matter of right**
      - ✚ Within 10 days from notice of the order admitting the same
      - ✚ The same period shall apply to answers filed on an amended counterclaim, cross claim and third party complaint.
  7. **Answer to counterclaim or cross claim**
    - ✚ Within 10 days from service.
  8. **Answer to third party complaint**
    - ✚ The same as the periods given in answering a complaint which shall either be 15, 30, or 60 days, as the case maybe.
  9. **Reply**
    - ✚ Within 10 days from the service of the pleading responded to.
  10. **Answer to supplemental complaint**
    - ✚ Within 10 days from notice of the order admitting the supplement complaint unless a different period is fixed by the court.

## COMPLAINT

**Side Comment:** The concept of remedial law is based on daily occurrences.

- ✚ One night, Santiago Wakas was surreptitiously tiptoeing to their conjugal room. He was shocked when all the lights were turned on. The next thing he heard was her wife shouting “nanggaling ka nanaman kay Kristina ano?” [*Complaint*] Cornered, Santiago responded, “oo nanggaling ako kay Kristina (*admission*), pero iyon ay para sinigilin ang pinautang mo sa kanya [*affirmative defense*]. Masyado ka namang mahigpit, eh noong last week nakita kitang kasama ang dating boyfriend mo!!!!!! [*Counterclaim*]

### What is a Complaint?

- ✚ Initiatory pleading, thus there must be a **verification, certification of non-forum shopping and payment of docket fees.**
- ✚ The pleading alleging the plaintiff’s cause or causes of action, stating therein the names and residences of the plaintiff and defendant.
- ✚ The moment the plaintiff filed his complaint he submits to the jurisdiction of the court.

### Manner of Making Allegations in the Complaint

#### I. Condition Precedent

- ✚ When a claim is subject to condition precedent, the compliance of the same must be alleged in the pleading.

#### II. How fraud, mistake, malice, intent, knowledge and other condition of the mind, judgments, official documents or acts be alleged.

##### 1. Fraud

- ✚ Must be stated with particularity.
- ✚ It is not enough for the complaint to allege that he was defrauded by the defendant. The complaint must state with particularity the fraudulent acts of the adverse party. These

particulars would necessarily include the **time, place, and specific acts of fraud** committed by him.

2. **Malice, intent, knowledge or other conditions of the mind of a person**

✚ Maybe averred generally.

3. **Judgments**

✚ It is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

4. **Official documents or acts**

✚ It is sufficient to aver that the document was issued or the act done in compliance with law.

5. **Capacity**

✚ Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in representative capacity or the legal existence of an organized association of persons that is made a party must be averred.

✚ **How to contest capacity to sue or be sued?**

✳ *Under the law, any party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include supporting particulars as are peculiarly within the pleader's knowledge.*

**How to make allegations in a case for breach of contract?**

✚ The plaintiff need not allege the negligence of the defendant. *Why?* Because negligence is not a requisite of a contract.

✚ **Though:** negligence of the defendant is not always presumed. Such presumption is only true in cases of:

1. Where the law categorically makes a presumption.
2. In cases of common carriers.

**Manner of Filing the Complaint**

I. **Personal**

✚ Done when the plaintiff personally presents the original copy of his pleadings to the clerk of court. The clerk of court shall endorse on the pleading the date and hour of filing.

II. **By Registered Mail**

✚ The date of mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, shall be considered as the date of their filing, payment or deposit in court. The envelope shall be attached to the record of the case.

✚ **Question: Are ordinary mails (private couriers) allowed?**

✳ **Answer:** Yes, if there is no registered mail (Philippine Post Office) in the area, but for purposes of prescription, *the date of actual receipt by the court of the pleadings is the date of filing.*

**PAYMENT OF DOCKET/ FILING FEES**

**Rule:**

✚ It is not only the filing of the complaint or appropriate initiatory pleading *but the payment of the prescribed docket fee that vest a trial court with jurisdiction over the subject matter or nature of the action.*

✚ *Payment of the required docket fee is a jurisdictional requirement;* even its nonpayment at the time of filing does not automatically cause the dismissal of the case, as long as the fee is paid within the applicable prescriptive or reglementary period.

- ✚ The Supreme Court has consistently held that payment of docket fee within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.
- ✚ However delay in the payment of the docket fees confers the court a discretionary, not a mandatory power to dismiss an appeal.
- ✚ *ERGO*, in connection with the payment of docket fees, the court requires that all complaints, petitions answers and similar pleadings must specify the amount of damages being prayed for both in the body of the pleading and in prayer therein and said damages shall be considered in the assessment of the filing fees; otherwise such pleading shall not be accepted for filing or shall be expunged from the record.

**Illustration:**

**Bar:** the plaintiff was abroad, his counsel filed the complaint. The defendant moved to dismiss on the ground that the court has no jurisdiction over the complainant because he is not in the Philippines.

- ✚ Defendant is wrong: jurisdiction is not acquired through his personal presence in court to file the complaint. Jurisdiction on his person is acquired by the **filing of the complaint in his name and under his authority**. Jurisdiction was acquired by virtue of the complaint filed in court.

<b>NOTICE OF LIS PENDENS</b> <b>Section 14, Rule 13</b>
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**General Principles:**

1. This is a **remedy** available to the **plaintiff OR defendant** when affirmative relief is claimed in his answer.
2. This remedy can be availed of during the pendency of the action and not necessarily at the time of the complaint or answer of the party concerned.
3. A notice of *Lis Pendens* is proper where there is a proceeding in court which affects the title to or possession of real property. It includes those that establish an equitable estate, interest or right in specific real property or to enforce any lien, charge or encumbrance against it arising during the progress of the suit.

**Purpose:**

- ✚ It is intended to protect the real rights of the party who caused the registration thereof. It will serve as a notice (not a lien) that such property is a subject of litigation.
- ✚ This is important because of the possibility that the subject property may be disposed during the pendency of the action.

**Contents of Notice of *Lis Pendens***

1. Names of the parties
2. Object of the action or defense
3. Description of the property

**How to cancel a Notice of Lis Pendens?**

- ✚ A notice of *Lis pendens* may be cancelled upon a court order after proper showing that the notice is for the *purpose of molesting the adverse party* OR that it is *not necessary to protect the rights of the party who cause it to be recorded*.

**Lis Pendens contra Litis Pendentia**

<i>Lis Pendens</i> (Sec 14, Rule 13)	<i>Litis Pendentia</i> (Sec 1, Rule 16)
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<ol style="list-style-type: none"> <li>1. The annotation of Lis pendens can be caused by the plaintiff OR defendant when affirmative relief is claimed in his answer</li> <li>2. It is submitted to the <b>Registry of Deeds</b> of the province in which the property is situated. (no required form, as long as it is written)</li> <li>3. Not a ground for motion to dismiss, but serve as a notice to third parties that the real property is subject of a pending litigation</li> <li>4. It can only be availed during the pendency of the action and not necessarily at the time of the complaint or the answer of the party concerned.</li> <li>5. It is proper only where there is an action or proceeding in court which affects the title to possession of real property. It includes those that establish an equitable estate, interest or right in specific real property or to enforce any lien, charge or encumbrance against it arising during the progress of the suit.</li> <li>6. The ultimate purpose is to serve as a CAVEAT to third persons...baka ibenta pa un property na subject ng litigation.</li> </ol>	<ol style="list-style-type: none"> <li>1. Initiated by the defendant.</li> <li>2. Filed in the <b>court</b> where the complaint seeks to be dismissed was filed.</li> <li>3. Ground for motion to dismiss.</li> <li>4. Though not covered by the omnibus motion rule, because it can be raised anytime during the proceeding.</li> <li>5. It is availed both in personal and real actions.</li> <li>6. The ultimate purpose is to terminate the case.</li> </ol> <p><b>REQUISITES:</b></p> <ol style="list-style-type: none"> <li>1. Identity of parties</li> <li>2. Identity of issues</li> <li>3. identity of relief sought</li> <li>4. Identity of particulars</li> </ol>
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## SUMMONS [Rule 14]

### General Principles:

1. *Defendant's voluntary appearance is equivalent to summons* (Sec 20, Rule 15). The first mode of acquiring jurisdiction over the person of the defendant is voluntary appearance not through summons. Because even if there was a defect in the service of summons, it is cured by the voluntary appearance of the defendant.
2. If you do not initiate any move to serve the summons, the court after an inventory and after the lapse of 30 days, dismiss the case on the ground of failure to prosecute.
  - ✳ **Side comment:** bigyan mo ng pamasaha si sheriff para i-serve ang summons! Kasi baka mas magaling yong defendant. Baka pagpunta ng sheriff sa kanyang bahay sabihin kaagad, sheriff baka gusto mo munang magpahinga o magbakasyon....todas!
3. Before answering a problem regarding summons look at the character of the defendant- is she a resident defendant or a non-resident defendant [*the word used by the rules is resident not citizenship or nationality*].
4. Before answering a problem regarding summons look also into the nature of the action whether it is an *accion in personam, accion in rem or accion quasi in rem*.
5. *Defective service of summons* is a ground for dismissal of the case on the ground of lack of Jurisdiction over the person of the defendant. This ground is not jurisdictional because it can be waived.
6. If the defendant questions the jurisdiction of the court over his person due to defective service of summons, it does not amount to voluntary appearance.
  - ✳ **Note:** The inclusion in the motion to dismiss *of other grounds aside from lack of jurisdiction over the person* of the defendant *shall not* be deemed a voluntary appearance

### What are summons?

- ✚ A writ or process issued by the court and served upon the defendant in a civil action for the purpose of securing his appearance therein.

### Who serves the summons?

- ✚ The sheriff, and not the judge or plaintiff



### How do we know that summons was properly served?

- ✚ Read the sheriff's return of service of summons. Check if the manner of service was in compliance with the requirements of the Rules regarding service of summons.

### What is the effect of lack of summons or invalid service of summons?

- ✚ The proceeding is not binding or it is a dismissible on the ground of lack of jurisdiction over the person of the defendant.

### What is the purpose of summons?

1. To comply with the constitutional rights of due process.
2. The service of summons enables the court to acquire jurisdiction over the person of the defendant. If there is no service of summons, any judgment rendered or proceedings had in a case are null and void, except when there is voluntary appearance of the defendant.

### What is an alias summons?

- ✚ A summons issued when original has not produced its effect because defective in form or manner of service, and when issued, supersedes the original summons.

### **Important Concepts in Relation to Summons**

#### *Accion in personam*

- ✚ It is an action against a person on the basis of his personal liability.
- ✚ In an *action in personam* there is a specific defendant and the plaintiff is asking that defendant to be liable.
- ✚ "May tiyakang defendant na tinutumbok!"
- ✚ In an *action in personam*, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case.

#### **Examples of Accion in Personam**

1. Actions for damages- you do not ask the whole world to be liable to the damage you had.
2. Actions for recognition- you do not ask the whole world to recognized a child. Ano siya anak ng buong bayan?!
3. Actions for unlawful detainer and forcible entry
4. Actions for injunction
5. Actions for specific performance
6. Actions for breach of contract

#### *Accion in Rem*

- ✚ It is an action against the thing itself instead of against the person.
- ✚ In a proceeding in *rem or quasi in rem*, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction over the res.
- ✚ Nonetheless summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements.

#### **Examples of Actions in Rem**

1. Cadastral proceedings- there is no specific defendant. Although there is a pro-forma defendant but you are not asking him to be liable.
2. Annulment of marriage- though the husband is designated as a defendant but you are not asking him to be liable, ergo no specific defendant, but an action against the whole world.
3. Land registration proceedings
4. Probate proceedings

#### *Accion Quasi-in-rem*

- ✚ It is an action which names a person as defendant but its object is to subject that person's interest in a property to a corresponding lien or obligation or an action pertaining to the status of a person. The decision which is called judgment *quasi-in-rem* is binding only between the parties.
- ✚ There is a specific individual who is interested in a property but it's actually the property which is the focal point of the suit.

#### Example

1. Actions for partition of co-owned real property
2. Actions for accounting of property
3. Actions for foreclosure of mortgage

#### How can the court acquire jurisdiction over the res (subject matter of the complaint)?

1. By the seizure of the property under legal process, whereby it is brought into actual custody of the law.
2. As a result of the institution of legal proceedings in which the power of the court is recognized and made effective.

### MODES OF SERVICE OF SUMMONS

#### I. Personal Service of Summons

- ✚ Priority mode. It can be made anywhere at any time
- ✚ It is made by handing the copies of the summons to the defendant in person OR if he refuses to receive and sign for it, by tendering it to him.
- ✚ Must be done in "several attempts" - at least 3 times and for at least two different days.
- ✚ Service to the wife or child of sufficient age is not personal service.

#### II. Substituted Service of Summons

##### A. When made?

- ✚ It may be resorted to if there are justifiable causes, where the defendant cannot be served within a reasonable time.

##### B. Where?

- ✚ Defendant's office/ regular place of business OR dwelling house/residence.

##### C. How?

1. By leaving copies of the summons at the defendant's dwelling house or residence with some person of *suitable age* and *discretion*, then *residing therein*.
2. By leaving copies at defendant's office or regular place of business with some *competent person incharge thereof*.

#### Can personal and substituted mode of service be availed simultaneously?

- ✚ No! The rule did not put it in the alternative. Personal service must first be availed and then if not possible, substituted service.

✳ **NOTE:** Substituted service is not allowed in service of summons on *domestic corporations*.

#### III. Constructive Service of Summons

- ✚ **How?** Summons by publication is always made by leave of court. It includes any action

##### ✳ Leave of court

- ✚ Permission from the court to effect summons by publication. **How?** It is made by motion in writing, supported by affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application (*Section 17, Rule 14*).

#### IV. Extraterritorial Service of Summons

- ✚ **When?** Applicable in an action in rem and quasi-in-rem. Never in an action in personam.
- ✚ This is important in a case where there is a **non-resident defendant**.
- ✚ **This applies:**
  1. When the action affects the personal status of the plaintiff.
  2. When the action relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent.
  3. When the relief demanded in such action consist, wholly or in part, in extending the defendant from any interest in property located in the Philippines.
  4. When the defendant non-resident's property has been attached within the Philippines.

**How is extraterritorial service made?**

✳ **It is always by leave of court through:**

1. Personal service outside the Philippines. OR
2. Publication and a copy of the summons and order of the court shall be sent to the last address of the defendant. OR
3. Any manner the court may deem sufficient.

**Summons by Publication versus Extraterritorial Service of Summons**

Summons by Publication	Extraterritorial
<ol style="list-style-type: none"> <li>1. Effected by leave of court</li> <li>2. Effected in any action.</li> <li>3. Effected when the defendant's identity or whereabouts are unknown.</li> </ol>	<ol style="list-style-type: none"> <li>1. Effected by leave of court</li> <li>2. Effected only in an action that affects the status of the plaintiff or the property of the defendant in the Philippines.</li> <li>3. Effected when the defendant is a non resident</li> </ol>

- ✳ **Check:** if the question is "how can you acquire jurisdiction over the person of the defendant?" it is automatically an *accion in personam*. Thus, the next thing to do is to look at the character of the defendant, whether he is a resident or a non-resident.

**Resident Defendant in an Action in Personam**

**How to acquire jurisdiction over his person?**

1. Voluntary appearance
2. Valid service of summons, personal or substituted

**Resident Defendant (temporarily absent in the Phils) in Any Action**

**How to acquire jurisdiction over his person? (Section 16, Rule 14)**

1. Personal service of summons
2. By leave of court- Summons by publication and the copy of the summons be sent by registered mail to his last known address.
  - ✳ **Rationale:** he cannot be served within a reasonable time in person.
3. By leave of court- Any manner which the court deems sufficient.
4. Substituted service
  - ✳ **Rationale:** Even if he is abroad, he has a residence in the Philippines or a place of business and surely because of his absence he cannot be served in person within a reasonable time.

**(Any) Defendant whose identity and whereabouts are unknown in any action?**

- ✚ Summons by publication but always by leave of court

**Non-resident Defendant in an Action in Personam**

**How can the court acquire jurisdiction over his person?**

1. Voluntary appearance
2. Valid service of summons within the state (Philippines).

**NOTE:**

1. No summons by publication
2. No substituted service because he has no place of business or residence in the Philippines.

**Exception:** Substituted service may be effected through:

1. The spouse of the non- resident defendant
2. The spouse must be residing in the Philippines
3. The spouse is appointed as attorney-in-fact in a previous case involving the non-resident defendant. (*Asiavest vs CA, quoting Gemperle vs. Shcenker, Sept. 25, 1998*).

- ✘ **Remedy:** If the action is in personam and the non-resident defendant has properties in the Philippines, file a motion for preliminary attachment, so that the personam action will be converted into quasi in rem. In that case you can effect summons by publication.

**Non-resident defendant in an Action in Rem/ Quasi-in-rem**

✚ Extraterritorial service of summons

✚ **It is always by leave of court through:**

1. Personal service outside the Philippines. OR
2. Publication and a copy of the summons and order of the court shall be sent to the last address of the defendant. OR
3. Any manner the court may deem sufficient.

**Service of Summons upon Entity without Juridical Personality**

✚ Service may be effected upon all the defendants by serving upon any one of them, OR

✚ Upon the person in charge of the office or place of business maintained in such name.

✚ **However,** such service shall not bind individually any person whose connection with the entity has, upon due notice, been severed before the action was brought.

**Service of Summons upon Domestic Private Juridical Entity**

✚ Service may be made on any of the following: **(the enumeration is exclusive)**

1. President
2. Managing partner
3. General manager
4. Corporate secretary
5. Treasurer
6. In-house counsel

**Service of Summons upon Foreign Private Juridical Entity**

✚ When the defendant is a foreign private juridical entity which has *transacted business* in the Philippines, service may be made in any of the following:

1. Resident agent designated in accordance with law for that purpose
2. In the absence of such agent, on *\*the government officials designated by law* to that effect,
3. On any of its officers or agents within the Philippines.

**\*Government Officials Designated by Law**

1. If the corporation is engaged in banking, saving, and loan or trust- Superintendent of Banks.
2. Insurance Corporations- Insurance Commissioner
3. Other Corporations- Secretary of Commerce or SEC

**Service upon Public Corporations**

✚ *Republic of the Philippines-* service may be effected on the Solicitor general.

✚ *Province, city, municipality or like public corporation-* service may be effected on its executive head, or on such other officer or officers as the law or the court may direct.

- ✚ GOCC- Office of the Government Corporate Counsel (OGCC)

### **Service of Summons upon Prisoners**

- ✚ The officer having the management of such jail OR
- ✚ *Institution* who is deemed deputized as a special sheriff for said purpose

### **Service upon Minors and Incompetents**

- ✚ Service shall be made upon him personally and on his guardian if he has one, or if none, upon his guardian *ad litem* whose appointment shall be applied for by the plaintiff.
- ✚ In the case of a minor, service may also be made on his father or mother.

### **What Constitutes Voluntary Appearance?**

1. Filing a motion for extension of time to file answer.
2. Submitting to a compromise agreement for approval.
3. Signing a compromise agreement.

### **Illustration:**

**Bar:** the plaintiff was abroad, his counsel filed the complaint. The defendant moved to dismiss on the ground that the court has no jurisdiction over the complainant because the plaintiff is not in the Philippines.

- ✘ Defendant is wrong: jurisdiction is not acquired through his personal presence in court to file the complaint. Jurisdiction on his person is acquired by the **filing of the complaint in his name and under his authority**. Jurisdiction was acquired by virtue of the complaint filed in court.

### **Real Action and Personal Action contra *Accion in Rem* and *Accion in Personam***

- ✚ Real action or personal action is entirely different from *accion in rem* or *accion in personam*. Real action is not *accion in rem*; also personal action is not *accion in personam*.
- ✚ The distinction of real action and personal action is important for purposes of venue, while the distinction of *accion in rem* and *accion in personam* is important for purposes of valid service of summons.

### **Illustrations:**

#### **Accion in Rem, yet a Personal Action**

Guillermo L., a Mexican resident came to the Philippines just to check whether Mount Mayon has a perfect cone, and to check whether the Chocolate hills of Bohol are really chocolates. He stayed in the Manila hotel. In the front desk was Maria. When Guillermo saw her, he was in love with her from head to heels and heels to head [translation: *sa pagmamahal niya pabali-balintuwang na siya*]. He went to Maria and directly confessed "Hola! Senora, yo te amo con todo mi Corazon [Hi! Miss, I love you with all my heart]." Maria replied, "no senor, yo ya estoy comprometido a Santiago Wakas.....y yo estoy locamente elogiando a Francisco [No! Sir, it cannot be, I am already engaged to Santiago Wakas.....and I am madly in love to Francisco]." Brokenhearted, Guillermo went away. When he returned to the hotel he was holding bunch of explosives with a remote control and a rocket launcher and shouted "hey! Maria, marry me or I will blow your house and your parents." Shortcut lingo, they were married. They stayed in the Manila Hotel, but after one month Guillermo returned to Mexico. Maria was very happy so she went to the rooftop of the hotel and shouted "Dios mio, muchas gracias libertad!!!! [My God, thank you so much. Liberty!!!!]" She filed an action in court for declaration of nullity of marriage.

1. What is the nature of the action?
2. What kind of summons to be employed?
3. Where will you file the case?
4. What court has jurisdiction over the case?

#### **Answers:**

1. Under the law the action is an *accion in rem* because it involves the personal status of the plaintiff.

2. Under the law, the summons that would be employed is extraterritorial service of summons because the defendant is a non-resident defendant.
3. Under the law, for purposes of jurisdiction, the case must be filed in the RTC because annulment of marriage is incapable of pecuniary estimation, which falls under the jurisdiction of the RTC.
4. Under the law, for purposes of venue, the case must be filed in the residence of the plaintiff because it is a personal action. It does not involve a real property or ownership, possession, or interest thereof. It can also be filed in the residence of the defendant. However in this case the plaintiff cannot have the option of defendant's residence because the defendant is a non-resident. .

**Accion in Personam yet a Real Action**

While having his vacation, I unlawfully occupied the house of Santiago Wakas. When he returned he discovered that I was unlawfully occupying his house. He filed a case of forcible entry against me.

1. What is the nature of the action?
2. What is the mode of service of summons to be employed?
3. What court has jurisdiction over the case?
4. Where will you file the case?

**Answer:**

1. Under law, the action is an action in personam, because there is a specific defendant that is being made liable [may tiyakang defendant na tinutumbok]. You cannot eject the whole world [kalabisan na yon].
2. Personal service of summons or substituted service of summons.
3. Under the law, for purposes of jurisdiction the case should be filed in the MTC. Forcible entry is covered by the rules on summary procedure, which is under the jurisdiction of the MTC.
4. Under the law, for purposes of venue, the case should be filed in the place where the property is located because it is a real action. It involves an interest over real property.

**MOTIONS**  
**[Rule 15]**

**General Principles:**

1. Under the law any defense or objections not raised in the motion is barred [**Doctrine of Omnibus Motion Rule**].
  - ✘ **Except:**
    - d. Lack of jurisdiction over the subject matter.
    - e. Litis pendentia.
    - f. Res judicata
    - g. Prescription/ violation of the statute of limitations
    - h. Where evidence that would constitute a ground for dismissal is discovered during the trial but there must be leave of court.
2. Every written motion shall be set for hearing by the applicant (*Section 4, Rule 15*).
  - ✘ **Exception:** motions which the court may act upon without prejudicing the rights of the adverse party.
3. *Service of motion comes first before filing of motion.* Because before you will file a motion there must be a proof of service.
4. In case of written motions, the movant should furnish a copy of the motion to the other party's counsel.

**What is a Motion?**

✚ Under the law a motion is an application for relief other than by a pleading.

- ✚ Its purpose is to ask for specific relief.

#### Motion contra Pleading

MOTION	PLEADING
An application for relief other than a pleading.	A written statement of the respective claims and defenses of the parties submitted to the court for appropriate judgment. It may be in the form of a complaint, counterclaim, cross-claim, third-party complaint, or complaint-in-intervention, answer or reply.
An application for an order not included in the judgment.	It relates to the cause of action; interest in the matters to be included in the judgment.
Not a pleading, even when reduced to writing; it relates generally to procedural matters. Not an independent remedy, and thus cannot replace an action to enforce a legal right.	Generally states substantial questions.
May be initiatory	Cannot be initiatory as they are always made in a case already filed in court
Always filed before judgment	May be filed even after judgment

#### Litigated Motion contra Ex-parte Motion

Litigated Motion	Ex-parte Motion
One which requires the parties to be heard before a ruling on the motion is made by the court.	One which does not require that the parties be heard, and which the court may act upon without prejudicing the rights of the other party.

#### What is the required form of a motion?

- ✚ Under the law, all motions shall be in writing. The rules applicable to pleadings shall apply to written motions so far as **concerns caption, designation, signature, and other matters of form.**
- ✚ *Exception to written form:* motions made in open court or in the course of a hearing or trial.

#### What must be the content of a motion?

- ✚ Under the law a motion shall:
  - State the relief sought to be obtained
  - And the ground upon which it is based.
  - And if required by the rules or necessary to prove facts alleged therein, shall be accompanied by supporting affidavits and other papers.

#### When must a notice of hearing of a motion be served to the other party? (Section 4, Rules 15)

- ✚ Under the law, every written motion required to be heard and notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least 3 days before the date of hearing, unless the court for good cause set the hearing on shorter notice.
- ✚ **Exceptions:** Under the law these motions are excepted from 3 day notice rule:
  - Ex-parte motions
  - Urgent motions
  - Motions agreed upon by the parties to be heard on shorter notice or jointly submitted by the parties.
  - Motions for summary judgment which must be serve at least 10 days before hearing.

#### To whom the notice of hearing be addressed and when must be the hearing scheduled? (Section 5, Rule 15)

- ✚ Under the law, notice of hearing shall be *addressed to the counsel of all the parties concerned*, and *shall specify the time and date of the hearing which must not be later than 10 days after the filing of the motion.*



### Is proof of service of the motion necessary for the court to hear the same? (Section 6, Rule 15)

- ✚ Under the law, no written motion set for hearing shall be acted upon by the court without proof of service thereof.
- ✚ **Note:** Copy furnished is not sufficient, there must be proof that the other party receive the notice of hearing for the motion.

#### Note:

- ✘ Under the law a motion that did not comply with Sections 4, 5, 6 of Rule 15 is a mere scrap of paper. It should not be accepted for filing and if filed is not entitled to judicial cognizance and does not affect any reglementary period involved for the filing of the requisite pleading.

### When should be the motion day? (Section 7, Rule 15)

- ✚ Under the law all motions shall be scheduled for hearing on Friday afternoon, or if Friday is a non-working day, in the afternoon of the next working day.
- ✚ Friday afternoon as a motion day is mandatory.
  - ✘ **Exception:** Those motions requiring immediate action.

### What is required if a party files a motion for leave?

- ✚ Under the law, a motion for leave to file a pleading or motion shall be accompanied by the pleading or motion to be admitted.
- ✚ **Note:** Under the law, non-compliance with the submission of motion or pleading sought to be admitted will render the denial of the applied motion.

## MOTION FOR BILL OF PARTICULARS Rule 12

#### General Principles:

1. *Motion for Bill of particulars is both an ex-parte motion and a litigated motion.* Ergo, it is safer to treat it as a litigated motion.
2. The counsel of the other party must be furnished with a copy of the motion for BoP.
3. There must be a proof of service not merely copy furnished.

#### What is the purpose of a motion for Bill of Particulars?

- ✚ Under the law, the function of a bill of particulars is to clarify vague allegations in the pleading so that an adverse party may be informed with certainty of the exact character of a cause of action or a defense. Without the clarifications sought by the motion, the movant may be deprived of the opportunity to submit an intelligent responsive pleading.

#### When to file a Motion for Bill of Particulars?

- ✚ Under the law a Motion for Bill of Particulars directed to a **complaint must be filed 15 days from receipt of summons and before, not after responding to a pleading.**
- ✚ If the motion for BoP is directed to a **reply** directed to a counterclaim it should be **filed 10 days from service of counterclaim.**

#### How must the court resolve a motion for BoP?

- ✚ Under the law, the court may either:



1. Deny the motion outright
2. Grant the motion outright; OR
3. Hold a hearing, on the motion.

**What is the effect of filing a motion for BoP on the period to file a responsive pleading?**

- ✚ Under the law, whether or not the motion for BoP is granted, the period to file the responsive pleading is stayed or interrupted.

**What if the BoP was denied?**

- ✚ Movant should file an answer.
- ✚ After the notice of denial of his motion, the movant may file his responsive pleading within the period to which he is entitled to at the time the motion for bill of particulars is filed.

**Note:**

- ✘ If the **movant has less than 5 days to file his responsive pleading upon the service of the BOP or after notice of the denial of his motion**, he nevertheless has 5 days within which to file his responsive pleading (*section 5, Rule 12*). [*Side comment: in the quiz -check the dates- baka may holiday*]

**Illustration:**

- June 1- receipt of summons (up to July 16 to file answer)
- June 14- filed a BoP
- June 23- motion for BoP denied
- June 27- receipt of order denying BoP
- July 2- last day to file answer (5 days per section 5, Rule 16)

**What if the BOP was granted?**

- ✚ Under the law, if a motion for BoP is granted, the court shall order the pleader to submit a bill of particulars to the pleading to which the motion is directed.
- ✚ The compliance shall be effected within 10 days from notice, or order within the period fixed by the court

**What if the other party did not comply with the court's order to file a BoP?**

- ✚ Under the law, non-compliance with the order to file a BoP has the following effects:
  1. Striking out of the pleading.
  2. The portions thereof to which the orders was directed; or
  3. Make such order of amendment as it deems just.
- ✘ **Remedy:** If the essential parts of the complaint were stricken out, then you can file a motion to dismiss on the ground of failure to state a cause of action.

**Is it allowed that you file a Bill of Particulars, and then subsequently you file a motion to dismiss?**

- ✚ No, unless it is on the ground of lack of jurisdiction over the subject matter, res judicata, litis pendentia, and prescription.
- ✚ Rationale: the reason for filing a motion of Bill of particulars is for the respondent to intelligently prepare his answer. Thus, it would be utmost stupidity to file a motion to dismiss when you are asking for the plaintiff to clarify his complaint.

**COMPUTATION OF TIME**  
**Rule 22**

**Principles:**

- ✚ In computing any period of time prescribed or allowed by the Rules, or of the court, or by any applicable statute:

1. The day of the act or event from which the designated period of time begins to run is to be **excluded**.
  2. The date of performance shall be **included**.
- ✚ If the day of the period, as thus computed falls on a Saturday, a Sunday, or a legal holiday in the place where the courts sits, the time shall not run until the next working day.

**Cases where there was a Valid Interruption:**

1. Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.
2. The day of the act that caused the interruption shall be excluded in the computation of the period.

**Note:**

- ✚ Valid interruptions include force majeure, fortuitous events or calamities.
- ✚ It also includes the filing of Motions for Bill of Particulars, motion to dismiss, etc...
- ✚ The question of the determination of when the event occurred and was terminated, and how the party affected knows or be made aware of the period of such interruption, it is believed that the notice thereof can be given by the court to the parties on a case to case basis.

**MOTION TO DISMISS  
Rule 16**

**General Principles:**

1. It is a litigated motion.
2. If you file a motion to dismiss you waived your right to interpose a counterclaim. Therefore if you have a counterclaim that is potent do not file a motion to dismiss, file an answer with counterclaim using your ground for motion to dismiss as affirmative defenses.
3. Under the law, a motion to dismiss must be filed within the reglementary period for filing a responsive pleading and before such responsive pleading is filed.
4. Motion to dismiss under **Rule 16** is different from motion to dismiss in **Rule 33**.
5. Proceed to file a motion to dismiss if you have a ground, even if it does not bar the re-filing of the case.
  - ✘ **Why?** Because if the motion was granted and the case is dismiss, baka magdalawang isip ang plaintiff na i-refile, considering the fact na magbabayad uli siya ng filing fees....eh kung 500,000 ang filing fee? (No refund of filing fees)
6. If the motion to dismiss was denied after hearing, and the case goes to trial, the evidence presented during the hearing shall automatically be part of the evidence of the party presenting the same (*Section 2, Rule 16*).

MOTION to DISMISS	DEMURRER to EVIDENCE
Grounded on preliminary objections.	Based on insufficiency of evidence.
May be filed by any defending party against whom a claim is asserted in the action.	May be filed only by the defendant against the complaint of the plaintiff.
Should be filed within the time for but prior to the filing of the answer of the defending party to the pleading or claim against him.	May be filed for the dismissal of the case only after the plaintiff has completed the presentation of his evidence.

If reverse on appeal the adverse party can still prosecute its claim.	If refused on appeal the defendant waives to present its evidence. Reversal is in favor of the plaintiff.
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#### How is a motion to dismiss resolve?

- ✚ Under the law a motion to dismiss maybe resolve in either of the following manner; after hearing the court may:
  1. Dismiss the action or claim
  2. Deny the motion
  3. Deny the motion and order an amendment

#### Can the court defer the resolution of a motion to dismiss?

- ✚ Under the law, the court cannot defer the resolution of the motion on the ground relied upon is not certain or indubitable.
- ✚ In every case, the resolution of a motion shall state clearly and distinctly the reasons therefor.

#### What are the remedies of plaintiff when the complaint was dismissed [motion to dismiss was granted]?

- ✚ *Dismissal is final but without prejudice*- the plaintiff may simply re-file the action depending upon the ground for the dismissal of the action.
- ✚ *Dismissal is final and it bars the refilling of the case*- plaintiff may appeal from the order of dismissal.
- ✚ *Dismissal is without prejudice and the court gravely abused discretion*- the plaintiff may resort to certiorari.

#### What are the remedies of defendant when the motion is denied?

- ✚ *File an answer*- within the balance of the period prescribe by Rule 11 to which he was entitled at the time of serving his motion, but not less than 5 days in any event.
- ✚ *Civil action under rule 65*- this remedy, however is predicated upon an allegation and a showing that the denial of the motion was tainted with grave abuse of discretion amounting to lack of jurisdiction. Without such showing, Rule 65 cannot be applied as a remedy.
- ✚ *File an appeal*- this remedy is appropriate in the instances where the plaintiff is barred from refilling the same action of claim if the dismissal is based on the following grounds:
  1. The cause of action is barred by a prior judgment
  2. Prescription
  3. The claim or demand has been paid, waived, abandoned or otherwise extinguished.
  4. The claim on which the action is founded is unenforceable under the statute of frauds.
- ✚ *File an answer, proceed to trial, and avail judgment before interposing an appeal.*

#### What are the grounds for motion to dismiss?

- ✚ Under the law, these are the grounds for motion to dismiss:
  1. The court has no jurisdiction over the person of the defending party.
  2. The court has no jurisdiction over the subject matter of the claim.
  3. The venue is improperly laid.
  4. The plaintiff has no legal capacity to sue
  5. That there is another action pending between the same parties for the same cause [litis pendentia].
  6. That the cause of action is barred by prior judgment or by the statute of limitations.
  7. That the pleading asserting the claim states no cause of action.
  8. That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished.
  9. That the claim on which the action is founded is unenforceable under the provisions of the statute of frauds.
  10. That a condition precedent for filing the claim had not been complied with.

✘ **Note: this enumeration is a close list. It cannot be added.**

### **Lack of Jurisdiction over the person of the Defendant**

- + This ground is **waivable** especially if there is a voluntary appearance.
- + Under the law it is held that while lack of jurisdiction over the person of the defendant may be duly and seasonably raised, his voluntary appearance in court without qualification is a waiver of such defense.

### **Lack of Jurisdiction over the Subject Matter**

#### × **General Rule:**

- + This ground is not waivable. It can be raised anytime on the proceedings.

#### × **Exceptions:**

- + *Estoppel by laches*
- + Where a party invokes the jurisdiction of a court to obtain affirmative relief, and it failed, he cannot therefor repudiate such jurisdiction. While the issue of jurisdiction may be raised at anytime, he is estopped as it is tantamount to speculating on the fortunes of litigation.
- + Also where the other party knows the lack of jurisdiction but filed a counterclaim.

#### × **Take Note!**

- + Under the law, jurisdiction over the subject matter is conferred by law and determined by the allegations in the complaint regardless of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.
- + *Lack of jurisdiction over the subject matter is not cured by regular exercise of authority. Also lack of jurisdiction over the subject matter is not cured by the correctness of the decision of the court that has no jurisdiction over the same.*

### **The venue is improperly laid**

- + This ground is waivable

### **The plaintiff has no legal capacity to sue**

- + This ground is waivable.
- + Questions to be considered
  - × Do I have the capacity to sue?
  - × Does the defendant have the capacity to be sued?
  - × Does the plaintiff has the legal personality to sue?

#### **Who has a legal capacity to sue?**

- + *Individual*- at least 18 years of age/ those who attained the age of majority.
- + *Juridical entity*- person authorized to represent the entity through a board resolution.
- + *Representative capacity*- the one representing must have a Special power of Attorney (SPA).
- + *Minor/ incapacitated*- must be assisted by guardian

#### × **Take note!**

- + *Meaning of lack of capacity to sue:* under the law, lack of capacity to sue means that the plaintiff is either not in the exercise of his civil rights or does not have the character or representation that he claims.
- + *Ergo*, where the **plaintiff is not the real party in interest**, the ground for the motion to dismiss is lack of cause of action and not lack of capacity to sue.

### **Litis Pendentia/ Auter Accion Pendant**

- + This ground is not waivable.
- + **Elements:**

1. Identity of parties and the interest they represent.
2. Identity of rights asserted.
3. Identity of particulars (evidence needed).

✘ **Which case should be dismissed?**

- ✚ **General Rule:** the second case that gave rise to *litis pendentia*.
- ✚ **Exception:** retain the case that would best resolve the issue of the case.

**Note:** there is no *litis pendentia* in an action for **forcible entry and quieting of title**. The issues are different. One is for recovery of possession the other is recovery of ownership.

✘ **Take Note!**

- ✚ The pendency of an administrative case between the parties does not generally constitute *litis pendentia* in another civil or criminal case between them.

### **Res Judicata**

**Two Aspects:**

1. **Bar by prior judgment-** same case; one case is decided on the merits.
2. **Conclusiveness of Judgment-** presupposes different causes of action but the judgment of the court in the first case is conclusive in the second case.

**Illustration:**

- ✘ Santiago Wakas filed a case against Guillermo Lawagan for recovery of ownership over a parcel of land. The court decided in favor of Guillermo. Guillermo leased the said land to Pedro. Santiago feeling that he was prejudiced filed damages against Pedro, alleging that the latter used the land without his permission. Pedro filed a motion to dismiss on the ground of *Res judicata*. Resolve the motion.
- ✘ **Answer:** The motion should be granted. Under the law, the court's decision on the case filed by Santiago against Guillermo is conclusive, and all cases arising from the same subject matter must yield to it. The suit filed by Santiago against Pedro is anchored on the same subject matter, thus barred by the conclusiveness of the judgment in the prior case.

✘ **Elements of Res Judicata**

1. Identity of parties and of the interest they represent.
2. Identity of rights asserted.
3. Identity of particulars
4. Judgment on the merits by a court that has jurisdiction over the case

✘ **Take note!**

- ✚ Under the law, *res judicata* as a ground for dismissal requires a previous final judgment in a case prosecuted between the same parties involving the same subject matter and cause of action.
- ✚ Principle of *res judicata* applies to all cases and proceedings, including land registration and cadastral proceedings.
- ✚ **Compromise Agreement-** if there was a compromise agreement, the court in its decision will adopt the compromise agreement and it becomes a judgment on the case. Such judgment is final and executory on the day that it is rendered. The judgment by compromise constitutes *res judicata*.

### **Prescription/ Statute of Limitations**

- ✚ This ground is not waivable.
- ✚ The court can dismissed *motu proprio* the complaint on the ground of *prescription only if the dates are apparent* in the face of the complaint.

### Prescription of Actions (Civil Code)

#### Non Prescriptible Actions

1. To demand a right of way when the property is isolated and upon payment of proper indemnity.
2. To bring an action to abate public or private nuisance.

**10 Year Period-** the following actions shall be brought within 10 years from the time the right of action accrues:

1. Upon a written contract
2. Upon an obligation created by law
3. Upon judgment

**6 Year Period-** the following actions must be commenced within 6 years:

1. Upon an oral contract
2. Upon a quasi-contract

**4 Year Period-** the following actions must be instituted within 4 years:

1. Upon an injury to the rights of the plaintiff
2. Upon a quasi-delict

**1 Year Period-** the following actions must be filed within one year:

1. For forcible entry and detainer.
2. For defamation.

### **The Pleading Asserting the Claim States No Cause of Action**

- ✚ This ground is waivable
- ✚ This ground can be invoked **only if there is a cause of action** but it does not appear on the complaint.
- ✚ Under the law, when the ground for dismissal is that the complaint states no cause of action, such fact can be determined only from the facts alleged in the complaint and from no other and the court cannot consider other matters aliunde. **This implies that the issue must be passed upon on the basis of the allegations assuming them to be true and the court cannot inquire into the truth of the allegations and declare them to be false**, otherwise it would be a procedural error and a denial of due process to the plaintiff.

#### ✘ How to determine if the complaint states no cause of action?

- ✚ Check in the complaint if the elements of a cause of action are present or alleged. If none, then the complaint states no cause of action.

#### ✘ What is the remedy of the plaintiff if his complaint states no cause of action?

- ✚ If the defendant did not manifest his objection by filing a motion to dismiss and if one was filed but was denied the plaintiff may amend his complaint or introduce evidence proving the same during the trial

#### ✘ Lack of Cause of Action

- ✚ This can be a ground to dismiss only after the plaintiff presented his evidence and rested his case.
- ✚ It is effected by way of demurrer to evidence.
- ✚ It can be raised anytime however evidence are needed to prove the same.

**The claim on which the action is founded is unenforceable under the provisions of the statute of frauds**

- + This ground is **waivable**.
- + Under the law, this ground for motion to dismiss may be filed even if the absence of a cause of action does not appear on the face of the complaint. Such absence may be proved during the hearing of the motion to dismiss on said ground.
  
- ✘ **Article 1403 of NCC-** 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 a secondary evidence of its contents:
  1. An agreement that by its terms is not to be performed within a year from the making thereof.
  2. An agreement made in consideration of marriage, other than a mutual promise to marry.
  3. 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 persons on whose account the sale is made, it is sufficient memorandum.
  4. An agreement for the leasing for a longer period than one year, or for the sale of real property or of an interest therein.
  5. A representation as to the credit of third person.
  
- ✘ **Take note!**
  - + If the foregoing transactions were not in writing, they are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them.

**Republic Act 8792- E-commerce Law [Corollary to enforceability]**

**Section 6.** *Legal Recognition of Electronic Data Messages-* Information shall not be denied validity or enforceability solely on the ground that it is in the form of electronic data message purporting to give rise to such legal effect, or that it is merely incorporated by reference in that electronic data message.

**Section 7.** *Legal Recognition of Electronic documents-* Electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing, and-

(a) Where the law requires a document to be in writing, that requirement is met by an electronic document if the **said electronic document maintains its integrity and reliability and can be authenticated so as to be usable for subsequent reference**, in that-

i. The electronic document has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and

ii. The electronic document is reliable in the light of the purpose for which it was generated and in the light of all relevant circumstances.

(b) Paragraph (a) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the document not being presented or retained in its original form.

(c) Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document if-



- i. There exists a reliable assurance as to the integrity of the document from the time when it was first generated in its final form; and
- ii. That document is capable of being displayed to the person to whom it is to be presented: Provided that no provision of this Act shall apply to vary any and all requirements of existing laws on formalities required in the execution of documents for their validity.

**For evidentiary purposes**, an electronic document shall be the functional equivalent of a written document under existing laws.

This Act does not modify any statutory rule relating to admissibility of electronic data messages or electronic documents, **except** the rules relating to authentication and best evidence.

### **Non-compliance to a condition precedent**

1. Barangay Conciliation
2. Lack of Barangay certification- not jurisdictional therefore can be waived.
3. Exhaustion of administrative remedy.
  - Exceptions:**
    1. If the decision of the administrative body is a patent nullity.
    2. Urgency of the case
    3. Decision of the administrative body is simply a reiteration.
4. If a suit is among family members, earnest effort of reconciliation must be made.
  - ✗ **Who are family members?**
    - ✚ Parents and their children.

#### ✗ **Illustration:**

A and B are siblings disputing over a parcel of land. A without an earnest effort to effect conciliation among them filed a case against B together with her husband. B filed a motion to dismiss on the ground that it did not comply with a condition precedent. Resolve the motion.

**Answer:** the motion should be denied. Under the law, suit among family members include only those suit between parents and siblings or suit between siblings and siblings. In this case the husband is not a family member. Thus, the condition precedent of reconciliation among the parties is not necessary.

**What is the remedy if there was a ground for a motion to dismiss but the defendant did not file a motion to dismiss?**

- ✚ Under the law, if no motion to dismiss has been filed, any of the grounds provided for dismissal may be pleaded as an affirmative defense in the answer and a preliminary hearing may be had thereon as if a motion to dismiss has been filed.

**Are affirmative defenses limited only to the grounds of motion to dismiss?**

- ✚ No! Any ground that would bar recovery can be use as an affirmative defense.

#### ✗ **Other grounds that would bar recovery: Article 1231 NCC**

1. By the loss of the thing due
2. By the condonation or remission of the debt
3. By the confusion or merger of the rights of creditor and debtor
4. By compensation
5. By novation
6. Annulment
7. Fulfillment or resolutive condition

**Question: the defendant filed a motion to dismiss but it was denied. He then filed an answer using his ground for motion to dismiss as affirmative defenses. Can the defendant ask for a hearing of his affirmative defenses?**

- ✚ NO! The rules provide that an affirmative defense will be heard on a hearing if a prior motion to dismiss was not filed.
- ✚ **Exceptions:**



1. If the trial court had not categorically resolved the motion to dismiss.
2. When it is evident that the action is barred by res judicata. This can be justified by the liberal construction rule. Res judicata is not waivable.

#### May the court dismiss an action upon a ground not alleged in a motion to dismiss?

- ✚ NO! Except in cases where the courts can dismiss the case *motu proprio*, such as in cases of lack of jurisdiction and on the ground of prescription provided that the same is palpable on the face of the pleading.
- ✚ **Rationale:** It prevents the plaintiff from arguing the point in question. The plaintiff should argue the issues raised on the motion to dismiss.

### MOTION FOR AMENDMENT OF PLEADINGS [Rule 10]

#### How is amendment of pleading done?

1. By adding or striking out an allegations or the name of the party.
2. By correcting the name of the party or a mistaken or inadequate allegation or description in any other respect.
3. Show amendment either by underscoring it or making it bold or as long as it is noticeable.

- ✘ **Purpose of Amendment:** So that actual merits of the controversy may speedily be determined without regard to technicalities and in the most expeditious and inexpensive manner.

#### Who can amend?

- ✚ **Plaintiff**- with regard to his complaint
- ✚ **Defendant**- with regard to his answer

#### When can the amendment be done?

1. **Amendment as a matter of Right**- before a *responsive pleading is served*. [Note- the word used is **served** not filed].
  - ✚ Can be availed only once and **for whatever reason**. The court cannot exercise its discretion.
  - ✚ This amendment covers only *amendments done for the first time [once only]*.
  - ✚ Responsive pleading to a complaint is an answer. Responsive pleading to an answer is a reply [in cases when a reply is mandatory].
  - ✚ **It is a matter of right**. Ergo, if the court denied your motion to amend your pleading **the remedy is mandamus**, because it is ministerial duty for the courts to allow your amendment.
  - ✚ **If the pleading to be amended is a reply it must be done within 10 days after it is served.**
  - ✚ **The party effecting amendment can correct the error of jurisdiction in the complaint.**

#### Example:

- ✘ In a suit for damages, nagkamali yon nilagay mong amount. Instead of the jurisdictional amount of the RTC, ang nilagay mo ay below the same, pwede mong palubuin yong amount in your amendment para magconform sa jurisdiction ng RTC.
- ✘ You filed your complaint for a collection of money. However, in your complaint you did not allege that the obligation of your debtor was due and demandable. When the debtor received the copy of your complaint, he noticed that there was a failure to state a cause of action, so he filed a motion to dismiss. As counsel for the creditor what will you do?

**Answer:** Amend your pleading as a matter of right because there was no responsive pleading that was served. Wag ka nang magpagod na sagutin ang motion to dismiss!

- ✘ **Question:** What if a motion to dismiss was already filed by the defendant; can the plaintiff amend his complaint as a matter of right?

**Answer:** Yes, a motion to dismiss is not a responsive pleading. Also, it is applicable even after a motion to dismiss has been submitted for decision and even if a decision of dismissal of the cases was ordered but it did not become final and executory. **However**, if a decision was already made relative to the motion to dismiss the plaintiff should file a *motion for reconsideration*, attached thereto is the amended pleading.

**Is amendment of a complaint still possible even if an order for its dismissal was issued?**

- ✚ Yes! Amendment of the complaint may be allowed even if an order for its dismissal has been issued as long as *the motion to amend is filed before the dismissal order becomes final*.

- ✚ *This contemplates amendment as a matter of right*. The motion to dismiss that caused the dismissal of the complaint is not a responsive pleading, thus even if the dismissal order was issued but it was not final, the plaintiff can amend the complaint.

**Can an amended answer be allowed even if the case was set for trial on the merits?**

- ✚ Yes! An amended answer may also be allowed even after the case has been set for trial on the merits if the purpose of the amendment is to submit the real matter in dispute without intent to delay the action.

**Can amendment of pleadings be allowed even first time on appeal?**

- ✚ Yes! As long as it *does not change the cause of action or causing unfair prejudice to the other party*.

- ✚ It is allowed if the purpose is to (a) correct a defect of party plaintiff (where it is merely to include the husband of the plaintiff's wife) OR (b) substitute the name of the real party in interest.

**2. Amendment with Leave of Court-** after a responsive pleading was served.

- ✚ It *needs leave of court* especially if it involves substantial amendments.

✘ **Situations covered:**

1. After a responsive pleading was served, an amendment to the complaint may be substantial and will correspondingly require a substantial alteration in the defenses of the adverse party. The amendment of the complaint is not only unfair to the defendant but will cause unnecessary delay in the proceedings. Leave of court is thus required.
2. Second amendment before a responsive pleading is served
3. Substantial amendment
  - ✚ *Substantial amendment of complaint-* anything that would change, adds the COA or would increase the liability of the defendant.
  - ✚ *Substantial amendment of answer-* anything that would drastically change the theory of the defendant.

**Example:**

- ✘ Santiago filed a case for collection of money against Guillermo in the amount of 250, 000. It was filed in the RTC. After serving his responsive pleading Guillermo filed a motion to dismiss on the ground of lack of Jurisdiction. Santi petition the court to amend his pleading. The court granted it so he increased the amount to 400, 000. Is the court correct in granting the petition?

**Answer?** No! Because the court has no jurisdiction over the case. A court should not act over a case which it has no jurisdiction. If the court grants the prayer of Santi it is acting out its jurisdiction, hence violative of the Rules and principles of due process.

**Note:** The story would be different if the amendment made by Santiago is an amendment as a matter of right. Because the court will not act by exercising its discretion. Therefore it is not acting without its jurisdiction.

**3. Formal Amendment-** on clerical errors

- ✚ Leave of court is not necessary.
- ✚ A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, *provided no prejudice is caused thereby to the adverse party.*

**4. Amendments to conform to OR authorize presentation of evidence**

- ✚ When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues.
- ✚ If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.
- ✘ **If a court acquires jurisdiction over an issue not raised in the pleading, can the pleading be amended to conform to such jurisdiction?**
  - ✚ *Yes! If the following requisites concur:*
    1. The court acquired jurisdiction over the issue not raised in the pleadings.
    2. Such issue was tried with the express or implied consent of the parties [there was no objection].
    3. Act must be initiated by any party.
- ✘ **Take note:**
  - ✚ Failure to amend the pleading does not affect the result of the trial of the issues, because there is evidence.
  - ✚ There court can also allow the amendment of a pleading if evidence was introduced on an issue not raised in the pleading and the opposing party did not object.
  - ✚ *Exception:* the foregoing rule will not apply when *the case is decided on a stipulation of facts* because the parties have already agreed on the facts that concern their interest.
- ✘ **Can there be an implied amendment of the pleading?**
  - ✚ Yes! If evidence not covered in the pleading is presented during the trial and it was not objected by the defendant.

**Amendments with Leave of Court but Improperly Done [Prohibited Amendments]**

1. Where the court has no jurisdiction over the original complaint and the purpose of the amendment is to confer jurisdiction on the court by eliminating the objectionable portion OR where the cause of action originally pleaded in the complaint was outside the jurisdiction of the court.
  - ✘ **Rationale:** since the court must first have jurisdiction over the case, before it can order such amendment.

2. If it would result in delay.
3. If it would result in a change of the cause of action or defense or change the theory of the case or are inconsistent with the allegations in the original complaint, unless justice and equity warrant such amendment which would negate defendant's liability or will not result in substantial injury to the adverse party.
4. If the plaintiff has no cause of action at the filing of the original complaint and the purpose of the amendment is to introduce a subsequently accrued cause of action.

### **SUPPLEMENTAL PLEADINGS**

- ✚ **Purpose:** To set forth transactions, occurrences or events which have happened after filing of the complaint or answer.
- ✚ Cannot introduce a new cause of action.

#### **Who may file a supplemental pleading?**

- ✚ Any party upon his motion and always by leave of court.

<b>Amended Pleading</b>	<b>Supplemental Pleading</b>
1. Amended pleadings refer to the facts existing at the time of the commencement of the action.	Supplemental pleadings refer to facts arising after the filing of the original pleading.
2. An amended pleading results in the withdrawal of the original pleading.	Supplemental pleading is merely in addition to but does not result in the withdrawal of the original pleading.
3. An amended pleading can be made as matter of right, as when no responsive pleading was not served.	Supplemental pleadings are always with leave of court. <b>[motion by leave of court to file supplemental pleading]</b>

- ✘ **If the defendant wants to file answer to the supplemental complaint-** "*Answer to the supplemental Complaint*". It must be filed within 10 days from the issue of the order admitting the motion for supplemental pleading.

### **EFFECTS OF AN AMENDED PLEADING**

1. The *amended pleading supersedes the original pleading* which is deemed withdrawn and no longer constitutes part of the records.
  - ✚ Any defense or allegation not included in the amended pleading is deemed waived.
2. *Filing of the amended pleading does not retroact to the date of the filing of the original*, hence the statute of limitations runs until the filing of the amendment.
  - ✚ It is the actual filing in court that controls, and not the date of the formal admission of the amended pleading.
  - ✚ **Exception:** But an amendment which merely supplements and amplifies facts as originally alleged in the complaint relates back to the date of the commencement of the action and is not barred by the statute of limitations which expired after the service of the original complaint.
3. Where the original complaint states a cause of action but does it imperfectly and afterwards an amended complaint is filed correcting the defect, the plea of prescription will relate to the time of the filing of the original complaint. However, such rule would not apply to the party who was impleaded for the first time in the amended complaint which was filed after the period of prescription had already lapsed, hence the amended complaint must be dismissed as to such party who was thus belatedly included in the action.
4. The superseded pleading is not totally expunge because reference thereby with regards to the effect of amendments, that is:
  - a. Admissions in the superseded pleading can still be received in evidence against the pleader.

- ✚ It partakes the nature of *extra-judicial admission*. It cannot be contradicted by the pleader. It is extra-judicial admission because it has been superseded by the amended pleading. Extrajudicial admission does not need further proof.
- b. Claims or defenses alleged therein but not incorporated or reiterated in the amended pleading are deemed waived.

**MOTION FOR DISMISSAL OF ACTION BY THE PLAINTIFF**  
**Rule 17**

**Can the plaintiff cause the dismissal of the action?**

- ✚ Yes. Under the law, the plaintiff can cause the dismissal of the action in 3 ways:
  1. *Upon filing in court a notice of dismissal*- plaintiff's matter of right
  2. *Upon filing in court a motion to dismiss by the plaintiff*- judicial discretion
  3. *Due to the fault/inaction of the plaintiff*

**When can a mere notice of dismissal be filed?**

- ✚ Under the law, a mere notice of dismissal as a matter of right can be effected:
  1. Before the defendant *served his answer* OR
  2. Before the defendant *moved for a summary judgment*.

✘ **Note:**

- ✚ Under this dismissal the court will not exercise its discretion but it will issue an order confirming the dismissal. The order is necessary for purposes of prescription [to reckon the date when the decision becomes final and executory].
- ✚ What causes the loss by a plaintiff of the right to effect dismissal of the action by mere notice is *not the filing of the defendant's answer* with the court but the *service on the plaintiff of said answer or of a motion for summary judgment*.

**What is the effect of dismissal by mere notice?**

- ✚ The dismissal is *without prejudice* except:
  1. Where the notice of dismissal so provides.
  2. Where the plaintiff has previously dismissed the same case in a court of competent jurisdiction twice [*two dismissal rule*].
  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 claim involved.

**TWO DISMISSAL RULE**

**Elements:**

1. Plaintiff dismissed an action twice
2. The action is based OR includes the same claim or cause of action
3. The same was filled in a court of competent jurisdiction.

**Note:** *the two dismissal rule is not self-executing*. It is up to the defendant to invoke it.

**Illustration:**

Santiago loaned from Guillermo alias "Bombay". When the obligation became due Santiago was unable to pay. Bombay filed a suit against Santiago. Santiago asks for the condonation of the loan which Bombay granted and causes the dismissal of the case. One month after, Santiago obtained again a loan from Bombay. He failed to pay. A suit was filed against him. He pleaded to Bombay to dismiss it because babayaran din niya yon. Nauto si Bombay kaya pinadiniss un kaso. Kaya lang nung nalasing sila nagdirty

finger si Santiago kay Bombay. Naasar si Bombay kaya ni-refile un kaso. Is the two dismissal rule applicable?

**Answer:** No! Because there are two separate cause of action. The two dismissal rule will apply if the action which was dismissed twice proceeds from the same cause of action and it was filed in a court of competent jurisdiction. In this case the first and second loan of Santiago constitutes two separate causes of action.

**When is the motion to dismiss by the plaintiff effected?**

✚ After the defendant filed his answer

✘ **Note:**

- ✚ This is a *non-litigated motion* because even if there is a counterclaim, the rules explicitly provide that the dismissal shall be limited to the dismissal of the complaint and not the counterclaim.
- ✚ Dismissal is without prejudice *except* if the order of dismissal so provides.

**When shall be the motion to dismiss effected by the plaintiff be effective?**

1. Upon approval of the court of the motion **and**
2. Upon such terms and conditions as the court deems proper.

**What is the effect where the plaintiff moves for the dismissal of his complaint to which a counterclaim has been interposed?**

- ✚ The dismissal shall be limited to the complaint.
- ✚ The dismissal shall be without prejudice to the right of the defendant to either prosecute his counterclaim in a separate action or to have the same be resolved in the same action.
- ✚ Should the defendant opt to prosecute his claim in a separate action, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint.
- ✚ Should the defendant choose to have his counterclaim disposed of in the same action wherein the complaint had been dismissed, he must manifest such preference to the trial *court within 15 days from notice to him of plaintiff's motion to dismiss.*
  
- ✚ *Effect of non-manifestation:* if there is no manifestation after 15 days the counterclaim will be dismissed.
  
- ✘ **Note:** the principle that the dismissal of the complaint carries with it the dismissal of the counterclaim *applies to instances where the court has no jurisdiction over the main case.*

**When can there be a dismissal of the action due to the fault of the plaintiff?**

- ✚ **Grounds:** if these are present the court can dismiss the case *motu proprio*
  1. Failure of the plaintiff to appear on the date of the presentation of his evidence in chief without justifiable reasons.
    - ✚ *Presentation of evidence in chief-* presentation of witnesses for direct examination
  2. Failure of the plaintiff to prosecute his action for an unreasonable length of time
    - ✚ *Criminal Cases-* equivalent to speedy trial
  3. Failure of the plaintiff to comply with the Rules of Court
  4. Failure of the plaintiff to obey any order of the court.
  
- ✘ **Note:**
  - ✚ The dismissal is with prejudice, except if the order provides otherwise. Thus when the dismissal does not contain any condition at all, it has the effect of an adjudication on the merits as it is understood to be with prejudice.
  - ✚ **This is tantamount to Res Judicata**, hence it is an exception to the rule on “after trial and judgment on the merits” of res judicata.

- ✚ It is plaintiff's failure to appear at the trial, and not the absence of the lawyer, which warrants dismissal. Where the counsel for the plaintiff had adduced evidence for his client, his failure to appear at a subsequent hearing cannot be considered as failure to prosecute but only a waiver of the right to cross-examine the witnesses for the defendant and to object to the admissibility of evidence for the latter.
- ✚ Dismissal of the case due to the fault of the plaintiff is not applicable in criminal cases.

**What is meant by dismissal without prejudice?**

- ✚ It means that the plaintiff can re-file the case.

**What is meant by dismissal with prejudice?**

- ✚ It means that the plaintiff cannot anymore re-file the case since it is barred.

**MOTION TO INTERVENE**  
**Rule 19**

- ✘ **Side comment:** Intervenor- translation: "paki-alamiro"

**General Principles:**

1. *General Rule:* Must be filed before the *Trial courts [not appellate courts]*.
2. This is a remedy of a third person who has an interest over the litigation or the result of the litigation.
3. The allowance or disallowance of a motion to intervene is addressed to the sound discretion of the court.
4. A motion for intervention is always done by leave of court.
5. Intervention is not intended to change the nature and character of the action itself. In general, an *independent controversy cannot be injected into a suit* by intervention, hence such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies.

**What is the nature of intervention?**

- ✚ Intervention is merely a *collateral or accessory or ancillary to the principal action and not an independent proceeding*. With the final dismissal of the original action, the complaint in intervention can no longer be acted upon.

**Who may intervene?**

1. A person who has a legal interest in the matter in litigation.
2. A person who has a legal interest in the success of either of the parties.
3. A person so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.
4. A person who has a legal interest both in the matter of litigation and the success of either parties.

**What are the requisites of intervention?**

1. There must be motion for intervention filed before rendition of judgment by the trial court.
2. The movant must show in his motion that he has
  - a. A legal interest in the matter in litigation.
  - b. The movant is so situated as to be affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.



- c. The intervention must not unduly delay or prejudice the adjudication of the rights of the original parties and that the intervenor's rights may not be fully protected in a separate proceeding.

**Note:**

- ✚ Both requirements must concur!
- ✚ The interest which entitles a person to intervene in a suit must be on the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.

**When to file a complaint-in- intervention?**

✚ **General Rule:**

- ✚ The motion to intervene may be filed at any time before rendition of judgment by the trial court. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties.

✚ **Exception:**

- ✚ Intervention can be allowed even if there is already a judgment on the principal action or the judgment became final or even the principal action is on *appeal if the intervenor is an indispensable party*.

**When to file an answer to a complaint-in-intervention?**

- ✚ The answer to the complaint-in-intervention shall be filed within the 15 days from notice of the order admitting the same, unless a different period is fixed by the court.

**What will the intervenor file if he unites with the plaintiff?**

- ✚ Complaint-in-intervention against the defendant.

**What will the intervenor file if he unites with the defendant?**

- ✚ Answer-in- intervention against the plaintiff.

**What will the intervenor file if he does not ally himself to the parties?**

- ✚ Complaint in intervention against both parties.

**What is the remedy of intervention was denied?**

- ✚ *Improper denial*- correctible by appeal
- ✚ *Improper denial with grave abuse of discretion*- mandamus will lie, if there is no other plain, speedy and adequate remedy.

**Illustration:**

Narinig mo ang kapitbahay mong nag-aaway. Nagdemandahan sila. Umusad ang kaso sa hukuman. Tuwang-tuwa ka pero noong napadaan ka, narinig mo na ang iyong lupa pala ang pinag-aawayan. Base sa kanilang mga ebidensya ang lupa mo nga ang pinag-aawayan nila. Hindi ka naman makasawsaw sa tunggalian nila kasi hindi ka sinama na party in the case. Anu ang remedy mo?

**Answer:** By leave of court file a motion to intervene so as to protect your right or interest over your property.

**ANSWER**

**General Principles:**

1. Under the law an answer is mandatory, otherwise the defendant will be declared in default.
2. The defendant may deny or accept the allegations in the complaint. If he specifically denies the allegations, the case proceeds because there is an issue to be resolved. However, if he accepts all the allegations decision will be rendered immediately.
3. General denial is considered an admission of the averment not specifically denied



4. The defendant may include in his answer his *counterclaim, crossclaim, third-party complaint, fourth party complaint* and so on.
5. The defendant instead of filing his answer may file motion to dismiss if the complaint is dismissible.
6. Issues are joined upon filing of an answer.

#### What is an answer?

- ✚ It is a pleading in which a defending party sets forth his defenses. It may allege legal provisions relied upon for defense. Defenses are either *negative or affirmative*.
- ✚ When the answer sets forth negative defenses, the burden of proof rest upon the plaintiff, and when the answer alleges affirmative defenses, the burden of proof devolves upon the defendant.

#### Kinds of Defenses

##### I. Affirmative Defenses

Allegations of new matters, which while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar the recovery to him.

**It includes:**

1. Fraud
2. Statute of limitations (prescription)
3. Release
4. Payment
5. Illegality
6. Statute of frauds
7. Estoppels
8. Former recovery
9. Discharge in bankruptcy
10. Res judicata
11. Ultra vires act of a corporation
12. Lack of authority of an agent
13. Laches
14. Unconstitutionality
15. Any other matter by way of confession and avoidance.

##### **Other grounds that would bar recovery: Article 1231 NCC**

1. By the loss of the thing due
2. By the condonation or remission of the debt
3. By the confusion or merger of the rights of creditor and debtor
4. By compensation
5. By novation
6. Annulment
7. Fulfillment or resolutive condition

##### II. Negative Defenses

It is the specific denials of the material fact or facts alleged in the pleading of the claimant essential to his cause or cause of action.

##### Forms of Denials

###### 1. Absolute Denial

- ✚ This happen when the defendant specify each material allegation of fact the truth of which he does not admit and whenever practicable sets forth the substance of the matters upon which he relies to support such denial.

###### 2. Partial Denial

- ✚ This happen when the defendant does not make a total denial of the material allegations in specific paragraph, denying only a part of the averment. In doing so he specifies that part of the truth of which he admits and denies only the remainder.
3. **Denial by Disavowal of Knowledge**
- ✚ This happen when the defendant alleging having **no knowledge** or **information** sufficient to form a belief as to the truth of a material averment made in the complaint. Such denial must be in good faith.
  - ✚ When the matter denied by a disavowal of knowledge is plainly and necessarily within the defendant's knowledge, such claim shall not be considered a specific denial.

**CASE: Republic vs. Sandiganbayan (July 15, 2003)**

Several cases were filed against the Marcoses for forfeiture of properties and bank accounts abroad which was alleged to be ill-gotten. In their pleading the Marcoses just alleged their lack of knowledge of the said property and bank accounts.

In the trial, it was proven that their claim of lack of knowledge was not in good faith because based on the evidences; Imelda Marcos penned her signature on the documents of said bank accounts. At the outset she has knowledge of the thing which she is denying. Her signature speaks for her knowledge of the same.

**NOTE:** If the denial does not fall within the scope of the abovementioned kinds of specific denial, it shall be considered a **general denial which is considered as an admission of the averment not specifically denied.**

**Negative Pregnant**

- ✚ It is tantamount to admission because it is pregnant with admitting the allegations.
- ✚ It is an admission in avoidance which does not qualify as a specific denial.
- ✚ It is a form of negative expression which carries with it an affirmation or at least an implication of some kind of favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, the qualifying, circumstance alone are denied while the fact itself is admitted.

**In the case supra:**

- ✚ Despite the serious and specific allegations against them, the Marcoses responded by simply saying that they had no knowledge or information sufficient to form a belief as to the truth of such allegations. Such a general, self-serving claim of ignorance of the facts alleged in the petition for forfeiture was insufficient to raise an issue. Respondent Marcoses should have positively stated how it was that they were supposedly ignorant of the facts alleged.

**To elucidate here is a sample of the allegations of the Republic and the answer of private respondents:**

23. The following presentation very clearly and overwhelmingly show in detail how both respondents clandestinely stashed away the country's wealth to Switzerland and hid the same under layers upon layers of foundations and other corporate entities to prevent its detection. Through their dummies/nominees, fronts or agents who formed those foundations or corporate entities, they opened and maintained numerous bank accounts. But due to the difficulty if not the impossibility of detecting and documenting all those secret accounts as well as the enormity of the deposits therein hidden, the following presentation is confined to five identified accounts groups, with balances

amounting to about \$356-M with a reservation for the filing of a supplemental or separate forfeiture complaint should the need arise.

#### **The answer of private respondent**

22. Respondents specifically DENY paragraph 23 insofar as it alleges that Respondents clandestinely stashed the country's wealth in Switzerland and hid the same under layers and layers of foundations and corporate entities for being false, the truth being that Respondents' aforesaid properties were lawfully acquired.

- ✚ **This is in the law of pleadings a negative pregnant.** Although you specifically denied a certain specific allegation but you did not present any evidence that would support your denial. The effect is as if you admitted the substantial facts of the allegation even though you filed an answer denying the same.

### **Actionable Documents**

#### **What is an Actionable Document?**

- ✚ Actionable documents are documents relied upon by either the plaintiff or the defendant.

#### **How to plead actionable document?**

- ✚ Under the law the pleader is required to:
  1. Set forth in the pleading the substance of the instrument or the document; or
  2. To attach the original or the copy of the document to the pleading as an exhibit and to be part of the pleading; or
  3. To set forth in the pleading said copy of the instrument or document.

#### **How to contest actionable documents?**

- ✚ Under the law, a denial of an actionable document must be:
  1. Under oath of the defendant.
  2. Couch in specific denial and sets forth what the defendant claims to be the facts [dapat sabihin ng defendant kung ano ang dahilan niya at ang version niya ng kwento].
- ✚ **Exception:** [check if a question involves actionable documents and if the party is a privy to the actionable instrument].
  - ✘ **Under the law the requirement of an oath does not apply**
    1. When the adverse party *does not appear to be a party* to the instrument or
    2. When compliance with an order for an inspection of the original instrument is refused [hindi pinayagan ng plaintiff na tingnan ang original copy ng actionable document].

#### **What is the effect of a denial of an actionable document is not under oath?**

- ✚ Under the law, if a denial of an actionable document is not under oath it is considered that **the defendant deemed to have admitted the genuineness and due execution of the document.** But it cannot preclude the defendant from assailing that the actionable document is obtained through force and intimidation, because they are not part of genuineness.

**Note:** the form of the document can be attacked even if not under oath, such as its wordings, because it has nothing to do with due execution and genuineness.

#### **What is the effect if the defendant filed an answer but admitted all the allegations in the complaint?**

- ✚ There is no triable issue. Thus, there can be judgment on the merits.

**What is the effect if the defendant did not file his complaint and the reglementary period to file the same had lapsed?**

- ✚ The defendant may be declared in default.

## COUNTERCLAIM

### General Principles:

1. It must be filed in the same court where the original complaint is filed. It must be filed with an answer thus.....**answer with counterclaim**. A counterclaim cannot be filed alone.
2. A compulsory counterclaim if not set is barred.  
**Except:**
  - a. If the **counterclaim matured or was acquired after the defendant had served his answer**. Is such case, it may be pleaded by filing a supplemental answer or pleading before judgment.
  - b. When a pleader fails to set up a counterclaim through oversight, inadvertence, excusable negligence or when justice requires, he may, by leave of court, set up the counterclaim by amendment of the pleadings at anytime before judgment.
  - c. Permissive counterclaims.
3. It requires non-payment of docket fee.
4. Does not need a certification of non-forum shopping.
5. A counterclaim or cross-claim need not be answered if it is based on and inseparable from the very defense raised by the opposing party as it will merely result in said opposing party pleading the same facts already raised in his former pleading or where the counterclaim merely alleges the opposite of the facts in the complaint.
6. A plaintiff who chooses not to answer a compulsory counterclaim cannot be declared in default on such counterclaim. The law controverts the allegation in the counterclaim in favor of the plaintiff.

### What is a Counterclaim?

- ✚ Any claim which a defending party may have against an opposing party.

### Kinds:

#### I. **Compulsory Counterclaim**

- ✚ It arises out of and is necessarily connected with the subject matter of the plaintiff's claim.

#### Elements:

1. It arises out of, or is necessarily connected with the transaction or occurrence which is the subject matter of the plaintiff's claim.
2. It does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.
3. Subject to the qualification on the jurisdictional amount with regard to counterclaims raised in the trial courts.

#### Illustration:

The case was filed in the MTC. What if the defendant has a counterclaim beyond the jurisdictional amount of the MTC and he insists that it must be decided along with the original complaint, can the court decide on the case and award the amount prayed in the counterclaim?

**Answer:** Yes! But the award of counterclaim will not exceed the jurisdictional amount of the MTC. Thus if the counterclaim of the defendant is 500,000 he may only be awarded only up to 300,000.

### Test to Determine Whether or not a counterclaim is Compulsory

1. Are the issues affect or law raised by the claim and counterclaim largely the same.

2. Would res judicata bar a subsequent suit on defendant's claims absent the compulsory counterclaim rule?
3. Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim?
4. Is there any logical relation between the claim and the counterclaim?

## II. Permissive Counterclaim

- ✚ Does not arise out of nor is it necessarily connected with the subject matter of the opposing party's claim. It is not barred even if not set up in the action.

### Characteristics of a permissive counterclaim:

1. Even if not set up is not barred because it doesn't arise out of the same transaction as that of the complaint.
2. It can be brought as a separate action in itself.
3. Docket fee must be paid.
4. It must be answered by the adverse party to prevent default.
5. It needs certificate against forum shopping

### Requirements of a permissive Counterclaim

1. It does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction.
2. It must be within the jurisdiction of the court wherein the case is pending and cognizable by the regular court of justice.
3. It does not arise out of the same transaction of series of transactions subject of the complaint.

### What is the effect on the counterclaim when the complaint is dismissed?

- ✚ If a counterclaim has already been pleaded by the defendant prior to the service upon him of the plaintiff's motion to dismiss, and the court grants the said motion to dismiss, the dismissal shall be limited to the complaint.
- ✚ The dismissal of the complaint is without prejudice to the right of the defendant to prosecute his counterclaim in the same action or in a separate action. This dismissal shall have the effect of adjudication upon the merits, unless otherwise declared by the court. The dismissal of the main action does not carry with it the dismissal of the counterclaim.

### What should the defendant do if he wants to prosecute his counterclaim in the same action filed by the plaintiff?

- ✚ Should the defendant choose to have his counterclaim resolved in the same action, he must **notify the court of his preference within 15 days from notice of the plaintiff's motion to dismiss.**
- ✚ Should he opt to prosecute his counterclaim in a separate action, the court should render the corresponding order granting and reserving his right to prosecute his claim in a separate complaint.

### Illustration:

#### BAR 1999

**Question:** A, who is engaged in tile installation business, was sued by EE Industries for breach of contract for installing different marble tiles in its offices as provided in their contract. Without filing any motion to dismiss, A filed its Answer with Counterclaim theorizing that EE Industries has no legal capacity to sue because it is not a duly registered corporation. By way of counterclaim, A asked for moral and actual damages as her business depleted as a result of the withdrawal and cancellation by her clients of their contracts due to the filing of the case. The case was dismissed after the trial court found that EE Industries is not a registered corporation and therefore has no legal capacity to sue. However, it set a date for the reception of evidence on A's counterclaim. EE Industries opposed on the ground that the counterclaim could no longer be prosecuted in view of the dismissal of the main case. Is the stand of EE Industries sustainable? Explain.

**Suggested answer:** No, because if no motion to dismiss has been filed, any of the grounds for dismissal provided in the Rules may be pleaded as an affirmative defense in the answer which may include a counterclaim. This is what A did by filing an Answer alleging the lack of legal capacity of EE Industries to sue because it is not a duly registered corporation with a counterclaim for damages. The dismissal of the complaint on this ground is without prejudice to the prosecution of the counterclaim in the same action because it is a compulsory counterclaim. (*Sec. 6 of Rule 16.*)

## CROSS CLAIM

### What is a Cross -claim?

- ✚ **It must be filed together with an answer. It cannot be filed independently...thus, "answer with a cross-claim"**
- ✚ Presupposes two or more defendants
- ✚ Filed against a co-party
- ✚ By its very nature it is compulsory
- ✚ It always arises out of the transaction or occurrence that is the subject matter either of the original complaint/ action or of a counterclaim therein.

**General rule:** a cross-claim which is not set up in the action is barred.

**Exception:**

When it is outside the jurisdiction of the court or if the court cannot acquire jurisdiction over third parties whose presence is necessary for the adjudication of said cross- claim.

**Note:**

- ✚ The dismissal of the counterclaim carries with it the dismissal of a cross-claim which is purely defensive, but not a cross claim seeking affirmative relief.

**Illustration:**

**BAR**

B and C borrowed P400, 000.00 from A. The promissory note was executed by B and C in a Joint and several capacity. B, who received the money from A, gave C P200, 000.00. C, in turn, loaned P100,000.00 out of the P200,000.00 he received to D. a) In an action filed by A against B and C with the RTC of Quezon City, can B file a cross-claim against C for the amount of P200,000.00? b) Can C file a third party complaint against D for the amount of P 100,000.00?

**Suggested answer:**

(a) Yes. B can file a cross-claim against C for the amount of 200,000.00 given to C. A cross-claim is a claim filed by one party against a co-party arising out of the transaction or occurrence that is the subject matter of the original action or a counterclaim therein and may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted against the cross-claimant. (*Sec. 8 Rule 6*)

(b) No, C cannot file a third-party complaint against D because the loan of P100, 000 has no connection with the opponent's claim. C could have loaned the money out of other funds in his possession.

**Alternative answer**

Yes, C can file a third-party complaint against D because the loan of 100,000.00 was taken out of the P200, 000 received from B and hence the loan seeks contribution in respect to his opponent's claim. (*Sec. 11 of Rule 6*)

## THIRD PARTY (FOURTH, etc) COMPLAINT

**General Principles:**

1. It must be filed with an answer. It cannot be filed independently, thus.... "Answer with a third party complaint.
2. Under the law, a third party complaint arises in the same action subject matter of the complaint.

3. Motion for Leave of court to file a third party complaint is necessary. The third party complaint must be attached to the motion.
4. It is an initiatory pleading as against the third party defendant, therefore payment of docket fees is mandatory.  
**Note:** payment of docket fee should not immediately be done because third party complaint is by leave of court. There is a tendency that the court will not grant the third party complaint. Sayang yon ibinayad pag nadeny kasi walang refund!
5. It is filed by the defendant. Thus in the third party complaint the defendant is the plaintiff in the third party complaint and the one impleaded in the third party complaint is the third party defendant.

**What is a third party complaint?**

Under the law, a third party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third (fourth, etc.) party defendant, for **contribution, indemnity, subrogation, or any other relief** (must be connected with the original complaint) in respect of his opponent's claim.

**Can the third party defendant have a counterclaim against the original defendant?**

Yes! Under the law it is allowed.

**Can the third party defendant include his counterclaim against the original plaintiff in his answer to the third complaint?**

Yes!

**Note:** the judgment on the original complaint and the judgment in the third party complaint are independent from each other.

**Illustration:**

A (plaintiff) vs. B (defendant) for collection of sum of money. B impleaded C as third party defendant. The trial court rendered judgment in favor of A. Both B and C are made to pay. C appealed the decision but B did not do anything. On appeal he obtained favorable decision. Can the decision of the appellate court benefit B?

No, because the judgment of the third party complaint is entirely separate from the judgment of the original complaint.

**MOTION TO DECLARE DEFENDANT IN DEFAULT**

**General Principles:**

1. If the defendant does not file his answer within 15 days from the receipt of summons or file a motion to interrupt the running of the reglementary period, the plaintiff may file a **motion to declare defendant in default**.
2. If the **summons was effected trough publication**, then the **motion to declare defendant in default may also be published** in a newspaper of general circulation at least once.

**What is default?**

✚ Default is a procedural concept that occurs when the **defending party fails to file his answer within the reglementary period**. It does not refer to the failure of the defendant to appear in either pre-trial or trial.

**When is a declaration of default proper?**

✚ If the defending party fails to answer within the time allowed therefor, 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.



### Requisites in order to declare defendant in default:

1. The court must have validly acquired jurisdiction over the person of the defendant either by service of summons or voluntary appearance. [Of course! How can you declare a party in default if in the first place you did not acquire jurisdiction in his person].
2. The defendant fails to answer within the time allowed therefor.
3. There must be a motion to declare the defendant in default. [The court cannot declare defendant in default on its own].
4. There must be notice to the defendant by serving upon him a copy of such motion.
5. There must be proof of such failure to answer.
6. There must be a hearing to declare the defendant in default.

### What is the effect of an order of default?

1. The party declared in default loses his standing in court preventing him from taking part in the trial.
2. The party in default shall still be entitled to notices of subsequent proceedings as well as to receive notice that he was declared in default.

**Take note:** The declaration of default is not an admission of the truth or validity of the plaintiff's claim.

### What are the remedies of the party declared in default?

#### 1. Remedy after notice of order and before judgment

File a motion to lift the order of default [litigated motion], showing that:

- ✚ The failure to answer was due to **fraud** [extrinsic fraud-outside the court], **accident**, **mistake**, or **excusable negligence** [FAME], and,
- ✚ The defendant has a **good and meritorious** defense which must be **coupled with an affidavit of merit**.

**Affidavit of merits-** it is under oath. It must be executed by whoever knows the facts of FAME.

- ✚ If the motion to lift order of default is granted, the defendant may be allowed to file his answer.

**Side comment:** These two must be present because the conjunctive is **"and"**. This is very pragmatic... late ka na nga sa pagfile ng answer wala pang merit yong defense mo, what would you expect the court will do? Grant your motion to set aside default order? No way!

#### 2. Remedies after judgment but before finality

- ✚ Motion for new trial under Rule 37; or
- ✚ Motion for reconsideration;
- ✚ Appeal from judgment as being contrary to the evidence or the law under Rule 41.

**Note:** you can directly file an appeal without passing Motion for reconsideration (MR) and Motion for New Trial (MNT); **OR** you can file MR/MNT and if denied, then you can still file an appeal and have a new "fresh 15 day" period of appeal, which is the Neypes doctrine. This Neypes Doctrine on "fresh period of appeal" applies to Rule 45 and Section 3 (e) of Rule 122.

#### 3. Remedies after judgment becomes final and executory

- ✚ Petition for certiorari under Rule 65.
- ✚ Petition for relief from judgment under Rule 38.
- ✚ Action for nullity of judgment under Rule 47.

**Note:** if the order of default is **valid**, certiorari is not available. If the default order was improvidently issued, that is, the defendant was declared in default, without a motion, or without having served with summons before the expiration of the reglementary period to



answer, certiorari is available as remedy (Matute case 26 SCRA 798; Akut vs CA, 116 SCRA 216).

**What will the plaintiff do if the defendant was declared in default and the defendant's motion to lift order of default was not granted?**

- ✚ If the evidences are sufficient to warrant judgment, the plaintiff may submit the case for decision.
- ✚ If the evidences are insufficient so as to warrant judgment, the plaintiff is required to present his evidence ex-parte, and thereafter the case may be submitted for decision.

**When does a partial default occur?**

- ✚ There are several parties and are required to individually submit their answers but some of them did not.

**What is the effect of a partial default?**

- ✚ When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.
- ✚ In other words, default is only against those defendants who didn't file the answer but they can also benefit from the answering defendants.

**What is the extent of relief in a partial default?**

- ✚ There can be no automatic grant of relief as the court has to weigh the evidence. However, if relief is to be granted it must not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

**What are the actions where default is not allowed?**

1. Annulment of marriage
  2. Declaration of nullity of marriage
  3. Legal separation
  4. In special civil actions of certiorari, prohibition and mandamus where comment instead of an answer is required to be filed.
  5. Summary procedure.
- } in order to prevent collusion between husband and wife.

**REPLY**

**What is a reply?**

- ✚ A pleading, the office or function of which is to deny, or allege facts in denial or avoidance of new matters alleged by way of defense in the answer and thereby join or make issue as to such matters.

**Is filing a reply mandatory?**

**General Rule:**

- ✚ The filing of a reply is optional as the new matters raised in the answer are deemed controverted even without a reply.

**Exceptions:**

- ✚ Filing a reply is mandatory and must be verified and must be filed within 10 days from the receipt of answer in the following:
  1. Where the answer alleges the defense of usury in which case reply under such oath is required otherwise the allegations of usury are deemed admitted.

- Where the answer is based on an actionable document in which case a verified reply is necessary, otherwise the genuineness and due execution of said actionable document are generally deemed admitted.

**Can a party amend his cause of action in his reply?**

- NO! It is violative of the due process rule. The purpose of a reply is to controvert the answer of the defendant, thus when the plaintiff files his reply it connotes that an answer was served by the defendant. An answer is a responsive pleading, thus the plaintiff cannot anymore amend his pleading so as to change his cause of action.

**MOTION FOR JUDGMENT ON THE PLEADINGS**

**General Principle:**

- If the complaint and evidence are sufficient to warrant judgment, then the case can be submitted for decision. However, if evidence is insufficient and there are damages claimed, the plaintiff is required to present his evidence ex parte, and afterwards the case may be submitted for decision.  
**Note:** evidence is required if the complaint includes a claim for damages. As such evidences must be adduced to prove such damages.

**When does judgment on the pleadings proper?**

- When the defendant **did not file his answer**.
- When the defendant filed an answer, but **the answer tenders no issue** because it admitted all the allegations in the complaint.

**Note:**

- A judgment on the pleadings presupposes that there is no **controverted issue whatsoever between the parties**, hence the plaintiff is also assumed to have admitted all the relevant allegations of fact of the defendant in his answer.
- The judgment is therefore based exclusively upon the allegations appearing in the pleadings of the parties and the annexes thereto, if any without consideration of any evidence aliunde.

**Judgment on the Pleadings contra Judgment by Default**

Judgment on the Pleadings	Judgment by Default
<ol style="list-style-type: none"> <li>Only the plaintiff can file the same.</li> <li>When it appears that there is no genuine or ostensible issue between the parties because the defendant failed to answer. <b>No issue was raised at all.</b></li> <li>Based exclusively upon the pleadings without introduction of evidence.</li> <li>Is available in any action except for annulment of marriage, legal separation, and declaration of nullity of marriage.</li> <li>Subject only to the 3 day notice rule and where all the material averments of the complaint are admitted, such motion may even be made ex-aprte.</li> <li>No- partial judgment.</li> </ol>	<ol style="list-style-type: none"> <li>Genuine issue of facts and law are normally involved.</li> <li>Evidence must be introduced on the material allegations, albeit ex-parte, except in cases covered by the rule on summary procedure.</li> <li>All cases may be subject to judgments by default except those for annulment or declaration of nullity of marriage or legal separation.</li> <li>Motions for default judgments may be filed ex-parte, except under the rule on summary procedure wherein upon failure of defendant to answer, the court, motu proprio or on plaintiff's motion, shall render the corresponding judgment.</li> </ol>

**CALENDAR OF CASES**  
**Rule 20**

**Who keeps calendar of cases?**

- ✚ The clerk of court is required to keep at least **4 separate calendars** reflecting the cases for **pre-trial, for trial, those whose trials were adjourned and postponed**, and those **requested to be set for hearing**.
- ✚ The presiding judge exercises direct supervision over the calendar of cases.
- ✚ Note: in the calendar of cases, preference shall be given to Habeas Corpus cases, election cases, special civil actions, and those required by law.

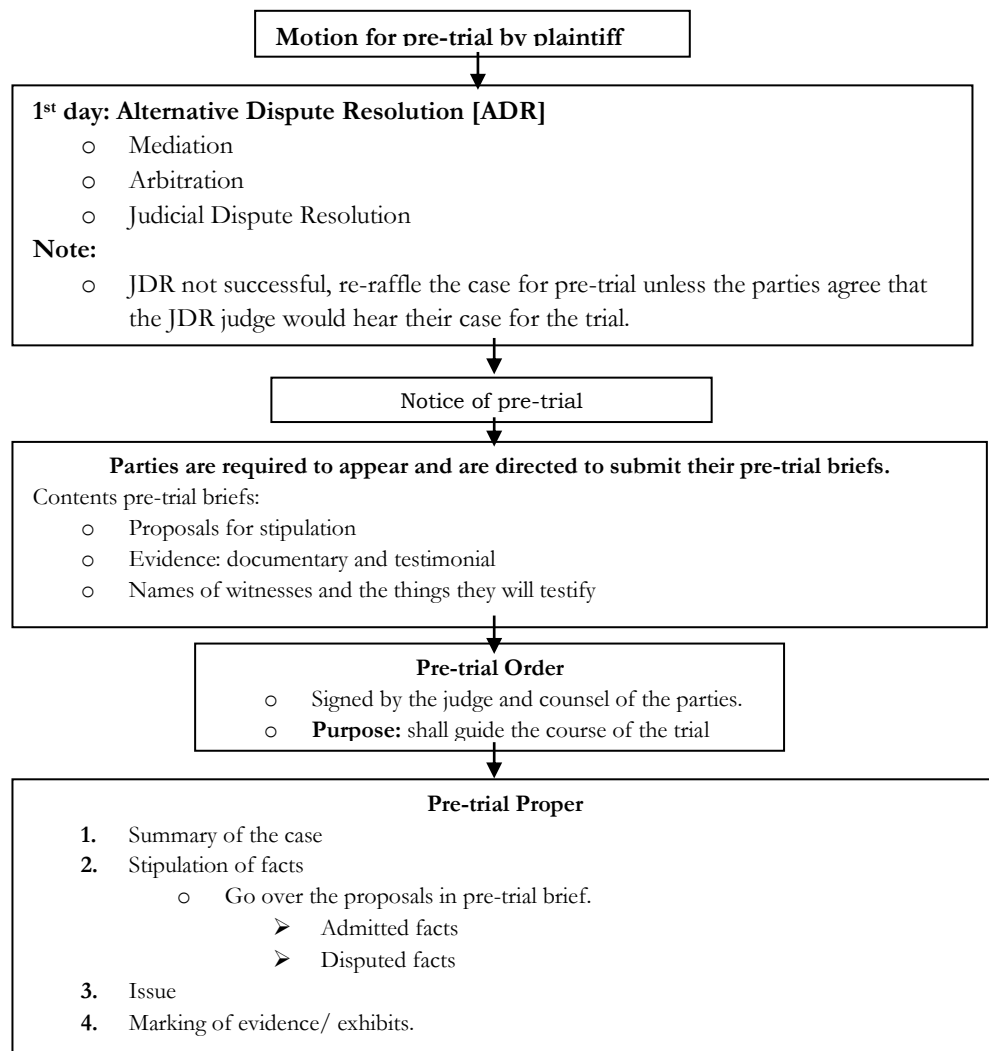
**How is assignment of cases to different branches of the court done?**

- ✚ The assignment of cases is required to be done exclusively by raffle.
- ✚ Also the raffle shall be done in open session with prior notice to the interested parties.

**MOTION FOR PRE- TRIAL**  
**Rule 18**

**General Principles:**

1. Pre-trial and trial on the merits of the case must be held in separate dates.
2. Pre-trial is **mandatory** both in civil and criminal cases.



## What will be done on the first day of pre-trial?

### ALTERNATIVE DISPUTE RESOLUTION

#### ARBITRATION

##### Procedure of arbitration:

- + If the party to a case has already filed a complaint with the trial court without prior recourse to arbitration, the proper procedure to enable an arbitration panel to resolve the parties' dispute pursuant to the contract is for the trial court to stay the proceedings.
- + After the arbitration proceeding has already been pursued and completed, and then the trial court only confirms the award made by the arbitration panel.

##### Remedies

- + If a party feels that he was aggrieved by the decision of the arbitration panel he may file an MR before it.
  - + If denied he can avail of the following remedies:
1. It may petition the proper RTC to issue an order vacating the award on the grounds provided under section 24 of the arbitration law.

##### Section 24

- a) The award was procured by corruption, fraud, or other undue means.
  - b) That there was evident partiality or corruption in the arbitrators or any of them or
  - c) That the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section 9 hereof, and willfully refrained from disclosing such disqualification or of any other misbehavior by which the rights of any party have been materially prejudiced.
  - d) That the arbitrator exceed their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.
2. File a petition for review under Rule 43 with the Court of Appeals on questions of fact, or law, or mixed question of fact and law.
  3. File a petition for certiorari under Rule 65 on the ground that the arbitration committee acted without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

### COURT ANNEXED MEDIATION [CAM] AND JUDICIAL DISPUTE RESOLUTION [JDR] A.M. NO. 11-1-6-SC-PHILJA

#### Who is a JDR- judge?

- + It is the judge who will act as mediator, conciliator, and neutral evaluator during the JDR proceedings.

#### Who is a trial-judge?

- + It is the judge who will handle the case from pre-trial proper until judgment when there is no compromise made during CAM and JDR.

#### 3 STAGES OF DIVERSION

1. **Court Annexed Mediation [CAM]**
  - + The judge refers the parties to the Philippine Mediation Center [PMC] for the mediation of their dispute by trained and accredited mediators.
2. **Judicial Dispute Resolution [JDR]**
  - + If no settlement was made at the CAM.
  - + In this stage the JDR judge sequentially becomes a mediator-conciliator- early neutral evaluator in a continuing effort to secure a settlement.
  - + If the parties did not agree at this stage the mediator- judge must turn over the case to another judge [a new one by raffle or nearest/ pair judge] who will try the unsettled case.
3. **PMC-Appeals Court Mediation [ACM]**

#### CASES COVERED BY CAM AND JDR

1. All civil cases and the civil liability of criminal cases covered by the Rules on Summary Procedure, including the civil liability for violation of BP Blg 22, except those which by law not be compromised [Article 2035, Civil Code].
2. Special proceedings for the settlement of estates.

3. All civil and criminal cases filed with Certificate to File Action issued by the Punong Barangay or the Pangkat ng Tagapagkasundo under the revised Katarungang Pambarangay Law.
4. The civil aspect of quasi-offenses under Title 14 of the RPC.
5. The civil aspect of less grave felonies punishable by correctional penalties not exceeding 6 years imprisonment, where the offended party is a private person.
6. The civil aspect of estafa, theft, and libel.
7. All civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts.
8. All cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts.
9. All civil cases involving title or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts.
10. All habeas corpus cases decided by the first level courts in the absence of the RTC judge that are brought on appeal from the special jurisdiction granted to the first level courts.

#### CASES NOT COVERED BY CAM AND JDR

1. Civil cases which by law cannot be compromised.
  - Article 2035, Civil Code:** 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.
2. Other cases not covered under paragraph 3 to 6 above.
3. Habeas corpus petitions.
4. All cases under Republic Act No. 9262 [Violence against Women and Children].
5. Case with pending application for Restraining Orders/ Preliminary Injunctions.

#### **Note:**

- ✚ However in cases covered under 1, 4, and 5 where the parties inform the court that they have agreed to undergo mediation on some aspects thereof, e.g., custody of minor children, separation of property, or support pendente lite, the court shall refer them to mediation.

#### **Who are required to appear during CAM and JDR?**

- ✚ **Individual Parties-** required to personally appear for mediation. In the event they cannot do so, they can send their representatives who must be **fully authorized to appear, negotiate, and enter into a compromise**, through a Special Power of Attorney.
- ✚ **Juridical Entity as party-** shall be represented by a ranking corporate officer fully authorized by a Board Resolution to offer, negotiate, accept, decide and enter into compromise agreement, without need of further approval by or notification to the authorizing party.

#### **COURT ANNEXED MEDIATION**

##### **Who will conduct?**

- ✚ Any accredited mediator.

##### **PROCEDURE OF CAM**

1. After the last pleading has been filed, the judge shall issue an order requiring the parties to forthwith appear before the concerned PMC unit staff to start the process for the settlement of their dispute through mediation. On the same date, the court shall give to the PMC a copy of the order for mediation.
2. On the date set in the order, the parties shall proceed to select a mutually acceptable mediator from among the list of accredited mediators. If no agreement is reached, the PMC unit staff shall, in the presence of the parties and the mediators, choose by lot the one who will mediate the dispute from among the mediators inside the unit, ensuring a fair and equal distribution of cases: Provided, however, that in exceptional circumstances where special qualifications are required of the mediator, the parties shall be given an opportunity to select from the entire list of accredited mediators.

3. The concerned mediator shall forthwith start the mediation process, unless the parties and mediator agree to reset the initial mediation conference, which shall not be later than 5 days from the original date.
4. With the consent of both parties, the mediator may hold separate caucuses with each party to determine their respective real interests in the dispute. Thereafter, another joint conference maybe held to consider various options that may resolve the dispute through reciprocal concessions and on terms that are mutually beneficial to both the parties.
5. If no settlement has been reached at the end of the period given, the case must be returned to the referring judge for JDR.

**Note:**

- ✚ The mediator shall not record in any manner the proceedings of the joint conference or of the separate caucuses. No transcript or minutes of mediation proceedings shall be taken. If personal notes are taken for guidance, the notes shall be shredded and destroyed. Should such record exist; they shall not be admissible as evidence in any other proceedings.

**DURATION OF MEDIATION IN THE PMC**

- ✚ The mediator shall have a period of not exceeding 30 days to complete the mediation process. Such period shall be computed from the date when the parties first appeared for the initial conference as stated in the order to appear. An extended period of another 30 days may be granted by the court, upon motion filed by the mediator with the conformity of the parties.

**SUSPENSION OF PERIODS**

- ✚ The period during which the case is undergoing mediation shall be excluded from the regular and mandatory periods for trial and rendition of judgment in ordinary cases and in cases under summary proceedings.

**SETTLEMENT**

- ✚ **If full settlement-** the parties assisted by their respective counsels, shall draft the compromise agreement which shall be submitted to the court for judgment upon compromise or other appropriate action. Where compliance is forthwith made, the parties shall instead submit a satisfaction of claims or a mutual withdrawal of the case and, thereafter the court shall enter an order dismissing the case.
- ✚ **If partial settlement-** the parties shall with the assistance of counsel submit the terms thereof for the appropriate action of the court without waiting for resolution of the unsettled part. In relation to the unsettled part of the dispute, the court shall proceed to conduct JDR proceedings.

**Note:**

- ✚ **Article 2037, Civil Code-** A compromise agreement has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.
- ✚ **If full settlement-** agreement is *res judicata* on the entire case; **if partial settlement-** agreement is *res judicata* on the part of the case agreed upon by the parties.
- ✚ **Remedy against a compromise agreement.**

**General Rule:**

- ✚ **Par. 1 of Art. 2038, Civil Code-** A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of 1330 of this code.
- ✚ **Article 1330, Civil Code-** A contract where consent is given through mistake, violence, intimidation, undue influence or fraud is voidable.

**Exception:**

- ✚ **Par. 2 of Art. 2038, Civil Code-** However one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced. [Kaya kapag may ground ka to annul the compromise agreement ilatag mo na bago magwithdraw ang other party].

**JUDICIAL DISPUTE RESOLUTION**

**PROCEDURE OF JDR**

1. **When?** At the initial stage of the pre-trial conference, the JDR judge briefs the parties and counsels of the CAM and JDR processes. Thereafter, he issues an Order of Referral of the case to CAM and directs the

parties and their counsels to proceed to the PMCU bringing with them a copy of the Order of Referral. The JDR judge shall include in said order, or in another order the pre-setting of the case for JDR not earlier than 45 days from the time the parties first personally appear at the PMCU so that JDR will be conducted immediately if the parties do not settle at CAM.

2. **Role of a JDR judge:** if the parties do not settle their dispute at CAM, the parties and their counsels shall appear at the preset date before the JDR judge, who will then conduct the JDR process as **mediator, neutral evaluator** and/or **conciliator** in order to actively assist and facilitate negotiations among the parties for them to settle their dispute. As mediator and conciliator, the judge facilitates the settlement discussions. As a neutral evaluator, **the judge assesses the relative strength and weaknesses of each party's case and makes a non-binding and impartial evaluation of the chances of each party's success in the case. On the basis of such neutral evaluation,** the judge persuades the parties to a fair and mutually acceptable settlement for dispute.
3. If the parties settled the case it will not continue for pre-trial proper and judgment will be rendered adopting the compromise agreement. If the parties do not agree to a compromise, the case is re-raffled for pre-trial proper.

**QUESTION: Can the JDR judge be the one to try the case for pre-trial until judgment?**

- ✚ Yes! Before the commencement of the JDR proceedings the parties may file a **joint written motion requesting that the court of origin conduct the JDR proceedings and trial.**

#### RE-RAFFLING OF CASES IF JDR WAS UNSUCCESSFUL

##### 1. Multiple Sala Court

- ✚ If the case is not resolved during JDR it shall be raffled to another branch for the pre-trial proper up to judgment.
- ✚ For cases with pending applications for restraining orders/ preliminary injunctions, the judge to whom the case was raffled shall rule on the said applications. During the pre-trial stage, the judge refers the case to CAM, but if the parties do not settle at CAM, the case will be raffled to another branch for JDR. If the parties do not settle at JDR, the case will be returned to the branch that ruled on the applications for the pre-trial proper and up to judgment.

##### 2. Single Sala Court

- ✚ The JDR proceedings will be conducted by the judge of the pair court, if any, otherwise, by the judge of the nearest court as determined by the concerned executive judge. The JDR proceedings shall be conducted at the station where the case was originally filed. The result of the JDR proceedings shall be referred to the court of origin for appropriate action, e.g., approval of the compromise agreement, trial etc.

##### 3. Family Courts

- ✚ The JDR proceedings in areas where only one court is designated as a family court shall be conducted by a judge of another branch through raffle. However, if there is another family court in the same area, the family court to whom the case was originally raffled shall conduct the JDR proceedings and if no settlement is reached, the other family court shall conduct the pre-trial proper and trail.

##### Note:

- ✚ Despite the non-mediatable nature of the principal case, like annulment of marriage, other issues such as custody of children, support, visitation, property relations and guardianship, may be referred to CAM and JDR to limit the issues for trial.

##### 4. Commercial, Intellectual Property, and Environmental Courts

- ✚ The JDR proceedings in areas where only one court is designated as commercial/intellectual property/ environmental court, hereafter referred to as special court, shall be conducted by another judge through raffle and not by the judge of the special court. Where settlement is not reached, the judge of the special court shall be the trial judge. Any incident or motion filed before the pre-trial stage shall be dealt with by the special court that shall refer the case to CAM.

**QUESTION: Can there be JDR during trial?**

- ✚ Yes! Cases may be referred to **JDR even during the trial stage upon written motion of one or both parties** indicating willingness to discuss a possible compromise. If the motion is granted, the trial shall be suspended and the case referred to JDR, which shall be conducted by another judge through raffle in multiple sala courts.



- ✚ If settlement is reached during JDR, the JDR court shall take appropriate action thereon, i.e. approval/disapproval of the compromise agreement. If settlement is not reached at JDR, the case shall be returned to the referring court for continuation of trial.
- ✚ In single sala courts, the JDR shall be conducted by the nearest court [or pair court, if any] regardless of the level of the latter court. The result of the JDR proceedings shall be referred to the court of origin for appropriate action, e.g., approval of the compromise agreement, trial, etc.

**Note:**

- ✚ The parties may by joint written motion, despite confidential information that may be divulged during JDR proceedings, file a request that their case be not transferred to other courts for JDR and that they agree to have the trial judge continue the trial should the case not be settled through JDR.

**PROVISIONS COMMON TO BOTH JDR AND CAM**

**CONFIDENTIALITY**

- ✚ Any and all matters discussed or communications made, including requests for mediation, and documents presented during the mediation proceedings before the Philippine Mediation Center or the JDR proceedings before the trial judge shall be privileged and confidential, and **the same shall be inadmissible as evidence for any purpose in any other proceedings. However, evidence or information that is otherwise admissible does not become inadmissible solely by reason of its use in mediation or conciliation.**
- ✚ Further, the JDR judge shall not pass any information obtained in the course of conciliation and early neutral evaluation to the trial judge or to any other person. This prohibition shall include all court personnel or any other person present during such proceedings. All JDR conferences shall be conducted in private.

**ROLE OF LAWYERS IN MEDIATION AND IN JDR PROCEEDINGS**

- ✚ Lawyers may attend mediation proceedings in the role of adviser and consultant to their clients, dropping their combative role in the adjudicative process, and giving up their dominant role in judicial trials. They must accept a less directive role in order to allow the parties more opportunities to craft their own agreement.
- ✚ In particular, they shall perform the following function:
  1. Help their clients comprehend the mediation process and its benefits and allow them to assume greater personal responsibility in making decisions for success of mediation in resolving the dispute.
  2. Discuss with their clients the following:
    - ✚ The substantive issues involved in the dispute.
    - ✚ Prioritization of resolution in terms of importance to client.
    - ✚ Understanding the position of the other side and the underlying fears, concerns, and needs underneath that position.
    - ✚ Need for more information or facts to be gathered or exchange with the other side for informed decision making.
    - ✚ Possible bargaining options but stressing the need to be open-minded about other possibilities.
    - ✚ The best, worst, and most likely alternatives to a negotiated agreement.
  3. Assist in preparing a compromise agreement that is not contrary to law, morals, good customs, public order, or public policy so that the same may be approved by the court, paying particular attention to issues of voluntary compliance of what have been agreed upon, or otherwise to issues of enforcement in case of breach.
  4. Assist, wherever applicable, in the preparation of a manifestation of satisfaction of claims and mutual withdrawal of complaint and counterclaim as basis for the court to issue an order of dismissal.

**PRE- TRIAL PROPER**

**What is a Pre-Trial?**

- ✚ It is a mandatory conference and personal confrontation before the judge between the parties and their respective counsel.
- ✚ It is an informal meeting which opposing attorneys confer usually with the judge, to work toward the disposition of the case by discussing matters of evidence and narrowing the issues that will be tried.

**When can a pre-trial be conducted?**

- ✚ Under the law, pre-trial will be conducted after the last pleading has been served and filed.



**General Rule:**

- ✚ A pre-trial cannot validly be held until the last pleading has been filed. The last pleading may be the plaintiff's reply.

**Exception:**

- ✚ Where the period to file a last pleading has lapsed. The pre-trial may be properly scheduled even if the plaintiff had not yet filed his answer to the defendant's compulsory counterclaim since no answer is required to be filed thereto.

**Who can move for the scheduling of a pre-trial?**

- ✚ It is the plaintiff and not the court or defendant that will cause the scheduling of the pre-trial. **How?** Through a motion ex-parte.

**What is the purpose of pre-trial?** In the pre-trial the court shall consider:

1. The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution.
2. The simplification of the issues.
3. The necessity or desirability of amendments to the pleadings.
4. The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof.
5. The limitation of the number of witnesses.
6. The admissibility of a preliminary reference of issues to a commissioner.
7. The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist.
8. The advisability or necessity of suspending the proceedings.
9. Such other matters as may aid in the prompt disposition of the action.

**What is the bearing of facts found during the pre-trial?**

- ✚ The findings of fact of a trial court consequent to a pre-trial conference are findings which are based on evidence and can accordingly support a decision or an order.

**Must a notice of pre-trial be served to the other party?**

- ✚ Yes! Under the law all written motions should be furnished to the adverse party. The notice of pre-trial shall be served on counsel, or on the party who has no counsel. The counsel served with such notice is charged with the duty of notifying the party represented by him.

**Is presence of the parties in the pre-trial mandatory? Yes!**

**General Rule:**

- ✚ It shall be the duty of the parties and their counsel to appear at the pre-trial.

**Except:**

1. The non-appearance of a party maybe excused only if a valid cause is shown therefor **OR**
2. If a representative shall appear in his behalf fully authorized in writing.

**Take note!**

- ✚ It must further be noted that the special authority should confer on the party's representative not only the **power to enter into compromise**, but also to **submit to alternative modes of dispute settlement**, and to **enter into stipulations or admissions of facts and documents**.
- ✚ If the **authority is not complete**, the party is considered as absent.
- ✚ Also the mere representation of such written authority is not sufficient, but must be complemented by a showing of valid cause for the non-appearance of the party himself.

**What is the effect of failure to appear in the pre-trial?**

**Plaintiff**

- ✚ Failure to appear in the pre-trial shall be cause for dismissal of the action.
- ✚ The dismissal shall **be with prejudice** unless otherwise ordered by the court.

**Defendant**

- ✚ Defendant's failure to appear in the pre-trial shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

#### **What are the remedies if case was dismissed due to non-appearance in the pre-trial?**

##### **Plaintiff**

- ✚ Appeal from the order of dismissal, the same being a final order because it was a dismissal with prejudice.
- ✚ File a motion for reconsideration.

##### **Defendant**

- ✚ The order of the court allowing the plaintiff to present his evidence ex parte does not dispose of the case with finality. The order is there merely interlocutory; hence not appealable. Ergo the remedy of the defendant who feels aggrieved by the order is as follows:
  1. File for a motion for reconsideration without need for affidavits or merits regarding the fraud, accident, mistake, or excusable negligence, obviously because the defenses of the defendant are set out in his answer.
  2. If MR is denied, certiorari is the remedy as such order of default is interlocutory.

#### **Do filing an amended complaint after pre-trial necessitates another pre-trial?**

- ✚ No! Where a pre-trial has already been held, the fact that an amended complaint was later filed, with leave of court, does not necessitate another pre-trial.

#### **What is a pre-trial brief?**

- ✚ A pre-trial brief is a document prepared by a legal counsel for a plaintiff or defendant that summarizes the facts of a case and the legal arguments she will present during the trial.
- ✚ Pre-trial briefs typically include applicable laws, rules of procedure and other information relevant to the case.

#### **Who will file and serve pre-trial briefs?**

- ✚ Plaintiff/s and defendant/s

#### **When should a pre-trial brief be filed with the court and serve on the adverse party?**

- ✚ The parties shall file with the court their respective pre-trial briefs which shall be received at least 3 days before the date of pre-trial. This pre-trial brief shall be served on the adverse party.

#### **What are the contents of a pre-trial brief?**

1. A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof.
2. A summary of admitted facts and proposed stipulation of facts.
3. The issues to be tried or resolved
4. The documents or exhibits to be presented, stating the purpose thereof.
5. A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners
6. The number and names of the witnesses and the substance of their respective testimonies.

#### **What is the effect of failure to file a pre-trial brief?**

- ✚ Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial. Ergo, apply the rules on non-appearance in the pre-trial.

#### **Do the proceedings in the pre-trial needs to be recorded? What is the binding effect of the records? Yes!**

##### **Civil Cases**

- ✚ Upon the termination of the pre-trial, the court shall issue an order which shall recite in detail the matters taken up in the conference, the action taken thereon, the amendments allowed to the pleadings and the agreements or admissions made by the parties as to any of the matters considered. Should the action proceed to trial, the order shall explicitly define and limit the issues to be tried. The contents of the order shall control the subsequent course of the action, unless modified before trial to prevent manifest injustice.

### Criminal case

- ✚ An agreement or admission of a party in the pre-trial conference shall be admissible against him only if reduced to **writing and signed by him and his counsel.**

## MOTION FOR SUMMARY JUDGMENT Rule 35

### What is a Motion for Summary Judgment?

- ✚ It is a litigated motion.
- ✚ A procedural technique to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions and affidavits on record, of for weeding out sham claims or defenses at an early stage of the litigation to avoid the expense and loss of time involved in a trial.

### Who and when can a party file a motion for Summary judgment?

#### Plaintiff

- ✚ A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.
- ✚ The motion must be made **at any after the pleading in answer to his claim has been served.**

#### Defendant

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

### Can there be a partial summary judgment of a case?

- ✚ Yes! **Section 4, Rule 35.**
- ✚ If judgment is not rendered upon the whole case, the court shall ascertain what material facts exist without substantial controversy and those that are controverted. The court shall then render a partial judgment with trial to proceed on the matters that remain controverted.
- ✚ **Note:** although summary judgment allows rendition of partial judgment of a case, **such judgment is interlocutory in nature and not final and appealable judgment.** The appeal from partial summary judgment should be taken together with the judgment in the entire case after the trial shall have been conducted on the material facts on which substantial controversy exists.

### When can summary judgments not apply? It will not apply in the following cases:

1. declaration of nullity of marriage
2. annulment of marriage
3. legal separation
4. In cases of unliquidated damages, or admission of the truth of allegation of adverse party  
**Why?** The material facts should be proven, which can be done only if there is a trial.

### What is required of the supporting affidavits?

- ✚ Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Certified true copies of all papers or parts thereof referred to in the affidavit shall be attached thereto or served therewith.
- ✚ Should it appear to its satisfaction at any time that any of the affidavits presented are in bad faith, or solely for the purpose of delay, the court shall forthwith order the offending party or counsel to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including attorney's fees. It may, after hearing, further adjudge the offending party or counsel guilty of contempt.

### Judgment on the Pleadings contra Summary Judgments

Judgments on the Pleadings	Summary Judgments
The answer does not tender an issue	There is an issue tendered in the answer, but it is not genuine or real issue as may be shown by affidavits and depositions that there is no real issue and that the party is entitled to judgment as a matter of right;
The movant must give a 3-day notice of hearing	The opposing party is given 10 days" notice;
The entire case may be terminated	It may only be partial
Only the plaintiff or the defendants as far as the counterclaim, cross-claim or third-party complaint is concerned can file the same.	Either the plaintiff or the defendant may file it.

**MODES OF DISCOVERY**  
**Rule 23-38**

**General Principle:**

- ✚ The various Modes of Discovery are intended to be cumulative and not alternative or mutually exclusive. One can avail all the Modes of Discovery simultaneously.
- ✚ Modes of Discovery are done usually during the pre-trial. Its purpose is to prepare the parties for trial.
- ✚ **May the modes of discovery be used on no-parties?** No. only deposition may be used on non-parties and not the modes of discovery.

**What are the Modes of Discovery?**

1. Depositions Pending Action- Rule 23
2. Depositions Before Action or Pending Trial- Rule 24
3. Interrogatories to Parties- Rule 25
4. Admission by Adverse Party- Rule 26
5. Production or Inspection of Documents or Things- Rule 27
6. Physical and Mental Examination of Persons- Rule 28

**What is the importance of the Modes of Discovery?**

- ✚ The importance of the rules of discovery is that they shorten the period of litigation and speed up adjudication. The evident purpose is to enable the parties, consistent with recognized principles, to obtain the fullest possible knowledge of the facts and issues before civil trials and thus prevent said trials from being carried on the dark. The rules of discovery serve as:
  - a) Devices along with the pre-trial hearing under Rule 18, to narrow and clarify the basic issues between the parties; and
  - b) Devices for ascertaining the facts relative to those issues [Republic vs. Sandiganbayan, 204 SCRA 212].

**What are the basic purposes of the Modes of Discovery?**

1. To enable a party to obtain knowledge of material facts within the knowledge of the adverse party or of third parties through depositions.
2. To obtain knowledge of material facts or admissions from the adverse party through written interrogatories.
3. To obtain admissions from the adverse party regarding the genuineness of relevant documents or relevant matters of fact through requests for admissions.
4. To inspect relevant documents or objects, and lands or other property in the possession and control of the adverse party; and
5. To determine the physical or mental condition of a party when such is in controversy.

**What are the three principal characteristics of discovery?**

1. It is largely self-executing process. For the most part, lawyers conduct discovery without judicial approval, participation, or regulation.
2. The discovery rules are flexible and permit any order, and repeated use, of the various discovery methods subject only to court protection against abuse.
3. Orders regulating discovery are **usually not final appealable orders**. Since discovery issues will often be moot by the time a final judgment is entered in the case, appeals are relatively infrequent. This means that issues concerning discovery are principally resolved at the trial court level.

**Is the availability of deponent during trial will not allow the taking of depositions?**

✚ No because it is only a mode of discovery.

**Can you take deposition even after pre-trial?**

✚ Yes!

**Are the Modes of Discovery applicable to criminal cases?**

✚ Yes! Except Interrogatories to Parties and Depositions before Action.

✚ **Why?** Because it violates the principle that an accused is always presumed innocent until proven otherwise. To serve the adverse party written interrogatories violates this principle for the adverse party is compelled to answer the questions which may incriminate himself. Written interrogatories constitute a fishing expedition, which is violative other accused constitutional right against self-incrimination. Lastly, the prosecution must first present its evidence.

**Is private investigation a mode of discovery?**

✚ No! Because there is no opportunity for the adverse party to cross-examine. Even if the investigator is presented in court as a witness, most likely the entire information gathered by him is all hearsay. The laws on evidence provides that the witness must have a personal knowledge of what he is testifying.

**Illustration:**

**Atty:** Are you sure that Mr. X is having an affair with Ms. Y?

**Private Investigator:** Yes, sir.

**Atty:** How did you come to know about this?

**Private Investigator:** Based on the information of all the people whom I talked, Sir.

*This cannot be. This is hearsay. The testimony has no probative value and is inadmissible in evidence.*

## **DEPOSITIONS PENDING ACTION [Rule 23]**

**What is a deposition?**

✚ Deposition is the taking of the testimony of any person, whether he be a party or not, but at the instance of a party to the action.

**Classifications of Depositions**

1. Depositions on oral examination and depositions upon written interrogatories; or
2. Depositions *de bene esse* and depositions in *perpetuam rei memoriam*.
  - ✚ **Depositions de bene esse**- those taken for purposes of a pending action.
  - ✚ **Depositions in perpetuam rei memoriam**- those taken to perpetuate evidence for purposes of an anticipated action or further proceedings in a case on appeal.

**What is the distinction between affidavit and deposition?**

✚ While an affidavit is also under oath, it is distinguished from a deposition in that it is executed ex parte without any opportunity for the other parties to attend and cross-examine the affiant. Hence **an affidavit is hearsay and inadmissible in evidence** while a **deposition is admissible in evidence**.

✚ **Deposition** is an exception to the hearsay rule because there is an opportunity for the other parties to cross-examine the affiant.

**Who can be subjected to depositions?**

✚ Any party or witness.

**Who can make use of depositions?**

✚ Any party.

**During the taking of deposition is the presence of the adverse party necessary?**

✚ Yes! Because they have to cross-examine the witnesses. This is the reason why the proponent must notify the adverse party.

**What if despite notice, the adverse party did not appear?**

✚ He had deemed to waive his right to cross-examine the witness. In addition he may be made to pay the expenses in the taking of the deposition and be cited in contempt.

### How is deposition taken?

- ✚ The deposition is taken out of court. It may be either by oral examination, or by a written interrogatory. It is with leave of court or not as the case may be.
- ✚ In getting depositions, examinations and cross-examination of deponents may proceed.

### When is deposition pending action available to a party?

- ✚ Deposition may be resorted to **after jurisdiction has been obtained over any defendant** [not necessarily all defendants].
- ✚ **Without leave of court-** it is without leave of court after an answer to the complaint **has been served**. Just file a **Notice to take Deposition**.
- ✚ **With leave of court-** where no **answer has not been served**, even if jurisdiction has been obtained over any defendant. **Motion to take Deposition** is necessary.  
**Rationale:** Before the service of such answer, the disputed facts are not clear.

### Who are the people whom a deposition may be taken?

**Within the Philippines:** Depositions may be taken before any:

1. Judge; or
2. Notary public; or
3. Person chosen by the parties provided that:
  - a. It is stipulated by them
  - b. The stipulation was made in writing
  - c. The person chosen must be one authorized to administer oaths;
  - d. The taking of depositions was made in accordance with the Rules of Court.

**Outside the Philippines** In a foreign state or country depositions may be taken:

1. On notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines; or
2. Before such person or officer as may be appointed by commission or under letters rogatory; or
3. Before a person stipulated by the parties to take their depositions provided the stipulation is in writing and the taking of the depositions is in accordance with the Rules of Court.

### What is a Commission?

- ✚ May be defined as an instrument issued by a court of justice, or other competent tribunal, to authorize a person to take depositions or do any other act by authority of such court or tribunal.
- ✚ **How and whom it is addressed?** Under the Rules of Court, a commission is addressed to officers designated either by name or descriptive title.
- ✚ The **laws of the Philippines** are followed in taking the depositions.

### What are Letters of Rogatory?

- ✚ Defined as instruments sent in the name and by authority of a judge or court to another, requesting the latter to cause to be examined, upon interrogatories filed in a cause pending before the former, a witness who is within the jurisdiction of the judge or court to whom such letters are addressed.
- ✚ **How and whom it is addressed?** Addressed to some appropriate judicial authority in the foreign state. Letters of rogatory may be applied for and issued only after a commission has been returned unexecuted.
- ✚ The **laws of the foreign country and not the Philippines** are followed in taking the depositions.

### What are the duties of the officer before whom a deposition is to be taken?

The officer before whom the deposition is to be taken shall:

1. Put the witness on oath and shall personally or by someone acting under his direction and in his presence, record the testimony of the witness;
2. The testimony shall be taken stenographically unless the parties agree otherwise.
3. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. **Ergo**, the officer does not have the power to rule upon objections. He should merely have such objections noted in the deposition.
4. Evidence objected to shall be taken subject to the objections.



**Note:**

- In lieu of participating in the oral examination, parties served with notice of taking deposition may transmit written interrogatories to the officers, who shall propound them to the witnesses and record the answers verbatim.

**Who are not qualified to take depositions?**

**Section 13, Rule 23-**

- No deposition shall be taken before a person who is a relative within the 6th degree of consanguinity or affinity, or employee or counsel of any of the parties;
- Or who is a relative within the same degree or employee of such counsel,
- Or who is financially interested in the action.

**When is leave of court required when deposition is taken abroad?**

- Leave of court is not required when the deposition is to be taken before a secretary of embassy or legation, consul, general consul, vice-consul or consular agent of the republic of the Philippines and defendant's answer has been served.
- However, if the deposition is to be taken in a foreign country where the Philippines has no secretary of embassy or legation, consul, general consul, vice consul or consular agent, it may be taken only before such person or officer as may be appointed **under letters rogatory**.

Thus, **leave of court is necessary** in letters of rogatory because you will apply for it in the court. The court may grant or deny it. The judicial officer will not be the one to take the deposition. He will commission someone. He will act as an intermediary only.

**Against whom depositions is used?**

**Depositions can be used against:**

- Any party who was present during the taking of deposition.
- Any party represented at the taking of the deposition.
- Any party who had due notice of the taking of deposition.

**What are the uses of depositions?**

Depositions may be used for:

- Contradicting or impeaching the testimony of the deponent as a witness. The one to be impeached is the inconsistency of the testimony of a witness and his depositions if he testifies during trial;
- Any purpose by the adverse party where the deponent is a party;
- Any purpose by any party, where the deponent is a witness if the court finds that:
  - The witness is dead;
  - The witness resides more than 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.
  - The witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or
  - The party offering the deposition has been unable to procure the attendance of witnesses by subpoena; or
  - When exceptional circumstances exist.

**What is the scope of examination in a deposition pending action?**

- Unless otherwise ordered by the court, the deponent may be examined regarding:
  - Any matter not privileged;
  - Which is relevant to the pending action, whether relating to the claim or defense of any other party;
  - Not covered by a protective order of the court.

**Are depositions of original parties binding upon substitute parties?**

- Yes! As per **Section 5, Rule 23**.
- Substitution of parties does not affect the right to use depositions previously taken.
- When an action has been dismissed and another action involving the same subject is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

**Does the deponent automatically become a witness of a party that took his depositions?**

- ✚ No! As per **Section 7, Rule 23-** A party shall not be deemed to make a person his own witness for any purpose by taking his deposition.

**What is the effect of using or introducing depositions?**

- ✚ **General rule:** As per Section 8, Rule 23- the introduction of the deposition binds the party who introduces it, since he thereby makes the deponent his witness.
- ✚ **Exception:** A party who introduced deposition is not bound thereby if:
  - a) The deposition was introduced to impeach or contradict the witness.
  - b) If the deposition introduced was the deposition of an opposing party.

**When may objections to admissibility of depositions be made?**

- ✚ **General Rule:** Subject to the provision of **Section 29, Rule 23**, objections to the admissibility of depositions **may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason** which would require the exclusion of the evidence if the witness were then present and testifying.
- ✚ **Exception: Section, Rule 23** provides that:
  - a) *As to notice-* All errors and irregularities in the notice for taking a deposition **are waived unless written objection is promptly served upon the party giving notice.**
  - b) *As to disqualification of officer-* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is **waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.**
  - c) *As to competency or relevancy of evidence-* Objections to the competency of a witness or the competency, relevancy, or materiality of testimony **are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.**
  - d) *As to oral examination and other particulars-* Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, removed, or cured if promptly prosecuted, are **waived unless reasonable objection thereto is made at the taking of the deposition.**
  - e) *As to form of written interrogatories-* Objections to the form of written interrogatories submitted **are waived unless served in writing upon the party propounding them within the time allowed for serving succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.**
  - f) *As to manner of preparation-* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed certified, sealed, indorsed, transmitted, filed, or otherwise dealt with by the officer are **waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.**

**When may taking of deposition be terminated or its scope limited?**

- ✚ As per **Section 18, Rule 23**, taking of deposition may be terminated or its scope limited at any time during the taking of the deposition, upon showing:
  - a) That the examination is being conducted in bad faith; or
  - b) That it is conducted in such manner as reasonably to annoy, embarrass, or oppress the deponent party.
  - c) The information is privileged.
  - d) The information is irrelevant and not material to the case.

**ORAL DEPOSITIONS**

**What are the requirements if oral depositions are to be taken?**

- ✚ **Section 15, Rule 23-** A party desiring to take the deposition of any person upon oral examination shall:
  - a) Give **reasonable notice in writing to every other party to the action.**
  - b) The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and if his name is not known, a general description sufficient to identify him or the particular class or group to which he belongs.

**Note:**



1. On motion of any party upon whom the notice is served, the court may for cause shown enlarge or shorten the time.
2. For the protection of the parties and deponents, **Section 16, Rule 23** provides that: After notice is served for taking a deposition by oral examination, **upon motion seasonably made** by any party or by the person to be examined and **for good cause** shown-
  - a) The court in which the action is pending may make an order that the deposition shall not be taken or that it may be taken only at some designated place other than that stated in the notice or that it, may be taken only on written interrogatories or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed, the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;
  - b) The court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment or oppression.

**Comment:** Only upon motion seasonably made and upon showing of good cause that Section 16, Rule 23 will apply. The court will not motu proprio apply it.

#### How shall an ORAL DEPOSITION be taken?

1. The officer before whom the deposition is to be taken shall put the witness on oath.
2. The officer shall personally, or by someone acting under his direction and presence, record the testimony of the witness.
3. The testimony shall be taken stenographically unless the parties agree otherwise.
4. All objections made at the time of the examination shall be noted by the officer upon the deposition.
  - a) Objections to the qualifications of the officer taking the deposition
  - b) Objections to the manner of taking the deposition.
  - c) Objections to the evidence presented.
  - d) Objections to the conduct of any party.
  - e) Any other objections to the proceedings.
5. Evidence objected to shall be taken subject to the objections. Note that the officer has no power to rule on the objections.
6. In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written interrogatories to the officers, who shall propound them to the witness and record the answers verbatim.
7. **Certification and Filing by Officer**
  - ✚ The officer shall certify on the deposition that the witness was duly sworn to by him and that the deposition is a true record of the testimony given by the witness.
  - ✚ He shall then securely seal the deposition in an envelope enclosed with the title of the action and marked „Deposition of [insert name of deponent], and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.
8. **Notice of Filing**
  - ✚ The officer taking the deposition shall give prompt notice of its filing to all the parties.
9. **Furnishing of Copies**
  - ✚ Upon payment of reasonable charges therefor [by the requesting party], the officer shall furnish a copy of the deposition to any party or to the deponent.

#### WRITTEN INTERROGATORIES

- ✚ Answers may be in written form or oral. If in oral form it should be transcribed.
- ✚ It covers any party or any witness.

#### What is the procedure of taking written interrogatories?

1. A party desiring to take the deposition of any person upon written **interrogatories shall serve them upon every other party with a notice** stating the name and address of the person who is to answer them and the name or descriptive title of the officer before whom the deposition is to be taken.
2. Within 10 days thereafter, a party so served may serve cross-interrogatories upon the party proposing to take deposition.

3. Within 5 days thereafter the latter may serve redirect interrogatories upon the party who has served cross-interrogatories.
4. Within 3 days after being served with redirect interrogatories, a party may serve recross-interrogatories upon the party proposing to take the deposition.
5. The party taking the deposition shall deliver the notice to take deposition and copies of all interrogatories to the officer before them whom the deposition shall be taken.
6. The officer shall propound the written interrogatories to the witness and record the answers verbatim.
7. When the testimony of the witness is fully transcribed, it shall be submitted to the witness for examination and reading, unless such examination and reading are waived by the witness.
8. Any changes in form and substance which the witness desires to make shall be entered upon the deposition with a statement of the reasons given therefor.
9. The deposition shall there be signed by the witness, unless signing is waived by the parties or the witness is ill, cannot be found or refuse to sign.
10. If the deposition is not required by the witness, the officer shall sign it with a statement of waiver or of the illness or absence of the witness or of his refusal to sign.
11. The officer shall then certify and file or mail the deposition attaching thereto a copy of the notice and the interrogatories received by him.
12. The officer shall promptly give notice of such filing to all the parties.
13. He may furnish copies to any parties upon payment on the necessary fees by the party obtaining it.

#### **DEPOSITIONS BEFORE ACTION OR PENDING APPEAL [Rule 24]**

- + Depositions before action are available only in civil cases, not in criminal cases.
- + Depositions Pending Appeal is available in both civil and criminal cases.

#### **DEPOSITION BEFORE ACTION [Perpetuation of Testimony]**

##### **Who can avail of deposition before action?**

- + Any person who desires to perpetuate his own testimony or that of another person.

##### **What is the subject of the petition for deposition before action?**

- + Any matter that may be cognizable in any court of the Philippines.

##### **How is deposition before action made?**

1. It may be made by **filing a verified petition in the court** of the place of the residence of any expected adverse party. **Leave of court is necessary.**

**Contents of the Verified petition** The petition shall be entitled in the name of the petitioner and shall show:

1. That the petitioner expects to be a party to an action in a court of the Philippines but is presently unable to bring it or cause it to be brought;
  2. The subject matter of the expected action and his interest therein;
  3. The facts which he desires to establish by the proposed testimony and his reasons for desiring it to perpetuate;
  4. The names or a description of the persons he expects will be adverse parties and their addresses so far as known;
  5. The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each, and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition for the purpose of perpetuating their testimony.
2. **Notice and Service**
    - + The petitioner shall serve a notice upon each person named in the petition as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order describe in the petition.
    - + At least 20 days before the date of the hearing, the court shall cause notice thereof to be served on the parties and prospective deponents in the manner provided for service of summons.
  3. **Order of Examination**
    - + If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions shall be

taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with Rule 23 before the hearing.

#### 4. Reference to Court

- ✚ For the purpose of applying Rule 23 to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

#### What is the use of deposition before action?

- ✚ If a deposition to perpetuate testimony is taken, or if, although not so taken, **it would be admissible in evidence, it may be used in any action involving the same subject matter subsequently brought.**

**ILLUSTRATION: Problem:** Santiago intends to file a tort case against Guillermo. He intends to use the Testimony of Winnie as a key witness but the latter will shortly be going to the United States to work as a nurse. What is the remedy of Santiago? **Answer:** Santiago should avail of depositions before action which states that a person who desires to perpetuate his own testimony or that of another person regarding any matter that may be cognizable in any court of the Philippines, may file a verified petition in the court of the place of the residence of any expected adverse party.

### **DEPOSITIONS PENDING APPEAL**

#### When to avail depositions pending appeal?

1. It can be availed of if **an appeal has been taken from a judgment of a court**, including the court of appeals in proper cases; or
2. **Before the taking of an appeal if the time therefor has not expired**, the court in which the judgment was rendered may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the said court.

#### Who can avail of depositions pending appeal?

- ✚ Any party who desires to perpetuate the testimony may make a motion in the said court for leave to take the depositions, upon the same notice and service thereof as if the action was pending therein.

#### Contents of the Motion for Leave to Take Depositions Pending Appeal

The motion shall state:

1. The names and addresses of the persons to be examined and the substance of the testimony which he expects to elicit from each; and
2. The reason for perpetuating the testimony.

#### Note:

- ✚ If the court finds that the perpetuation of the testimony is proper to **avoid a failure or delay of justice**, it may make an order allowing the depositions to be taken, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these Rules for deposition taken in pending actions.

### **INTERROGATORIES TO PARTIES [Rule 25]**

#### Rule 23 versus Rule 25

- ✚ Interrogatories **under Rule 25 are directly served upon the adverse party** for him to answer by himself. It is **applicable to parties only**.
- ✚ Written interrogatories **under Rule 23 may be served on all other parties [adverse party or witnesses]** and delivered to the officer taking the deposition for answer by the deponent who may not necessarily be the adverse party and the answers are given to the deposition officer.

#### Who can avail of interrogatories to parties?

- ✚ Any party desiring to elicit material and relevant facts from any adverse parties.

#### When to avail?

- ✚ **With leave of court-** before answer has been served.
- ✚ **Without leave of court-** after answer has been served.

#### What is the importance of interrogatories to parties?

- ✚ It is a method of eliciting material facts from any adverse parties.
- ✚ **Can you present the adverse party as your hostile witness?** Yes! Provided that you had served him interrogatories to parties.

#### How are interrogatories to parties taken?

1. The party who wants to avail of this mode of discovery shall file and serve upon any adverse party written interrogatories. 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 unless allowed by the court for good cause shown and to prevent a failure of justice.
  - ✚ **Good cause-** means a substantial reason- one that affords a legal excuse. The matter of good cause is to be determined by the court.
2. The interrogatories shall be answered fully in writing and shall be signed and sworn to by the person making them. The party upon whom the interrogatories have been served shall file and served a copy of the answers on the party submitting the interrogatories within 15 days after service thereof, unless the court, on motion and for good cause shown, extends or shortens the time [Section 2].
3. Objections to any interrogatories may be presented to the court within 10 days after service thereof, with notice as in case of a motion; and answers shall be deferred until the objections are resolved, which shall be at as early a time as is practicable [Section 3].

#### What is the required number of interrogatories?

- ✚ **General rule:** one set of written interrogatories to be answered by the same party.
- ✚ **Exception:** more than one set of written interrogatories if there is a leave of court.

#### What is the use of interrogatories?

- ✚ Same purpose as depositions.

#### What is the scope of written interrogatories?

- ✚ Interrogatories may embrace any relevant matter unless the same is:
  - a. Privilege
  - b. Prohibited by court order.

#### When should objections to interrogatories be manifested?

- ✚ Objections to any interrogatories may **be presented to the court within 10 days after service-thereof, with notice as in case of a motion.**
- ✚ Answers shall be deferred until the objections are resolved, which shall be at as early a time as is practicable.

#### What is the effect of refusal to answer written interrogatories?

- ✚ The **defendant party** who fails to serve his answer to written interrogatories may be subject of a judgment by default.
- ✚ The **plaintiff party** who fails to serve his answer to written interrogatories may subject to the striking out of all or any part of his pleading or dismissal of his action or proceedings relative to the same.
- ✚ **Rationale:** the party availing this mode of discovery is exercising a right provide by law. As such the party whom a written interrogatories s served must responsively comply with what is provided by the Rules of Court. What is provided by the Rules is that one should serve or give his answer to the written interrogatories otherwise he will be declared in default.

#### What is the effect of failure to serve written interrogatories?

- ✚ **General rule:** a party **not served** with written interrogatories may not be compelled by the adverse party-
  - a. To give testimony in open court; or
  - b. To give deposition pending appeal.
- ✚ **Exception:** he may be required to give testimony in open court or to give deposition pending appeal if **such is allowed by the court or to prevent failure of justice.** However such allowance must be based on a good cause.

## ADMISSION BY ADVERSE PARTY [Rule 26]

### When and how may a request for admission be made?

- ✚ At any time after issue have been joined, a party may file and serve upon any other party a **written request** for the admission by the latter of:
  1. 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; or
  2. The truth of any material and relevant matter of fact set forth in the request.

#### Note:

- ✚ Copies of the documents shall be delivered with the request unless copies have already been furnished.

### On whom must the request for admission be served?

- ✚ A request for admission must be served directly upon the party requested. Otherwise, that party cannot be deemed to have admitted the genuineness of any relevant matters of fact set forth therein on account of failure to answer the request for admission.

### May a party on whom the request for admission is served engage the services of counsel to make the response in his behalf?

- ✚ Yes! When the Rule 26 states that party shall respond to the request for admission, it should not be restrictively construed to mean that a party may not engage the services of counsel to make the response in his behalf.
- ✚ This is so where the request for admission was served not directly upon the party requested but upon his lawyer. It is unfair to expect such party to answer such requests for admission when he did not receive the same.

### What may a party do after service of a request for admission upon him?

- ✚ Upon service of request for admission, the party served may do any of the following acts:
  1. He may admit each of the matters of which admission is requested, in which case he needs not file an answer.
  2. He may admit the truth of the matters of which admission is requested by serving upon the party requesting a written admission of such matters within the period stated in the request which must not be less than 10 days after service, or within such further time as the court may allow on motion and notice.
  3. He may file a sworn statement denying specifically the matter of which an admission is requested.
  4. He may file a sworn statement setting forth in detail the reasons why he cannot truthfully either admit or deny the matters of which an admission is requested.

### May a party be requested to admit facts which he had already denied in his answer?

- ✚ No! A request for admission is not proper where the subject matters thereof are the same as the ultimate facts alleged in the requesting party's complaint for which the requested party had already denied in his answer. A party should not be required to make second denial of those already denied in his answer to the complaint.
- ✚ Also even if the response to the request for admission was not made under oath and such matters sought to be admitted were denied in the answer to the complaint, it cannot be said that the party admitted it because the purpose of modes of discovery is not to reiterate a party's allegations but should set forth relevant evidentiary matters of facts or documents described in and exhibited with request, whose purpose is to establish said party's cause of action or defense.

### When is there implied admission?

- ✚ Implied admission happens when the party asked to admit, **did not served** upon the party requesting the admission a **sworn statement**.
- ✚ The sworn statement must be served within the period designated in the request, which shall not be less than 15 days after service thereof, or within such further time as the court may allow on motion.

#### Contents of the Sworn Statement:

- a) Specific denial of the matters of which an admission is requested for; or

- b) Detailed reasons why the party asked to admit cannot truthfully either admit or deny those matters sought to be admitted.

**When should objections to any request for admission be made?**

- + Objections to any request for admission shall be submitted to the court by the party requested **within the period for serving and filing this sworn statement or the period fixed by the court and prior to the filing of his sworn statement.**
- + Filing of the objection shall defer the proceeding and toll the running of the period until such objections are resolved, which resolution shall be made as early as practicable.

**What is the effect of admission?**

- + Any admission made by a party pursuant to such request is **for the purpose of the pending action only and shall not constitute an admission by him for any other purpose nor may the same be used against him in any other proceeding.**

**What is the effect of failure to file and serve request for admission?**

- + **General rule:** the party who fails to file and serve a request for admission on the adverse party of material and relevant facts at issue which are, or ought to be, within the personal knowledge of the latter, shall not be permitted to present evidence such facts.
- + **Exception:** even if there was failure to file and serve a request of admission, the party shall be permitted to present evidence on such facts if allowed by the court for good cause shown and to prevent failure of justice.

**Can an admission be withdrawn?**

- + Yes! The court may allow the party making an admission whether express or implied to withdraw or amend it upon such terms as may be just.

**PRODUCTION OR INSPECTION OF DOCUMENTS OR THINGS [Rule 27]**

**Rule 27 contra Subpoena Duces Tecum**

Rule 27	Subpoena duces tecum
1. A showing for good cause and upon motion is required for an order for the production or inspection of documents or things. 2. An order for production or inspection of documents or things can only be directed to a party. 3. A motion for a production or inspection order is a pre-trial discovery device intended to obtain facts or documents in order to prepare for trial; the movant may opt to use such facts or documents.	1. Subpoena duces tecum may issue upon an ex parte application. 2. May be directed to a non-party. 3. Is a process used during the trial proper and contemplates that the party applying for its issuance intends to present in evidence the witness or the things subject thereof.

**When is it availed? Who can avail?**

- + It is availed upon motion of any party showing good cause therefor. Thus this mode of discovery is **always with leave of court** because you must show good reason and that the party is in possession of the same.

**What will the court do?**

- + If satisfied that there is a good cause the court may-
  - a) Order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated document, papers, books, accounts, letters, photographs, objects or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession custody or control; or
  - b) Order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting measuring, surveying or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place, and manner of making the inspection and taking copies and photographs and may prescribe such terms and conditions as are just.

**PHYSICAL AND MENTAL EXAMINATION OF PERSONS [Rule 28]**



**Who can be subjected to this mode of discovery?**

- ✚ This is applicable to parties only and not witnesses.

**When is it available?**

- ✚ It is available in an action in which the mental or physical condition of a party is in controversy.
- ✚ The mental condition of a party is in controversy in proceedings for guardianship over an imbecile or insane person, while the physical condition of a party is generally involved in physical injuries cases.

**When can the order of examination be issued?**

- ✚ An order of examination maybe issued upon concurrence of the following:
  1. A motion must be filed for the physical and mental examination
  2. Showing good cause therefor
  3. Notice to the party to be examined and to all the other parties
  4. Shall specify the time, place, manner, condition and scope of the examination and the person or persons by whom it is made.
- ✚ Non-compliance of the foregoing will render the petition for examination invalid.

**How is physical and mental examination done?**

1. The order for examination may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties, and shall specify the time, place, manner, conditions and scope of the examination and the person or persons by whom it is to be made [Section 2].
2. If requested by the party examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings and conclusions. After such request and delivery, the party causing the examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report, the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such report the court may exclude his testimony if offered at the trial.

**WAIVER OF PRIVILEGE**

**Is the adverse party entitled to the result of the examination?**

- ✚ As a rule no! But he may request to be given copies thereof.

**What is the effect if the adverse party was given a copy of the examination upon his request?**

- ✚ If given a copy the adverse party cannot present any medical certificate contrary to what was stated in the medical certificate that was given to him.

**Rationale:** Baka kasi mag-fabricate ang adverse party ng medical certificate na hindi tugma sa nakalahad doon sa nakuha niyang medical certificate. Alam na niya kasi ang resulta ng medical examination eh. **Eh ano ang remedyo ng adverse party?** Do not ask for a copy of the result of the medical examination. Instead the adverse party should submit himself to medical examination. Such medical examination can be used to contradict the former medical examination if the latter is presented as evidence during trial.

<b>REFUSAL TO COMPLY WITH MODES OF DISCOVERY</b>	
<b>Rule 26</b>	

Refusal to comply with modes of discovery	Sanctions
Refusal to answer any question	<ul style="list-style-type: none"> <li>✚ The court may, upon application, compel a refusing deponent an answer. If granted and refusal to answer is without substantial justification, the court may require the refusing party to pay the proponent the amount of the reasonable expenses incurred in obtaining the order, including attorney's fees.</li> <li>✚ If denied and filed without substantial justification, the court may require the proponent to pay to the refusing party or deponent the amount of the reasonable expenses incurred in opposing the application, including attorney's fees.</li> <li>✚ A refusal to answer after being directed by the court to do so may be</li> </ul>

	considered contempt of that court.
Refusal to be Sworn	Cite the disobedient deponent in contempt of court
Refusal to answer designated questions or refusal to produce documents or to submit to physical or mental examination	The court may make the following orders: <b>1)</b> An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; <b>2)</b> An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition; <b>3)</b> An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and <b>4)</b> In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.
Refusal to admit actionable document	The court may issue an order to pay the proponent the amount of the reasonable expenses incurred in obtaining the order, including attorney's fees.
Failure of party to attend or serve answers	The court may: <b>1)</b> may strike out all or any part of any pleading of that party; <b>2)</b> dismiss the action or proceeding or any part thereof; <b>3)</b> enter a judgment by default against the disobedient party; <b>4)</b> Order to pay reasonable expenses incurred by the other, including attorney's fees.

**SUBPOENA  
Rule 21**

**General Principle:**

- ✚ It is used during trial.
- ✚ No subpoena can be issued in the absence of an action pending in court.

**Purpose:**

- ✚ To ask witnesses to testify and produce evidence material to the case.

**What is a subpoena?**

- ✚ Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition.

**What is subpoena ad testificandum?**

- ✚ To appear and testify
- ✚ It is a process requiring a person to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the hearing of his deposition.

**What is subpoena duces tecum?**

- ✚ To appear and bring the papers and documents. [Papadala ko nalang." Hindi pwede, gusto mo bang ma-contempt!]
- ✚ It is a process requiring a person to bring with him any books, documents, or other things under his control.

**Who can issue a subpoena?**

1. The court before whom the witness is required to attend.
2. The court of the place where the deposition is to be taken.
3. The officer or body authorized by law to do so in connection with investigations conducted by said officer or body;
4. Any justice of the SC or the CA in any case or investigation pending within the Philippines.



5. MTC for the attendance before it of a prisoner even if he is not confined in a municipal jail, unless such prisoner has been sentenced to death, reclusion perpetua, or life imprisonment and his desired appearance has not been authorized by the SC.

**What are the considerations if a subpoena is directed to a prisoner?**

1. When application for subpoena to a prisoner is made, the judge or officer shall examine and study carefully such application to determine whether the same is made for a valid purpose.
2. No prisoner sentenced to death, reclusion perpetua, or life imprisonment and who is confined in any penal institution shall be brought outside the said penal institution **for appearance or attendance in any court** unless authorized by the SC.

**What is the form and contents of a subpoena?**

**Form-** written

**Contents:** A subpoena shall

1. State the name of the court.
2. The title of the action or investigation
3. Directed to the person whose attendance is required.
4. And in case of a subpoena duces tecum, it shall contain a reasonable description of the books, documents or things demanded which must appear to the court prima facie relevant.

**When to quash a subpoena?**

The court may quash a subpoena:

1. Upon motion promptly made and
2. In any event, at or before the time specified therein.

**What are the grounds of quashing a subpoena duces tecum?**

It can be quash if the subpoena duces tecum is:

1. Unreasonable and oppressive, OR
2. The relevancy of the books, documents, or things does not appear, OR
3. If the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof, OR
4. When the books, papers to be produce was not described; OR
5. The witness fees and kilometrage was not tendered upon service of the subpoena.

**What are the grounds of quashing a subpoena ad testificandum?**

A subpoena ad testificandum may be quash on the ground that:

1. The witness is not bound thereby OR
2. The witness fees and kilometrage was not tendered upon service of the subpoena.

**Note:**

- ✚ Under the Rules, if you are a witness you should be able to perceive and make known your perception.
- ✚ As such a witness is not bound to make known his perception and is not bound by the subpoena in the following cases: **[where the information is privilege]**
  1. Where there exists penitent-confessor relationship.
  2. Where there exists attorney-client relationship.
  3. Where there exists physician-patient relationship.
  4. Privilege information between husband and wife.
  5. Non-disclosure of result of census.
  6. Non-disclosure of trade secrets.
  7. Information held by a public officer in relation to the state.
  8. Non-disclosure of whom you voted.
  9. Secrecy of bank deposit.
  10. Executive privilege.

**What is the required proof for the issuance of a subpoena?**

- ✚ Proof of service of a notice to take a deposition shall constitute sufficient authorization or the issuance of subpoena for the persons named in said notice by the clerk of the court of the place in which the deposition is to be taken.

- ✚ The clerk shall not, however, issue a subpoena *duces tecum* to any such person without an order of the court.

#### How is service of subpoena made?

- ✚ Service of subpoena shall be made in the same manner as personal or substituted service of summons.
- ✚ The original shall be exhibited and a copy thereof delivered to the person. On whom it is served, tendering to him the fees for one day's attendance and the kilometrage allowed by the rules;  
**Exception:** when a subpoena is issued by or on behalf of the Republic of the Philippines or an officer or agency thereof, the tender need not be made.
- ✚ The service must be made also so as to allow the witness a reasonable time for preparation and travel to the place of attendance.
- ✚ If the subpoena is *duces tecum*, the reasonable cost of producing the books, documents or things demanded shall also be tendered.

#### If a person is present in court, is there a need for subpoena in order for him to testify?

- ✚ No! A person present in court before a judicial officer may be required to testify as if he were in attendance upon a subpoena issued by such court of officer.

#### What if a witness did not respond to the subpoena?

##### General Rule:

- ✚ The court or judge issuing the subpoena may issue warrant of arrest to the sheriff or his deputy to arrest the witness and bring him before the court or officer where his attendance is required and the cost of such warrant and seizure of such witness shall be paid by the witness if the court issuing it shall determine that his failure to answer the subpoena was willful and without just cause.
- ✚ Before the witness will be arrested it must be shown to the court or judge that:
  1. There was a proof of service of the subpoena.
  2. The witness failed to appear.

##### Exceptions:

1. Arrest and contempt against a witness shall not apply to a witness who resides more than 100 kilometers from his residence to the place where he is to testify by the ordinary course of travel.
  - ✚ This is known as the **viatory right of a witness**. **Viatory right of a witness is applicable only in civil cases!**
2. Arrest and contempt will not apply to a **detention prisoner** if no permission of the court in which his case is pending was obtained.

#### What are the sanctions for unjustifiable failure to obey subpoena?

- ✚ Failure by any person without justifiable cause to obey a subpoena served upon him shall be deemed a contempt of the court from which the subpoena is issued.
- ✚ If the subpoena was not issued by a court, the disobedience thereto shall be punished in accordance with the applicable law or Rule.

#### What is the remedy in order to obtain the testimony of a witness exempt from subpoena?

- ✚ Get their **depositions** using the **different modes of discovery**.

## CONSOLIDATION AND SEVERANCE OF CASES

#### General principles:

- ✚ Consolidation of cases generally applies only to **cases pending before the same judge**, not to cases pending in different branches of the same court or different courts and also applies to special proceedings.

- ✚ But **whenever appropriate, and in the interest of justice**, consolidation of cases in different branches of the same court or in different courts can be effected.
- ✚ **Consolidation of cases on appeal** and assigned to different divisions of the Supreme Court or the Court of Appeals is also authorized, and generally the case which was appealed later and bearing the highest docket number is consolidated with the case having the lower docket number.
- ✚ On consideration of judicial economy and for the convenience of the parties, the **Supreme Court** [only! Not other courts] can also order the consolidation of cases involving substantially the same parties and issues but which have been filed in different courts of equal jurisdiction.
- ✚ **Consolidation as discretionary**- consolidation of several cases involving the same parties and subject matter is discretionary with the **trial court**.
- ✚ **Consolidation as a matter of duty**- when two or more cases are tried before the same judge, or if filed with different branches of the RTC one of such cases has not been tried.
- ✚ When there is a consolidation of cases, there is severance because the other cases will be dropped and only one case remains.

#### When can there be consolidation of cases?

- ✚ There can be consolidation of cases when-
  1. The actions involve a common question of law and fact.
  2. These cases are pending before the court
  3. The court ordered a joint or trial of any or all the matters in issue of the action or it order the consolidation of all actions.
  4. The basis of the order for consolidation of the proceedings is to avoid unnecessary cost or delay.

#### What is the rule if consolidation of cases involves a change of venue?

- ✚ Permission of the Supreme is necessary.

#### What is the rationale of consolidation of cases?

- ✚ To avoid multiplicity of suits, guard against oppression or abuse, prevent delay, clear congested dockets, and simplify the work of the trial court and save unnecessary costs and expenses.
- ✚ Consolidation seeks to attain justice with the least expense and vexation to the litigants.

#### What are the modes of consolidating cases?

1. **By recasting the cases already instituted**
  - ✚ Reshaping of the case by amending the pleading and dismissing some cases and retaining only one case. There must be joinder of causes of action and of parties.
2. **By consolidation proper or by consolidating the existing cases**
  - ✚ It is a joint trial with a joint decision, the cases retaining their original docket numbers.
3. **By test-case method**
  - ✚ By hearing only the principal case and suspending the hearing on the other cases until judgment has been rendered in the principal case. The cases retain their original docket number.

### SEVERANCE of CASES

#### Can there be separate trial of any claim, cross-claim, counterclaim or third party complaint instead of consolidating them?

- ✚ Yes! **Section 2, Rule 31**- The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party complaint or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party complaints or issues.

#### Note:

- ✚ When separate trial of claims is conducted by the court under this section; it may render separate judgments on each claim [see section 5, Rule 36].
- ✚ The permission of separate trials presupposes that the claims involved are within the jurisdiction of the court. When one of the claims is not within its jurisdiction, the same should be dismissed so that it may be filed in the proper court.

**TRIAL BY COMMISSIONER**  
**Rule 32**

#### Who is a commissioner as contemplated by the Rules of Court?

- ✚ A commissioner includes a **referee**, an **auditor** and an **examiner** [Section 1].

### When can there be trial by commissioner? [Section 2]

#### 1. Reference by consent of both parties

- ✚ By **written consent of both parties**, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court.

#### 2. Reference ordered on motion.

- ✚ The parties did not consent.
- ✚ This happens upon **motion of either party** or at **the court's instance**.
- ✚ The court shall direct a reference to a commissioner in the following cases:
  - When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue or any specific question involved therein.
  - When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order in effect;
  - When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or for carrying a judgment or order into effect.

### What are the duties of a commissioner?

- ✚ Before entering upon his duties the commissioner shall be sworn to a faithful and honest performance thereof [Section 4].
- ✚ It is the duty of the commissioner to proceed with all reasonable diligence.

#### Question: Eh panu kung kukupad-kupad yong commissioner, what is the remedy?

- ✚ Either party, on notice to the parties and commissioner may file a motion to the court for an order requiring the commissioner to hasten the proceedings and to make his report.

### What are the powers of a commissioner?

- ✚ Under the rules, the court's order may specify or limit the powers of the commissioner. Hence, the order may direct him to:
  - Report only upon particular issues;
  - Do or perform particular acts; or
  - Receive and report evidence only;
  - Fix the date for beginning and closing of the hearings and for the filing of his report.
- ✚ **Subject to such limitations stated in the order, the commissioner:**
  - Shall exercise the power to regulate the proceedings in every hearing before him;
  - Shall do all acts and take all measures necessary or proper for the efficient performance of his duties under the order;
  - May issue subpoena and subpoena duces tecum, and swear witnesses; and
  - Rule upon the admissibility of evidence, unless otherwise provided in the order of reference.

### PROCEEDINGS BEFORE THE COMMISSIONER

- Upon receipt of the order the commissioner shall notify the parties and their counsel of the time and place of the first meeting if the same is provided in the order. If the time and place were not given in the order then the commissioner shall set it within 10 days after the date of the order of reference and shall notify the parties or their counsel [Section 5].
- If a party fails to appear at the time and place appointed the commissioner may proceed ex parte or in his discretion, adjourn the proceedings to a future day, giving notice to the absent party or his counsel of the adjournment [Section 6].
- Upon the filing of the report, the parties shall be notified by the clerk and they shall be allowed 10 days within which to signify grounds of objections to the findings of the report, if the so desires.  
**\*Objections to the report based upon grounds which were available to the parties during the proceedings before the commission, other than objections to the findings and conclusions therein set forth shall not be considered by the court unless they were made before the commissioner [Section 10].**

### What shall the court do after the commissioner filed his report and notified the parties?

- ✚ Upon the expiration of the period of 10 days within which to present their objections to the report of the commissioner, the report shall be set for hearing, after which the court shall issue an order **adopting, modifying, or rejecting** the report in whole or in part, or recommitting it with instructions or requiring the parties to present further evidence before the commissioner or the court [Section 11].
- ✚ As such the commissioner's report is not binding to the court because the court may **adopt, modify, or reject** the same.

**Can the parties stipulate on the finding of facts? What is the effect?**

- ✚ When the parties stipulate that a commissioner’s findings of fact shall be final, only questions of law shall thereafter be considered [Section 12].

**What if a witness unjustifiably refuses a subpoena issued by the commissioner?**

- ✚ The refusal of a witness to obey a subpoena issued by the commissioner or give evidence before him shall be deemed a contempt of the court which appointed the commissioner [Section 7].

**Who shall pay the compensation of commissioner?**

- ✚ The court shall allow the commissioner such reasonable compensation as the circumstances of the case warrant to be taxed as costs against the defeated party, or appointed, as justice requires.

**May a party object to the commissioner’s report?**

- ✚ Yes! Under the rules, **within 10 days from notice of the filing of the report of the commissioner**, the parties may file their objections to the report.
- ✚ Though it must be noted that objections based on grounds which were available to the parties during the proceedings before the commissioner, other than objections to the findings and conclusions therein set forth, shall not be considered by the court unless they were made before the commissioner.

**May the parties agree that the findings of the commissioner shall be final?**

- ✚ Yes! And if that is so, the court shall consider only the questions of law arising from the report [Section 12].

<b>TRIAL Rule 30</b>
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**General Principles:**

- ✚ **General rule:** the trial shall be limited to the issues stated in the pre-trial order; **Exception:** unless the court specifically directs.
- ✚ **Additional evidence** may be offered at the **rebuttal stage** if it was newly discovered, or omitted through mistake or inadvertence, or where the purpose is to correct evidence previously offered, subject to the discretion of the court.
- ✚ **Postponements of trial** are addressed to the sound discretion of the court and, in the absence of grave abuse of discretion, cannot be controlled by mandamus.

**What is trial?**

- ✚ An examination, usually involving the offering of testimony before a competent tribunal according to established procedures, of facts or law put in issue in a cause for the purpose of determining such issue.
- ✚ The judicial process of investigating and determining the legal controversies, starting with the production of evidence by the plaintiff and ending with his closing arguments.

**What is the order of trial in Civil Actions?**

1. The plaintiff shall adduce evidence in support of his complaint;
2. The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third party complaint;
3. The third- party defendant if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth party complaint;
4. The fourth party and so forth, if any shall adduce evidence of the material facts pleaded by them;
5. The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense;
6. The parties may then respectively adduce rebutting evidence only, unless the court permits them to adduce evidence upon their original case; and
7. Upon admission of the evidence, the case shall be deemed submitted for decision.

**Note:**

- ✚ This order of trial applies to a regularly controverted claim.
- ✚ This will not apply if the answer admits the defendant’s obligation as alleged in the complaint but special defenses are alleged, plaintiff does not have to present evidence since judicial admissions do not require

proof, and it should be the defendant who should forthwith present evidence in support of his special defenses.

- ✚ This order of trial will also not apply if there was a separate trial of the counterclaim, cross-claim, third-party complaint, etc... or if the court for special reasons otherwise directs.

#### **Can the parties agree on the statement of facts? What is the effect?**

- ✚ Yes! Section 6, Rule 30.
- ✚ The parties to any action may agree in writing, upon the facts involved in the litigation. The parties may also stipulate verbally in open court. Such stipulations are binding unless relief therefrom is permitted by the court on good cause shown, such as error or fraud.
- ✚ The parties may submit the case for judgment on the facts agreed upon, without the introduction of evidence. If the parties agree only on some of the facts in issue, the trial shall be held as to the disputed facts in such order as the court shall prescribe.
- ✚ **Effect:** agreed statement of facts is conclusive on the parties as well as on the court. Neither of the parties may withdraw from the agreement, nor may the court ignore the same.

#### **Note:**

- ✚ Counsel cannot stipulate on what their respective evidence consists of and ask that judgment be rendered on the basis of such stipulation.
- ✚ Stipulations of facts are not permitted in actions for annulment of marriage.

#### **How will the party know of the scheduled trial?**

- ✚ Upon the entry of a case in the trial calendar, the clerk shall notify the parties of the date of its trial in such manner as shall ensure his receipt of that notice at least 5 days before such date [Section 1].

#### **Can the court adjourn trials?**

- ✚ Yes! A court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require.
- ✚ However, the court has no power to adjourn a trial for a period longer than 1 month from each adjournment, nor more than 3 months in all, except when authorized in writing by the court administrator.

#### **Can trials be postponed?**

- ✚ Yes, subject to the following conditions:
  1. There must be a motion for postponement filed by any of the party.
  2. The motion for postponement should not be filed on the last hour especially when there is no reason why it could not have been presented earlier.
  3. Postponement is not a matter of right. It is addressed to the discretion of the court.

#### **REQUISITES OF MOTION TO POSTPONE TRIAL FOR ABSENCE OF EVIDENCE [Section 3]**

1. A motion for postponement stating the ground relied upon must be filed;
2. The motion must be supported by an affidavit or sworn certification showing:
  - a. The materiality or relevancy of the evidence; and
  - b. That due diligence has been used to procure it.

#### **Note:**

- ✚ If the adverse party admits the facts given in evidence, the trial shall not be postponed even if he reserves the right to object to admissibility of the evidence.

#### **REQUISITES FOR MOTION TO POSTPONE TRIAL FOR ILLNESS OF PARTY OR COUNSEL [Sec. 4]**

1. A motion for postponement stating the ground relied upon must be filed;
2. The motion must be supported by an affidavit or sworn certification showing:
  - a. That the presence of the party or counsel at the trial is indispensable; and
  - b. That the character of his illness is such as to render his non-attendance excusable.

#### **What should be done to any statement of the judge during hearing or trial?**

- ✚ During the hearing or trial of the case any statement made by the judge with reference to the case, or to any of the parties, witness or counsel, shall be made of record in the stenographic notes [Section 7].

#### **Who shall receive evidence?**

- ✚ **General rule:** The judge must himself personally receive and resolve the evidence of the parties.



- ✚ **Exception:** the reception of evidence may be delegated under the following conditions:
  1. The delegation may be only in default or ex parte hearings or an agreement in writing by the parties;
  2. The reception of evidence shall be made only by the clerk of court who is a member of the bar;
  3. Said clerk shall have no power to rule on objections to any question or to the admission of evidence or exhibits;
  4. He shall submit his report and transcripts of the proceedings, together with the objections to be resolved by the court, within 10 days from the termination of the hearing.

**State the nature of the defect if any, of the practice of referring a case to the clerk of court to receive evidence and report the same to the court?**

- ✚ The defect is procedural which can be waived by the express or implied consent of the parties. If a party objects thereto, he must do it on time and in the trial.

<b>DEMURRER TO EVIDENCE</b> <b>Rule 33</b>
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**General principles:**

- ✚ The provision of the Rules governing demurrer to evidence does not apply to an election case [Gementiza vs. COMELEC, 353 SCRA 724].
- ✚ An order denying a demurrer to evidence is interlocutory and is therefore, not appealable. It can however the subject of a petition for certiorari in case of grave abuse of discretion or an oppressive exercise of judicial authority.
- ✚ **Leave of court is not required** before filing a demurrer.
- ✚ Where the defendant's motion is sustained and the case is dismissed under this Rule, **such order would be an adjudication on the merits**, hence the requirement in Section 1, Rule 36 that said judgment should state clearly and distinctly the facts and the law on which it is based, should be complied with.

**What is demurrer to evidence?**

- ✚ A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case.

**When to avail demurrer to evidence?**

- ✚ A demurrer to evidence can be filed after the plaintiff has completed the presentation of his evidence. As such the defendant need not present his evidence.

**Who can avail of demurrer to evidence?**

- ✚ Any defendant in a case.

**What is the ground for filing a demurrer to evidence?**

- ✚ The only ground is that upon the facts and the law the plaintiff has shown no right of relief. Evidence of the plaintiff is insufficient to entitle him to relief.

**Note:**

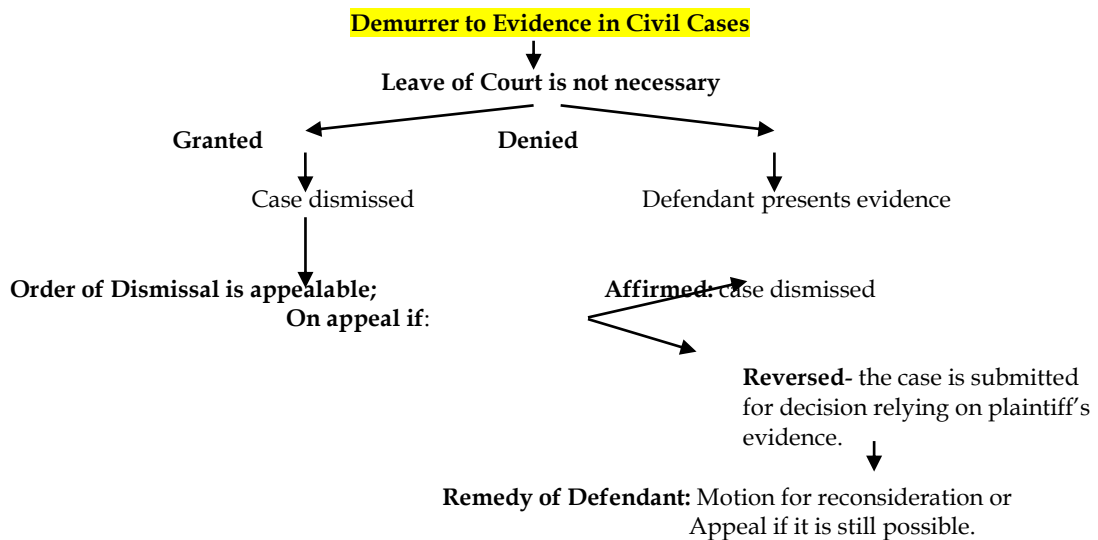
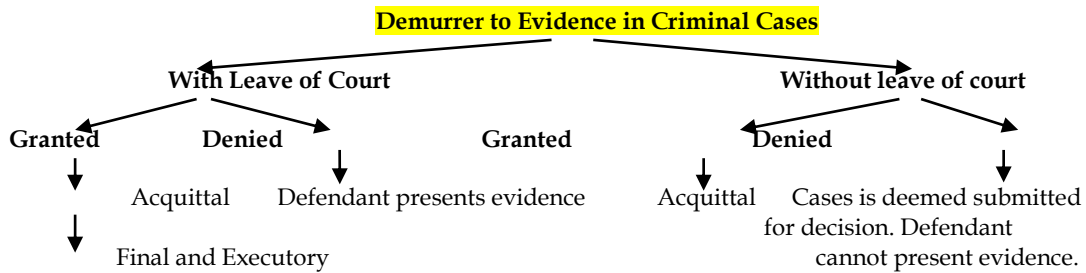
- ✚ Demurrer to evidence differs from Motion to Dismiss in Rule 16 in this wise: Motion to Dismiss is grounded on preliminary objections and is presented at the outset of the case, i.e. generally before a responsive pleading is filed by the movant and within the period for the filing thereof.

**What is the effect of filing a demurrer to evidence?**

- ✚ **If denied-** the defendant retains the right to present their own evidence.
- ✚ **If granted-** the defendant need not present his evidence and the case is dismissed.

**Note:**

- ✚ However, it is noteworthy that if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence on his behalf. As such the movant cannot appeal the decision of the appellate court.
- ✚ In the case of reversal, the Appellate Court shall render judgment for the plaintiff based on the evidence alone. Corollarily, it is not correct for the appellate court reversing the order granting the demurrer to evidence to remand the case to the trial court for further proceedings. The appellate court should, instead of remanding the case, render judgment on the basis of the evidence submitted by the plaintiff.



Demurrer to Evidence in Civil Cases	Demurrer to Evidence in Criminal Cases
<ol style="list-style-type: none"> <li>1. Leave of court is not required before filing a demurrer.</li> <li>2. If the demurrer is granted, the order of dismissal is appealable.</li> <li>3. If the demurrer is denied, the defendant may proceed to present his evidence.</li> <li>4. The plaintiff may file a motion to deny the motion to demurrer to evidence.</li> </ol>	<ol style="list-style-type: none"> <li>1. Demurrer is filed with or without leave of court.</li> <li>2. The order of dismissal is not appealable because of constitutional policy against double jeopardy- order of dismissal granting demurrer is tantamount to acquittal, thus final and executory.</li> <li>3. The accused may adduce evidence his evidence if he filed it with leave of court. He cannot present his evidence if he filed the demurrer without leave of court.</li> <li>4. The court may motu proprio deny the motion.</li> </ol>

**JUDGMENTS, FINAL ORDERS, AND ENTRY THEREOF**

**General Principles:**

- ✚ A **judgment must conform to the pleadings and the theory of the action** under which the case was tried. A judgment going outside the issues and purporting to adjudicate something on which the parties were not heard is invalid.
- ✚ A **judgment contrary to the express provisions of law is erroneous but it is not void**. Once it becomes final and executory, it is as binding and effective as any judgment and though erroneous, will be enforced as a valid judgment in accordance with its dispositions.



- ✚ Every court having jurisdiction to render a particular judgment has inherent power and authority to enforce it and to exercise equitable control over such enforcement. The court has authority to inquire whether its judgment has been executed, and will remove obstruction to the enforcement thereof. Such authority extends not only to such orders and such writs as may be necessary to carry out the judgment into effect and render it binding and operative, but also to such orders as may be necessary to prevent improper enforcement of the judgment.
- ✚ **Principle of Stare Decisis et non quieta movere-** It means that once the case is decided by the Supreme Court as the final arbiter of any justifiable controversy one way or another, then another case involving exactly the same point at issue should be decided in the same manner.

#### Who renders a judgment?

- The judge, who heard the case.
- **What if the judge who rendered the judgment is not the judge who heard the case, can there be a valid judgment?** Yes! There is no requirement in the Rules requiring the same. Though, a judge permanently transferred to another court of equal jurisdiction can render a decision on a case in his former court which was totally heard by him and submitted for decision, with the parties having argued the case.

#### What is a judgment?

- ✚ It is the final consideration and determination by a court of the rights of the parties as those rights which presently exist upon matters submitted in an action or proceeding.

#### What are the requisites of a valid judgment?

1. A final judgment or final order determining the merits of the case shall be in writing.
2. Personally and directly prepared by the judge;
3. Stating clearly and distinctly the facts and the law on which it is based;
4. The judgment must be signed by him;
5. The judgment must be filed with the clerk of court.

#### Note:

- ✚ It is the filing of the signed decision with the Clerk of Court, and not its pronouncement in open court that constitutes rendition of judgment.
- ✚ If the decision is sent by the judge by registered mail, it is considered filed in court as of the date of its receipt by the clerk, and not of the date of its posting or mailing.

#### What is the effect if a judgment was not based on law or facts?

- ✚ It is void. In one case it was held that an order of dismissal of a petition for Habeas Corpus without stating the reasons or basis therefor is null and void for having been rendered in violation of the constitutional mandate that no decision shall be rendered by any without expressing therein clearly and distinctly the facts and law upon which it is based.

#### What must a judgment contain?

- ✚ A judgment must contain two parts:
  1. The body of the judgment or the *ratio decidendi*, and
  2. The dispositive portion of the judgment or *fallo*.

#### Note:

- ✚ The body of the decision is not part of the judgment that is subject to execution but the *fallo* because it is the latter which is the judgment of the court.
- ✚ The *fallo* or dispositive portion of a decision should state whether the complaint or petition is granted or denied, the specific relief granted, and the costs.
- ✚ It is the dispositive part of the judgment that actually settles and declares the rights and obligations of the parties, finally definitively, and authoritatively.

#### What is the rule to be followed if there is a conflict between the dispositive portion of the decision and the body thereof?

- ✚ **General rule:** The dispositive portion controls irrespective of what appears in the body of the decision.
- ✚ **Exception:** however an exception is recognized:
  1. Where the inevitable conclusion from the findings of fact in the opinion is so indubitable and clear as to show that there was mistake in the dispositive portion **OR;**
  2. Where explicit discussion and settlement of the issue is found in the body of the decision.

### Who are covered by the Rules on Judgments?

- ✚ Courts or Records [RTC and MTC]

### Note:

- ✚ Supreme Court is not compelled to adopt a definite and stringent rule on how its judgments shall be framed. It has the discretion to decide whether a “minute resolution” should be used in lieu of “full blown decision” in any particular case and that a minute resolution of dismissal of a petition for review on certiorari constitutes adjudication on the merits of the controversy or subject matter of the petition. Since the grant of a petition for review on certiorari is not a matter of right but of sound judicial discretion, there is accordingly no need to fully explain the court’s denial. Such a minute resolution can only mean the Supreme Court agrees with or adopts the findings and conclusions of the lower court, that is, that the latter’s decision sought to be reviewed and set aside is correct.

- ✚ **Section 40, B.P Blg. 129-** has authorized memorandum decisions, a species of succinctly written decisions by appellate courts for expediency, particularity and convenience in consideration of the docket status of our courts. It has been held that such decisions comply with the constitutional mandate.

**However, to be valid,** such memorandum decision should actually embody the factual findings and legal conclusions in an annex attached to and made an integral part of the decision.

**When should memorandum decisions are to be used?** Also such decisions should be sparingly used and may be resorted to only in cases where the facts are accepted in the main by parties, are easily determinable by the judge and do not involve doctrinal complications requiring extended discussion. It may be employed in simple cases where the appeal is obviously groundless and deserves no more than the time to dismiss it.

### Why is judgment so important?

- ✚ Judgment is so important because it is the basis of execution. Once judgment becomes final and executory it is subject of execution. Although by way of exception, interlocutory orders can be subject of an “execution pending appeal.”

### What is the effect if judgment becomes final and executory?

- ✚ **General rule:** once judgment becomes final and executory it becomes immutable and unalterable.
- ✚ **Exception:** judgment may change in cases of:
  1. Typographical error
  2. Void judgment
  3. Judgment *nunc pro tunc*.

### Note: Corollarily

- ✚ **Amended/ clarified judgment-** In an amended or clarified judgment, the court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. Such amended and clarified decision is an entirely new decision which supersedes the original decision.
- ✚ **Supplemental decision-** does not take the place of or extinguish the original decision; it only serves to bolster or add something to the primary decision.

### Is there promulgation of judgment in civil cases?

- ✚ **Trial Courts-** None! Judgment, final orders are served, not promulgated. The service is either personal or registered.
- ✚ **Appellate courts-** Yes! But the type of promulgation is not the same as the promulgation contemplated in criminal cases. Promulgation is done in the appellate courts when the Clerk of Court will announced that the #rd Division of the SC or CA rendered a decision on the case of ... and on the day of...

### Can the validity of a judgment or order of a court be collaterally attack?

- ✚ **General rule:** The validity of a judgment or order of a court cannot be collaterally attacked.
- ✚ **Exception:** except on the ground of:
  1. Lack of jurisdiction ; or
  2. Irregularity of its entry apparent from the face of the record.

### What is meant by entry of judgment and final orders?

- ✚ It is when there is no appeal or motion for new trial or reconsideration is filed within the time provided in the Rules, the Clerk of court enter into the book of entries of judgment, the judgment or order of the court.
- ✚ **The date of finality of the judgment or final order shall be deemed to be the date of its entry.**

**What shall be entered in the book of entries of judgment?**

- ✚ Only the dispositive part of the judgment or final order and not the whole judgment or final order.

**What shall the Clerk do after such entry?**

1. The clerk shall sign the entry;
2. Certifies that such judgment or final order has become final and executory.

**When does a final judgment or order become final and executory?**

- ✚ Upon the lapse of 15 days from the date of notice to the party of such judgments, if such party does not employ valid remedies to toll the running of such period.

**Illustration:**

**Plaintiff's counsel**

**August 1**---- receipt of notice of order  
**15 days**--- within which to file post judgment remedies.  
**August 16**----- if no MR, appeal or Motion for New Trial is filed the final order becomes final and executory against the plaintiff.

**Defendant's counsel**

**August 16**---- receipt of notice of the order  
**15 days**---within which to file post judgment remedies.  
**August 31**----- if no MR, appeal or Motion for New Trial is filed the final order becomes final and executory against the plaintiff.

**When will there be an entry of judgment?**

- ✚ September 1 because that is the date where the judgment becomes final and executory between the parties.

**Within August 16 to 31, can the defendant file a Motion for Reconsideration, Motion for New Trial or Appeal the case?**

- ✚ No! Because the reglementary period for him to avail those remedies had lapsed on August 16.

**SPECIAL FORMS of JUDGMENTS under the RULES of COURT and JURISPRUDENCE**

1. Judgment by Default [Section 3, Rule 9]
2. Judgment on the Pleadings [Rule 34]
3. Summary Judgment [Rule 35]
4. Several Judgment [Section 4, Rule 36]
5. Separate Judgment [Section 5, Rule 36]
6. Judgment for Specific Acts [Section 10, Rule 39]
7. Special Judgment [Section 11, Rule 39]
8. Judgment upon Confession
9. Judgment upon Compromise or on Consent or Agreement.
10. Clarificatory Judgment
11. Judgment Nunc Pro Tunc.

Judgment by Default  
 Judgment on the Pleadings  
 Summary Judgment  
 Judgment upon Compromise  
 Judgment upon Consent  
 Judgment on JDR Proceedings

} judgment is rendered without trial.

**JUDGMENT BY CONFESSION**

- ✚ Judgment by confession is not a plea but an affirmative and voluntary act of the defendant himself and the court exercises a certain amount of supervision over the entry of judgment, as well as equitable jurisdiction over their subsequent status.

- ✚ While a judgment upon confession may be rendered when the defendant appears in court or files a pleading expressly agreeing to the plaintiff's demand, it has been held that there is no law in this jurisdiction which recognizes a judgment note.
- ✚ **Judgment note**- a promissory note wherein the maker authorizes in advance, on warrant of attorney, a confession of judgment against him in the event of non-payment of the note on its maturity. This is considered void as being contrary to public policy, since the promisor bargains away his day in court and this might be a source of abuse and oppression.

### JUDGMENT BY CONSENT

- ✚ Judgment by consent is one where the provisions and terms of which are settled and agreed upon by the parties to the action, and which is entered in the record by the consent of the court.
- ✚ There must be an unqualified agreement among the parties to be bound by the judgment on consent before said judgment may be so entered and the court does not have the power to supply terms, provisions or essential details not previously agreed to by the parties.

### JUDGMENT UPON COMPROMISE

- ✚ As a rule, a judgment upon compromise is immediately executory in the absence of a motion to set the same aside on the ground of fraud, mistake, etc., and if such motion is made and denied, appeal may be taken from such order of denial.
- ✚ The Supreme Court held that to be entitled to appeal from a judgment on compromise, a party must not only move to set aside or annul the compromise agreement itself. A judgment rendered pursuant to a compromise is not appealable and has the effect of res judicata from the moment it is rendered.
- ✚ If the supposed nullity is based on the parties' alleged lack of consent to the compromise agreement, the remedy is to move for its reconsideration and to appeal from the judgment if the motion is denied; or if the judgment is already final and executory, to file petition for relief under Rule 38.
- ✚ In a case, it was held that where a judgment based on a compromise is sought to be enforced against a person who was not a party thereto, he may file an original petition for certiorari to quash the writ of execution. He could not move to have the compromise set aside and then appeal from the order denying the motion since he is not a party to the compromise or the judgment therein. A petition for relief would be an adequate remedy as the execution was already being carried out.

### JUDGMENT NUNC PRO TUNC [now for then]

- ✚ Judgment *nunc pro tunc* is rendered to enter or record such judgment as had been formerly rendered but has not been entered as thus rendered. Its only function is to record some act of the court which was done at a former time, but which was not then recorded, in order to make the record speak the truth, without any changes in substance or in any material respect.
- ✚ It may be availed to correct judicial errors such as to render a judgment with the court ought to have rendered in place of the one it did erroneously render or to supply non-action by the court however erroneous the judgment may have been.

### Can there be a judgment for or against one or against one or more of several parties?

- ✚ Yes! Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants. When justice so demands, the court may require the parties on each side to file adversary pleadings as between themselves and determine their ultimate rights and obligations.

### When can several judgments be made?

- ✚ A several judgment is proper where the liability of each party is clearly separate claims against each of them could have been the subject of separate suits, and judgment for or against one of them will not necessarily affect the other.
- ✚ In actions against solidary debtors, a several judgment is not proper. Thus under Section 3(c), Rule 9, where there is a common default, the case shall be tried on the basis of the answer of the non-defaulting defendant as a several judgment is not proper there being a common cause of action.

### May the court render a conditional judgment?

- ✚ No! because a case should be decided in its totality, resolving all interlocutory issues in order to render justice to all concerned and to end the litigation once and for all.

**May the court change its judgment?**

- ✚ Yes! Before the lapse of the period to appeal, the judge can change the judgment, or even make a new one. But once it becomes final, only clerical errors can be corrected. Before it becomes final, the power to amend a judgment is inherent in the court.

**What is the test in determining whether an order is interlocutory or not?**

- ✚ The test to determine whether the order is interlocutory or final would be: Does it leave something to be done by the trial court on the case? If it does, it is interlocutory, if it does not, it is final.
- ✚ The word interlocutory refers to something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy. An interlocutory order does not terminate nor does it finally dispose of the case; it does not end the task of the court in adjudicating the parties' contentions and determining their rights and liabilities as against each other but leaves something yet to be done by the court before the case is finally decided on its merits.

**REMEDIES AGAINST AN ADVERSE JUDGMENT**

*Remedies Before a Judgment Becomes Final and Executory*

1. Motion for reconsideration
2. Motion for new Trial
3. Appeal

*Remedies After Judgment Becomes Final and Executory*

1. Petition for Relief from Judgment
2. Action to Annul a Judgment
3. Certiorari
4. Collateral Attack of a Judgment

**MOTION FOR NEW TRIAL OR RECONSIDERATION**  
**Rule 37**

**General Principles:**

- ✚ A party can avail of the remedy of Motion for New Trial even though a Motion for Reconsideration is pending, provided that any grounds for motion for new trial is present. Ergo, Motion for Reconsideration and Motion for New trial is not mutually exclusive.

**MOTION FOR RECONSIDERATION**

- ✚ Litigated motion

**What are the grounds for filing a Motion for Reconsideration?**

1. The damages awarded are excessive or insufficient; or
2. The evidence is insufficient to justify the decision of final order; or
3. The decision of final order is contrary to law.

**When to file a Motion for Reconsideration?**

- ✚ Within the period for taking an appeal, this is within 15 days from the receipt of the notice of the judgment or final order.

**Where to file a Motion for Reconsideration?**

- ✚ **Section 1, Rule 37-** The motion shall be filed with the trial court, i.e., the court which rendered the judgment.

**Can the reglementary period for filing a Motion for Reconsideration be extended?**

- ✚ **Par. 2, Section 3, Rule 41-**No! A motion to extend the reglementary period for filing a motion for reconsideration is not authorized.

**What is the effect of filing a Motion for reconsideration?**

- ✚ **Par. 2, Section 3, Rule 41-** the period of appeal shall be interrupted by a timely motion for reconsideration or new trial.

**What is the effect if the Motion for Reconsideration is granted?**

- ✚ If the Motion for Reconsideration is granted the court may amend or modify such judgment or final order accordingly.

**What is the effect if the Motion for reconsideration is denied?**

- ✚ If the Motion for Reconsideration is denied, the movant has a fresh period of 15 days from receipt or notice of the order denying or dismissing the motion for reconsideration within which to file a Notice of Appeal of the judgment or final order.

**What is the remedy if Motion for Reconsideration is denied?**

- ✚ The remedy of the movant is to appeal the judgment or final order not the order denying the Motion for Reconsideration or Motion for New Trial.
- ✚ In the appeal, assign as one of the errors the denial of the Motion for Reconsideration.

**Note:**

- ✚ The movant has a fresh period of 15 days from receipt or notice of the order denying or dismissing the motion for reconsideration within which to file a notice of appeal. This new period becomes significant if either a motion for reconsideration or a motion for new trial has been filed but was denied or dismissed.
- ✚ This fresh period rule applies not only to Rule 41 governing appeals from RTC but also to Rule 40 governing appeals from MTC to RTC, Rule 42 on petitions for review from the RTC to the CA, Rule 43 on appeal from quasi-judicial agencies to the CA, and Rule 45 governing appeals by certiorari to the SC. Accordingly, this rule was adopted to standardize the appeal periods provided in the Rules to afford fair opportunity to review the case and in the process, minimize errors of judgment.
- ✚ Obviously the 15 day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, as held in the case of Neypes vs. CA [Sept. 14, 2005]. The Neypes ruling shall not be applied where no motion for new trial or motion for reconsideration has been filed in which case the 15 day period shall run from notice of the judgment.
- ✚ The Supreme Court ruled in one case that this fresh period of appeal is applicable in criminal cases.

**Is second Motion for Reconsideration allowed?**

- ✚ **No!** Except only in the Supreme Court.
- ✚ **Par 2 Section 5, Rule 37-** "No party shall be allowed a second motion for reconsideration of a judgment or final order."

**MOTION FOR NEW TRIAL [TRIAL DE NOVO]**

- ✚ Litigated motion.

**When to file a Motion for New Trial?**

- ✚ Within the period for taking an appeal, that is within 15 or 30 days from notice of the judgment.

**What is the ground for filing a Motion for New trial?**

1. Fraud, accident, mistake, or excusable negligence.
  - ✚ This must be with affidavit of merits executed by those who have knowledge of FAME. It must be under oath.
  - ✚ If these grounds were used in a motion to lift order of Default it cannot be used as a ground for trial de novo where the circumstances are the same.
2. Newly discovered evidence.
  - Requisites:** for newly discovered evidence to warrant new trial:
    - a. Must have been discovered after trial;
    - b. Could not have been discovered and produced at the trial despite reasonable diligence;
    - c. And if presented would probably alter the result of the action.

**FRAUD**



- ✚ Only **extrinsic fraud** can be ground for new trial.
- ✚ **Fraud as a ground for new trial must be extrinsic or collateral** that is, it is kind of fraud which prevented the aggrieved party from having trial or presenting his case to the court, or was used to procure the judgment without fair submission of the controversy.

**Acts Constitutive of Collateral fraud:**

1. Acts intended t keep the unsuccessful party away from the court by a false promise of compromise.
2. Acts which purposely keeps the unsuccessful party ignorant of the suit.
3. An act where the attorney fraudulently pretends to represent a party and connives at his defeat, or corruptly sells out his client’s interest.

**INTRINSIC FRAUD**

- ✚ Refers to the acts of a party at the trial which prevented a fair and just determination of the case and which could have been litigated and determined at the trial or adjudication of the case, such as falsification, false testimony and so forth, and does not constitute a ground for new trial.

**MISTAKE**

- ✚ 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.
- ✚ Constitutive act of mistake of law: a mistake as to the scope and extent of the coverage of an ordinance, or a mistake as to the effect of a compromise agreement upon the need for answering a complaint.

**Note:**

- ✚ As a general rule, a client is bound by the mistakes of his counsel. Only when the application of this general rule would result in serious injustice should an exception hereto be applied.

**EXCUSABLE NEGLIGENCE**

- ✚ To be a ground for new trial it 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.
- ✚ However, negligence of the counsel may also be ground for new trial if it was so great that the party was prejudiced and prevented from fairly presenting his case or where the party may be unjustly deprived of his property.

**ACCIDENT**

- ✚ Accident may be defined as an event that takes place without one’s foresight or expectation; an undersigned, sudden, and unexpected event. In an accident, a party claiming the benefit of an accident must not be negligent.
- ✚ An illness may be considered an accident.
- ✚ Loss or delay in the mails may be deemed an accident.

**What is the period to resolve a Motion for New Trial?**

- ✚ A Motion for New Trial shall be resolved within 30 days from the time it is submitted for resolution.

**What is the effect of filing a Motion for New Trial?**

- ✚ It suspends the running of the period to appeal, but does not extend the time within which an appeal must be perfected hence if denied, the movant is entitled to fresh period of 15 days to file his appeal from the receipt of the order denying the Motion for New Trial.

**What is the effect if Motion for New Trial is denied?**

- ✚ When a Motion for New Trial is denied on the ground of fraud, accident, mistake of fact or law, or excusable negligence, the **aggrieved parties can no longer avail of the remedy of petition for relief from judgment** [*Francisco vs. Puno, 108 SCRA 427*].

**What is the remedy against an order denying a Motion for New Trial?**

- ✚ **Section 8, Rule 37-** An order denying a Motion for New Trial is not appealable, the remedy being an appeal from the judgment subject of the Motion for New Trial.

**What is the effect if a Motion for New Trial does not satisfy the Requirement of Rule 37?**

- ✚ It is considered as pro forma and does not suspend the period to appeal.
- ✚ A Motion for New Trial is considered as pro-forma where:
  1. It is based on the same ground as that raised in a preceding motion for new trial or reconsideration which has already been denied.
  2. It contains the same arguments and manner of discussion appearing in the prior opposition to the motion to dismiss and which motion was granted.
  3. The new ground alleged in the second motion for new trial already existed, was available and could have been alleged in the first motion for new trial which was denied.
  4. It is based on the ground of insufficiency of evidence or that the judgment is contrary to law but does not specify the supposed defects in the judgment.
  5. It is based on the ground of fraud, mistake or excusable negligence but does not specify the facts constituting the grounds and/ or is not accompanied by an affidavit of merits. Note that fraud and mistake must be alleged with particularity.

**Can there be second Motion for New Trial?**

- ✚ Yes if there is a new ground other than the ground used in the first Motion for New Trial.
- ✚ **Section 5, Rule 37-** "xxx. A second Motion for New Trial, based on a ground neither existing nor available when the first motion was made, may be filed within the time herein provided excluding the time during which the first motion had been pending."

**Can there be a partial New Trial or Partial MR?**

- ✚ Yes, **Section 7, Rule 37-** "If the grounds for a motion under this Rule appear to the court to affect the issues as to only a part, or less than all of the matter in controversy, or only one, or less than all, of the parties to it the court may order a new trial or grant reconsideration as to such issues if severable without interfering where either a several or separate judgment is proper."

**What is the effect of Partial New Trial or Partial MR?**

- ✚ Section 8, Rule 37- "when less than all of the issues are ordered retried, the court may either enter a judgment or final order as to the rest, or stay the enforcement of such judgment or final order."
- ✚ Where one party files a motion for New Trial or Reconsideration and the other party seeks to perfect an appeal from the said decisions, the court should withhold action of the appeal until after the motion for New Trial or Reconsideration shall have been resolved.

**Can a party file a MR and Motion for New Trial at the same time? What shall be the first to be entertained by the court?**

- ✚ Yes. The Motion for New Trial because there is a possibility that the decision sought to be reconsidered can be vacated.

**MOTION FOR RE-OPENING OF TRIAL**

- ✚ Must be filed after the trial but before decision.
- ✚ Litigated Motion.

**When to file?** At any time after trial but before decision is rendered.

**Who can file?** Any party

**What are the grounds for filing a Motion for Re-opening of trial?**

- ✚ Any ground because it is discretionary upon the court.

**What is the effect if the Motion for Re-opening of Trial is granted?**

- ✚ The case is not deemed submitted for decision

**What is the effect if the Motion for Re-opening of Trial is denied?**

- ✚ Appeal the decision and assign as one of the error the denial of the Motion for Re-opening of trial.



## GENERAL PRINCIPLES ON APPEAL

### General Principles:

- ✚ The general rule is that the remedy to obtain reversal or modification of judgments on the merits is appeal. This is true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of facts or of law set out in the decision.
- ✚ The right to appeal is not part of due process but a mere statutory privilege that has to be exercised only in the manner and in accordance with the provisions of law.
- ✚ Where the order appealed from is interlocutory, the appellate court can dismiss the appeal even if no objection thereto was filed by the appellee in either the trial or appellate court.
- ✚ **Only parties to a case can appeal.**

### SOME RULES REGARDING APPEAL

1. No Trial de Novo anymore.
2. There can be no new parties.
3. There can be no change of theory.
4. There can be no new matters.
5. There can be amendments of the pleading to conform to the evidence submitted before the trial court.
6. The liability of solidary defendants who did not appeal is not affected by appeal of other solidary defendant.
7. Appeal by guarantor does not inure to the principal.
8. In ejectment cases, the RTC cannot award to the appellant on his counterclaim more than the amount of damages beyond the jurisdiction of the MTC.
9. The appellate court cannot dismiss the appealed case for failure to prosecute because the case must be decided on the basis of the record [*Rule 21, Interim Rules*].

### What do you call the parties on appeal?

- ✚ Appellant- the one who appealed the case.
- ✚ Appellee- the one who responds to the appeal.

### What can be appealed?

- ✚ Only final orders. Appeal may be taken only from judgments or final orders that completely dispose of the case.

### What are the matters that are non-appealable?

1. An order denying a petition for relief or any similar motion seeking relief from judgment.
2. An interlocutory order. An interlocutory order is not appealable until after the rendition of the judgments on the merits.
3. An order disallowing or dismissing an appeal.
4. 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.
5. An order of execution.
6. A judgment or final order for or against one or more of several parties or is separate claims, counterclaims, cross-claim, and third party complaints, while the main case is pending, unless the court allows an appeal therefrom.
7. An order dismissing an action without prejudice.

### What is the remedy on matters which are not appealable?

- ✚ The aggrieved party may file the appropriate special civil action under Rule 65, which refers to the special actions of certiorari, prohibitions and mandamus.
- ✚ Practically, it would be the special civil action of certiorari that would be availed of under most circumstances. The most potent remedy against those judgments and orders from which appeal cannot be taken is to allege and prove that the same were issued without jurisdiction, with grave abuse of discretion or in excess of jurisdiction, all amounting to lack of jurisdiction.

**Can questions not raised in the trial be raised on appeal?**

- ✚ **General rule-** No! A question that was never raised in the courts below cannot be allowed to be raised for the first time on appeal without offending basic rules of fair play, justice and due process. For an appellate court to consider a legal question, it should have been raised in the court below.
- ✚ **Exception- Section 8, Rule 51** in essence provides that the court may consider an error raised on appeal provided the same falls within any of the following categories:
  1. It is an error that affects the jurisdiction over the subject matter.
  2. It is an error that affects the validity of the judgment appealed from.
  3. It is an error which affects the proceedings.
  4. It is an error closely related to or dependent on an assigned error and properly argued in the brief.
  5. It is a plain and clerical error.

**May the appellate court consider or decide issues not raised on appeal?**

- ✚ As a rule, no issue may be raised on appeal unless it has been brought before the lower court tribunal for its consideration. Higher courts are precluded from entertaining matters not alleged in the pleadings not raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.

**If a judgment is appealed and reverse in favor of the appellant, is the judgment binding upon a party who did not appeal?**

- ✚ **General rule:** In the appellate proceedings, the reversal of the judgment on appeal is binding only on the parties in the appealed case and does not affect or inure to the benefit of those who did not join or were not made parties to the appeal.
- ✚ **Exception:** where the interest of those who appealed and those who did not are interwoven and dependent on each other as to be inseparable such that a reversal to one operates as a reversal as to all.

**What is the remedy if an action was dismissed without prejudice?**

- ✚ Not appeal but to file another action or move for Motion for Reconsideration.

**What is the remedy of denial of a Motion for Execution?**

- ✚ Appeal because the subject matter of the motion is final and executory.

**May an order of execution be appealed?**

- ✚ **General rule:** No because it is final. Final and executory judgments cannot be appealed.
- ✚ **Exceptions:** It can be appealed when-
  1. When the terms of the judgment are varied.
  2. When the terms of the judgment are not clear and there is room for interpretation.

**MODES OF APPEAL**

<b>Ordinary Appeal</b>	The appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other case of multiple or separate appeals where the law or the Rules so require. In such cases, the record on appeal shall be filed and served in like manner.
<b>Petition for review</b>	The appeal to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.
<b>Petition for Review on Certiorari</b>	In all cases where only questions of law are raised or involved, the appeal shall be to the SC by petition for review on certiorari in accordance with Rule 45.

**PERIOD OF APPEAL**

<b>Ordinary Appeal under Rule 40</b>	Within 15 days after notice to the appellant of the judgment or final order appealed from.  Where a <b>record on appeal</b> is required, the appellant shall file a notice of appeal and a record on appeal within 30 days after notice of the judgment or final order.
<b>Ordinary Appeal under Rule 41</b>	Within 15 days from notice of the judgment or final order appealed

	<p>from.</p> <p>Where a record on appeal is required, the appellants shall file a notice of appeal and a record on appeal within 30 days from notice of the judgment or final order.</p> <p>However, an appeal in Habeas Corpus cases shall be taken within 48 hours from notice of the judgment or final order appealed from.</p>
<b>Petition for review under Rule 42</b>	Within 15 days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for New Trial or Reconsideration filed in due time after judgment.
<b>Petition for Review under Rule 43</b>	Within 15 days from notice of the award, judgment, final order or resolution, or from the date of its last publication or of the denial of petitioner's Motion for new Trial or Reconsideration duly filed in accordance with the governing law of the court or agency <i>a gou</i> .
<b>Petition for Review on Certiorari under Rule 45</b>	Within 15 days from notice of the judgment, final order or resolution appealed from, or within 15 days from notice of the denial of the petitioner's Motion for New Trial or Motion for Reconsideration filed in due time.

#### ISSUES TO BE RAISE ON APPEAL

<b>Ordinary Appeal</b>	Questions of fact or mixed questions of fact and law.
<b>Petition for Review</b>	Questions of fact, of law or mixed questions of fact and law.
<b>Petition for Review on Certiorari</b>	Purely questions of law

Mode of Appeal		Period of Appeal	Period of appeal if files MR or New Trial
Ordinary appeal	Notice of Appeal	Within 15 days from receipt of judgment or final order.	Within 15 days from receipt of order denying the motion for reconsideration or new trial.
	Record on Appeal	Within 30 days from receipt of judgment or final order.	The 30 day to file the notice of appeal and record on appeal should be reckoned from the receipt of the order denying the motion for new trial or motion for reconsideration.
Petition for Review (Rule 42)		Within 15 days from receipt of judgment.	Within 15 days from receipt of the order denying motion for reconsideration or new trial.
Petition for Review (Rule 43)		Within 15 days from receipt of judgment or final order or of last publication.	Within 15 days from receipt of the order denying motion for reconsideration or new trial.
Appeal by Certiorari		Within 15 days from receipt of judgment or final order.	Within 15 days from receipt of the order denying motion for reconsideration or new trial.

#### PERFECTION OF APPEAL

<b>For ordinary appeals from MTC to the RTC and from RTC to the CA</b>	<b>Perfection of appeal by Petition for review under Rule 42.</b>
<p>a. By notice of appeal- upon filing of the notice of appeal in due time.</p> <p>b. By record on appeal- upon the approval of the record on appeal filed in due time; in either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and</p>	Upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees.

preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2, Rule 39, and allow withdrawal of the appeal.

**APPEAL FROM MTC TO THE RTC [ORDINARY APPEAL]  
RULE 40**

**Where an appeal from judgment or final order of the MTC may be made?**

- ✚ Section 1- "An appeal from a judgment or final order of Municipal Trial Court may be taken to the Regional Trial Court exercising jurisdiction over the area to which the former pertains. The title of the case shall remain as it was in the court of origin, but the party appealing the case shall further referred to as the appelland and the adverse party as the appellee."
- ✚ **Note** that the **notice of appeal** is filed to the MTC that rendered that order subject of the appeal and not in the RTC where the case is appealed.

**Within what period should an appeal be filed? (Section 2)**

- ✚ **Notice of appeal**- an appeal may be taken within 15 days after receipt of notice of the judgment or final order appealed from.
- ✚ **Record on appeal**- where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within 30 days after receipt of the notice of the judgment or final order sought to be appealed.

**Note:**

- ✚ The period of appeal shall be interrupted by a timely Motion for New Trial or Reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

**How may an appeal of the final order of the MTC may be taken to the RTC?**

- ✚ **Section 3**- the appeal is **taken by filing a notice of appeal** with the court that rendered he judgment or final order appealed from.
- ✚ A **record on appeal** shall be required only in special proceedings and in other cases of multiple or separate appeals.

**When can a Notice of Appeal be used?**

- ✚ It can be used in ordinary appeal from a decision of the MTC to the RTC. Ergo the RTC will entertain the appeal in its appellate jurisdiction.

**To whom the Notice of Appeal be addressed?**

- ✚ It must be addressed to the other party and not to the clerk of court. If addressed to the clerk of court, the court will not entertain the appeal and the reglementary period to file an appeal will not be tolled.

**What are the contents of Notice of Appeal?**

- ✚ As per **Section 5, Rule 41** a notice of appeal must indicate the following:
  1. The parties to the appeal
  2. The judgment or final order or part thereof appealed from.
  3. The material dates showing the timeliness of the appeal.

**When is an appeal via notice of appeal perfected?**

- ✚ Section 9, Rule 41- a party's appeal by notice of appeal is deemed perfected as to him upon the filing of notice of appeal in due time. The period of filing the appeal is within 15 days from the receipt of the notice of the final order sought to be appealed.

**Note:**

- ✚ Notice of appeal applies individually and only to each of the parties so circumscribed since the timeliness of their recourse as appellate remedy depends on when they respectively received a copy of the judgment or final order.

**If the appeal is by Notice of Appeal, when does the court lose jurisdiction over the case?**

- ✚ *Section 9 par. 3, Rule 41*- it loses jurisdiction over the case upon the perfection of the appeal filed in due time and the expiration of the time to appeal of the other parties.
- ✚ It loses jurisdiction where some of the parties made a perfected appeal and some of them did not appeal and the period to the same expired.
- ✚ Collorarily: **Residual jurisdiction**- the trial court can still entertain appropriate actions before it as long as it possesses the records of the appealed case. Once the trial court transmits the records to the appellate court, it cannot entertain actions regarding the case.

**When is a RECORD ON APPEAL required?**

- ✚ *Section 3, Rule 40*- a record on Appeal shall be required only in **Special Proceeding** and in other **cases of multiple or separate appeals**.
- ✚ It also includes an appeal from-
  1. Order of expropriation in eminent domain proceedings.
  2. Judgment for recovery of property or partition with accounting.
  3. Judgment for or against one or more of several defendants leaving the action to proceed against the others.
  4. Foreclosure of mortgage.

**What is the form and contents of a Record on Appeal?**

- ✚ A record on appeal contain the following:
  1. The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the judgment or final order from which the appeal is taken.
  2. It shall include in chronological order copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed judgment or final order for the proper understanding of the issue involved.
  3. It must be shown that the appeal was perfected on time
    - ✚ *As per Section 1(a), Rule 50*- The requirement that the record on appeal must show on its face that the appeal was perfected on time is mandatory and jurisdictional and if not complied with, the appellate court acquires no jurisdiction and the appeal must be dismissed.
  4. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, testimonial and documentary, taken upon the issue involved.
  5. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing and the testimonial evidence by the names of the corresponding witness.
  6. If the whole testimonial and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses of the numbers or letters of exhibits.
  7. Every record on appeal exceeding 20 pages must contain a subject index.

**If appeal is by record on Appeal, when does the court loses jurisdiction over the case?**

- ✚ *Par. 4, Section 9, Rule 41*- 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.

**When is an appeal via Record on Appeal perfected?**

- ✚ *Par 2, Section 9, Rule 41*- 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.

**Within what period and to whom should the appellant pay the appeal fees?**

- ✚ *Section 5, Rule 40*- within the period for taking an appeal, the appellant shall pay to the clerk of court of the court which rendered the judgment or final order appealed from, the full amount of the appellate court

docket and other lawful fees. Proof of payment thereof shall be transmitted to the appellate court together with the original record of the record on appeal, as the case may be.

#### What are the effects of the perfection of an appeal?

1. 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.
2. In appeals by **Record on Appeal**, the court loses jurisdiction only over the subject matter thereof upon the approval of the Record on Appeal filed on due time and the expiration of the time to appeal by the other parties.

#### State the procedure after the RTC receives the complete record or the record of appeal from the inferior court?

1. Upon receipt of the complete record or the record on appeal the clerk of court of the RTC shall notify the parties of such fact.
2. Within 15 days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within 15 days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.

#### Who are required to file their memorandum?

- ✚ **Appellant**- yes
- ✚ **Appellee**- No. **Why?** He can adopt the decision of the court *a quo* as his memorandum.

#### What is the effect if the appellant failed to submit his memorandum despite notice?

- ✚ In one case the SC held that the appeal was deemed abandoned when petitioners failed to submit their memorandum despite sufficient time given to them by the court.
- ✚ **Why?** A memorandum on appeal or an appeal brief is vital to an appeal for only errors specifically assigned and properly argued in the brief or memorandum will be considered in the decision on the merits, except those affecting jurisdiction over the subject matter as well as plain and clerical errors. Hence the lack of a memorandum on appeal is ground for the dismissal of an appeal.

#### When a case on appeal deemed is submitted for decision?

1. Upon filing of the memorandum for the appellee or the expiration of the period o do so, the case shall be considered submitted for decision.
2. The RTC shall decide the case on the basis of the entire record of the proceeding had in the court of origin and such memoranda as are filed.

#### When and why multiple appeals allowed?

- ✚ Multiple appeals are allowed is special proceedings, in actions for recovery of property with accounting, in action for partition of property with accounting; in the special actions of eminent domain and foreclosure of mortgage.
- ✚ The rationale behind allowing more than one appeal in the same case is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court and to be final.

### APPEAL FROM THE RTC TO CA RULE 41

#### What are the modes of appeal from judgment or final orders of the RTC? (Section 2, Rule 41)

1. **Ordinary Appeal**
  - ✚ The appeal to the Court of Appeals in cases decided by the RTC in the exercise of its original jurisdiction
  - ✚ It can be done by filing a Notice of Appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof to the adverse party.
  - ✚ No Record on Appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or the rules so require. In such cases, the record on appeal shall be filed and served in like manner.
2. **Petition for Review**

- ✚ The appeal to the Court of Appeals in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by Petition for Review in accordance with Rule 42.
  - ✚ The ground shall be question of fact, of law, or on mixed question of fact and law.
3. **Appeal by Certiorari**
- ✚ In all cases where only questions of law are raised or involved the appeal shall be to the SC by Petition for Review on Certiorari in accordance with Rule 45.

**What is the reglementary period of filing an ordinary appeal? (Section 3)**

- ✚ **Ordinary Appeal**- Shall be taken within 15 days from notice of the judgment or final order appealed from.
- ✚ **Record on Appeal**- the appellant shall file a notice of appeal and a record on appeal within 30 days from notice of judgment or final order.
- ✚ **Appeal in Habeas Corpus cases**- shall be taken within 48 hours from notice of judgment or final order appealed from.

**Note:**

- ✚ The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

**When to reckon the period to appeal if two dismissal of Motion for New Trial or Reconsideration was made?**

- ✚ Where the trial court set aside an order dismissing the complaint and granted on new trial but thereafter entered another order of dismissal, the period for perfecting an appeal runs from the date of the second order of dismissal.

**Can the period of appeal be extended?**

- ✚ Yes, but such extension is addressed to the sound discretion of the court and the mere filing and pendency of the Motion for Extension of Time to perfect the appeal does not suspend the running of the reglementary period.

**Can the court still entertain an appeal filed out of time?**

- ✚ Yes, even if the appeal was filed out of time, the court still has jurisdiction to admit and give due course to it, provided there are justifiable reasons therefor.
- ✚ Bago tanggapin ng corte ang isang late na appeal, titingnan muna ang rason kung bakit late ang appellant sa pag-file ng appeal. If the reasons are justifiable, then the court will look into the merits of the appeal. If the grounds for appeal are unmeritorious, then it will not entertain the same.

**Is the payment of appeal fees necessary for the court to acquire jurisdiction over an appeal?**

- ✚ Yes, since the appeal may be dismissed without paying the same.
- ✚ **Section 4, Rule 41**- within a period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court together with the original record or the record on appeal.

**Can a party withdraw his appeal?**

- ✚ Yes, but he cannot do so if his purpose is to revive the jurisdiction of the court where the final order appealed from originates.
- ✚ In an appeal by notice of appeal, a party's appeal is deemed perfected as to him upon filing of his appeal in due time. While he can withdraw such appeal, he cannot do so in order to revive the jurisdiction of the trial court and enable him to take another course of action calling for the exercise of the jurisdiction, such as the filing of a motion for new trial or reconsideration. This is so because by filing a notice of appeal insofar as he is concerned he has perfected his appeal to the appellate court and it is in that court where he can pursue a further remedy.

**Note:**

- ✚ A motion to dismiss the appeal on the foregoing grounds may also be filed in the appellate court (Section 1, Rule 50).
- ✚ The failure of the appellee to move for dismissal in the trial court of an appeal perfected out of time does not prevent him from filing such a motion to dismiss in the appellate court as it involves the appellate jurisdiction of the latter court.



**PETITION FOR REVIEW FROM THE RTC TO CA**  
**Rule 42**

✚ This remedy is availed in cases decided by the RTC in its appellate jurisdiction.

**How is an appeal done in the Court of Appeals?**

✚ **Section 1, Rule 42-** a party desiring to appeal from a decision of the RTC rendered in the exercise of its appellate jurisdiction may:

1. File a verified petition for review with the CA,
2. Paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of 500.00 for costs, and furnishing the RTC and the adverse party with a copy of the petition.
3. The petition shall be filed and served within 15 days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment.

**Can the reglementary period to file an appeal via petition for review be extended?**

✚ No.

**Can the reglementary period to file the petition for review be extended?**

✚ Yes, provided that there is a proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period.

✚ No further extension shall be granted except for the most compelling reasons and in no case exceed 15 days.

**What is the form and contents of the Petition for review?**

✚ **Section 2, Rule 42-** the petition shall be filed in seven legible copies, with the original copy intended for the court being indicated as such by the petitioner, and shall:

- a. State the full names of the parties to the case, without impleading the lower courts or judges thereof either as petitioners or respondents;
- b. Indicate the specific material dates showing that it was filed on time;
- c. Set forth concisely a statement of the matters involved, the issues raised, the specification of errors of fact or law or both, allegedly committed by the RTC, and the reasons or arguments relied upon for the allowance of the appeal.
- d. Be accompanied by clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition.
- e. Verification and Certificate of Non-forum shopping.

**What are the grounds for dismissing an appeal?**

✚ **Section 3, Rule 42-** the failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

**What is the effect if only questions of law are raised before the CA?**

✚ The appeal can be dismissed *motu proprio*.

**What should the court do if an appeal is perfected?**

1. **Section 4, Rule 42-** the Court of Appeals may inquire the respondent to file a comment on the petition, not a motion to dismiss, within 10 days from notice, or dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.
2. **Section 6, Rule 42-** if upon the filing of the comment or such other pleadings as the court may allow or require, or after the expiration of the period for the filing thereof without such comment or pleading having

been submitted, the Court of Appeals finds prima facie that the lower court has committed an error of fact or law that will warrant a reversal or modification of the appealed decision, it may accordingly give due course to the petition.

3. **Section 7, Rule 42-** whenever the Court of Appeals deems it necessary, it may order the clerk of court of the RTC to elevate the original record of the case including the oral and documentary evidence within 15 days from notice.

#### **What are the contents of a comment?**

✚ **Section 5, Rule 42-** the comment of the respondent shall be filed in seven legible copies, accompanied by certified true copies of such material portions of the record referred to therein together with other supporting papers and shall:

- a. State whatever or not he accepts the statement of matters involved in the petition;
- b. Point out such insufficiencies or inaccuracies as he believes exist in petitioner's statement of matters involved but without repetition; and
- c. State the reasons why the petition should not be given due course
- d. A copy thereof shall be served on the petitioner.

#### **When is the appeal deemed perfected? What are the effects?**

✚ **Section 8, Rule 42-**

- a. Upon filing of a petition for review and the payment of the corresponding docket and other lawful fees, the appeal is deemed perfected as to the petitioner.

The RTC loses jurisdiction over the case upon the perfection of the appeal filed in due time and the expiration of the time to appeal of the other parties.

However, before the CA gives due course to the petition, the RTC may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2, Rule 39, and allow withdrawal of the appeal.

- b. Except in civil cases deiced under the Rules on Summary procedure, the appeal shall stay the judgment of final orders unless the Court of Appeals, the law, or these Rules shall provide otherwise.

#### **When a petition for review deemed is submitted for decision?**

✚ **Section 9, Rule 42-** if the petition is given due course, the Court of Appeal may set the case for oral argument or require the parties to submit memoranda within a period of 15 days from notice. The case shall be deemed submitted for decision upon the filing of the last pleading or memorandum required by these Rules or by the court itself.

## **APPEAL BY CERTIORARI TO THE SUPREME COURT**

### **Rule 45**

#### **How is appeal taken to the Supreme Court?**

✚ **Section 1, Rule 45-** a party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Courts or other courts, whenever authorized by law, may file with the Supreme Court verified petition for review on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

#### **Note:**

✚ The appeal from the decision of the RTC contemplates that the RTC rendered judgment or final order or resolution acting in its jurisdiction.

#### **What issues can be appealed to the Supreme Court?**

✚ Only questions of law.

#### **When is there a question of law? When is there a question of fact?**

- ✚ **Question of law**- exists when there is a doubt or controversy as to what the law is on a certain state of facts.
- ✚ **Question of fact**- exists when the doubt of difference arises as to the truth or falsehood of facts.
- ✚ One test whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case it is a question of law, otherwise it will be a question of fact.
- ✚ Question of law must not involve the examination of the probative value of the evidence presented.

#### Is the finding of the CA conclusive to the SC?

- ✚ **General rule:** Yes, the findings of fact of the CA are final and conclusive and cannot be reviewed on appeal to the SC provided they are borne out by or are based on substantial evidence.
- ✚ **Exceptions:** Findings of fact of the CA may be reviewed by the SC on appeal by certiorari-
  1. When the inference made is manifestly mistaken, absurd or impossible.
  2. Where there is grave abuse of discretion in the appreciation of facts.
  3. When the conclusion is a finding grounded entirely on speculations, surmises or conjectures.
  4. When the judgment is based on a misapprehension of facts.
  5. When the findings of fact of the CA are conflicting.
  6. When the CA in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.
  7. Where the CA manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered, would justify a different conclusion.
  8. Where the findings of fact of the CA are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent or where the finding of fact of the CA are premised on absence of evidence but are contradicted by the evidence on record.

#### When to file a petition for certiorari?

- ✚ **Section 2, Rule 45-** the petition shall be filed within 15 days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the SC may for justifiable reasons grant an extension of 30 days only within which to file the petition.

#### Is payment of docket fees necessary for acquiring jurisdiction?

- ✚ **Section 3, Rule 45-** unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the SC and deposit the amount of 500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

#### What are the contents of a petition for certiorari?

- ✚ **Section 4, Rule 45-** the petition shall be filed in 18 copies, with the original copy intended for the court being indicated as such by the petitioner, and shall-
  - a. State the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges hereof either as petitioners or respondents.
  - b. Indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration if any, was filed and when notice of the denial thereof was received;
  - c. Set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition;
  - d. Be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court a qou and the requisite number of plain copies thereof, and such material portions of the record as would support the petition;
  - e. Contain a sworn certification against forum shopping.

#### What is the ground for dismissal or denial of petition for certiorari?

- ✚ **Section 5, Rule 45-** the failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the

contents of the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The SC may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

**What is the action of the court upon receipt of the petition?**

- ✚ *Section 7, Rule 45-* for purposes of determining whether the petition should be dismissed or denied pursuant to Section 5 of this Rule, or where the petition is given due course under Section 8 hereof, the SC, may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.
- ✚ *Section 8, Rule 45-* if the petition is given due course, the SC may require the elevation of the complete record of the case or specified parts thereof within 15 days from notice.

**When is a review necessary?**

- ✚ *Section 6, Rule 45-* a review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character or the reasons which will be considered:
  - a. When the court a quo has decided a question of substance, not theretofore determined by the SC, or has decided it in a way probably not in accord with law or with the applicable decisions of the SC; or
  - b. When the court a quo has so far departed from the accepted and usual course of judicial proceedings, so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

**MOTION FOR RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS**

**Rule 38**

**What is the ground for filing a Motion for Relief?**

- ✚ FAME
- ✚ *Section 2, Rule 38-* when a judgment or final order is rendered by any court in a case, and party thereto, by fraud, accidents, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

**When to file a Motion for relief?**

- ✚ *Section 3, Rule 38-* a petition for in either of the preceding sections of this rule must be verified, filed within 60 days after the petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than 6 months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence constituting the petitioner's good and substantial cause of action or defense, as the case maybe.

**What is the action of the court if a motion for relief was filed?**

- ✚ *Section 4, Rule 38-* if the petition is sufficient in form and substance o justify relief, the court in which it is filed shall issue an order requiring the adverse parties to answer the same within 15 days from the receipt thereof. The order shall be served in such a manner as the court may direct, together with copies of the petition and the accompanying affidavits.
- ✚ *Section 6, Rule 38-* after the filing of the answer or the expiration of the period therefor, the court shall hear the petition and if after such hearing, it finds that the allegations thereof are not true, the petition shall be dismissed; but if it finds said allegation to be true, it shall set aside the judgment or final order or other proceeding complained of upon such terms as may be just. Thereafter the case shall stand as if such judgment, final order or other proceeding had never been rendered, issued or taken. The court shall then

proceed to hear and determine the case as if a timely motion for new trial or reconsideration had been granted.

- ✚ *Section 7, Rule 38*- where the denial of an appeal is set aside, the lower court shall be required to give due course to the appeal and to elevate the record of the appealed case as if a timely and proper appeal had been made.

**What is the remedy in order to prevent the execution of the final order?**

- ✚ *Section 5, Rule 38*- the court in which the petition is filed, may grant such preliminary injunction as may be necessary for the preservation of the rights of the parties, upon the filing by the petitioner of a bond in favor of the adverse party, conditioned that if the petition is dismissed or the petitioner fails on the trial of the case upon its merits, he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction or other proceedings following the petition; but such injunction shall not operate to discharge or extinguish any lien which the adverse party may have acquired upon the property of the petitioner.

<b>ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS</b> <b>Rule 47</b>
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General Principles: