CRIMINAL PROCEDURE Part1

2010 Lecture by Atty. Tranquil Salvador

Good afternoon, Good afternoon, this is just like a cinema. From the last time I was here, I think not last year but the other year, there was no 2nd floor, now there's already a 2nd floor. I always welcome giving a lecture here in San Sebastian College, because this is the first school where I taught. I started teaching in this school in 1993, and until I became a Dean for a while in Pasay and proceeded to teach in other schools also. Now, I think I have the task of discussing w u and hopefully you will not fall asleep, hopefully you will not fall asleep, I will discuss with u today, Criminal Procedure. IS that right? Yes. I will discuss with you today criminal procedure. I would like to outline for you the rules, and I will highlight to you pertinent jurisprudence on criminal procedure. How many rules do we have? We have 18. Is that right? 18 rules? YES! We have 18 rules, starting with rule110 to rule127. Okay. So for those of you who are to study with me for today we have 4 hours, is that right, and tomorrow we have also 4 hours, 5-9 and on saturday 830-1230. K?! Just sit there try to take as much as you can and hopefully at the end of the 12 hours you get something from the session. Ah I don't want students, honestly, in my years of teaching now, for almost 17 yrs, I don't want my studs leaving the classroom and say "anu bang natutunan ko roon?" ganun ang estyudyante e, pag umuwi, ano bang natutunan ko roon? I can't remember anything!

So let me start with an item on jurisdiction. Of course when we talk of jurisdiction, you cannot avoid and take not of REPUBLIC ACT 7691. This is simpler, amending BP 129, this is simpler if you compare with it to Civil Procedure. This is simpler, why? You just have to remember the IMPRISONMENT PENALTY. If the penalty for the offense exceeds 6years, it will be with the Regional Trial Court, regardless of FINE or ACCESSORY PENALTY. Again, regardless of fine or accessory penalty. The penalty of the offense exceeding 6yrs = regional trial court; not exceeding 6yrs, regardless of fine or accessory penalty, municipal trial court, municipal circuit trial or metropolitan trial court. Do we need to distinguish whether it was committed in manila or outside of metro manila? Or outside of manila as a chartered city, do u need to distinguish, for purposes of determining jurisdiction of courts, you don't need to distinguish. The distinction arises when? FOR PURPOSES OF INSTITUTION OF ACTION which is in rule 110 section1. Are we clear? Okay. I hope that's clear. That's the first item I would want you to remember.

Now, the next item that I would like you to take note on jurisdiction is this. "Sir what if the penalty is PURELY A FINE?" Okay? What if the penalty is purely a fine? We will have to go back to circular 09-94. "Sir bat parang ang layo na yan?" That's in 1994. Because if you will recall RA 7691 was passed in 1994. And because the law was incomplete, or inadequate or insufficient the Supreme Court had to explain that portion wherein what if the penalty is purely a fine. You will jhave to remember the AMOUNT of 4000 pesos – exceeding 4000 pesos the penalty is a fine, it is the Regional Trial Court that has what? jurisdiction; not exceeding, what? 4000 pesos municipal trial court, municipal circuit trial court, and metropolitan trial court. Again there is no distinction as to manila, outside of Metro Manila. Are we clear? Now, the third item on juris I would like u to take note, is the most basic, oft-repeated and most recently cited in the case of Manuel Icip vs. People, a June 26, 2007 case VENUE is JURISDICTIONAL. Okay. Do u agree with me? Venue is jurisdictional. What do I mean by this? The place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. Let me illustrate this. Can u hear me? Let me illustrate this. Unlike civil cases, where venue is what? Can be subject of? agreement. Where venue can be subject of consent. Where venue could be subject of waiver. If you fail to raise an objection even if the venue is what? Improperly laid, can the court acquire jurisdiction? YES, are we clear? in civil cases, but in criminal cases, it's a whole together different story. For a criminal case, venue is jurisdictional, in simple words, where the crime was committed is the place where you could institute the action. Are we clear? The stabbing took place in manila, in sampaloc manila. Where can u institute the action? In manila, not in quezon city.

Let us say, the stabbing took place in manila, the action was instituted in quezon city, the respondent or the accused kept quiet about it. Is the court deemed to have acquired jurisdiction? NO! Because venue is jurisdictional. Are we clear? Venue is jurisdictional. But before I leave this topic, I would like to highlight a point, stated in this case: the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. I would like to be very clear with this. It does not mean that the allegations in the complaint or information confers jurisdiction – because it is only the LAW that confers jurisdiction. Are we clear? It is only the law that confers jurisdiction, without the law there could be no jurisdiction, the court will have no power to hear, try and decide the case. However, when jurisprudence says it is the allegations of the complaint that determines jurisdiction, it means that you will have to what? ALLEGE it in the information. That is why if u will read an information it says that the crime was committed within the jurisdiction of the city of manila – in order to show that the venue is in the place where the action was instituted. Are we clear? Ok. So let us not be confused with that.

The next item on jurisdiction that I would like you to take note, would be, HOW IS JURISDICTION ACQUIRED OVER THE PERSON OF THE ACCUSED?

Number 1: jurisdiction is acquired over the person of the accused by ARREST.

And number 2 by VOLUNTARY SURRENDER.

Now, let me lead you to another case, Landbank of the Phils v. Belisata, another 2007 case that answers this question. Jurisdiction of the RTC as a SPECIAL agrarian court. E sir bat tayo umabot sa agrarian e criminal procedure ito? I cited this case for this reason, this case says, that sec50 okay, sec 50 of the DAR Law says that the DAR has Primary jurisdiction to determine and adjudicate agrarian reform matters, with an exception that the DAR doesn't have original or exclusive jurisdiction over what? Determination of, just compensation, that is a JUDICIAL FUNCTION. Number 2, and this is what you want to hear, ALL CRIMINAL OFFENSES UNDER RA 6657 ARE WITHIN THE JURISDICTION OF THE RTC SITTING AS A SPECIAL AGRARIAN COURT. In simple words, all criminal cases or offenses arising from violation of said law, ra6657 shall be instituted where? In the regional trial court acting as a special agrarian court. Okay?

My next question on jurisdiction and venue would be this: Let us try to compare civil and criminal venue and jurisdiction. Let me try to compare. When you talk of civil jurisdiction under civil procedure, that is found where? In rule 4. That is found in rule4. And rule 4 tells you either, personal action or real action. Your venue in criminal cases is what? Jurisdictional. And that is found in rule110, sec15 if I am accurate. Okay? Rule 110, sec15. Now, 15 or 16, give or take one number, one section. Now, in civil cases, rule 4 is only a rule of general application, meaning it applies to ORDINARY CIVIL ACTIONS. I would want to be very clear with that ORDINARY CIVIL ACTIONS. "Why SIR?" there are some special civil actions which provide for a special rule in venue, like? Quo warranto. Provides a special rule in venue, where the respondent resides, RTC, or any of the respondents, you could also file it where? In the CA or SC. Another example of special civil action that does not follow rule 4? Is what? Rule 70. Although there is a provision in rule 4, touching on rule 70, what is that? ejectment cases are always with the MTC. Special proceedings - do you follow rule 4? The answer is NO. ok? On adoption – there is a different rule: where the adopter resides. On habeas corpus – where the writ will be enforced, the CA and SC have concurrent jurisdiction. Gusto ko maliwanag yun. You set that aside. However, for criminal cases, you only follow what? venue is Jurisdictional. Let me ask you this next question: "Can we transfer the venue of trial?" TRUE OR FALSE? Tinanong sa bar, uso na ngayon ang true or false diba? True or False: the venue of trial can be transferred. The answer is: The venue of trial subject to the approval of the SC can be transferred. Let me explain this, baka naman ilan lang

kaming nakakaintindi nito no.-siraulo! baka ilan lang kaming nakakaintindi kaya ipapaliwanag ko. "sir ba't ganun? Sinabi nyo ulit kayo ng ulit, venue is jurisdictional, now you're telling us, that the venue of trial is wht? Can be transferred? So sir you're wrong?!" NO the constitution gives the SC the POWER to allow the transfer of trial to another venue IF the lives of the witnesses will be endangered. If there will be a risk in the administration of justice. The SC can transfer it. For better understanding, let me give you actual examples, do you follow? Because for students, "ah ganun ba?" pag uwi nyan nakalimutan na! the most recent case of the MAGUINDANAO massacre. Do u follow? The crime was committed where? In Maguindanao, tama ba ko? Hindi naman cotabato un, maguindanao, it was committed in Maguindanao. E bat nasa quezon city na ngayon? Di nyo ba tinatanong un? Okay na din yan, kasi wala namang nag oobject e, ganun naman sa atin e, kung saan ang agos OKAY. Can u follow? Maguindanao massacre where is it being tried today?! who is the judge handling the case? A judge of QC. And why was it transferred? 1. It was applied for in the SC, and in the interest of justice, allowed the transfer of the venue of trial. The venue of trial is not the SAME as the venue for purposes of INSTITUTING THE ACTION. Can u follow? Again, the venue of trial – yes could be transferred – is different from the venue for purposes of instituting the action. Can u follow? What is that venue for purposes of instituting the action? Venue is jurisdictional.

Now, let me further explain this maguindanao massacre scenario.The crime was committed in maguindanao. Where was the action instituted? In qc? If we follow the rule that venue is jurisdictional, that could only be instituted where? In maguindanao.That is why inquest proceedings were conducted where? in maguinadanao. Can u follow?U cannot do it elsewhere. Even if the SC allows it. Because venue is jurisdictional. You will have to file it in maguindanao and once the information is, once you find probable cause, information is filed in court, the venue of the trial can it be transferred? YES! The venue of trial can be transferred.

Now let us move on to another item. Which I think, the next few items class that I will discuss with you in the next hour, or maybe in another 30-45 minutes will be, jurisdiction of the Sandigdanbayan. I noticed, let me call your attention, I noticed that in 2005, there was a question on special prosecutor.hmm..narinig nyo ung special prosecutor? Last year, there was another question on special prosecutor. However, more recently, you have to be very careful with this, sir why? Because of the rules of procedure on? Environmental cases. Kaya lang hindi kasama yan sa bar e binabanggit ko lang senyo, ok meron, which took effect in April "sir buti na lang hindi kasama sa cut-off!" kaso mabuti alam nyo rin! baka mamaya may maglaro e "what is the **writ of kalikasan**?" ayan mga ganyan haha..kailangan alam nyo yan, kaso hindi ko trabaho…o kita nyo nagugulat kayo, HANAPIN nyo! It is a writ that you could apply for, only the SC and the CA to be applied by the offended party any juridical entity or NGO to protect what? an environment. Because there will be a what? An actual violation or a threatened violation of ecology or environment, that is what you call writ of…baka gelatin kayo e..kasi kami yung writ of amparo e, yung unang una? Kami un! We were the first one! In 1991 the writ of amparo. Pag sinampolan kayo ng writ of kalikasan. Anu pang meron? A continuing mandamus, merong ganun! Baka gulatin kayo, an application for a continuing mandamus, today, ok? So…also in that procedure let me just touch on this, para hindi kayo magugulat, kasi nasa dyaryo yan e! anu pa? special prosecutor. There is a special prosecutor in that procedure on environmental cases. Who is a special prosecutor? If u know, in criminal cases, the State is represented by who? The public prosecutor, correct? And the offended party is represented by the private prosecutor, correct? But the law on environmental cases understands that there are certain violations where there is no private offended party. Do u follow? So the counsel in those cases when there's no private offended party wherein a person or a juridical entity named sa counsel is what you call a special prosecutor. Ok? He is what you call a special prosecutor.

Now, to continue. Ok pa ba kayo? Baka naman tulugan nyo ko a? ☺ wag kayo matutulog, pati kung matutulog kayo dilat pa rin kayo. Wag kayong matutulog. Now lets move on. Let us look at sandiganbayan. And I would like to discuss the case of People v. SB an Aug 25 2009 case, GR 167304, ok. how would I want u to remember the

jurisdiction of SB? Jurisdiction of SB, number one, if the offender is at least salary grade 27, and the act was committed in relation to the office.

Do u follow? Now lemme ask u this question therfor, does it mean that the acts or the violations or the offenses committed for you to fall within the jurisdiction of SB are only those violations of the anti-graft law? RA 3019. RA 1379 or Title 7 or the RPC chapter II, including bribery. Do u follow? Are those limited to thos4e offenses? NO! can there be offenses like murder, could there be offenses like grave threats that could fall within juris of SB? Huy, ano? "sir e kaya ka nga reviewer jan e, kaw magsalita, wag kami tanungin mo" ok, the answer is? YES!!!! The courst citing the case of Lacson v. Exec Sec, wherein the crime allegedly committed was MURDER! Citing the case of Alarilla v. SB the crime allegedly committed by the Mayor was what? The crime of grave threats. Therefor, I would like to be very clear. Whats the jurisdiction of SB? the offender is at least salary grade 27 and second the act was committed in relation to the office. It is not required that the offenses are those only enumerated! Like 3019, anti graft law, like ra 1379, NO! OTHER OFFENSES COULD ALSO BE included for as long as what? The crime was committed in relation to the office. What does it mean? In relation to the office? Lemme read from the ruling of the court this court ruled "as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance though improper or irregular of his official functions there being no personal motive to commit the crime and had the accused not have committed it had he not held the aforesaid office." – "Sir ang haba niyan, hindi ko maaalala yan!" Ito lang alalahanin nyo "that the office is a constitutive element of the offense" that **without the office the crime would not have been committed**! The Lacson case is the Kuratong-Baleleng case. They were saying that w/o the office, they would not have what? Committed the murder. The Kuratong-baleleneg case. Do u follow? Without the office.

Now, lemme ask u this question, considering I mentioned the Lacson case. One of the contentions of then Gen. Lacson was "e hindi naman kami principal!" do u follow? "we were just what? We weren't even there at the scene of the crime, we could be accessories, we could be accomplices, therefore we will not fall within the jurisdiction of the SB" --IS HE CORRECT? And I will give u a case, another example of a recent case on that matter. But I will answer it now, for as long as one is salary grade 27, regardless of whether he is a principal, accomplice or accessory, u will be together with him in the Sandiganbayan. For as long as one is salary grade 27. Even if u are not salary grade 27, u will be included. Or if you are a salary grade 27 and you are not a principal by direct participation or by inducement u will fall within the jurisdiction of the SB. That is the rule. Now, can private individuals be prosecuted before the SB? The answer is YES! Republic v. CA – republic through the DPWH v. CA a 2003 case. The scenario was there was a contract with the govt, with the DPWH. So there were contractors who dealt w/ the govt for dredging of creeks and canals, u follow? Now, it later appeared that the contractor never really dredged the creeks and canals. There was a contract, the govt has been paying but there was not actual implementation of the contract. For this reason, who were sued? Were the officers of the DPWH sued? YES. Were the contractor who were not public officers sued? YES! Does SB have jurisdiction over these private individuals? The answer is YES.

Now, lemme now proceed and discuss another case, the case of, baka kilala nyo pa to. Sirena v. SB a 2008 case. The petitioner in this case is a UP Student Regent who claims that he or she is not a public officer, and therefore, she will not fall within the jurisdiction of the Sandiganbayan. The SC in discussing who a public officer is said "the right to hold a public office under our political system is not a natural right, it exists solely by virtue of a law, of some law, expressly or impliedly conferring it. She was also claiming, "sandali po Im not receiving any compensation," sabi nya "hindi po ako tumatangaap ng sweldo," what did the SC say? It is well-established that compensation is not an essential element of public office, at most, it is merely INCIDENT to the public office. So If you are the type of person who will say "no don't give me salary because IAM rich, just give me one peso"—you are still a public officer. In this case, you have a student regent. Now, lemme now touch on her question "Does the

SB have juris over her, considering that she is only a student regent?" and she was saying "well I am not a salary grade 27" because as what we mentioned a while ago, the rule is: salary grade 27 and the act should have been in relation to the office. Tandaan nyo yun a! tandaan nyo yun! E sir ba't iba na to? Kaya nga pakinggan nyo to! Yung sasabihin nito pag nagpe-perform, panoorin mo! Pakinggan nyo tong susunod importante ito! Geduspan v. People cited in that case, in that case of Sirena v. SB, the SC said: *"we held that while the first part of Sec 4-A covers only officials with salary grade 27 and higher, okay, my discussion a while ago, covers only 4-a, according to geduspan, in second part, specifically includes other executive officials whose position may not be of salary grade 27 and higher, but who are by express provision of law placed under the jurisdiction of the SB."* Are we clear?! Therefore, under that law, PD 1606, you will have to look at Sec 4-a that says u should be at least salary grade 27 or higher and the action have been committed in relation to the office, u follow? Maliwanag un! And section b – that makes NO distinction, that makes no requirement that you should be salary grade 27. But who, according to this case, by express provision of law, placed under the jurisdiction of the said court. Lemme now quote to you a portion of the decision *"sec4-a 1g of PD 1606 explicitly vested the SB with jurisdiction over Presdents, Directors or Trustees or Managers of GOCCs, State Universities or educational institutions or foundations"* ok?

Now still, moving on. Still with the Sandiganbayan. Naiinip na ba kayo? Wag kayong maiinip a. the next question is: where a co-accused is within the jurisdiction of the Sandiganbayan. Esquivel v. Ombudsman, sabi nya ganito: "sandali po, I am a Municiapl Mayor, sabi nya! Municipal Mayor lang po ako, yung kasama ko, he is a brgy captain" ang galing e no?! Sabi nya "walang jurisdiction ang Sandiganbayan sa amin because I am a municipal mayor and he is a brgy captain" ano sagot ng SC? "as the positions of municipal mayors and bgy capts are not mentioned in the law, they claimed they are not covered by the law under the principle of expressio unius est exclusio alterius. However, the petitioners' claim lacks merit. Why? In Rodrigo v. Sandiganbayan, Binay, si BInay! Binay v. SB and Layus v. SB, the SC had already held that municipal mayors fall under original and exclusive jurisdiction of the SB. Yan sabi nila. Ah ok. Now, ngayong na settle that the municipal mayors are w/in the jurisdiction of the SB. Andito ung bgry captain sabi nya "ah, di sya lang ho, hindi ako kasama ☺" sabi nya "sya lang ho hindi ako kasama" –tama ba sya? Is he correct? The answer is NO! ok? The answer is no? why? I think ive answered that a while ago, that for as long as one falls within the jurisdiction of the SB, even if the other accused does not fall under salary grade 27, Sandiganbayan still has jurisdiction.

Now still on jurisdiction, I'm on jurisdiction ha class. The case of Mondejar v. BUban, baka gulatin kayo nito! Baka yung examiner nyo naging Immigration lawyer. Which court can issue a Hold Departure Order? HDO. Which court? Ok. Alam nyo class, ang ganda sanang discussion nito, kasi may bagong provision. Ang environmental cases, but I don't want to confuse you. Because studentss sometimes have a tendency to remember the unneccessaries (sic). Pag inulit ko, oh sinabi ni sir ganon, ay baka magkamali pa kayo. Dito na lang tayo, so what should u remember? The authority to issue HDOs to criminal cases are limited only to criminal cases w/in the juris of the 2nd LEVEL COURTS, what do I mean by 2nd-level courts? RTC. This is pursuant to circular 39-97. So the juris and that power to issue HDOs is with the RTCs.

Now, lemme now touch on the case of Badiola v. CA. Lemme touch on Appellate Jurisdiction. Naalala nyo ba? Nakita nyo ba yung examination last year? I don't want to haunt you no, but there was a question, I recall you will have to tell the examiner when to file, where to file and what to file. 38. Remember? And one of the questions then was, where do you go, I could still remember this, sabi ko pag hindi ito diniscuss ng professor hindi masasagot ng estudyante, from a decision of the CTA Division, where will you go? EN banc –only then can you go to the Supreme Court on a petition for review on ceritiorari. O ang galing nyo a, daw?! Sagutin natin to. Badiola v. CA. Where do u go from a decision of the CA? Regardless of whether it was decided by the CA in Division or En Banc, can the CA render a decision En Banc? True or False? NO! Basic na basic yan a! WHY? Because the CA render a

decision in Divisions of 3! Ok, nagtatrabaho sa CA dito alam tong sinasabi ko, in divisions of 3, they do not render a decision En Banc, they render a decision in divisions of 3, and where do you go from a decision of the CA? to the SC on a petition for review on certiorari. I know my next point is something you already know, but I would like to repeat it. A wrong mode of appeal will not vest, or give the court what? Appellate jurisdiction. This is found in Rule 56 Sec.5F okay? Ngayon, baka meron senyo nagrereact, sir parang hindi natin coverage yan? Bat nasa Rule 56? Diba? Wag kayong mag alala paliliwanag ko sa inyo na kabit kabit yan, and when you end this class by Saturday I will explain to you appeals in criminal cases, and when you go home you will realize that it's basically the same.

Rule56 tels you if it's a wrong mode in the SC whether civil or criminal, Rule 56 of the Rules of CIVPRO applies to both civil and criminal! Oh sir ganun? OO! Buksan nyo sa rule125, makikita nyo. Ang ikli lang dyan isang paragraph, why? Look at rule 124 last section, it makes reference to civil procedure and look at rule 45 last section that says the only way to go up to the SC is via petition for review on certiorari whether in civil or criminal EXCEPT where the penalty is DEATH LIFE OR RECLUSION PERPETUA. And my last point on this case, only In this case, is a SECOND MOTION FOR RECONSIDERATION allowed? Ah sir maning mani naman yan! The answer is?! Is it allowed? Whether in trial or appellate court? The answrr is NO! however this case of Badiola April23, 2008 GR 17069 says "as a rule a 2nd motion for reconsideration is not ALLOWEDE, class, CODAL YAN! CODAL YAN. As a rule, a 2nd MR is not allowed, you open to Rule 37 you will see that, you open to rule52 you will see that, a 2nd MR is prohibited, except for **ordinarily persuasive reasons and ONLY AFTER an EXPRESS leave shall have first been obtained, OBTAINED**!

Now, lemme now discuss a few items on Ombudsman. Ok to naman! Ombudsman naman tayo! So we've discussed juris of courts, of the SB, now we will discuss jurisdiction of the OB. Alam nyo class magugulat kayo may mga, may talagang mga lumalabas dyan, SB OB and I noticed in the last few years, they always see use as an example in their facts, factual antecendent cases falling within the office of the SB. And if I can recall accurately last year's question, the special prosecutor amended the information. You remember that? AMENDED the information! When allowed by the court, can he do that?! HE doesn't have authority to do that. Ok? Now let us now proceed to the next case: the next case will answer the dismissal of a criminal charge, does it carry with it dismissal of the administrative case? Tecson v. SB, does the dismissal of the criminal case, carry with it the dismissal of the administrative case? What's the answer? The answer is NO! A public officer could be civilly liable if by reason of his act the govt or someone else suffered damages, civil damages, he could also be what? Criminally liable based on a penal sanction and he could also be what? Administratively liable – meaning he could be removed suspended sanctioned or reprimanded. 4512. Now, so take note of that. My next question is this: "what is the power of the ombudsman?" DOJ v. Liwag, a 2005 case, GR 149311 what is the power of the OB? And lemme quote this for you to be accurate, it was granted, "for this purpose it was granted more than the usual powers given to the prosecutor" take note of that. The power of the OB, it was granted more than the usual powers given to the prosecutors. It was vested with power to investigate complaints against public office, or public officer on its own initiative, ok on its own initiative. Do you need a formal complaint? w/o the formal complaint, can the OB investigate? The answer is YES! Kahit nga isang pirasong papel sulatan mong ganun e, ireklamo mo e, even anonymous if there is basis, they will entertain. Even in the absence of a formal complaint. What else? How about, can it inquire into acts of govt agencies and public servants based on reports in the media and those which come to its attention through sources other than a complaint. The answer is YES! so although generally, the OB perform close to the function of a public prosecutor, that is what to investigate, to conduct prelim invest, but as worded by the SC, it was granted more than the usual powers given to the prosecutor. Right? Because the prosecutors cannot initiate on its own. The prosecutors cannot act if it's not an affidavit-complaint unless of course it is what? An inquest proceeding where you are caught *in flagrante delicto* or a hot pursuit situation. can u follow? You see now the difference of an OB? Now. The method of filing a complaint accdg to the court with the OB is direct informal

speedy and inexpensive. Now lemme ask u this question, should a Public officer be committing an act in relation to his office? So that the OB to have jurisdiction? Is it required that the act of the offender or the public officer is in relation to the office for the OB to have jurisdiction? The answer is? NO! All that is required for the OB to have jurisdiction is a misfeasance or malfeasance of a public officer. Therefore, so that you will remember, I need to give examples, extreme examples, you are a police officer, wala kang magawa e, ano ka e, OFF wala kang duty, nilinis mo yung baril mo, gusto mong praktisin kung ok na, nilinis mo e, binaril mo ung manok ng kapitbahay, can they sue you before the OB? YES! Sabihin mo, "im not on duty!" –regardless, that's not important! Nagpautang ka, ang claim e estafa, nagkalokohan may estafa daw, pwede ba dalhin dun? Pwede! Ang hirap maging public officer class! Any complaint against you can be brought before the OB, any misfeasance or malfeasance even if its not in relation to the office. Is the office of the OB a COURT? The answer is NO! it is not a court. Naku naman sir madali, e ung iba hindi alam e. it is not a court. It is an investigative body.

Now lemme now ask u this, which has primary jurisdiction to investigate cases cognizable by the SB? Ok im extending my discussion. Which has primary jurisdiction to investigate cases falling or cognizable by the SB to the exclusion of the DOJ. K. what did the Court say? In this case? "OB's primary jurisdiction, still on DOJ v. Liwag, OB's primary jurisdiction over cases cognizable by the SB and authorizes him to takeover at ANY STAGE from ANY investigatory agency the investigation of such cases. THE OB is what you call PRIMARY jurisdiction for cases falling w/in the juris of the SB. While, how bout ang DOJ sir? While the DOJ has general jurisdiction to conduct preliminary investigation of cases involving VIOLATIONS OF THE RPC. Are we clear? Simplify. Lets simplify.

The OB has jurisdiction over cases cognizable by the SB, it has what you call primary jurisdiction. And it can interfere, it can, what? take cognizance at any stage of the proceedings. Unlike the DOJ, the DOJ has what you call general jurisdiction over investigation of cases involving violations of the RPC. Take note of this next statement, this general jurisdiction cannot diminish the plenary power and primary jurisdiction of the OB to investigate complaints specifically directed against public officers. Are we clear? To give you briefly the facts of this Liwag case, 5208 this involved the Oakwood Mutiny, ito yun! Bakit? natengga ng mahaba e, natengga ng mahaba sa OB, ang tagal! Gustong pasukan ng DOJ, sabi nila "we will form our own panel that will hear the charges against those participants in the Oakwood Mutiny" so you have th OB and the DOJ having its own panel. Yan ang tanong! Anong sabi ng SC? Ay sandali, the OB is what you call PRIMARY JURISDICTION. The DOJ's only what you call only general jurisdiction and this cannot diminish the plenary power of the OB. Now, another case, ito na, Lazatin v. Desierto June 5, 2009, GR 147097. Office of what? Office of the SPECIAL PROSECUTOR. Is this office the same as the office of the Ombudsman? For those of you who are aware of the history of the office of the special prosecutor, this is formerly the TANODBAYAN. Wala na tayong tanodbayan ngayon. What did SC say, is it on the same level with ON, the Office of the Special Prosecutor is merely a component of the Office of the OB. And may only act under the supervision and control and upon authority of the OB can you follow? It cannot supersede, it cannot superimpose what it wants, it works under the Office of the OB, it is subordinate to the OB. The SC citing the case of Perez v. SB said that the power to prosecute carries with it the power to authorize the of filing informations (sic) which power had not been delegated to the Office of Special Prosecutor. Do you follow? Again, the power to prosecute carries with it the power to authorize the filing of information. And that is the power of the OB which power had not been delegated to the Office of the Special Prosecutor. Are we clear? Now, where do you go, baka inaantok na kayo a?

Where do you go from a decision of the OB? In administrative cases where do you go? Where? Ok? From a decision of the OB? But before I answer that question let me give you the case of Buencamino v. CA, an April 17 2007 case, orders or decision of the OB in administrative cases, imposing penalties of public censure, reprimand or suspension of not more than 1 month or a fine not equivalent to 1 month salary, shall be final and unappealable and immediately executory. I will repeat: orders or decision of the OB in administrative cases, imposing penalties

of public censure, reprimand or suspension of not more than 1 month or a fine not equivalent to 1 month salary, shall be final and unappealable and immediately executory. **So itong mga to, hindi mo iaappeal u follow?** So my next discussion point is where do you go from a decision of the OB? Of course not including the reprimand, the censure, where do you go? Rule 43!!! Petition for Review, you go on a Rule 43 on a pet for review Enemesio v. CA, lumabas na sa bar yan, k? however, if its tainted with grave abuse of discretion amounting to lack of jurisdiction in criminal cases, you could go where? To the SC on a petition for certiorari. And citing the case of Antonino v. Desierto Dec 18 2008, Rule 65 is not the GENERAL RULE, petition for certiorari questioning a decision of the OB is not a general rule, but rather an EXCEPTION. And under what circumstances, and let me enumerate to you cited in the case of Antonino, referring to the case of Collantes v. Marcello, they laid down the ff exceptions:

1. When necessary to afford adequate protection to the constitutional right of the accused;

2. When the necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

3. When there is a prejudicial question that is subjudice;

4. When the acts of the officer are w/o or in excess of authority;

5. The prosecution is under an invalid law ordinance or regulation;

6. When double jeopardy is clearly apparent;

7. When the court has no jurisdiction over the offense;

8. Where it is a case of persecution rather than prosecution.

9. When the charges are manifestly false 5900 and motivated by vengeance; and

10. finally when there is clearly no prima facie case against the accused.

Lemme now proceed, I think this is a good discussion point Sesbreno v. Aglugog, though it's a 2005 case, I felt it necessary to cite it for you. It says that all prosecutors are deputized by the Ombudsman, I'm now deputized by the OB, the resolutions and these are the steps Id like you to take note, resolutions in OB cases against public officers by a deputized public prosecutor shall be submitted to whom? To a provincial or city prosecutor. Lemme explain again, if this is the deputized public prosecutor, he conducts preliminary investigation his resolution shall be reviewed and approved by whom? the city or provincial prosecutor. Is it enough? if u read rule112, it is enough. Do u follow? An information could already be filed. But if you talk of the work of an OB, you have a deputized public prosecutor then you have what? A city or provincial prosecutor, should it be reviewed by the OB? Yes by the Deputy OB of the Area.

Kaantok! Its already 6am, I need to go lie down and catch some dreams ☺

Yes by the Deputy OB of the area and his recommendation shall what? Subject to the final approval of the OB. U follow? So u add a number of steps, ordinarily when there's a Preliminary Investigation, you have an asstant prosecutor, city or provincial prosecutor correct? If you find probable cause, information is filed. When you find cases falling w/in the juris of the OB, if it is a deputized prosec, it will be reviewed by the city/prov prosec and then it will be subhmitted to the Deputy OB of the area and subject to the final approval oif the OB. The cases of Sesbreno v. Aglugo.

Can the office of the OB dismiss a case outright? Yan. Can it dismiss a case outright? Naalala ko yung tanong na to, may tinanong close to this no, in 2008 if not, I think 2008 if not 2007. The question was: "can the court dismiss a motion for bill of particulars outright?" yun oh. Naalala niyo un? What's the answer? You don't need to go to jurisprudence, it's sec2 of Rule 12, YES. The court can dismiss a Bill of Particulars outright. My question now is this: "Can the OB dismiss a complaint outright?" the SC said: Presidential ad hoc fact-finding committee v. Desierto July 24,2007, it said "it is clear under sec2A, Rule 2 of the Rules of Procedure of the Office of the OB, that it may dismiss a complaint outright. For what ground? FOR PALPABLE MERIT." Again, for WANT of palpable merit it can be dismissed outright.

Lemme now move on to another case, Punzalan v. Dela Pena. Wag kayong maiinip, malapit na ko sa Rule 110. Sinusuyod ko lang to e. ok. Wag kayong mag alala, tapos natin yan sa Sabado. Sir hindi e, matatapos natin yan, sa pre-week nga e dalawang oras lang yan. Sir hindi tayo pre-week, e hindi nga, so I need to discuss this in more detail. Sa pre-week 2 oras lang yan, ung 18 rules, we need to highlight, we will highlight, but during pre-week I do not go into discussion of as much cases, I will highlight the doctrine of the cases.

Now, let us now move on to the next case. The case of Punzalan v. Dela Pena, k. the Sec of Justice exercises power of direct control and supervision over decisions or resolutions of prosecutors. It is w/in the purview of the function of the DOJ. What do I want you to remember here? It is the Sec of Justice that exercises power of DIRECT CCONTROL AND SUPERVISION over the decisions or resolutions of the prosecutor. So that you will NOT forget this, I will give you an example of SECRETARY AGRA. He exercised what?! POWER OF CONTROL! As to the nature of his decision, I don't want to discuss it, okay. I would like to zero in on his power of control and supervision over resolutions of the prosecutors. Yan yun o! kita nyo may power sya? But if he exercised it w/in the ambits of proper of discretion, ay hindi ko na yun, juzgado magsasabi nun. U follow? It is w/in The Sec of Justice exercises power of direct control and supervision of prosecutors. Now CAN A PROSECUTOR BE COMPELLED TO INSTITUTE or TO FILE AN INFORMATION IN COURT EVEN IF HE BELIEVES THERE IS NO PROBABLE CAUSE? Can he be compelled by mandamus? Hagerty v. CA, cited in this case of Punzalan: "WE declared, a public prosecutor, by the nature of his office, IS UNDER NO COMPULSION to file an Information, where there is no clear justification that there is a case or there is a crime that was committed." Now lemme now move on, and discuss the case of Castro v. Veloria, a 2009 case, Jan 27 2009, can the OB prosecute cases w/in the jurisdiction of regular courts? Ha? O dapat bay an e Public Prosecutor lang? under the city and the provinces, this could be in a Fact question. What is the answer? The answer is: YES! Ok? Sec.15 of RA 6770 gives the OB primary jurisdiction over cases cognizable by the SB, Sir you said SB, listen! The grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers, employees cognizable by other courts. So if it is public officers, and it was before the OB "can the OB still prosecute?" the answer is YES, it is not excluded. It must be stressed according to the SC, that the powers granted by the Legislature to the OB are very broad and encompasses of all kinds of malfeasance, misfeasance and nonfeasance, ok? And I think my last point before I start w/Rule 110 would be this: WHO REPRESENTS the People in the Supreme Court and Court of Appeals? WHO REPRESENTS THE PEOPLE OR THE STATE IN THE SC OR CA? This is the case of People v. Duka Oct 9 2009 citing the ruling case of City Fiscal of Tacloban v. Espina, and what did the Court say? "COMPLAINT OF INFORMATION IN THE TRIAL COURT—RTC and MTC – shall be under the control and direction of the prosecutor! Tandaan nyo yan! MTC RTC prosecution is undet the direct control and direction and supervision of who?! The public prosecutor and that is consistent with Rule 110, Sec5, naalala nyo yan? Tignan nyo yan. The first paragraph: direction and control of criminal cases shall be with the public prosecutor. However, still in this case of People v. DUka, the SC said: "When such criminal actions are brought to the CA or the SC, it is the SOLICITOR GENERAL who must represent the People of the Philippines, and

NOT the prosecutor." AGAIN: when it reaches the SC or the CA, it is the Office of the Solicitor General and not the Prosecutor that represents the People or the State.

Now, lemme dig deeper into this case. The question in this case was: "Was the petition, should the petition stand?" Why? A copy of the petition was served upon the prosecutor! Was served before the prosecutor. And the case was already pending in th SC, or even the CA. Should the petition be served to the prosecutor? NO! therefore the SC said, it was w/ grave abuseo of discretion that the petition was even entertained by the CA. WHY? Because the petition should have been served to the OFFICE OF THE SOLICITO GENERAL. Okay? Di pa tayo magbe-break a. di pa ko magbe-break. But I will now touch on, oh iano nyo na, ia, tune niyo na yung utak nyo. We will now touch on Rule 110. (whew!)

RULE 110

I will now touch on Rule 110, sir military courts? Hindi kasama yun. Matagal ng hindi kasama yun, haha, panahon ni Marcos kasama yun, pero ngayon hindi na kasama. Now, let us now touch on Rule 110. I will outline to you the rules and I will cite to you certain jurisprudence for better understanding. 11116 But class, for you to have a good grasp of criminal procedure, as you study, or as you review, you should know the rule. Pag ang ginawa nyo class, nagbasa basa lang kayo, hindi nyo binasa yung batas, delikado yun, ok? If you are the type of the person who feels secured by reading notes only, W/O READING THE LAW, that's very dangerous, you will have to read the LAW. K?

Lemme now start with Rule 110, Sec.1.

> Section 1. *Institution of criminal actions*. — Criminal actions shall be instituted as follows:
>
> (a) For offenses where a preliminary investigation is required pursuant to Section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.
>
> (b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters.
>
> The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws.

What about rule 110, sec1? How may paragraphs do you have? Do we have 3? 3 or 4? 3? Tama ba? Tatlo no? right! Let us look at this. What should you remember? I will simplify it for you. Where will you institute an action? Where will you institute an action? Let's simplify it. So that when you go home "ay ganun lang pala yun!" If the crime is committed in a CHARTERED CITY LIKE MANILA, where can you institute the action? Do you need to distinguish whether there is a need to go through a preliminary investigation do u need to distinguish? That's right! You don't need to distinguish, nakita ko may mga alam yung sagot e. may mga estyudanteng alam ang sagot. Andito ka sa Maynila, this is a chartered city, Makati is a chartered city, Caloocan, u follow? San mo ifa-file? Ke maliit, ke malaking kaso, san ang file? PISKALYA! MAliwanag?! YUN LANG UN! That's all you need to remember. So you look at the facts. That explains the FIRST PARAGRAPH. Are we clear? Kahit na ganyan kaliit, oral defamation, slander by deed, do u follow? Sir, it does not require preliminary investigation! In fact, it might fall under the rule on summary procedure! E un na nga e, where will you file? PISKALYA! "Edi sir mag pi- PI din?" HINDI! Paliliwanag ko senyo, hindi mag pi-PI yan, "e sir bat mo finile sa piskalya?!" HINDI NGA MAG pi-PI (pi-ay = preliminary investigation ☺) yan! Paliliwanag ko senyo, yun ang una kong gustong tandaan nyo, are we clear? If the crime is committed here, regardless of the GRAVITY of the offense where will you file? OFFICE OF THE PROSECUTOR, are we clear? Maliban lang un kung inquest. We will discuss that later on. Baka may pipilosopo, e sir paano yung inquest? Ibang usapan yun.

Now let us look, at class, if the crime was committed OUTSIDE of the chartered city or in the provinces ok? Do we need to distinguish? OH YES! We need to distinguish. U follow? If the crime or the offense was committed where? OUTSIDE of a chartered city or in the provinces, you need to distinguish k? why? Whether it would require prelim

investigation or not. Are we clear? w/n it would require prelim investigation, sir why? Lemme ask u this question. Baka sampolan kayo. Angtagal na nito, 2005 pang amendment to ha, pag hindi nyo pa alam to! Aba e delikado. Sabagay hindi pa naman pre-week so maaral nyo pa no? CAN A MUNICIPAL TRIAL COURT JUDGE conduct prelim investigation? O kita nyo may gumaganun? Yes daw, haha, baka lumang libro binabasa nya! NO!!!! a municipal trial court judge TODAY CAN NOT CONDUCT PRELIMINARY INVESTIGATION. Cge nga buklatin nyo. Sir san ko bubuklaten? Sa rule! Rule 112, sec.2! tignan nyo nga kung andun pa sya?! As to who can conduct preliminary investigation. Tignan naten. (silence) O?? "Sir nandito pa!" sinong meron? Taas nyo nga kamay? Aba'y luma yang libro mo! Hahaha! Tignan mo yung likod (merciful ☺) ok, burahin mo na ngayon yan! Baka yan pa ang maging dahilan! Tignan nyo may mga nakakita pa sa inyo! (drinks water) pag andun pa sya, as of Aug 2005, WALA NA YAN! A municipal trial court judge can NO longer conduct preliminary investigation.

My next question is this: Can a Metropolitan Trial Court judge conduct a preliminary investigation? Aba sir, maibang tanong yan a, haha, sir ibang tanong yan a. parang ngayon ko lang na-encounter yang tanong nay an. W/more reason HINDI! It's provided for in BP 129! In the original provision, even before the amendment, can you follow? Sir bakit ganun? Because Metropolitan Trial Court judges are only stationed in chartered cities. Naintindihan nyo na?! so hindi, lahat ng kaso sabi ko kanina will be filed where? Office of the prosecutor, are we clear? I will repeat: outside of a chartered city, or in the provinces, a municipal trial court judge can no longer conduct preliminary investigation, therefore, if there is an offense, you will have to ask yourself: "Is the penalty for the offense at least 4years, 2months and 1day?" un ang tanong. Is it at least 4years, 2months and 1day? Bakit? Because if it's at least 4years, 2months and 1day, it should go through preliminary investigation. Ok?

Let us say, the offense was for homicide. It was committed in the province. Where will you file? Can you file before the MunTC? NO! because the MunTC judge can no longer conduct preliminary investigation. Can you file before the provincial prosecutor or the public prosecutor in the provincial office? YES! Because only a prosecutor can conduct preliminary investigation and that would include the OFFICE of the OB. The MunTC judge can no longer conduct preliminary investigation. Now if the penalty for the offense is below 4years, 2months and 1day, again, if the penalty is below 4years, 2months and 1day, where can you institute the action? Can you institute the action directly with the MunTC? YES! Why? Because it does not require preliminary investigation. And for that reason, it can be instituted directly with the MunTC. Now, if the offense carries a penalty again, below 4years, 2months and 1day, can you still file before the Office of the Prosecutor? No one's preventing you from doing it.

You have now 2 ways to do it: If it does not require preliminary investigation and the crime was committed outside of a chartered city and in the provinces, you could either 1.go to the MunTC judge on a direct filing, or you can go where? 2. Office of the Prosecutor.

Later on class, I will discuss the difference. Sir bat parang pareho lang? e bat puro piskal? U follow? I will discuss the distinction later on. Lemme now discuss, I hope this is clear so far. Prescription. Ok? Sir meron prescription? Oo yung last paragraph nyo, prescription. Kung ngayon mo lang nadiscover, tandaan mo haha,malamng hindi mo nabasa nung estyudante ka! "ay oo nga ano? Prescription" merong provision ang prescription. The prescriptive period is tolled or interrupted when? This is a good question. That's been asked for more than 5 years now. How will it be interrupted. Will it be interrupted from the filing of the complaint in the office of the prosecutor? Or in the what? In court? Okay. We will have to answer that question. Before I give you the case of Panaguiton v. DOJ, Nov 25 2008, let me give you a general framework of how this goes. For ordinary offenses, falling under the RPC, if you file before the Office of the Prosecutor – it's enough. For special laws, because of Act 3326, ok, 3326, kita nyo act pa ito a, act this is a 1926 law ok? Because of this Act, it should be, because it's a special law, where? IN COURT. Owkay? In court. However, that's why for those of you interested, you can read the panagiton case in its original,

why? Because the case gave the historical perspective of the application of Act 3326, because this through time, through decades had raised the question. And you will see repeated cases starting from Phil Reports, that's it's FILING IN COURT. And it is now that they had to revisit it. In this case of Panaguiton, it's a case involving BP 22, take not, BP 22, so pwedeng itanong to simple e. BP 22, where the penalty is not less than 30 days or not more than 1 year, because it is a special law, we expected it to fall under Act 3326, k? this is the question presented before the Court: "Does it toll the prescriptive period once the complaint was filed before the Office of the Prosecutor?" the SC said YES! And the SC said: "we rule and so hold that the offense has not yet prescribed. Petitioner's filing of his complaint-affidavit before the office of the city prosecutor in 1995 signified the commencement of the proceedings for the prosecution of the accused and thus, effectively ibnterrupted the prescriptive period for the offenses they have been charged under BP 22" tandaan nyo un. Because if you follow the basic rule Act 3326, it should be filing in court. But this case said that once it was filed before the office of the prosecutor, it interrupted the period. Let me also call your attention, this was the basis, the next discussion points, were the basis of Panaguiton, the case of Inco v. SB and the case of San Rio Company Ltd v. Lim. In the case of Inco what was involved was an anti-graft, violation of the latter which is a special law. RA 3019. While in the case of San Rio, it involved what? Violation of the Intellectual Property Code. Ok. What did the SC say? The SC said citing the case of Interport, SEC v. Interport, the Court ruled that the nature and purpose of an investigation conducted by the SEC on violation of the Revised Securities Act – another special law – is equivalent to the preliminary investigation conducted by the DOJ in criminal cases. And thus, effectively interrupts the prescriptive period. I will repeat, in touching on Inco v. SB and San rio company v. Lim, touching on special law, one is anti-graft the other one is violation of IP code, in ruling that the filing before the office of the prosecutor interrupts the running period of the prescriptive period, they cited the case of INterport, SEC v. Interport. Wherein once the case was filed before the SEX for violation of the Revised Securities Act, the SC said that equates to a preliminary investigation, therefore, the running of the prescriptive period is what? Interrupted. So please, take note of that! I had to discuss this matter with you.

The next case that I would like to touch on is the case of Brillantes v. Republic, that only reiterated the rule: that for purposes of ordinary offenses, once the complaint or affidavit-complaint is filed before the office of the prosecutor, the prescriptive period is? INTERRUPTED. Now, let me now touch on ok, let me now touch on another item. I hope that its clear to us. K. let me touch on control and supervision of a prosecutor. K. control and supervision of the prosecutor. And that is Rule 110, sec5.

SEC. 5. *Who must prosecute criminal actions.* — All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority shall cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both are alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents, or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding para graph.

No criminal action for defamation which consists in the imputation of any of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party. (5a)

The prosecution for violation of special laws shall be governed by the provisions thereof, (n)

First paragraph, who has control in the conduct of a prosecution of a criminal case? It is the public prosecutor. What does control mean? What does it mean?

Does it mean that the prosecutor can stop the private prosecutor at any point in the conduct of the trial? Can the public prosecutor do that? YES! The public prosecutor can stop the private, he can intervene because he is in control of the conduct of the criminal case. That is the power of the public prosecutor. And kindly take not of the duties of a public prosecutor. What are the duties of a public prosecutor?

Number 1: can conduct preliminary investigation. For cases filed before their office. The public prosecutor can conduct preliminary investigation. What else? The public prosecutor can, what? Will be in charge or will have control over a prosecution of the case. And number 3, if a public prosecutor if assigned, by the city or provincial prosecutor, can conduct, inquest proceedings. Can conduct inquest proceedings. I will discuss inquest proceedings later on.

Let me now call your attention to the case of Chua v. Padillo, a 2007 case, what is the rule? The power of the public prosecutor to exercise discretionary power is not absolute. It is subject to what? To appeal to the DOH (nagkamali si sir ☺). Bat napunta tayo sa DOH? Haha, kita nyo kung di ko pa sinabi, di nyo narinig, DOJ not DOH. The decision of the provincial or the city prosecutor, could it be questioned before the DOJ? YES! What is the mode? What is the mode of appeal? Yan, "sir, edi appeal" –yan! What is the mode of appeal? You file a petition for? REVIEW! That is under Circular 70 of the DOJ. That is under Circular 70 of the DOJ and you have how many days to elevate it to the DOJ? 15 days from receipt of resolution or denial of a Motion for Reconsideration. What is the second exception? The CA may review the decision of the DOJ under a Rule 65, under a rule 65 on the premise that it was what? Tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. So again, the rule is: whats the rule? POWER OF THE PROSECUTOR TO EXERCISE DISCRETIONARY POWER IS NOT ABSOLUTE. It is subject to review by the DOJ and the DOJ decision is subject to review by the CA on a rule 65 if its tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. From the DOJ can you go to the Office of the President? Haha yun yung sinasabi nila no? Is it, you remember the events just recently? From the DOJ walang kibo ang ano, naku, naka tv pa naman ako ok, diba sabi, diba pinipilit, the president should do something about it! Para naman pag nakipag-discuss kayo may substance hindi yung "kasi sinabi niya" Can the decision/resolution of the DOJ be elevated to the Office of the President? The answer is YES! Sir anung basis? Wala sa Law un! It was a Circular passed during the time of Corazon Aquino. That **if the penalty for the offense is Death, Life, Reclusion Perpetua, you could go up to the Office of the President.** Only in those instances can you go up to the Office of the President. Ok. So tatlo lang yun! Death life reclusion perpetua. Kaya kung ang mga kaso mo e grave threats "I would like to go to the Office of the President!" – NO you can not! U follow? This is an ideal question that could be reviewed by the President because it involves what? Of course we do not have Death today, Life and? Reclusion Perpetua. Awkay?

Now, let us now move on and discuss k, im not yet through with sec5. Class, we tend to remember sec5 only because of control and direction or supervision of the criminal case by a prosecutor. We tend to remember it but we should not forget this EXCEPTION: **CAN A PRIVATE PROSECUTOR proceed with the trial of the case even in the absence of a public prosecutor?** Ayan! Pwede ba? O? what is the rule? NO! the rule is NO! yun ang rule. Subukan nyo yan pag abogado na kayo, abogado ang public prosecutor, di reset! Reset un! If I'm the counsel for the accused, aba okay reset na naman! Ganun un! If the public prosecutor is absent, reset. However, you could obtain a certification from the Chief of the PRosecutio Office or the Regional State Prosecutor or the Regional Posecutor to allow the private prosecutor to proceed even in the absence of a public prosecutor. If you do not have the certification or authority to proceed, independent of the public prosecutor, sorry! Your case will simply be what? Rescheduled. Ganun un! "sir violation of speedy trial!" sandali we will discuss that, rule 119. Ok? So take note of that, you need a certification to proceed without a public prosecutor. Let me ask you this question: Is there intervention in a criminal case? O sir, o kita nyo? Is there intervention in a criminal case? Buksan nyo kaya yung last section of rule 110, is there intervention? MERON? **When a private prosecutor enters his appearance for the civil liability of the offended party, that is the concept of INTERVENTION in a criminal case.** U follow? So pag tinanong kayo, para hindi kayo magugulat. O subukan natin yung galing nyo sa rule 19 sir ano un? Intervention, un talaga intervention.

> **SEC. 16.** ***Intervention of the offended party in criminal action.***—Where the civil action for recovery of civil liability is instituted in the criminal action pursuant to Rule 111, the offended party may intervene by counsel in the prosecution of the offense.

Let me do some exercises on intervention. Where could you file a motion for intervention? Can you file it before the appellate court? Ok. Class, yung mga ganitong discussion, this is a point of advice, try to get it even if you sometimes feel, naku baka hindi naman itanong. Wag kayong mag decide kung ano itatanong at hindi! Di naman kayo examiner e. ay hindi, hindi important yan, kaya pala ang bilis mo magbasa, lahat not important (laughter) this is not important. Ok? A puro not important e talagang mabilis ka magbasa! Sir nakakatatlong reading na ko, kasi puro not important e! believe me, in the 2008 bar exams, I recall, I was, I discussed this in one of the reviews but not here, because it was a topic of civil procedure, the question was, "can you have original cases filed in the CA?" ordinarily you will not read it, yes! Certiorari prohibitiom mandamus quo warranto petition for writ of amparo, habeas data, you follow? Habeas corpus on custody of minors. Biro mo un, hiningan ng enumeration! San mo kukunin yun? Ay sir, kasi sinabi mo not important, ayan! pATAY! So lahat sa atin important, kay now, lets move on.

So I hope that's very clear to us. O not yet? Ive not yet answered the question, can you file a Motion for Intervention in the CA or SC? YES! But only subject to the discretion of the appellate court. So nasasakanila yan to entertain it or not, theres no express provision in the law allowing you to file a motion for intervention, and for this reason, you will have to seek LEAVE OF COURT. Wala e. class kahit na alam nyo yung galagudin? Kahit na suyurin nyo yan, 46 to 56 wala kayong makikita nyan! However, there is a provision for trial courts, for trial courts, can you file a motion for intervention in civil cases? Yes! That's in rule 19! Cited in the case in Gingoyon v. Republic, sec2 of your rule19, when can you intervene? At any time before rendition of judgment in the trial court- yon express yon! Sec 2 of rule19! At any time before the court renders a judgment in the trial court. So we're clear with that. Now let us also as a general rule now, im still on who can institute the action. Who? Im done with where, my next question is who? Can institute the action? Can the offended party institute the action? Yes! Can a peace officer institute the action? Yes! Can a police officer institute the action? Yes! A person charged with the enforcement of the law can institute the action for as long as the offense is a PUBLIC OFFENSE. Syempre kung private yan papano? Hindi sila pwede, the offended party (lang). U follow? If it's a public offense, the answer is yes, but if it's a private offense, rape, is rape a private offense today? NO! A police officer institutes the action, the offended party need not be the one but she can if she wants, ok now. How about adultery and concubinage? Who can institute the action? Only the offended party. Yan. Parang alam na alam nyo to, sumasagot kayo e no. only the offended party. Alam ko ang estyudante pag alam e! yan. Offended party. Do you need to implead even the partner? The paramour? Yes! Unless he is DEAD. Ok? Ok unless he is dead. Now if it's seduction, abduction, and acts of lasciviousness, who can institute the action? The offended party, the parents, the grandparents, the guardian successive and exclusive. Can the minor on her own institute the action? YES! And this was a part of the amendment on the Rules of the Criminal Procedure because of so many cases involving ascendants violating children or their descendants. That is why the law provided for a window where only the minor can institute the action, if the minor is incapacitated, who can institute for the minor if it was the ascendant who violated the child? The STATE CAN INSTITUTE THE ACTION for the minor.

Now, let us now look at sufficiency of Information. Class this is important. Sufficiency of information is in sec6. If I were you, I will what? Memorize! Kung ako sa inyo aba'y memoryahin ko yan. "sir mahaba, 'sang paragraph, mahaba!" haha, kung ako sa inyo, sir bat nyo pinamememorize yan? For reasons that your sec7 to sec12 is just what? A discussion of your section 6. Your sec7- sec 12 are sections simply discussing what was enumerated in sec6, sufficiency of information.

> **SEC. 6.** ***Sufficiency of complaint or information.***—A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

What's the first requirement? The name of the accused. Should the accused be named? Of course! If his name is known. Of course his full name should be indicated, if his name is not known,

an appellation or nickname would suffice. If his name is not known, a statement that his name is not known will likewise be accepted, of course the most common example of this is the John Doe, Jane Doe, accused. K. what are examples of appellations? Of course the name, ayan, o kita nyo alam nyo, yung mga ganyang kalokohan alam nyo! Anu yang mga what appellations can you have? And sometimes they are more known by their appellations rather than by their real name. yung mga jeep barker, tricyle barker, "Boy Taga" "Boy SIngkit" these are what? These are not nicknames, these could be appellations, but is that is his nickname that could also be used. So these are examples. That is why if it's presented in a case, "a.k.a" – also known as. Ok.

The next item that I would like to call your attention on, is the date of commission. The case of People v. Ibanez, a 2007 case, let's do some exercises and tell me if the date is properly alleged.

"Sometime in the month of April of 1998" –is that enough? YES.

"On or about May 1998" – YES.

"On or about 2004"- NO. because it's so, the possibilities are so huge. It could be 2001, 99, 2002, it could be 2008, or 2009, u follow? So there should be SOME LIMITATION. Now my next question is in the case of Ibanez : "should the précised date of the commission of the Rape be alleged in the Information?" should the EXACT DATE of the commission of rape be alleged in the Information? What is the answer? NO! why?? Because the date of commission is NOT A MATERIAL ELEMENT OF THE OFFENSE. The rule that the law requires is simply an APPROXIMATION of the date of its commission unless the date is a MATERIAL ELEMENT of the offense. U follow? Like? Infanticide! Election offenses – malapit na! liquor ban, iinom inom ka dun sa harap nila, ordinarily that is not unlawful but the date of commission is material element of the offense. Now, are we clear? What is your remedy for an INSUFFICIENT INFORMATION? You could file, 1. A motion for Bill of Particulars. Do you have this motion in criminal cases? YES that is found in Rule 116 Sec9. But of course, if you, I am the lawyer of that case, I will not file a motion for a bill of particulars, do u agree with me? Why will I file? Why will I teach you how to do it? If for your purposes and for easy recollection, there's Bill of Particulars in civil cases, in Rule 12, in criminal cases Rule 116. Does it work the same way? YES. Why? All you need to allege is you have to identify the defects and number 2 the details desired. In civil cases, before an answer, in criminal cases before arraignment, u follow? Sir bakit before arraignment? Edi bago ka basahan? Why will you teach them? Prosecution mali yan, dapat yung element ganito yan kulang kayo ng place of commission, dapat you should indicate the place – will you do that?! NO! but of course for academic purposes, haha, we have to discuss this right? Your remedy is MOTION FOR BILL OF PARTICULARS for insufficient information, what else?! You can file a Motion to Quash. Most specially if the information does not constitute an offense. Or the information is defective. Ok? Now, what elese do we need? For purposes of a sufficient information?

Acts or omissions constituting the offense. You need to give the facts and surrounding circumstances taking into consideration the elements of the crime. Do you need to allege aggravating and qualifying circumstances? YES. Kailangan ba class un? tinanong na to sa bar ng 2005, the answer is YES. Sir even generic? YES! To be taken against the accused, it should be alleged in the information. Hindi ko na idi-discuss yung "when I was a student" hindi na, malilito kayo e. there was a different rule when I was a student. Today, you have to allege both aggravating generic and qualifying circumstances, do I need to allege the exact wording of the law? Not necessarily. Not necessarily. Why sir? Because, all that is required by the law is a statement that falls within aggravating generic or qualifying circumstances. Nombrecia v. People it says "What determines the real nature and cause of the accusation against the accused is the actual recital of facts stated in the information and not the caption or preamble" so you have to

look at the allegation of facts in the body of the information and not the preamble or caption nor specifications of the provisions of the law alleged to have been violated.

Now my next question: "Do you need to state the law that was violated?" the next requirement for sufficiency of information is what? Designation of the offense by statute, what do you mean by designation? Homicide, murder, estafa, libel, designation of the offense by the statute. But not all offenses have what? Designation by the statute. Like violation of BP 22 ano? Anong tawag mo sa kanya? Bouncer? ☺ dahil talbog ng talbog ang tseke, HINDI, you say VIOLATION OF BP 22, natatawa na kayo nyan a. e papano kung violation of Dangerous Drugs Law? Adik! Hindi pwede hahaha! U follow? PUSHER! HINDI! In instances like that, you would have to refer to violation of sec5 and sec 11 of the DDL. One is sale, one is use. If there is no designation of the offense by statute you don't need to formulate one! E baka naman gumawa kayo ng designation of the offense by statute all you need to refer to is the? SECTION or the PROVISION OF LAW that makes it an offense. Ok what else? Do we need to give the name of the offended party? This is sec12. Do you need to give the name of the offended party? This was answered in the case of Eduardo Ricarse v. CA Feb 2007. I'm referring not to the accused ha, im referring to the name of the offended party. Do we need to give it? Is it absolutely necessary or is it absolutely indispensable? The SC said, it is not ABSOLUTELY INDISPENSABLE. Because there are crimes maybe the offended parties cannot be identified. Although, according to this case, citing the provision of sec12, if it's a crime against property and the offended party is not identified you will have to what? Describe the property that was violated.

Let me now proceed to my next item, still on sufficiency on information: PLACE OF COMMISSION. Do you need to put the exact address where the crime was committed? 2423 Wilson St., San Juan – you need to put it? Where the crime was committed? The exact address? What is the rule? What is the answer? NO! an APPROXIMATION, or a statement that the crime was committed where? Within the jurisdiction of the City would suffice, UNLESS the PLACE of commission is a material element of the offense. Like in what cases? Violation of Domicile. Trespass to Dwelling. Arson. U follow? In all theses cases, you need to give the exact place of commission. Are we clear? Now, what else do we need to take note here? I think I have touched before I leave completely sufficiency of information, take note of sec9!

> **SEC. 9.** ***Cause of the accusation.***—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute, but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

What is sec9? Cause of accusation. What is cause of accusation? This is the equivalent of cause of action in civil cases, and the requirement of law for purposes of cause of accusation is it should be in a language that is understood by the accused. For what purpose? Why should it be in a language that is understood by the accused? Bakit? Look beyond rule 110, why should it be in the language known or understood by the accused? Because the same information where the cause of accusation is alleged will be read to the accused during the arraignment. Let me ask you this question: "can the accused be arraigned in his absence?" ah? O kapatid mo akusado, pwede ikaw ang ma arraign? Can the lawyer be arraigned? NO! tandaan nyo yon! Tama yun! An accused should be present to be arraigned the case cannot proceed without him being arraigned, HOWEVER, on the rule of procedure in environmental cases, hindi naman itatanong, gusto ko lang alam nyo e, ok? Gusto ko alam nyo, if you applied for bail, one of the conditions for bail in criminal cases on environmental cases is that if you are absent you waive the reading of what? The information, and likewise as a condition of bail, the court can enter, because of your absence, a plea of? A plea of not guilty. Medyo iba nakita nyo? Medyo iba pero hindi niyo pa yan iaano, hindi nyo pa yan ife-face nayon, but what I would like you to take note that they have, in to do something, that maybe, maybe in the future could be deduced, but today the accused should be present for purposes of arraignment, for the reading of the information. What is the time now? Ok its seven o'clock, I will give you a short break and then, I'll be back in 10 minutes. We'll continue until 9 o'clock okay.

END OF PART I (whew)

Let me start with duplicity of offenses. Can we join offenses in one information? Can we join as many offenses as there are in one information? Let's say there are 5 counts of rape, 5 counts of estafa, can it be included in one information? Whats the answer? The answer is NO! for every offense, there should be one information – that is the general rule! EXCEPT sir except what? Except if there is a single punishment for various offenses, like? A COMPLEX CRIME. U follow? If there is a single punishment for various offenses, it can be contained in one information. But the general rule is: EVERY OFFENSE SHOULD HAVE ONE INFORMATION. Now let us say, if by chance, one information contained more than one offense? Can the court render a valid judgment? Not a complex crime, that is found in rule 120 sec3: For as many offenses as there are if contained in one information and there was no objection on the part of the accused, each of the offense established and proven can be taken against the accused. Are we clear? So the rule is: ONE INFORMATION, ONE OFFENSE, UNLESS, there is a single punishment for various offenses. You can refer to rule120 sec3 that tells us "if there are more than offense in one information if all of them are established and proven and there was no objection on the part of the accused, it could be a judgment against the accused.

Now, let me now move on and discuss, okay, before I move on and discuss amendment, let me call your attention to this, just for purposes of comparison. What is the equivalent on the rule of duplicity of offenses in civil procedure? Ha? In criminal cases, can you join different offenses in one information, hmm class? Can you join offenses in one information? Generally no, u follow? In civil cases, can you join causes of action in one complaint? Oh YES! AH! It's different. Rule 2, sec5. That is what you call joinder of causes of action. Parties can be joined in the alternative or otherwise. For as many causes of action as you have, for as long as you follow the following rules:

1. you cannot join those covered by? SPECIAL RULES. Special proceeding and ordinary civil action? You cannot join. Adoption and sum of money? You cannot join. Natatawa kayo no? petition for certiorari and specific performance? You cannot join. U follow? But, unlike criminal cases, in civil procedure allows joinder of causes of action. What else?

2. can you join parties in cases of multiple causes of action? And multiple parties? YES. And please remember this: I just want to highlight this, when you join multiple parties, in civil cases, you have to look at RULE 3 sec.6 ok? Take note of that. If there is more than one party on one side, it should arise from the same transaction or series of transaction. Are we clear? Ok. Jointly severally or in the alternatively.

3. also there is what you call in civil cases, the TOTALITY RULE. Remember that? Ano yung totality rule? It is the sum of all of the claims. So if all of the claims are claims for sums of money, can you claim? Can you join them together? Yes. E sir papano yung estafa, BP 22? NO! because that is a criminal case.

SEC. 14. *Amendment or substitution.*—A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused shall not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (14a)

Let us now look at, I think I've made the distinction already on duplicity of offenses, and joinder of causes of action. And finally in joinder of causes of action, if you join and one is with the RTC, it will be joined in the RTC respecting the rule on? JURISDICTION AND VENUE. But in criminal cases, again, can we join? NO! ONE OFFENSE ONE INFORMATION unless it is a complex crime, or there was inaction on the part of the accused when offenses have been joined or included in one information and he failed to object. Can the court render a valid judgment? YES!

Now, let's move on and discuss amendment. Madali lang ba ang amendment? YES! Madali lang yan! In criminal cases what is your reference point? What should you remember? In criminal cases, what is your reference point: PLEA. In civil cases, what is your reference point: ANSWER. In civil cases, before answer, that is a matter of right, after answer – it is with leave of court. Ok. Subject to the discretion of the court. In criminal cases before plea, can you amend? YES, both to matter of form and substance. Remember that! After plea – only as to matters of form. Take note of that, again, only as to matters of form – but that is incomplete, for as long as it will not prejudice the rights of the accused! If you only say, yes as to matter of form, that is incomplete, because it could be a matter of form but if amended will prejudice the rights of the accused, it will not be allowed. Are we clear? Like for example, sabi mo naku typographical error, hindi naman 19 ang edad nyan nagkamali! 16! Ah hindi! Yes it's a matter of form, but what? What would make the offense more grave? U follow, or sabi mo naku, nakalimutan ko yung ano, yung insanity, ok, after the rape she became insane, unless it is what a supervening event, even if you have entered a plea, even if you have been arraigned the court could allow. Or it was discovered after the plea. Yes the court may allow, but ordinarily the court will not allow, are we clear?

So now, what then is the rule for us to know, whether it is a substantial amendment or a formal amendment? Let me call your attention, still on Ricarse v. CA, Feb 9 2007 that explained a substantial amendment, this consist of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. Yun ang sabi, all other matters are merely matters of form. Substantial amendment consists of recital of facts constituting the offense and determinative of the jurisdiction of the court all other matters are merely matters of form, now, let me enumerate to you, so that you have an idea, based on jurisprudence those which were held to be mere formal amendments. I have 5 with me, examples of formal amendments:

1. there is a new allegation w/c relate only to the range of penalty that the court might impose in the course of the conviction. So it's just the range. U follow? It did not change the imposable penalty but merely the range.

2. an amendment w/c does not charge another offense different or distinct from that charge in the original one.

3. additional allegations w/c do not alter the prosecution's theory and will not surprise the accused.

4. an amendment w/c does not adversely affect any substantial right of the accused and

5. an amendment that merely adds specifications to eliminate vagueness of the information.

What now is the TEST? According to the case of Ricarse, the test as to whether a defendant is prejudiced by the amendment, is whether a defense under the original information would be available after the amendment is made. W/N the defense available in the original information is still available after the amendment. If the answer is yes, it is only a formal amendment that will not prejudice the rights of the accused.

Now, lemme now ask you this question: can the court motu propio order, o tanungin kayo sa bar? Can the court order an amendment without a motion to amend? Ha pwede? Sinabi sa bar exam, enumerate instances where the court can order an amendment, aba mahirap na tanong yan pag tinanong tama? What are examples? In criminal cases, if there is what? A MOTION TO QUASH. Tama? If there is a motion to quash on the ground that the information does not constitute an offense or is defective, the court instead of what? This is in rule 117, the court can, instead of dismissing it, will order the amendment. Only when you fail to amend, will the court what? Order the dismissal of the case. Are we clear? Now, let me slide slowly ok, for purposes of comparison, to a civil case. Can a court order an amendment without a motion to amend or notice to amend under rule 10? Can the court amend? Order an amendment? YES! What are the instances?

1. is there is a motion for Bill of Particulars, instead of denying or granting it the court can order an amendment tignan nyo sa code yan, nasa Code yan.

2. another instance, when you file a MTD under Rule 16 wherein the court can what? Either grant deny or order an amendment. So these are instances wherein the court can order an amendment even w/o an application for an amendment are we cleat?

Now, let us now move on to another item. I am still in this section, sir what is that? EXCLUSION. Do you know what exclusion is? Sir alam ko lang amendment. Class andaming possible questions dito sa topic na to. What is an exclusion? It means you EXCLUDE an accused even before an accused pleas you exclude the accused. The prosecution moves for it, with notice to the offended party and number 3 with leave of court. A Motion to Exclude to be allowed should be filed before plea. Ok. What else could be filed before plea? Aside from a Motion to Exclude? Downgrading. A motion to downgrade the offense. Sir for example? Murder to Homicide. Attempted homicide to serious physical injuries. Qualified theft to (simple) theft, u follow? Can you downgrade? Yes, before what? Before plea. Ok. That can happen. Now, lemme call your attention to the case of Yu v. Presiding Judge of RTC Tagaytay, june 30 2006, let us distinguish Discharge as a State Witness from Discharge from the Witness Protection Program. Before I even discuss that, still on the case of Yu, let me distinguish, discharge as a state witness and discharge from the information. Can u follow? Discharge as a State witness – where is that found? Rule 119 sec 17, yan un, yan yung gusto nyo marinig, naku state witness, star witness, diba yan yon? When you speak of discharge of an accused from the information that is rule 110 sec14, that is what you call EXCLUSION! What is the difference? When you talk of exclusion, will double jeopardy attach? NO because for double jeopardy to attach there should be a court of competent jurisdiction, there should be a complaint or information, there is a valid plea and there is conviction, acquittal or dismissal without the express consent of the accused. Therefore when we talk of exclusion, does double jeopardy attach? NO! but when we talk of discharge and assuming there is a valid discharge, will double jeopardy attach? YES. Because when you talk of the discharge of the accused as a State Witness, under Rule 119, he should be arraigned although he needs to file an affidatvit, he should be arraigned. And the effect of a valid discharge as a State Witness is what? An acquittal. I hope that's clear, are we clear on that point? Still on the case of Yu, ot went on to discuss Discharge of the Accused as a State Witness, distinguished from what? Discharge of the accused under the Witness Protection Program. Ok nasusundan niyo ko? Meron tayong discharge under the Code, Rule 119, meron din tayong discharge but not under the code, but under the Witness Protection Program. Sir meron ba nun? MERON! E ano mga requisites? Yan yan ang mga tanong, memorize nyo ba yan? Sir mememorizin ko palang ☺ ok there is what? 1. There is no direct evidence. 2. There is absolute necessity of the evidence. 3. It could be corroborated in its material points. 4. The accused appears to be not the most guilty. 5. He hasn't been convicted of a crime involving moral turpitude. Can there be more than one state witness? Yes! Are the requisites the same? Yes! Yan ang sasabihin ko sa inyo, the requisites uner rule119 and under the WPP are the same! Only the procedure is different. Sir papano un? When you talk of discharge under the WPP, that is applied before the DOJ and at the same time approved by the Secretary and endorsed to the city or provincial prosecutor, can you follow? It is applied before the DOJ. Therefore, will double jeopardy attach? NO! because it is a discharge BEFORE PLEA, therefore there is NO double jeopardy. Ok I hope that's clear.

Lemme now discuss another point, lemme now discuss substitution. Aba, may substitution ba? Baka yung iniisip nyo yung substitution by reason of death, that is in rule 3 sec 16, that is in a civil case. Is there substitution in a criminal case? Sino gusting pumalit sa akusado? Sa inyo meron? Substitution of information, yon meron, so pag tinanong kayo sa bar, substitution of information. When the prosecution is convinced that it would not be able to convict or to cause the conviction of the accused, the prosecution can cause the substitution of information. Now,

let me now touch on, I think I've covered, what I have to cover on this point, and I've discussed venue. O, before I forget, this is important, I will have to restate it. I said a while ago, venue is jurisdictional, ang galing nyo no natutunan nyo agad! Sir alam na naming yan bago pa rito. VENUE IS JURISDICTIONAL – meaning the place of commission is the place where the action will be instituted. But there are exceptions, do you agree with me? Asan? Art. 2 of the RPC, wherein there is what? There is forgery, or illegal reproduction of Philippine bank notes and securities, though the crime be committed outside of the Philippines, can you be prosecuted in the Philippines in any RTC that first takes cognizance of the case? Yes you follow? Now, there is another exception, alam nyo ba yon? Hindi lang art.2 yan, nasan yon? The Human Security Law. If I'm accurate it's Sec. 57. Sir ano yun? Ngayon ko lang narinig yun a, Acts of Terrorism. Maybe rebellion, acts of terrorism coupled with rebellion, murder, homicide, sedition, coup d'etat, u follow? Will fall under this. Now why will it fall under the exception? Because in that section it says, though the crime is committed outside of the Philippines, it could be instituted and prosecuted in the Philippines. What are those offenses? A crime against the Republic of the Philippines. A crime or offense committed against Filipino citizens or directed to the Filipinos or a particular ethnic group—though committed outside of the Philippines could be prosecuted here in the Philippines? The answer is YES! What is the next? An offense committed against Diplomatic officers, or offenses committed w/in diplomatic premises of the Philippines, though committed outside of the Philippines, could it be prosecuted in the Philippines? YES. So those are the exceptions. But of course the standard provisions you will have to know. If the aircraft of a motor vehicle is in transit, from the point of departure, to the point of destination. When you talk of vessel, from the port of first entry or any ports that they may have to pass through.

24:50. Part2: RULE 111.

Let me now touch on Rule 111. Ok rule 111. Was there a question on this on the latest bar exams? I do not recall. What are the rules that I would like you to remember here? The rules are as follows:

1. Once a criminal action is instituted, the civil (action) is likewise instituted. That is the rule. Now, the next item, unless it is reserved, what else? Waived, or instituted ahead of the criminal case. Ok? Let us look at this. When can you reserve? You can reserve AT ANY TIME before the prosecution commences with the presentation of its evidence. It doesn't end there. And affording him what? The opportunity to make the proper reservation; again, and affording him the proper opportunity to reserve. Again, you just make a notation, you might use this when you're already a lawyer, because I do not expect that this will be asked in the bar exams. In ENVIRONMENTAL cases, nakita nyo ba yung procedure nyan lumabas sa dyaryo. ISANG CODE! When can you reserve? Just to note, only during arraignment! BEFORE arraignment. For ordinary cases, ito isang isasagot nyo sa bar, at any time before the prosecution commences with the presentation of its evidence and affording the private offended party to properly reserve.

Next item, can you file a counter-claim, cross-claim, third-party complaint in a criminal case? The answer is NO! that is provided for in the Code and cited in jurisprudence, Republic through DPWH v. CA of 2003. In that case, aside from the SB case, the private contrtactors instituted an action for recovery of sum of money against the Govt. there was a move to what? To consolidate the SB case and the? The action for recovery of sum of money frpm the government. Did the SC allow the consolidation? The SC said NO! you can NOT consolidate, first, the SB has no jurisdiction for recovery of sum of money and to allow consolidation would amount in allowing a counter-claim, cross-claim in a criminal case. U follow? So that is why it is not allowed. Now, do you have filing fees for damages claimed in a criminal case? Do you pay filing fees? Hindi ko na ididiscuss yung sa civil, maganda sana idiscuss e, kaya lang mauubos na ang oras natin dyan. Ok do u need to pay filing fees for damages claimed or

alleged in a criminal case? The answer is YES! You are to pay damages except for? ACTUAL, that's right! Except for actual damages, you are to pay filing fees for moral, exemplary, nominal and? Temperate, damages.

How about BP 22 cases? Are you to pay filing fees for BP 22 cases? The answer is YES! On all claims for damages, you will have to pay, "sir including actual damages?!" YES! I repeat, moral, exemplary, nominal, temperate, actual, and liquidated! For BP 22, all will have to be paid, ok? Now, will BP22 class, the next question is, fall under ordinary criminal procedure or will it fall under the rule on summary procedure? SUMMARY PROCEDURE. Maliwanag ba? Nagkakaintindihan ba tayo? Tandaan nyo yan a! BP 22 falls under the RULE ON SUMMARY PROCEDURE! "Sir anong kaibahan nun?" e Summary e, ok? For summary procedure, there will be no direct examination but submission of? Judicial affidavits, subject to cross-examination. And the most important item that you will note, why BP 22 was downgraded to Summary Procedure is what? Can the court issue a warrant of arrest once an information for BP 22 is filed in court? Can the court issue? What is the answer, true or false? Ay hindi pala, walang statement dun, can the court issue? IT CAN'T. On Summary Procedure, and remember this, on Summary Procedure unlike ordinary procedure, once the information is filed, the COURT NEED NOT ISSUE A WARRANT OF ARREST – yun ang kaibahan nun! Basahin nyo mamaya. Yung mga unbeliever, ganyan, you read it later on. Para sabihin niyo "ay tama pala yon!" ganun yon class, that is the reason why downgraded or included it in Summary Procedure, so that the agencies of the govt will not be used as collection agencies of the finance companies, ganun un. That is why once there's an information for BP 22 no warrant of arrest! "Sir kelan magkaka-warrant?" if you have been notified by the court, repeatedly, and you failed to appear in a Summary Procedure case, only then will you what, receive a warrant of arrest.

Considering I mentioned Summary Procedure, let me now touch on the jurisdiction of the MTC on Summary Procedure in criminal cases. What is the jurisdiction? For offenses or where the penalty for imprisonment does not exceed 6yrs, ok. Now, let's compare. How about Summary Procedure in civil cases, do you follow the same rule? What numbers should you remember? 200 and 100,000! That was amended, Rule on Summary Procedure in 2002. I will repeat, civil to ha! Criminal – penalty for imprisonment does not exceed 6yrs! For civil, in metro manila not exceeding 200, 000, outside of Metro Manila, not exceeding 100, 000. And because of this, I need to touch on small claims. What is the jurisdiction of the MTC or the small claims court for claims not exceeding 100, 000. And please take note even the civil aspect of a criminal case or arising from delict if the claim for sum of money or damages does not exceed 100, 000.

Now, lemme now proceed and touch on another item, do you need to reserve the civil aspect of a BP 22 case? You can NOT reserve the civil aspect of a BP 22 case. Let us look at this scenario class, a civil action was instituted ahead of the criminal arising from the delict, and there was a subsequent criminal action instituted arising from the same delict, what happens to the civil case? It will be? SUSPENDED. In whatever stage it is, it will be suspended. Could it be consolidated? YES! It can be consolidated. What if the criminal case was instituted ahead of the civil? Can you file a civil case arising from the delict? The answer is NO! you will have to wait until the termination of the criminal, assuming you had a valid reservation. Now, can a petition for a writ of amparo be consolidate with a criminal case? If it involves the same violation or threatened violation: YES it can be consolidated! Can a civil case be consolidated with a petition for a writ of amparo? NO. can a petition for a writ of amparo be consolidated with an administrative case? The answer is NO. ok you can not consolidate.

Now, let me now do some exercises. Let's say you have a client, for example in the bar exams this is the question, and your client-accused dies, what happens to your criminal case? Well it depends. If he dies, after arraignment, this criminal case, including the civil arising from the delict will be what? It will be extinguished. It will be dismissed. But if the accused dies, before arraignment, the case can proceed against the estate. You can claim

against the estate. Can there be substitution of accused in a criminal case? Of course the answer is NO, but even before you answer no, kindly refer to Sec4 2nd paragraph. You could scan through it, is it, does it ah, does it look familiar? Ha? E kung sagot mo "sir hindi, ngayon ko lang nga nakita yan e" hindi ka nakikinig sa civil procedure. Look at that it says that if the person dies it is the duty of the lawyer to inform the court within 30days from the fact thereof correct? That is similar if not exactly the same to the provision on rule 3 sec 16 – substitution by reason of death. "sir bakit meron nito rito? It's a criminal case" you have to look at the provision carefully. This provision will come into play, substitution of the so-called accused, if it arises from an independent civil action. If its an independent civil action, the accused dies, can there be substitution? Yes, by who? By a legal representative. U follow? Do u need to reserve today an independent civil action, art32, 33, 34, 2176 of the civil code? Do you need to reserve it today? NO MORE, that's a BIG NO! ung estudyante kami iba sagot dyan hindi ko sasabihin baka yung mali ang matandaan nyo. Today do you need to reserve? NO! you don't need to reserve an independent civil action. Now, it doesn't end there. Substitution of the accused wherein a legal representative will be named, will come into play also when the claim arises from other sources of obligation. Meaning? Law, contract, not delict, quasi-delict or quasi-contract. U follow? Other sources of obligation.

Now, there is one item that for the longest time has not been asked in the bar exams. What is that, you know? Prejudicial question. Abangan nyo yan! Alam nyo yung ano, yung ah, substitution, last year lumabas un! 2003 pa lang inaabangan na namin un! For almost 6 years, never been asked, but the question in last year's bar exams was a bit complicated, because its an application not only of sec16 rule3 but likewise an application of rule3 sec 20, the question was misleading. The judgment in that bar exam case is null and void. Because they effected a substitution when the nature of the action was for a sum of money! And it was the defendant who died the court ordered substitution. There could be no valid judgment, because what should have taken place was a continuance of the case against the estate. Now, ito class yung example matagal na ring hindi tinatanong! Prejudicial question, what are the things I would like you to remember? When can you file a motion for suspension of action on the ground of prejudicial question? Kelan pwede? Class, there are 2 opportunities to file the motion: 1. Before the prosecutor conducting what? Preliminary investigation. Are we clear? Now lemme ask you this, what is suspended? The civil or the criminal case? It is the criminal case that is suspended, kaya ka nga nagfa-file dyan ng motion e, right? Otherwise, you will file it in the civil case. You will file the motion to suspend on the ground of prejudicial question in the criminal case before the prosecutor, that is one. And the second 2. In court before the prosecution rests is its case. So bago tumigil ang prosecution in the presentation of its evidence, can you file a motion to suspend proceedings in the ground of prejudicial question? The answer is YES. If I were to discuss this in an MCLE with lawyers, I will not discuss it in the same manner as I will do it now. But because you will take the bar, I need to be very strict with the rules. The civil should have been insitituted ahead of the criminal, tandaan nyo yan! And there is what? 2 cases: civil and the other criminal case, and the issue in the civil case is what? Is determinative of the guilt or innocence of the accused, so tandaan nyo yan, yan yung mga rekado na kelangan alam nyo. Kasi pag abogado nag iiba e, nag iiba na yan. There are cases, there are jurisprudence that considered, one civil one administrative as akin to prejudicial question. I don't want you to even consider that. So if there's a question in the bar exams, use these requisites. U follow? Now, let me give you the case of Coca-cola Bottlers v. SSS, a July 31, 2008 case, the question is can there be a prejudicial question when one is an NLRC case, a labor case, and for one a criminal case for violation of the SSS Law for non-remittance of the SSS premium – obviously this is a criminal case. But, is the labor case a civil case? NO. So there could be no prejudicial question.

Now, the most common example on prejudicial question that I will have to give you, to test whether or not you know the rules that I have given you is this: a criminal action for Bigamy, ah dapat alam nyo sagot nito a, nakatawa kayo, tignan natin kung alam nyo sagot. Mr. A married Edna, Mr. A believing that his marriage with Edna is void,

married Celia. Edna then instituted an action for Bigamy, but even before it was instituted, there was already a pending case for Nullity of Marriage. Is the civil case for nullity of marriage a prejudicial question? NO! hindi naman ganun lang ang sagot sa bar, kailangan ipaliwanag nyo. Ano un no? tama lahat ng sagot ko, puro no yes tama e no, pareho kami ng kaklase ko, class hindi ganun un, magkakatalo kayo sa sagot. What is the reason, because today class, there has to be JUDICIAL DECLARATION OF NULLITY OF MARRIAGE. Until such time, you should not remarry. Now, let's now touch on the case of Majestrado v. People, a july 10 2007 case, and it said, and I will quote *"for a prejudicial question in a civil case to suspend a criminal action, it must appear that not only said case involves facts intimately related to those of the criminal prosecution, but it should also establish the guilt or innocence of the accused."* So there are 2 requirements based on the case: 1. The facts should not only be intimately related, and 2. it should establish the guilt of innocence of the accused.

Let us touch on acquittal. Meron kasi dyan acquittal. What about it? Does it mean that if you're acquitted, your client-accused is acquitted, he is not civilly liable? NO, acquittal will not bar a civil action in any of the following cases: NUguid v. NIcdao feb 2006:

1. the acquittal is based on reasonable doubt, as only preponderance of evidence is required in civil cases;

2. where the court declared that the accused's liability is not criminal but only civil – that's the declaration of the court, not criminal, only civil; and

3. where the civil liability does not arise or is not baes upon the criminal act of which accused was acquitted.

Now, lemme now proceed to another item. Rule 112. Class, ito very, this is very interesting. A lot of questions can be asked. We'll try to simplify it, I hope that you still have the energy to listen, because ah, I need to explain section5. Ngayon bago ako magsimula, sige buklat-buklatin nyo yang 112 nyo, pag may 9 sections ka sobra ka ng isa! Para kang sampung daliri mo may labing-isa ka, sobra ka. O sino senyo may 9 sections? Wag mahiya. Aba e naku andaming may nine sections! Class you should only have 8 sections! Based on the amendment of 2005! Sir what was deleted? Ung old section5. Why? Because today a municipal trial court judge no longer conduct preliminary investigation, therefor the old sec5 – requiring the review of the resolution of a municipal trial court judge by a provincial prosecutor has already been deleted. Ok?

Now let us proceed. Class, if I illustrate will you see? There's a camera, ok. Just to be very clear, a hindi pwede, wait wait. O wala ng illustration? No no I will just do it this way, I will illustrate then I will explain, ok? You know class what is important for you to take note, is that there are certain cases, that will have to go through preliminary investigation, and there are cases which by law will not go through preliminary investigation, ok? And what are those cases? Let us look at cge galawin mo na, PI, NO PI, tanungin mo sila dun kung kita o, ok? Pi no pi falling under the rule on Summary Procedure. Now, let me ask you this, in Manila, or a chartered city, or in the provinces – outside of Manila/chartered city, before whom should a preliminary investigation be conducted? Before a prosecutor. And when you say preliminary investigation, what provision of rule 112 will apply, yan! Para pag narinig nyo, anu ba yun? Kasi minememorize nyo yan "that will engender a well-founded belief that the crime has been probably committed" ah okay memorizing nyo, sana itanong sa bar yan ha, yang definition para masasagot nyo rin! Now, what provision will apply when you talk of preliminary investigation? The entire of sec3 of rule112, ung BUO! The entire of sec3. When you say it does not require preliminary investigation, what provision will apply?

Rule112, sec3a ONLY. I will explain that. When you talk of falling under the rule on Summary Procedure, what section will apply? Section3a ALSO, but that is not referred to by the provision. Now, what is the cut-off when you talk of preliminary investigation? It is at least 4y 2m 1d! the next question I have is, will all cases in the RTC require preliminary investigation? Is it expected that all cases in the RTC has gone through preliminary investigation? What's the answer? YES! Because the jurisdiction for the RTC is exceeding 6yrs! Therefore, all of the cases falling or eventually filed in the RTC should have gone through preliminary investigation, as a rule. Are we clear?

Now, lemme ask you this: will all cases in the MTC go through preliminary investigation? NOT ALL. Only those cases wherein the penalty is at least 4y2m1d to not exceeding 6yrs! Maliwanag?! Un may PI un. How bout below 4y2m1d? will it require preliminary investigation? NO.

Now let us look at provinces, outside Manila a chartered city. Where will you file your case for purposes of preliminary investigation? The same! PROSECUTOR or if it involves a public officer? What? The Ombudsman. If it does not require preliminary investigation – where can you file? In the province, outside metro manila, chartered city, YOU HAVE AN OPTION of filing it where? Before the office of the provincial prosecutor, or you could also file it before the? Municipal trial court on a direct filing. K? now, for those falling under the rules on Summary Procedure, in a chartered city like manila, you could file it before the office of the? Prosecutor. Outside of metro manila, you can file it before the prosecutor or municipal trial court on a direct filing.

Having this in mind, let us now discuss, section3. What does sec3 tell us? 58.40 pag tinanong kayo what is preliminary investigation? The conduct of preliminary investigation? Its very simple. Let me explain this for you. When you talk of sec3, it starts with the filing of an affidavit-complaint. And that affidavit-complaint should be duly sworn to, before whom? It should be duly sworn to before a public prosecutor or a public officer authorized to administer oath. Can you subscribe before a notary public? Only in the absence or unavailability of a public prosecutor. Now, its not yet done, im not yet through with preliminary investigation, then what follows? The public prosecutor can either dismiss it outright or issue a subpoena. Now lemme ask you this next question: is a subpoena an indispensable requirement for the public prosecutor or assistant prosecutor to acquire jurisdiction over the person of the respondent? Remember I used the word "respondent" im not yet using the word "accused," "sir bakit?" "e PI pa lang yan e" hindi pa naman sya akusado e. It becomes an "accused" once the information is filed in court! It becomes People of the Philippines, for now it's the offended party against who? The respondent. 10056 are we clear? So is it necessary that the subpoena should've been received by the respondent? The answer is NO! secd of rule112 sec3, subsection. If a subpoena had been issued and not received, or refused to be received, the public prosecutor can already render a resolution or issue a resolution. Receipt of a subpoena is not required for the court to acquire jurisdiction over the person of the respondent. Can preliminary investigation be dispensed with? Is preliminary investigation a constitutional right? Or only a statutory right? Yan tinanong kayo, sabi explain. It is what? It is a statutory right –that is why, absence thereof will not render the information defective. In fact, for purposes of an inquest, the arrested person may decide not to ask for a preliminary investigation. It is only a statutory right. Now let me call your attention to the case of People v. Anonas, a 2007 case, class, will the concept of sppedy trial apply in preliminary investigation? Meaning violation of your right to speedy trial, under rule119 or speedy disposition of cases under the constitution, is that applied in preliminary investigation? The answer is NO. I gave you this case because this gave an example of an inordinate delay. It is not violation of speedy trial, because speedy trial does not apply in preliminary investigation. But there could be what? INORDINATE DELAY. And if there's inordinate delay, there could be violation of an accused's right or a respondent's right to due process. And let me read to you a portion of that case of People v. Anonas: "the preliminary investigation of the respondent for the offense charged took more than how many years? 4 years, he was arrested for the offense charged Nov 1996, having been arrested without a warrant, and not having been afforded a formal investigation, he prayed for

reinvestigation of the case, the trial court in an order, ordered for a reinvestigation – for this reason the case was returned to whom? To the office of the prosecutor. Pag ginulat kayo sa bar exam, what is a reinvestigation? That is not defined in Rule 112, a **reinvestigation** is similar to a motion for reconsideration, but you are asking for new preliminary investigation – that is a reinvestigation, now, which was terminated only on February 16, 2001, wherefore, already 4 years had lapsed, ok? In fact, even the Solicitor General admitted it took sometime for the city prosecutor to terminate and resolve the reinvestigation. This kind of delay, is that which violates the right of the accused or the respondent in the conduct of the preliminary investigation. And we call that what? An inordinate, INORDINATE delay.

Now, let us now proceed and discuss, I've discussed up to subpoena. Once subpoena is received, the respondent should file what? A counter-affidavit. Pag ikaw ay mainipin, hangga't dito may PI na. If you're NOT the type of person who would like to read thoroughly, but I suggest you read thoroughly, once a counter-affidavit is filed, the process of preliminary investigation has been satisfied. Because the next step is what? Resolution of the assistant prosecutor, can u follow? So, for you to have a preliminary investigation, there should be an affidavit-complaint, and if the prosecutor/assistant prosecutor does not dismiss it, he issues together with the subpoena, requiring the other party to file a counter-affidavit within a period of 10 days, yun na un PI! What about 3a? do u need to go through that process when you talk of 3a? NO! look at 3a, of sec3 rule 112, it only says an affidavit-complaint is filed duly subscribed before the prosecutor, that is 3a, for this reason, once the affidavit-complaint is filed, an information will be filed in court. So you see the difference between sec3 as a whole, and sec3a.

Now, lemme now ask you this, my next discussion point is Warrant of Arrest. O wala pa ko sa rule 113, baka lumipat kayo sa 113, warrantless yon! Sec5. Iam still discussin warrant of arrest. When can the court issue a warrant of arrest? This you have to listen carefully, and I will walk you through the procedure. And this will help you until you become a lawyer. Para hindi ka nagtatanong sa Clerk of Court sa Sheriff, sa lahat ng clerk sa juzgado, tuturo ko sa inyo, class madali lang e. it's in the law. When can the court issue a warrant of arrest? For all RTC cases, listen to this, this is in Sec5, once the information is filed in court, what can the court do? The court will issue a warrant of arrest. That's one. So class, in simple words, if the problem presented to you in the bar exams is RTC, a warrant of arrest will naturally issue if there is probable cause. U follow? That's one. A warrant of arrest, second is the court can dismiss for absence of probable cause. Para hindi nyo makalimutan bibigyan ko kayo ng example na nababasa nyo sa dyaryo, kasi yan pag sinabi ko lang makakalimutan nyo e. Dismissal of the case for absence of probable cause. What is the more recent example of this? Si Lacson, si Senator Lacson. That was the provision used by his lawyers, to file a motion to dismiss for absence of probable cause, "sir should there be a judicial determination of probable cause?" when there is a determination of the public prosecutor already of probable cause, let's not be confused. The public prosecutor in the conduct of preliminary investigation will determine what? Probable cause. Once the information is filed in court, can the court determine existence of probable cause? Yes! And if he doesn't find probable cause, can he dismiss the case? Yes! Can he call for a hearing for further presentation of evidence, within a period of a number, lets say of 10 days? Yes he could do that. So are we clear? All RTC cases will have to follow this procedure, any of this. Now, lemme ask you this question: once a warrant of arrest had been issued, can the court dismiss it for absence of probable cause? Can u follow? The court issues a warrant of arrest, information is filed, can the court dismiss for absence of probable cause? NO, sir baket? E nag issue sya ng warrant, edi may probable cause. U follow? Once a warrant of arrest has been issued the case should necessarily proceed to arraignment, u follow? Pre-trial, trial. If the court will dismiss it, it should be prior to the issuance of a warrant of arrest.

Now, let us look at MTC. Will the MTC follow the same procedure, when it comes to issuance of a warrant of arrest? Listen to the answer, the answer is yes, ok but only for those cases that went through preliminary

investigation, can u follow? For those offenses with a penalty of at least 4y2m1day. Once information is filed in court, u follow the same procedure. Warrant of arrest – if the court finds reason for a warrant of arrest; dismissal for absence of probable cause –or to conduct a hearing for the presentation of evidence. Maliwanag? Simple ano? Basta dumaan ng PI yan ang procedure. So nakaabang ka na, mag-iisue ba ng warrant? But if there is no preliminary investigation, if there's no preliminary investigation, will we follow the same procedure? If there's no, meaning, the offense is below 4years, 2months and 1 day – will you follow sec5? The answer is NO, ok, maliwanaga. So what provision will apply? Sec8, your old sec9, your last section will apply, basahin nyo, eksakto! Not falling under Summary Procedure and not requiring preliminary investigation, am I right? K, what is the procedure? Once, class, and you will have to look at subsectionB ok, because subsectionA covers prosecutors, you have to look at that which covers the court. Once the information is there, or once the municipal trial court is convinced, assuming it is filed directly, with the Municipal Trial Court, the MTC could do any of the following. O, let us say, it was filed before the office of the prosecutor, and an information is filed, will the MTC issue a warrant of arrest as a matter of course? Or does the court have jurisdiction, or does it have DISCRETION to decide on whether or not to issue a warrant of arrest? The issuance of a warrant of arrest for offenses not requiring preliminary investigation is subject to the discretion of the court. And in lieu of a warrant of arrest, the court could issue what? SUMMONS! This is the only instance wherein a criminal court can issue summons. So here, the issuance of a warrant of arrest is subject to the discretion of the court, and in lieu thereof the court can issue summons. Can the court also dismiss for absence of probable cause? The answer is YES. Can the court conduct a hearing, yes. So it's basically the same except that the issuance of a warrant is subject to the discretion of the court.

What if it falls under the Rule on Summary Procedure, and the information is already in court? Class, it is already in court, what will you do? Will the court issue a warrant of arrest? I answered this already a while ago, will the MTC issue a warrant under the Rule on Summary Procedure? The answer is NO. that's under the Rule on Summary Procedure, the Summary Procedure court -the MTC will only issue a warrant of arrest if despite notice, you repeatedly absented yourself during the trial.

My last question on that point: "can a prosecutor issue a warrant of arrest?" the answer is a BIG NO. issuance of a warrant of arrest is a judicial function, it is not a function the Executive branch.

Now, let me now touch on another topic, a topic as interesting, and lemme touch now on the item on, ok, before I touch on this, wait para hindi ko malimutan no, I will just have to go through with this ***by conscience I want to go through with this.*** Ganun kasi ako e, minsan sabihin "wag na!" pero kailangan ko sabihin sa inyo e. An assistant prosecutor class handles the case, an assistant prosecutor cannot issue the resolution without the approval of a city or provincial prosecutor. Ok maliwanag un! It could only be issued if approved by the city or provincial prosecutor. If the recommendation of the assistant prosecutor is what? To dismiss and the city prosecutor does not agree, can the city prosecutor on his own prepare the information? Yes. Can he require another prosecutor to prepare the information without need of preliminary investigation? The answer is yes, are we clear? That's what he could do. Now let us take note class of this next point, where do you go from a decision of a city or provincial prosecutor? You could go to the DOJ, I mentioned this a whilre ago, on a Petition for Review within a period of 15 days.

Now let us look at an example when you talk of an Ombudsman. Let us say an assistan prosecutor was deputized by the Office of the OB, it will be approved, the resolution will be approved by the city or provincial prosecutor, to be further reviewed by the Deputy OB of the area. And of course subject to the final approval of the OB.

Now let us now look at inquest, inquest. Again this is a question waiting to be asked, inquest. Napaka interesting nito class. Sino bas a inyo ang na inquest na? (LOL) sigurado meron, hindi ko naman kayo patataasin ng kamay no, sino nang na inquest sa inyo? Wala, do not be sad, that is a good experience, that may help you become a lawyer. Ok. Alam nyo ba may kakilala ako tinulungan ko pa, law student sya pa non, di ko symepre sasabihin kung sinong pangalan no, that experience of his, na nakursunadahan siya, di ko naman masabing nakursunadahan because it was nighttime already around 2 o'clock in the morning, and I had to give some assistance, he was arrested, he was a law student then. Arestado! 3rd year ata sya non, ako ung pumunta sa prisinto e, abogado na sya ngayon. I believe personally that he became really focused, on one thing, to become a lawyer because of that sad experience. Siguro sabi nya "mga kayo a, magiging abogado rin ako!" And he took it just one take ok.

SEC. 3. *Procedure.*—The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, of if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

So let us look at inquest. Is inquest the same as preliminary investigation? The answer is NO. o cge nga hanapin nyo sa rules kung may definition ng inquest, wala. Nakalagay lang inquest, what is the procedure before an inquest prosecutor? An inquest prosecutor will decide on whether to what? To detain you or to release you for further preliminary investigation. The duty of an inquest prosecutor is either to order that you be detained, if the evidence appears to be strong, or that you be released for what? For further preliminary investigation. What do I mean by "further preliminary investigation?"class very simple, it only means that you will have to go through **sec3.**"e sir bat ganun wala namang affidavit-complaint." The affidavit of the arresting officer, will take the place of the affidavit-complaint. U follow? Kasi sinabi ng piskal, mahina ang kaso sayo, balik! But it doesn't mean it will be dismissed, u follow? It will not be dismissed, it will what? Proceed! Ok? You will be released for further preliminary investigation.

Now, my next point here, are we clear about what an inquest prosecutor can do? Ok. Now. Lemme ask you this question: Will all cases be subject to inquest? Lahat ba ng kaso nai-inquest? Class ha, I would want to **disabuse** your mind, "sir parang hindi ko masundan a" Ang ini-inquest lang class yung warrantless arrest! Ok? Maliwanag? Pag finile-an ka sa piskalya, hindi yun warrantless arrest kaya hindi ka i-inquest. Are we clear? Ang ini-inquest ung katulad nito, mamayang gabi, mag-ingat kayo sa pag-uwi, hahaha, baka makursonadahan kayo, masampolan agad yung pinag-aralan naten, "Ah alam ko yan! Napag-aralan ko yan!" ok? Naglakad ka, mukang wala kang patutunguhan, sabi nito "vagrancy!" hinuli ka ng pulis, Bagansya ka! Ngayon, dinala ka sa prisinto, u follow? You were arrested, where will you be brought? If you're arrested under Rule 113, you will be brought to the nearest police station, hindi kung saan! Hindi ka magiging invisible, you will be brought to the nearest police station and what will they do there? (someone shouted BUbugbugin!) "BUbugbugin daw haha, bubugbugin? Hindi naman hahaha." You will stay there for a while, of course not violating your right, to illegal detention, you will just stay there while they prepare your arrest report and their affidavit. Once they're ready with your arrest report and

their affidavit, the arresting officers, you will be brought to whom? Inquest prosecutor? WRONG! Vagrancy does not require preliminary investigation so no inquest. U follow? Naintindihan nyo? Maliwanag? Yung Bagansya, hindi ini-inquest yan! "hindi sir!" Maniwala kayo. Kung may mga pulis dito ang bukang-bibig nyan inquest, basta dinala sa presinto inquest. I had a student who was a Major, "sir buti na lang" sabi nya talaga o, nagpakatotoo sya in front of the class, "sir buti na lang tinuro nyo sa klase, ang tagal ko ng pulis, mahigit isang dekada, ganun pala un!" akalain nyo?! Yun pala no, ang pagkakaintidi nya ng inquest iba! Class, remember only, those offense that would require what, PI, will go through inquest. Therefore, the penalty for the offense should be at least, 4y2m1d, like illegal drugs, selling e i-inquest ka! U follow? Child trafficking, i-inquest ka. Smuggling, i-inquest ka. Pero vagrancy, prostitution di ka i-inquest, malicious mischief, "sir kung di ka i-inquest anong gagawin, uuwi ka na?!" aba'y HINDEH! What will they do? You will be immediately detained! U follow? Only those offenses that require preliminary investigation will go through inquest. "so sir what happens?" the next step for you if it's, your offense, below 4y2m1d, is to apply for? BAIL – because there is already deprivation of liberty.

So the next rule that I would like you to remember is what? Only offenses that would require preliminary investigation will have to go through inquest. Are we clear? So I hope that's clear, those not requiring preliminary investigation need not go through an inquest proceeding.

Ok now, who will conduct an inquest proceeding? A prosecutor. What if there's no available prosecutor? Can the case be filed directly in court? The answer is YES in an instance when theres no available public prosecutor. This will not happen in Metro Manila, in Manila in particular wherein you have almost a hundred prosecutors, in QC where you have around almost a hundred, that will not happen, maybe in the provinces that will happen.

Now let us now proceed to another item, my next item would be: "will the records of preliminary investigation form part of the records in court?" this was also touched upon in the Guidelines of Pre-Trial and Modes of Discovery in 2004. Will it form part of the records of the case? The answer is NO. if you want it to be part of the records, in the criminal case in court, you should apply for an order to elevate the records to the criminal court.

RULE 113

Now let us now touch on warrantless arrest. I am now on Rule 113 on warrantless arrest, what about warrantless arrest? The most important section there class is really, Sec5. The first that you will have to remember is? *In flagrante delicto* what do I mean? In flagrante delicto means you were caught while committing, about to commit, or has just committed – is that complete? The answer is NO! it should have been committed in his presence. Ok? That will help you answer the questions in the bar exam, IN HIS PRESENCE. Meaning it was within sight, it was within your perception; IN HIS PRESENCE. Are we clear?

> **SEC. 5. *Arrest without warrant; when lawful.*** —A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> (b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.
>
> In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with section 7 of Rule 112.

Now, let me now touch on the second item, I will not give you an example of (a) you know (a), all you need to remember is what? In his presence. What is the second item? The crime has just been committed or wait, the same as subsection (a), the crime has just been committed. Is it the same as subsection a? NO! because it is NOT in his presence. It is not the same as subsection a, but based on personal knowledge of facts and circumstances, there is what? Probable cause to believe that he has what? Committed it. Class take note the arresting officer in subsection B is not there at the scene of the crime. Take note of that. He did not see it happen. It has not just been committed in his presence, but, it has just been committed

and based on the facts and circumstances he was able to conclude that the person to be arrested has in fact committed it. Let me give you an example, Mr. A was on board an FX, and it was held-up, one person made a statement, this is a hold-up! So bring out all of your valuables! (sosyal na holdaper e no? ☺) he (Mr.A) pulled out his newly purchased cell phone, once all the valuables were taken by the hold uppers, they left, they jumped out of the FX, MR. A immediately alighted the FX, saw a police officer ran towards him and explained and pointed to the running hold uppers, can the police officer arrest them? Yes. Was it in his presence? NO, but based on facts and circumstances, there is what, reasonable ground to believe based on probable cause, that he has committed it.

What is the third? The 3rd is easy. A person who escapes from a prison cell, whether permanently detained or temporarily detained, now let me ask you this question, dito ako siguro matatapos: **"Can the person be arrested without a warrant outside of sec5?"** YES. A person who, under sec13, has been arrested without a warrant escapes or is rescued – could he be arrested without a warrant? Yes he could be arrested without a warrant. Another instance wherein an accused could be arrested without a warrant is Rule 114 sec23, sir what is that? Paragraph 2, a person, class, take note, who is out on bail cannot depart from the Philippines without an approval from the court, take note of that. A person who is out on bail cannot depart or leave the Philippines without what? An approval of the court. If he departs what happens? He could be arrested without a warrant. I was able to use that a number of times, in court, and a number of them settled because they cannot depart from the Philippines. I was for the prosecution, the accused cannot from the Philippines because I always call the court's attention "Your Honor, they have not sought the approval of the court to depart, therefore they should be arrested without a warrant." Now lemme ask you this question: "Can a private citizen effect an arrest?" yes, what is the duty of a private citizen to effect an arrest? He will have to state his intention and the casue of the arrest, if the arrest is to be made by a public officer without a warrant, he would have to state his authority and the cause of the arrest. If the arrest is by virtue of a warrant, the arresting officer will have to say that he's arresting with a warrant, without necessarily presenting the warrant of arrest, and the cause of the arrest. In all of these three, there is no need to state the cause if stating the same will imperil the arrest, or will allow the accuse to what? To flee or to escape. What is the effective life of a warrant of arrest? Is it 10days? No! until served or set aside by the court. It is effective for as long as it is not set aside by the court, for until it is served. That is the effective life of a warrant of arrest. The 10days as provided in your section, is ONLY the 10days for the public or police officers to comply with the service of the warrant of arrest. What is the effective life of a search warrant? Sir until served, NO! the search warrant is only effective for 10days, thereafter it will have no effect already. I think it is already, is it already 7 o 9 na?! hindi nyo ko binobola ha, 9 na nga? O cge, so I will a, tomorrow I will start with Bail, class bail is a long provision, this is very interesting, I recall in 2006 when Justice Pardo was the examiner, his question was "distinguish bail as a matter of right and as a matter of discretion" I do not recall a question like that last year or in bail, but we will discuss lengthily the rest of the provisions tomorrow, so good night. ☺

PART III

BAIL RULE 114

Ok, let's proceed, before I start on Rule 114 on Bail, let me call your attention to a number of cases, which I believe will touch on Rule 112. The first, 2007 case **People v. Laguio**, it is an example of the application of sec5 of rule 113. This jurisprudence declared that for subsection a, sec5 of rule 113 to apply, 2 requirements should be present, 2 requisites. Number one, the person to be arrested must execute an overt act, there should be an overt act indicating that he has committed, is actually committing, or has just committed. So number one, there has to be an overt act, number two, such overt act was done or committed in his presence. So you are to remember 2 things, number one overt act, and number two, in his presence or within the view of the arresting officer. In this particular

you would note, that the SC tried to apply sec5, subsection a, b and c, and briefly the factual antecedents are as follows: Mr. Lawrence Wang was walking from his apartment, Maria Orosa apartment, and was to enter into his parked BMW. Based on this facts an arrest was effected by the arresting officers, the first question is, was there an overt act committed in their presence? Was there an overt act? NO. will it even give rise to a suspicion? The answer is NO! so subectionA will not apply, will subsection B apply? Meaning a crime has just been committed and based on the facts and circumstances presented to him, there is probable to believe that he committed it? Will subsection B apply? The answer again is NO. therefore, this scenario or this set of facts, will not fall on warrantless arrest.

Now let me call your attention to what I call as **DIVERSION**. Have you heard of diversion? "ah sir, ah yung hi-way dyan, yan ung diversion road" no, that is different, "o sir yan yang criminal case the amounts are diverted" –NO. have you heard of diversion? Juvenile and Welfare Act of 2006, and repeated on the Rules of the SC on Child in Conflict with the Law. U follow? I think you know at this point in time that exemption from criminal liability has been increased from 9 years of age to 15 years of age. If the child is below 15 years of age, the child is what, exempt from criminal liability, u agree with me? And for this reason, he will not be detained, if arrested he will be placed in the custody, or immediately released to his parent or guardian, or if he has no known parent or guardian, to a non-governmental organization or a religious organization. However if the child is above 15, but below 18 and did not act with discernment, the same will be followed. But if he acted with discernment, DIVERSION will follow, that is diversion. What sir is diversion? It's a method of conciliation a method of mediation, a method of rehabilitating the accused. Here you will have to understand whether there are what, offended parties, because there are offenses where there are no offended parties – in which case he will have to go through rehabilitation. Now, diversion, kindly take note, if the penalty for the offense does not exceed 6years, would be before whom? The Barangay u follow? However class, if it is in excess of 6yrs, diversion should always be in COURT.

Now, lemme now call your attention to another case, the case of **Ortega v. People**, an Aug 20 2008 case, you know diversion as a concept can be asked in Criminal Law, and even in Criminal Procedure. I recall the diversion was already asked in Criminal Law, but my next question is in the case of Ortega v. People, in the determination of the age, of a child in conflict with the law, is it the date of commission or the date of promulgation of judgment? According to the case, what is controlling, with respect to exemption from criminal liability of a child in conflict with the law is NOT the age at the time of promulgation of judgment, BUT THE AGE AT THE TIME OF THE COMMISSION OF THE OFFENSE.

Now, let me now call your attention to another item,ok, I think, I believe this is important that's why I'm giving time on this, **Adaza v. Abalos**, Feb19 2007 case, let us look at a scenario that the trial court, look at this, the case is already with the trial court, and following the doctrine of ***Crespo v. Mogul*** once an information is already in court, who has jurisdiction over the case? The court. Therefore, if the DOJ believes that the case should be dismissed, all that it could do is to file a Motion, and it is for the court to grant or to deny it. Now in this particular case, the trial court dismissed the case, because the resolution of the DOJ, ok, took cognizance of the Petition for Review filed by petitioner. So here the DOJ issued an order or resolution recommending the dismissal of the case. But the action of the DOJ dismissing the case, according to this case of Adaza, is with grave abuse of discretion. Therefore, if its with grave abuse of discretion and the judge acted on the motion for dismissal, is there a valid judgment? What did the Court say? "as the order of dismissal of the trial court was made pursuant to the void resolution of the DOJ, said order was likewise null and void." So if the DOJ order is void, it will not be improved if passed upon by the trial court, it said that said Order is likewise VOID. The rule in this jurisdiction according to the Court, is that a void judgment is a complete nullity and without legal effects and all proceedings and actions founded thereon are regarded as invalid and ineffective for any purpose, take note of that.

Now, considering I mentioned judgment, what is the rule when it comes to judgment? A judgment that becomes final and executory is immutable and unalterable meaning hindi mo na pwede baguhin yan. It is immutable and unalterable unless it is, there is what? Typographical or clerical errors, number two it is a ***non protunct*** (nosebleed sa spelling haha, but I believe that's the term ☺) judgment. What do I mean by a non protunct judgment? A non protunct judgment is a judgment that does not speak the truth. And number three, a null and void judgment. Still on the case of Adaza, let me call your attention on this next item, once an accused is arraigned what is the effect? Let us say there was absence of preliminary investigation or there was what some question on the conduct of the preliminary investigation, arraignment = waiver of right to preliminary investigation and the right to question the irregularity, so the moment the accused is arraigned, and enters a plea, all irregularity in the conduct of preliminary investigation are deemed WAIVED. And let me quote to you the decision of the Court: "the settled rule is that when an accused pleads to the charge he's deemed to have waived the right to preliminary investigation, and the right to question its irregularity. This precept is also applicable in REINVESTIGATION as well as REVIEW of reinvestigation." According to the Court "when the accused has pleaded to the charge he has effectively waived the reinvestigation of the case by the prosecutor" u follow? So if let us say there's a pending reinvestigation and he's arraigned and pleaded, the reinvestigation is already what, WAIVED. Another item, aside from the fact of waiver of irregularity in the conduct of preliminary investigation, an arraignment and a consequent plea will likewise lead to what? If your client enters a plea, it will lead to what, it is tantamount to a finding of probable cause. Ok? Its tantamount to finding of probable cause. E nag plea ka e! The information was read to you correct? And you entered your plea, it is tantamount to finding of probable cause. Let me quote from the decision: "while there is authority permitting the court to make its own determination of probable cause, and we have studied this yesterday, can the court make a judicial determination of probable cause? Yes, do u agree with me? Once information is filed, the court can make a judicial determination, however, it cannot be made applicable in the instant case, as earlier stated the arraignment constitutes a waiver of the right to a preliminary investigation, such waiver is tantamount to finding of probable cause. For this reason there is no need for the court to determine the existence or non-existence of probable cause ok. U follow? So the very moment you enter your plea, you cannot question absence of probable cause, you cannot ask the court "your Honor you have to dismiss the case because of absence of probable cause" can u follow? In the same manner yesterday, when I mentioned that when a court issues a warrant of arrest, it is tantamount to a finding of probable cause. U agree, ok? So the mere issuance of a warrant of arrest is tantamount to finding of probable cause. The entry of a plea is likwise tantamount to finding of probable cause.

Let us now proceed to bail, alam ko hinihintay nyo na yan, bail. This is a good point to discuss and ah, this is a very good point to discuss, and a good source of questions. You have how many sections on bail? Is it 26 or 27 sections? Ilang sections ba yan, twenty? 26 sections. Have you read it before the class? "Sir hindi na mamaya na lang kaya nga kami andito e, titingnan naming kung meron kaming mapupulot sayo and then tsaka na namin babasahen" ano? Ganun un no? let us see, now class, I would like you to bear in mind that when you talk of bail, there is what, deprivation of liberty. Now you will ask me, "sir, at what point could I apply for bail?!" can you apply for bail when you are what, before you're subjected to inquest, could you apply for bail? True or false: before you a placed on inquest, let us say you are arrested without a warrant, could you apply for bail? NOT YET. An application for bail is still premature. Why? E titingnan ka pa ng prosecutor e. The prosecutor will still look on the arrest report and the affidavit of the arresting officer, and if he finds absence of evidence, he could release, for further preliminary investigation correct? Or could require that you be detained. U follow? Now, let us say you are arrested by virtue of a warrant of arrest, could you apply for bail din? If you are arrested by virtue of a warrant of arrest, could you apply? The General Rule is: for as long as there is deprivation of liberty, you could apply for bail, and your right o bail is a Constitutional right. However class, kindly take note that there are offenses which by their very nature are

non-bailable. And we will discuss that. Now before I proceed further, let me ask you another scenario, let us say for example, you are arrested, warrantless arrest brought to the inquest, assuming it requires preliminary investigation, you were brought on inquest before a prosecutor, and the prosecutor says "DETAIN HIM!" can you already apply for bail? YES, assuming it is a bailable offense. Kung bailable offense, maliwanag? Pag bailable, kung non-bailable kahit na gusto mo, o sandali may mga kokontra dyan saken, "aba hindi sir!" kasi parang ganyan e, isang tao, diba pag tiningnan mo isang tao, kaya nga diba sabi nila "beauty is subjective (beauty is in the eye of the apple, or beauty is in the eye of the holder in due course, bwahahaha! ☺)" –magtatalo kasi tayo dyan e, pero ang batas hindi subjective diba? Sabi mo "hindi maganda talaga yan! Tignan mong mabuti" diba ganon, yung iba hindi mag-aagree, but I tell you here, we have to agree. Now, let me ask you another question: "Is an arraignment a prerequisite to an application for bail?" yan, parang ni-raise yan ano, dun sa Ampatuan? Kinwestyon yan, that was raised dun sa Ampatuan, is an arraignment a prerequisite, baka itanong sa inyo sabar yan. Is it a prerequisite? Ha class? The answer is NO, that has been answered in the case of **Serapio v. Sandiganbayan**, a 2003 case, sinagot na yan. "E sir bakit si judge ng quezon city required an arraignment, before she will even entertain the application for bail?" Edi magaling sya, na-obliga nya e, siguro yung abogado ng a, ano, ng akusado, sige para hindi na humaba, ganun yan e, BUT jurisprudence tells you that an arraignment is not a prerequisite for an application for bail.

Now, di ko tatanungin sino nab a nag-pyansa dito? Di ko na itatanong yon no, ganito muna tayo, class, magandang experience yon no, hindi pa ako nag pyansa para sa mga kliyente ko – oo, ok. Gusto ko ganito isip nyo, ok, ang pyansa may conditions, ok, first and foremost, I would want you to take note, that when you talk of bail there are conditions, yung iba sa inyo "ah once there is deprivation of liberty ah you can apply for bail, ok na yang rule114, pwede na un, ayos nay un" – hindi ganon, hindi pwedeng ganon. I would like you to remember, there are conditions, the conditions are found in sec2. Naintindihan nyo ba yung conditions? "OO naman sir, anong akala nyo samen?!" ok ha, iisa-isahin ko kung alam nyo ung conditions. The **first** condition is: a Bail, if granted will be effective where? Effective in the RTC, basahin nyong mabuti yan, whether originally filed or on appeal. Ok. Alam nyo class if you read that carefully, that gives you the answer on bail as a matter of right. And I will explain to you, so kung nasa RTC, meaning, if you were able to apply for bail in the RTC, as an original case, it is effective correct? If you're able to apply for bail in the MTC and you had to appeal in the RTC, will it be effective? YES. That is a condition of bail.

> **SEC. 2.** ***Conditions of the bail; requirements.***—All kinds of bail are subject to the following conditions:
>
> (a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;
>
> (b) The accused shall appear before the proper court whenever required by the court or these Rules;
>
> (c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in absentia; and
>
> (d) The bondsman shall surrender the accused to the court for execution of the final judgment.
>
> The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail.

Second, if you are absent the case could proceed, the trial could proceed *in absentia.* And that if you are absent you are deemed to have waived your appearance in court. And, the bondsman commits that, they will bring you to court for purposes of promulgation of judgment. What is promulgation of judgment here? EXECUTION. Meaning, if there is a sentence, you will have to serve sentence. Is that complete? Can you add another condition? Is that complete? Can the accused waive his appearance if stipulated in the conditions for bail? Yes or no? "sandali sir, that is important, identity!" can the appearance be waived? Who says yes? Lakasan nyo naman, who says no? the answer is YES, the answer is found in Rule 115 sec1, subsectionC, k? that could be made as a condition. The appearance can be what, waived if its stipulated in the bail. I will not repeat my statement yesterday, "hala sir, ano yun? Ano yung hindi mo uulitin?" I will not repeat my statement yesterday on environmental cases, wag na natin ulitin yun, sinabi ko na yon e.

Now, lemme now present it to you in the siplest manner that I could. Class madali lang tong bail, madali lang ito ha, baka nga sa sobrang dali nito 15minutes lang tayo e, hindi naman,ok. Madali lang ito. You will have to

> **SEC. 4. *Bail, a matter of right; exception.*—**All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment. (4a)

understand that there is BAIL AS A MATTER OF RIGHT. Ok, what do I mean when I say Bail as a matter of right? Class, anung ibig sabihin non? This was last asked in the bar exmas of 2006, distinguish bail as matter of right and bail as a matter of discretion. If you look at the Code, that is sec4 and sec5. Nabasa nyo? Naintindihan nyo? Paliliwanag ko sa inyo. "sir hindi ba included dyan yung ano" mamaya may magtatalo pa dyan, "diba sir included dyan yung ano yung mga murder, na non-bailable discretionary" – yan sigurado may magtatalo dyan, "hindi ba sir discretionary un!" ok paliliwanag ko sa inyo.

First class, let's start with the simplest, the first category is: **BAIL AS A MATTER OF RIGHT**. If the case falls within the original and exclusive jurisdiction of the Municipal Trial Court, Municipal Circuit Trial Court, Metropolitan Trial Court, the case is BAILABLE. Ganon kasimple, andali ano? So class, hanggang sa maging abogado kayo, tandaan nyo yan! Pag ang kaso nyo MTC, criminal, bailable yan! So kung yung kliyente mo nebryoso, "naku attorney baka ako maaresto!" syempre pwede ka magyabang "AKONG BAHALA DYAN!" syempre kaw bahala bailable yan e! it's a matter of right, diba, medyo serious ka pa, "wag kang mag alala akong bahala sayo!" "talaga attorney, kaw bahala saken?" syempre bailable e! It's a matter of right, kaya sya matter of right, mahinang klase ng kaso lang, naintindihan nyo? Basta sinampa sa **MTC** bailable yan! **BEFORE OR AFTER CONVICTION**. Maliwanag? For as long as it is not yet final and executory, "sir anong ibig sabihin non? Fi-nile?" ah, you could apply for bail, walang problema, you are already convicted, but you filed an appeal, can you follow? You're already convicted and you filed an appeal, can your bail continue to have effect? Yes, diba simple?! Pagkatapos class nitong klaseng ito, hindi sa pagmamayabang (uhm, ehem ☺), di nyo na kailangang magtanong sa clerk of court, o baka naman may nasasagasaan ako dito a, na nasa juzgado, hindi na class. Kasi yon, minsan ginagawa ng abogado magtatanong sa clerk of court or sa clerk, tas' paatras nilang gagawin hahanapin nila yung batas, basta MTC, bailable.

Now, how 'bout **RTC**? Is it bailable as a matter of right? We will have to **DISTINGUISH**, you follow? And here we have to be very clear, if the penalty for the offense **exceeds 6years BUT the penalty is not** DEATH, LIFE, RECLUSION PERPETUA, is bail a matter of right? YES! Maliwanag? Sa madaling salita e ano? Pag sinabing bail as a matter of right, can you apply for it and will the court grant it? Does the court have a choice? Can the court exercise discretion? NO! because bail is a matter of right. Let me give you an example that you will surely remember, this is already part of our jurisprudence, but I will simplify it. Let us look at, you remember the case of a, Governor Leviste a? you know the case? The case of Gov. Leviste, when he allegedly, ALLEGEDLY, killed his aid, he was charged of what, was he arrested? NO. he voluntarily surrendered before then Mayor Binay. Correct? And then, he was immediately charged of? Murder o homicide? He was charged of homicide, what is the maximum penalty for homicide? 20years, u follow? Is the penalty for homicide, death life reclusion perpetua? NO! therefore, is he entitled to bail as a matter of right? YES.

Now, I said a while ago, can the court exercise discretion, what if class, it's a matter of right, but the court is convinced "this person is a flight-risk! Definitely he will escape!" – can the court nevertheless deny the application for bail, can the court deny it if it's a matter of right. The answer is NO. This was answered in the case of San Miguel v. Maceda, an administrative case, *"the existence of a high degree of probability that the defendant will abscond confers upon the court NO greater discretion than to INCREASE the bond,"* ok? Can u follow? So if it is a matter of right, if bail is a matter of right, and the judge fears that the accused will what, flee or escape, he cannot deny the application for bail correct, 'cause it's a matter of right. What should he do? He should only increase the bond, if he thinks he is a flight-risk. *"To deny him with his right to bail is in violation of his right."* So nagkakasundo na tayo dyan? Maliwanag? K.

Let us move on to another item, **BAIL AS A MATTER OF DISCRETION.** This is where some confusion arises. Maniwala kayo pag binigay ko sa exam yan, kung ano-anong sagot ang matatanggap ko. BAIL AS A MATTER OF DISCRETION – that is found in sec5. For those of you who have read sec5, does it cover non-bailable offenses? Wag ako tignan nyo, yun ang tignan nyo. The answer is NO. Because non-bailable offenses are covered by the succeeding sections, 6, 7 ,8. Now, in order not to add to your confusion, when the law says it's a matter of discretion, it is one set – meaning **after conviction, before the RTC, where the penalty for the offense is NOT DEATH, LIFE, or RECLUSION PERPETUA.** K? so after conviction, the penalty for the offense is not death, life or reclusion perpetua. "Edi sir, di simple lang?" NO class, this is where the DISCRETION COMES IN. The judge will have to ascertain or judicially determine whether he will be further entitled to bail. Why? Is the penalty for the offense xceeding 6years? Is he a flight-risk? Enumerated there, is he a habitual delinquent (62.5 last par., rpc); Is he a recidivist (14.9 rpc); Is he a quasi-recidivist (160 rpc); Can you see it? Did he violate his parole or conditional pardon? U follow? Are there pending cases against him? Once the court is satisfied that there is a risk based on any of those, or that he is a habitual redelinquent, recidivist, or q.recidivist, can the court exercise discretion and say NO?! can the court do that? YES!!! U follow? That is why it is DISCRETIONARY. AGAIN, I would like to disabuse your minds: The offense covered by this category of discretionary under sec5, covers only **AFTER CONVICTION IN THE RTC where the penalty is NOT Death , Life, or Reclusion Perpetua**.

> **SEC. 5. *Bail, when discretionary.***—Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.
>
> Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.
>
> If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:
>
> (a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
>
> (b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
>
> (c) That he committed the offense while under probation, parole, or conditional pardon;
>
> (d) That the circumstances of his case indicate the probability of flight if released on bail; or
>
> (e) That there is undue risk that he may commit another crime during the pendency of the appeal.
>
> The appellate court may, motu proprio or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case.

Now, let me now give you the example. Going back to my previous example on Leviste, the Levist case, the original charge of homicide, was elevated where? To the DOJ correct? And the DOJ filed the case of MURDER. Murder is what, is it a bailable offense? NO, non-bailable offense, for that reason he was immediately what, arrested. I will leave that item for now. But I would like to show you that Mr. Leviste was eventually convicted, he was convicted for homicide. And this will answer the next question, can u follow? He was charged of murder, but convicted of homicide, can you still apply for bail? There is alreadya conviction correct? It is before the RTC, can you still apply for bail? YES! But subject to who's discretion? Discrection of the court. Where will you apply, un ang tanong! That is the classic question and that is where his lawyer I believe, should have filed it somewhere else, because his lawyer filed, his initial application where, in the RTC. Was he correct? NO "sir why?" because when an offense is originally non-bailable and after judgment it becomes bailable, where will you apply for bail? The appellate court, the next-level court. Are we clear? Simpleng simple. Pag tinanong sa bar andali ng sagot. If it was originally non-bailable, but after conviction became bailable, where will you apply for bail? IN THE APPELLATE COURT, are we clear? Ganun un simpleng simple. So we are now done with second set. I hope that's clear.

Now, the third set, sometimes overlaps with the second set. Why? Because for non-bailable offenses, like murder, like rape, like syndicated or large-scale estafa, like large-scale illegal recruitment – these offenses are non-bailable. But can you still apply for bail, even if it's non-bailable?! YES, that is why I said there is some overlapping. Why? Because you will tell me "odi sir the court will have to exercise discretion" tama ba? But this is a different category, of course! There is a petition the court will have to exercise discretion. So the court will exercise discretion, number one, in discretionary bail, and the court will exercise discretion on non-bailable offenses if there is a

petition for bail, are we clear? Ganun un para maliwanag, the court will exercise discretion for discretionary bail under sec5, but the court will likewise exercise discretion if there is a Petition for Bail on non-bailable offenses, of course! How will he grant if he will not exercise discretion? Are we clear?

Now, let me start my discussion on this point with the case of former Pres. Estrada, in the case of **Serapio v. Sandiganbayan**, my first question is, you file a Petition for Bail, for a non-bailable offense, is a hearing required? Because it requires discretion, the hearing is required, and it is MANDATORY. What is the nature of the hearing? Is it a full-blown hearing? Or a Summary hearing? The hearing is SUMMARY. Ok. If there are numerous accused, meaning 1, 2, 3 accused, can there be joint-hearings of applications for bail? YES. Now, let me now call your attention, I'm not yet through on that point, let me call your attention to the case of **Mabutas v. Perello**, ok, Mabutas v. Perello that laid down the procedure and requirements on the need for a hearing on application for bail. According to this case, a hearing is mandatory.

Let me now give you the procedure. There are **4 items** that you need to take note. Before I start, let me begin with the premise, under the present Rules, a hearing on an application for bail is mandatory – whether bail is a matter of right or a matter of discretion. Ngayon baka sabihin mo "e sir papanu yun?" Kung matter of right? It is a matter of right but a hearing is required. U follow? Whether a matter of right or discretion, the prosecutor should be given reasonable notice of hearing, or at least his recommendation on the matter, must be sought. In case of an application for bail, the judge is entrusted to observe the following duties: 1. Notify the prosecutor of the hearing for the application of bail or require him to submit a recommendation; 2. Where bail is a matter of discretion, conduct a hearing for the application for bail, regardless of whether or not the prosecutor refuses to present evidence, ok, so it is mandatory, if it is a matter of discretion, that there be a hearing; 3. Decide whether the guilt of the accused is strong based on the summary evidence of the prosecution; and 4. If the guilt of the accused is NOT strong, discharge the accused upon approval of the bail bond. These are the requirements. This is the procedure outlined in jurisprudence. You have to take note of that. Again, hearing is required whether it is a matter of right or a matter of discretion.

Now, let me now touch on example for petition for bail. Let us say going back to my example, the penalty for the offense is life, or reclusion perpetua, it is murder, you filed a petition for bail, what is the duty of the prosecution? What is the burden of the prosecution? The burden of the prosecution is to show that the evidence of guilt is strong. And it is incumbent upon the accused that the evidence of guilt is NOT strong. Now, if the court discharges the accused believing that the evidence of guilt is not strong, and the accused is later convicted by the RTC, is he entitled to bail? Can you follow? I will repeat, an accused has been discharged or given provisional liberty after a petition for bail, his offense is originally a non-bailable offense, can you follow? Let's say murder, let us say he's granted bail, he is later convicted can he still apply for bail? Aba parang ang lalim na palaisipan nito no? hindi ito kailangang pag isipan ng malalim, why do u need any further evidence? The guilt of evidence is STRONG he was convicted! DO you think he would still be realeased on bail?! NO MORE! Para matandaan nyo to class, sa inyo na very keen on ah, news accounts, sinong nakita nyong nademanda at naconvict na ni-release, magsimula yan kung may isip na kayo, Mayor Sanchez, pagka-convict nyan sa RTC posas na yan, kulong na yan, sa Bilibid na dadalhin yan, kakalbuhin ka na, sino pa? Villarosa, of Mindoro Occidental, when he was convicted in QC what happened? Even if he was out on bail, because he was no longer entitled to? Bail! What else do you need to know? To show that the evidence of guilt is strong? You've already been convicted, then evidence of guilt is strong.

Now, let me now call your attention class to another question: "can you apply for bail even if the judgment is final and executory?" Aba, pwede? Yes or No? True? I can apply for bail? As a rule, you can NO longer apply for bail otherwise, lahat ng convict na yan e mag-aapply ng pyansa, di wala rin, u follow? However, if you applied for

probation, you can continue and you're entitled to one, you can continue on your original bail if one has been given, if you cannot avail for one because of financial incapacity, what can you do? You can be released on **RECOGNIZANCE**. Maliwanag a.

Let us not touch on how the court determines the amount of bail. Is this an arbitrary procedure that the court will have to choose the amount? Just to give you an idea, the amount of the bail, who recommends it? It is the prosecutor that recommends the amount of the bail. It is not the court, there is a recommended bail when the prosecutor files the information, they recommend the amount of bail and it is for the court upon motion to determine whether to increase or to reduce the amount of bail, based on any of the following. What are those? financial capacity of the accused, nature of the offense, the penalty for the offense, the character of the accused, what else, the possibility of flight and the pendency of other cases. All of these will have to be taken to consideration by the court before it decides on whether to increase or to reduce bail, let us say there was a question in the bar exams that goes this way: " an accused is charged with Slander by Deed, and o, let's say Slight Physical Injuries, and he has been in jail for more than a year, sobra sobra na, preventively detained, what should the court do?" can the court release the accused or should the court dismiss the case first? A. the court should release the accused immediately; B. the court should dismiss the case first; C. the court should release the accused w/o prejudice to the continuation of the case. O ano? A, b, or C? the answer is C. In instances wherein he has served the maximum penalty, the court will not dismiss the case, but the court will release the accused without prejudice to the continuation of the case. Some of you will become public attorneys, remember this day that you will not ask the accused to plead guilty instead. Bat kayo natawa? Kasi I've seen, again with all due respect, I have so may friends in the public attorney ('s office) but I've seen instances wherein there is a scenario like this, and the judge will say "o you talk to the accused" and after, they will ask the Accused "o what do u want to do?" "ah papalitan ko na ho yung plea ko" ha? What will you do? "I will change my plea of not guilty to a plea of guilty" – believing that he will be able to go home already, yes, he will be able to go home, but he will aready have a court record. Convict na sya e by that time. So, if he has served the maximum penalty what should you do, what should the judge do? RELEASE! Without prejudice to the continuation of his case. What if the accused has served only the minimum penalty without considering the ISLAW? He can be released under a reduced bail, or, recognizance.

Baka naman tanungin kayo sa bar, let us enumerate the kinds of bail, yan, yan naman class pag hindi nyo pa ala, yan, e alamin nyo na ngayon. Di ko naman sasabihin "naku delikado" pag hindi nyo alam no. alamin nyo na ngayon, first is a CASH BOND. When I say a cash bond, it means the amount of bail, if the bail recommended is 50, 000, do you need to raise 50, 000? YES. Are we clear? Can that be returned to you? YES, it will be returned to you after the termination of the case if you're acquitted, or the case against you dismissed, even if you are convicted, assuming there is no civil liability. Because sometimes, the judge will say, "there being a cash bond, the civil liability, the cash bond will be applied to cover the civil liability." If you are a lawyer, tinanong kayo nito sa Bar, maaring hindi remedial law, ethics, "if you are a lawyer and your client is acquitted, are you entitled to the cash bond?" anung yes, hahaha, babagsak ka sa ethics nyan! The answer is no! that is your client's money ok, sasabihin mo "akin na yan a! cincuenta mil din yan!" that is not yours! Let your client withdraw it because that could be withdrawn, and let your client pay that to you, do u follow? If you're client allows you to get it, you have to obtain what, a power of attorney to withdraw it, and if he says "that is in payment of your fees" issue a receipt to evidenced the payment, otherwise, there is a danger that you are using the funds of your client.

Now second, the second is a SURETY BOND ok. What is a surety bond? It is a bond issued by surety company, do you need to raise the entire amount, if the recommende amount is 100, 000, do you need to raise the entire amount? NO. that is why you need to deal with the surety company. If the recommended bail is 100, 000 pesos, you will only have to pay a PREMIUM to the surety company, and you will have to renew that annually. Take note

though class, that surety companies today should be accredited by the SC, if it is not accredite by the SC it will not be entertained by the courts.

The third one is a corporate surety. I'm sorry, a property bond, kei. Take note there is what you call a PROPERTY BOND. The most common is a, bail cash bond, or a corporate surety, another kind is a property bond. What is a property bond? It is the security is, the property. What is the most important requirement for a property bond? THE OWNER of the property should be a resident of the Philippines. Should the owner of the property be the accused himself? There is no such requirement. My next question is True or False. Can you be released on your own recognizance? Can the accused be released on his own recognizance? Whats the answer? YES ok, True. On his own recognizance or that of a reputable member of the community. So those are the four (sic, three).

I think another important item which is a good source of question for you would be where to file. Ok, where to file, your should be ready with this. I think this is sec.17, what are the rules before I give you the case. What are the rules when it comes to applying for bail? Class, there are 4 scenarios, the first scenario is this: If you are arrested in the place where the case is pending. For example, your case is in Manila, pending, you were arrested where, in Manila. Ok that's the first scenario. You were arrested in the place where the action is pending. So your case is pending in Manila, and you were arrested where, in Manila. Where will you apply for bail? Class, andali lang nito, where will you apply for bail? Minsan estudyante ang madali yun ang hindi alam e, yung mahirap they give so much time, ok, where will you apply for bail, simpleng simple, kliyente mo tumawag, sabi nya "attorney, naaresto ho ako" "asan ka?" "andito ho ako sa Pasay" ay sandali san ung kaso? Manila. Ah ibang rule mag aapply hindi yon, u follow? Pag tumawag ang kliyente mo, "attorney nahuli ako, andito ho ako sa Taft Avenue" and the case is pending in RTC of Manila correct? Where will you apply for bail? A. I can only apply for bail in the court where the action is pending; B. Before any RTC; C. Before any RTC and MTC; and D. None of the above. O iisa-isahin natin to ha, ayoko yung uuwi kayo na hindi maliwanag hindi yung "ah okay na yan alam ko nay an" –HIDI, ganito yan. Maliwanag ba yung tanong? Ang kaso nasa RTC, where were you arrested? In Manila in Taft Ave, san ka kaya dadalhing prisinto? Un ang tanong, san ka kayang dadalhing prisinto? Aba'y sa Manila syempre, sa Manila ka nahuli e, where will you apply for bail? In the court where the action is pending, THAT IS THE RULE. That's the first, tandaan nyo yan ha! Yan ang una. In the court where the action is pending, maliwanag ba? You were arrested in the place where your action is pending. Where will you apply for bail? In the court where the action is pending.

> **SEC. 17. *Bail, where filed.***—(a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.
>
> (b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or appeal.
>
> (c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held.

Now, "sir can I go to other courts?" ganun yan e, can you go to other courts? You could only go to other courts when the judge where your case is pending is absent or unavailable. That is very important class, the phrase "absent or unavailable" is very important. Because if the judge where the case is pending, you cannot go to any court, the very moment he is certified to be absent or unavailable, can you go to any RTC or MTC? The answer is YES. Maliwanag? I will repeat: the first step, you were arrested in Manila, your case is pending in Manila where could you apply for bail? In the court where the action is pending, are we clear? In his absence or unavailability, before any RTC or MTC.

Let us look at the case of Ruiz v. Beldia, a 2005 case, and lemme read to you the facts, the facts says: "record shows that Executive Judge Dela Cruz and Presiding Judge Enriquez, were present on May 30 2001 to act on the bail application of Mr. Santos the accused, when respondent Beldia acted on the bail application of accused on May 30, his designation was merely an assisting judge in RTC of Marikina, his permanent station was in San Carlos,

Negros Occidental, as such his authority in Marikina is limited. In this particular case, Mr. Santos was arrested where? In Quezon City! Tignan nyo ah! Mr. Santos was arrested in Quezon City, bakit umabot ng Marikina? Nakita nyo? Yung mga kaibigan nating pulis dito, alam kung paano gawin yan. Bakit umabot ng Marikina e hinuli sa Quezon City? Following the Rules, if the case is not pending in Quezon City, he was arrested in Quezon City, we follow the next scenario, what are the rules? Again, he was arrested in Quezon City, but the case is pending let us say in Pasay, where will he apply for bail? He will apply for bail in? ANY RTC of Quezon City, can u follow? Or where the place where he was arrested. Para sa inyo para maintindihan nyo, "sir parang malabo" tandaan nyo to: sa tingin nyo ang pulis Quezon City, inaresto ka sa QC dadalhin ka sa kung saan? Hindi, that is on the premise that you were arrested by any police QC, but there are instances where there are coordination, wherein the Pasay police will coordinate with the local police. U follow? But the general rule is: if you are arrested in a place other than where the action is pending, where will you apply for bail? IN ANY RTC of QC – because that is not the place where the action is pending, or in their absence or unavailability, where will you apply for bail? Before any MTC. Later on I will give you 2 problems.

What is the third scenario? What if it's a matter of discretion, bail is a matter of discretion or requires an application for recognizance? That will only be applied where? In the court where the action is pending. Class you have to know this, this is a source of questions. Pag walang maitanong sa bail, pwedeng kunin ang tanong dito. And finally, there is yet no pending case, let us say nag happy-happy kayo umabot kayo ng Tagaytay, and because of that you were arrested without a warrant, what is the rule? Where will you apply for bail? In the court where you are held. Ok. If you are held in Tagaytay, where will you apply for bail? In Tagaytay, obviously you were arrested without a warrant in Tagaytay, the case will also be filed in Tagaytay – because venue is jurisdictional. (puta may mumu!!!! Waaah! 1:05:10-1:05:13) U follow? So where you are held where there is no pending case in cases of in flagrante or hot pursuit situations. We're not yet done with bail, my next question on bail would be: distinguish cancellation from forfeiture of bail, ok. Can we distinguish? Yes you have to, class what is the rule? This is the rule: when you talk of cancellation, the bail will no longer be in effect either by voluntary surrender or by death. And it will be cancelled automatically if the accused is acquitted, convicted, or the case against him without the express consent of the accused. How 'bout forfeiture? For those of you who in work in court or in law offices you have an idea of forfeiture. Class, look at me, ganto lang yan, look at me, let us say I am the judge, she is the counsel for the prosecution, she is the counsel for the accused. The judge says, where is the accused? The prosecution will now move, "o what is your pleasure prosecution?" "Your Honor, due to the absence of the accused I move for the issuance of a warrant of arrest, and that the bond be forfeited in favor of the government." – that is practice, but is that what the law says? The requirement of the law are as follows: if the accused is absent, the court will first require the bondsman to explain, "huy mapaliwanag ka!" within a period of 30days, and bring the body of the accused within a similar period. If you fail to present the body within a similar period, what happens? Then the court will FORFEIT. What is your remedy in case of forfeiture of a bail bond? Your remedy for forfeiture of a bailbond is an appeal. Your remedy is an APPEAL.

Now let me now touch on another case, People v. Hernandez, a 2006 case. Let us say class, there was an order of acquittal, and you are not satisfied with the order of acquittal, you are for the prosecution, do you have any other remedy? As we know, when there is an acquittal, double jeopardy has already what, set in. are we clear? What is your remedy in the case of People v. Hernandez, in order that a judgment or order of acquittal may be successfully challenged in a Petition for Certiorari under Rule 65, petitioner must prove that the trial court what, committed not merely errors of judgment, but grave abuse of discretion amounting to lack or excess of jurisdiction. But WAIT, it is correct that you could question on a Rule 65, but this is not a regular remedy, you follow? You will have to show that there is grave abuse of discretion and in actual practice class, outside of this jurisprudence, you will have

to obtain the consent of the Office of the Solicitor General. So rule65 coupled with the consent of the Office of the SolGen.

Let me now give you the problems that I was mentioning to you a while ago. Let us say class, I have a client, let's try to answer this, I have a client who is an accused, and an information has already been filed in court, my client told me "attorney, kung may warrant na yan, if there's already a warrant of arrest, I would like to apply for bail" do you need a certification of arrest to be able to apply for bail? I will repeat, the court has already issued a warrant of arrest, it reached my knowledge and I asked my client, in fact my client informed me "attorney kung may warrant na ho yan, e pyansa na lang ako, para wala na tayong saket ng ulo" – Do I need a certification of arrest so that my client can apply for bail? Do I need a certification? The answer is NO, that amounts to a Voluntary Surrender, and therefore you don't need a certificate of arrest. Let me give you an actual case that I handled, to show how this was answered. A client of mine, the case was transferred to me, told me "attorney baka may information na sa court" when I checked, there was already an information, and with more reason there's already a warrant of arrest, so I called the court, I asked my associate to call the court "tawagan mo nga yung court, tignan mo nga yung ano, tignan mo nga kung pwede na tayong mag pyansa" anong sabi nya? "sir okay na daw" tumawag sya, it was a Friday morning, so we called, I told him "ok I'll be there" so by 2 o'clock in the afternoon I was already in court, because this was a very sensitive case, I was already in court and I told the court personnel "ready na kami mag pyansa" what did the court personnel tell me? "asan ho ang akusado?!" sabi ko "nandyan dyan lang yon" diba? Yung mga court personnel dito alam kung anong ibig kong sabihin ano? "dyan dyan lang yon" –baket? Edi kung kaibigan nila yung prosecution, tinext na "andito na dalhin mo yung pulis!" patay ka! Ok kaya sabi ko "andyan dyan lang" sabi nya "ano bang aaplyan nyo?" sabi ko "aba'y cash bond kami" ok so, im ready with the cash, if the judge requires his attendance, I will do so, I will bring him in. ok then ah, I said "let's be ready with the documents" because class, for a cash bond, you need, there's an order and you have to fill in something and it will be submitted to the Treasury of the court and you will have to pay or deliver the amount. And only after that will the court issue an order of release. Edi sabi ko "sige ready nyo nay an ng mabayaran na" you know what they said? "sir, kailangan mag piano yan muna" "bakit kailangan mag piano?" No problem, "o di kumuha kayo ng stamp dyan tapos igaganon natin" "hindi sir, you have to bring him to the police station" alam nyo kung ano ibig sabihin non? And get a certification of arrest. Edi parang pinaaresto ko kliyente ko?! Viernes ng hapon?! DO you need a certification of arrest based on my question to you? NO! so what did I say? I'm sharing this to you so that you know, not only for purposes of the Bar but as a lawyer, aba sabi ko "tanungin mo ke judge" "hindi sir, kelangan ng certification of arrest" "hindi nga tanungin mo nga ke judge e" di punta sya don, tigas ng ulo ng clerk of court e! pinabalik, "hindi sire, kelangan e, tinanong ko na ke judge e" sabi ko "tinuturo ko yan," edi balik sya ulit ke judge, pagbalik "hindi, sir kelangan daw talaga kasi last week ganyan ho ginawa namin" sabi ko "ok ka no" so I had to already, say, "e bat sabi ng tatay ko?!" haha "e kasi judge ung tatay ko e," "ba't sabi ng tatay ko?!" "ah sandal ho, itatanong natin ulit" –yan tinanong ke judge, mas may bias pala yung "tatay ko" kesa yung "nagtuturo ako" wala palang bisa yon! Hindi pinaniniwalaan ang titser! Sabi nya "ay oho attorney pwede na raw" akalain nyo pwede na?! hindi ko naman kailangan ng certificate of arrest, of course I didn't know if he really asked the judge, I didn't know. But class you don't need a certificate of arrest, can you follow? you don't need a certificate of arrest if you're applying for a cash bond. Are we clear? Am I clear?

Now, class, let us now move on to still on bail, just one more item on bail that il would like you to take note. Let us say class, that you were, that your case is pending in Manila, meaning your accused's case is pending in Manila but your client-accused is arrested where, in Ilocos Norte, whats the procedure? Where will he apply for bail? Obviously before any RTC of Ilocos Norte, do u follow? Before any RTC of Ilocos Norte. Now, will the files remain in Ilocos Norte, or will the judge transmit the records to the court of Manila? YES, take note of that, TAKE NOTE OF

THAT. If you are arrested, or your client is arrested in a place other than where the action is pending, the bail records will have to be transmitted to the court where the case is pending, that is the duty of the judge. Now cam the judge reject it? Can the judge of Manila say "I don't want that bail, I want another one" can the judge do that? "ayoko, magbigay ka nga ng bago!" the judge can do that. That is in the provision of the law, if the judge is not satisfied on the bail submitted in the place where he was arrested, the judge can require a new bail.

Now class, let me now ask you a question on a motion to quash, class hindi ko tinatalunan ang rule 115 ha, I just want to lead some discussion on motion to quash. What is a motion to quash? Is it similar as a motion to dismiss? Let us compare. A MTD in a civil case is filed before an answer within the reglementary period to file an answer; A MTQ is filed at anytime before an accused pleas – both motions shoukd be in writing; and in addition to a MTQ, a MTQ can be signed by the accused himself or by his counsel. Now I will not move on t the grounds yet. Let me ask you this important question: if a MTD is granted under Rule 16, can a case be re-filed? Napaisip kayo no? kita nyo tagal tagal nyo ng pinag aaralan yan pag iisipan nyo pa ngayon. YES! Class, pa gang MTD granted, can you re-file the case? YES, except res judicata, statute of limitations, hindi litis pendentia, payment waiver abandonment or extinguishment of obligation and unenforceable under the Statute of Frauds. Why am I giving you this example? To make you understand whether it's the same, in terms of how it operates. If you file a motion to quash, and the Motion to Quash let us say is granted, the MTQ is granted, or denied first, dun muna tayo sa denied. The MTQ is denied, is a Petition for Certiorari a proper remedy? What is the answer? The answer is NO. A petition for certiorari is not a remedy for a denied MTQ, **Lazarte v. Sandiganbayan**, let me quote to you the jurisprudence: *"at the outset it should be stresses that the denial of a Motion to Quash is not correctible by certiorari. Well-established is the rule that when a Motion to Quash is denied, the remedy is not certiorari but to GO TO TRIAL without prejudice to reiterating the special defenses."* Ulitin ko ha, if your MTQ is DENIED, jurisprudence says in Lazarte, di ka pwede mag certiorari, anong dapat mong gawin, proceed to trial. Now tanungin ko kayo, if your MTD is denied, can you file for a petition for certiorari? YES if the order is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Now, let us say a MTQ is GRANTED, if a MTQ is granted and the court dismisses the case, can the criminal be information be re-filed? "ay sir, double jeopardy na yan!" –HINDEH! Sandali lang, hahaha, hindi pa, tuturo ko sa inyo yan, hindi pa Motion to Quash, hindi SQUASH, ok, kailangan ko pa kayong gisingen, baka sabihin nyo "sir squash natin yan!" hindi, we will quash the? INFORMATION. Ok, nasusundan nyo pa ba ako? If a Motion to Quash is granted, can you re-file the case? YES, PWEDE. You can re-file the case, except EXTINGUISHMENT OF CRIME or PRESCRIPTION – prescribed na e, cant be, and DOUBLE JEOPARDY, yon! Convicted, acquitted and dismissed without the? EXPRESS CONSENT of the accused. Maliwanag? Ok so yun muna a. sana nasusundan nyo yan.

Let us proceed further on our comparison, objections not raised in an answer or Motion to Dismiss in a civil case, what is the effect? They are deemed WAIVED. Ok, except, litis pendentia, res judicata, statute of limitation and lack of jurisdiction over the subject matter. E sa Motion to Quash, if not raised in a MTQ, will it be waived? Yes, it will be waived, EXCEPT LACK OF JURISDICTION that it does not constitute an offense, what else, PRESCRIPTION and DOUBLE JEOPARDY, are we clear, pareho! Later on we will discuss the grounds. This is how I would want you to remember this, in such a way that it is not immediately Double Jeopardy.

Now, let me now touch on RIGHTS OF THE ACCUSED. **RULE 115**. Tignan natin ang Rights of the Accused. Let me start with the case of People v. Dimalanta, a 2004 case, **presumption of innocence.** This is one of the most abused presumptions. That sometimes students remember presumption of innocence when or it is only equated with a pendency of a criminal case, once you are charged "oh presumption of innocence." Let us look at how the SC addressed presumption of innocence in the case of **People v. Dimalanta.** The Court said "when the circumstances are capable of 2 or more inferences, one of which is consistent with presumption of innocence, while the other is

SECTION 1. *Rights of accused at the trial.* —In all criminal prosecutions, the accused shall be entitled to the following rights:

(a) To be presumed innocent until the contrary is proved beyond reasonable doubt.

(b) To be informed of the nature and cause of the accusation against him.

(c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. The accused may, however, waive his presence at the trial pursuant to the stipulations set forth in his tail, unless his presence is specifically ordered by the court for purposes of identification. The absence of the accused without justifiable cause at the trial of which he had notice shall be considered a waiver of his right to be present thereat. When an accused under custody escapes, he shall be deemed to have waived his right to be present on all subsequent trial dates until custody over him is regained. Upon motion, the accused may be allowed to defend himself in person when it sufficiently appears to the court that he can properly protect his rights without the assistance of counsel.

(d) To testify as a witness in his own behalf but subject to cross-examination on matters covered by direct examination. His silence shall not in any manner prejudice him.

(e) To be exempt from being compelled to be a witness against himself.

(f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

(g) To have compulsory process issued to secure the attendance of witnesses and production of other evidence in his behalf.

(h) To have speedy, impartial and public trial.

(i) To appeal in all cases allowed and in the manner prescribed by law.

compatible with guilt, ok? Let us say that it could lead, the facts would lead to a number of inference, one is a presumption of innocence, and the other one is a, or that which is compatible with guilt, the presumption of innocence must prevail. And the court must acquit. So tandaan nyo yun, so if the facts would lead to a number of inferences, one is presumption of innocence and the other one is compatible with guilt, the court should acquit, furthermore, the Constitutional presumption of innocence requires them to take a more than casual consideration. The evidence of the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

Let me now proceed to another right of the accused. What is another right of the accused? Another right of the accused is **to be informed of the nature and cause of the accusation against him.** Class, when we talk of ah, informing him of the cause and nature of accusation against him, is it required that he knows the language of the information? What if the accused is a Chinese? The accused is a Chinese and the records of the information is in English, how will you comply with the minimum requirement of the right of the accused – of informing him of the nature and cause of accusation against him? How? "sir I will get an interpreter" you were in court, you saw a Chinese "hey do you understand Chinese? Can we use you in court?" can you do that? You cannot do that. There should be an authorized what, interpreter. "But sir there's an interpreter in court!" But the interpreter there only knows Filipino and English, but he doesn't know Chinese. In which case, if the accused doesn't know the local language or even English, you will have to retain a language interpreter to satisfy the minimum requirements of due process. Now, is an accused entitled to a lawyer? Let us look at this, the entitlement of an accused to a lawyer. Is an accused entitled to a lawyer? What is the rule? YES, an accused is entitled to counsel of choice, ok. A *counsel de parte*, a counsel of choice, or if he believe he doesn't need one, he can proceed with himself. Or if he cannot afford one, the court can appoint a *counsel de officio*. Of course today we have the Public Attorney's Office, we have the PAO.

Let me walk you through the provisions of law where a *de officio counsel* can be appointed. This will be one of, if you're asked in the Bar Exams, can you name those instances where the SC or the courts can appoint a *counsel de officio.* Where, when is the first instance? The first instance is during arraignment. As a new lawyer I will tell you, class, as a new lawyer wag kayong mag uupo sa harap, dahil pag walang abogado, "ah attorney o you assist the accused" – only for purposes of arraignment. U follow? U could be required by the court. When else? Pag pina-enumerate sa inyo, a *counsel de officio*, for purposes of trial the court can appoint you as a *counsel de officio,* second. Third, it is the duty of the clerk of court to certify that the accused has been informed of his right to counsel and his right to a *counsel de officio* before the records are elevated on appeal, it is the duty of the Clerk of Court, to certify that the accused was given the opportunity to counsel. Where else? In the CA, is an accused entitled to a *counsel de officio?* Is he entitled? The answer is YES, when? If the accused **signs his appeal by himself**, that is found in rule124. If the accused signs the appeal by himself, or if the accused is in prison, the court will appoint a *counsel de officio*. Where else? Can the SC appoint a *counsel de officio*? YES or NO? The answer is YES. As to the standard on how they choose a *counsel de officio*, they have their own guidelines. It is NOT in the Code but

the SC can appoint a *counsel de officio.* So once you become a lawyer, don't be surprised if you receive a notice from the SC that you will be appearing as a *counsel de officio*.

Now, another right of the accused is the right of the accused to a **compulsory process.** Is an accused entitled to a compulsory process? OH YES. What then, anu nga ba yung compulsory process? What is a compulsory process, napaisip kayo ah. Compulsory process is a SUBPOENA. As a consequence of non-compliance you could be held in contempt. I will discuss this, I will discuss this compulsory process. Kei, what provision then will apply, when you talk of compulsory process? In 2008 there was a question on compulsory process, subpoena so you have to know this. Class meron bang rules on subpoena in the Rules on Criminal Procedure? Is there a provision on subpoena on the Rules on Criminal Procedure? Whats the answer? The answer is, it's NOT in Criminal Procedure, it's in Rule 21. The provision on subpoena in Rule 21 (on Civil Procedure) applies to both civil and criminal cases, in the same manner as the rule on motions in Rule 15 applies to civil and criminal cases.

Let me walk you through the rule on subpoena as a compulsory process. There are 2 kinds of subpoena: sub-po-ena? Ok lang yun kung ganon ang pronunciation mo, ang importante tama ang sagot, *1. Subpoena ad testificandum,* and *2. Subpoena duces tecum.* It is important for you to take note, on how to quash a subpoena. How do you QUASH a subpoena? It would depend. If it is a subpoena duces tecum (sic, this should have been ad testificandum), you are not bound thereby, okay. And what, let's take **ad testificandum**, you are not bound thereby and there is **no tender of kilometrage and witness fees**. You know what kilometrage is right? The kilometrage requirement to be able to use subpoena as a compulsory process is how many kilometers? A. 50, B. 60, C. 100. O kita mo may 60, 100 yan! Alam nyo wag kayo mag alala meron talagang, may librong lumulutang ngayon 60 e, totoo yon, nasa Law e! 100! If you're within 100km from the place where's the hearing to be conducted, your attendance can be compelled by a subpoena if you refuse to comply with a subpoena, can you be arrested? OH YES! And not by a warrant of arrest but by a BENCH WARRANT. If you are asked in the Bar Exams, distinguish and explain the difference between a warrant of arrest and a bench warrant. Ok, what is the difference? "sir alam ko yan e, pareho naming warrant yan e" a **warrant of arrest** is only issued once information is filed in court after finding of probable cause. So class, pag may warrant ka, sa medaling salita ay ano? Aba'y may kaso ka. May criminal case ka tama? If we talk of a **bench warrant**, it is a warrant issued by the court in the exercise of its judicial authority to compel attendance of a person in court. "Sir wala ho akong criminal case" –okay lang. if you ignore the process of the court, can you be arrested? Yes! Through a bench warrant. Now how do you quash a duces tecum? Failure to tender kilometrage, witness fees what else? Failure to describe the books to be presented, and failure to tender the cost of production. That is how to **quash a subpoena duces tecum**.

Now class, my last point here on subpoena as a compulsory process would be this. If the witness is in Cebu you are where, the case is in Manila, that's more than 100km, ok? In a civil case how will you compel? I will move on to a criminal case ha, because I will cite to you a case. In a civil case if the witness is more than 100km, like Manila the witness is in Cebu, tatawana ka lang nun, di mo mapapa-aresto yon e. What is your remedy? Deposition. Rule 23, if the witness is more than, or the person is more than 100km you can avail of deposition, how 'bout in a criminal case? You would want to examine your witness or the witness of the prosecution, or the accused, in the nature of a deposition, will rule 23 apply? NO. it will not apply, but rule119 secs13, 12 and 15. I will discuss that. After the break , I would still continue on with the rights of the accused with compulsory process thereafter, I will proceed with arraignment, ok. Let's have a break.

PART IV

Are you ready? Ok. I was informed that it takes you some time to eat, so to give you the time to leisurely eat I had to extend the break. Now, let me start with another compulsory process before I touch on another right of the accused. Another compulsory process is contempt. Any person who refuses to appear in court or to testify can be placed in contempt. There is what you call direct contempt or indirect contempt. By express provision of law, in rule71 sec3, by express provision of law failure to comply with a subpoena, could make you liable for indirect contempt. Indirect contempt under sec3 of rule 71, last subsection. My next question is this: "how do you institute indirect contempt?" 1:22.

Under the present law, there are only 2 ways to initiate indirect contempt. And how is this? By a verified petition filed and docketed separately and number 2 by the court motu propio, upon a formal charge. I would like to disabuse you of the idea that you could file a motion for indirect contempt. This has never been asked in the bar exams, has been subject to a number of rulings of the SC.

If you are to file an indirect contempt, you cannot do so by a motion, you can only do it either by a verified petition filed and docketed separately, or upon a formal charge by the court motu propio. No motion for indirect contempt. How do you initiate direct contempt? By acts of disrespect or disobedience in the presence of so near a court or the judge. So you don't need a formal complaint. You don't need a formal petition, all that is required is you IRRITATE the judge. Right? Any act of disobedience or disrespect will expose you to, DIRECT CONTEMPT. I will not make much time on this but I will leave you with a thought on what is your remedy for an indirect contempt. What is your remedy? For failure to comply with a subpoena issued by the court? What is your remedy? AN APPEAL. What is your remedy for direct contempt? Lets say youre placed on direct contempt, a direct contempt ruling is executory. You can only stay it by posting a supersedeas bond, but what is your remedy? CERTIORARI.

Now, let me now proceed and discuss, "Can a witness who's unavailable or who died, can his transcript or testimony be presented in court?" u follow? The witness already died or he is unavailable, but he has been previously presented in another case involving the same parties and subject matter, can his testimony reproduced in a transcript be presented in a criminal case? YES! "sir san mo napulot yon?" Codal ho yun e. subsection of rule115, the only important requirement, bago nyo kuhanin yung sinabi ko, ito ang requirement na kailangan, the witness should have been subjected to cross-examination, or at least an opportunity to cross-examine – only an opportunity would suffice. Wala na yung testigo e, patay na o kaya nag-ibang bansa na, but he was presented in another case, involving the same parties and subject matter, can his testimony be presented in court? Yes! And this has a partner provision class. Sir ano yung partner niya? IN EVIDENCE, lam nyo un? Have you taken up evidence, wala pa no? ah you've taken that up, e dapat alam nyo sagot. Is that hearsay? Actually that's hearsay because the witness is NO LONGER AVAILABLE in person to testify in court, that is an EXCEPTION TO THE HEARSAY RULE, rule 130 sec47, open nyo. It will tell you any testimony or deposition given to a judicial proceeding or administrative proceeding can be presented even if the witness is already dead or unavailable for as long as there is an opportunity to cross-examine, maliwanag? So wag kayong maguguluhan sasabihin nyo kagad "din a pwede yan patay na e!"—NO! for as long as it involves the same subject matter and parties and an opportunity to cross. Even in criminal cases that is allowed.

Now, let me now touch on another right of the accused: the **RIGHT AGAINST SELF-INCRIMINATION**. How bout DNA? Theres a new rule on DNA, the 2007 Rule on DNA Evidence, what are the items I would want you to remember, dapat alam nyo to, this is just an exercise. Are you aware that by examining the DNA sample it was discovered, or the reslults would show that the father, the purported father is 99.9% or higher that is only what a

disputable presumption, below 99.9% that is **corroborative** evidence. Ok. And if the results tell you that you cannot be the father, that is **CONCLUSIVE** evidence.

Have you discussed this next point? **POST-DNA CONVICTION** Examination (favorite nya to). This is in addition to the right of the accused, although in that point in time he's no longer an accused but a convict. Are you aware of this? Can there be **POST-DNA CONVICTION** Examination? YES! "sir even without an order?" YES! For as long as you could show that the examination is material, would show that your innocent and would change the outcome of the case, then it is allowed. Now let us say after the **POST-DNA CONVICTION** Examination and it was shown that you cannot be the perpetrator of the offense, how can you effect the realease of a convict? Habeas Corpus. Where to file? In the court that rendered the original judgment. Are we clear? Take note of that, malapit na itanong yan (hmm). Yun ngang 1-day examination witness rule e, that was asked last year, that was from the 2004 Guidelines in Pre-Trial and Modes of Discovery, see it took them what 5 years to ask it. U follow? So ito baka hindi pa itanong, baka masyado pang bago ito para sa inyo. But if it is asked you know what to answer. U follow?

Now let us now move on and proceed with another right of the accused. How about class the right against self-oincrimnation. Does it mean that you cannot be compelled to be a subject of a urine test? Of a blood test? or a part of your body cannot be examined? This right is only **limited to ORAL testimony**.

Now let us touch on the **right to speedy trtial.** How many kinds of speedy trial do we have? A sure ako dito e, pinag isipan nyo e, mukang di kayo tiyak sa sagot. There is one under the Constitution: speedy disposition of cases, and the other one is under the Rules on Criminal Procedure: the right to speedy trial. What is the difference? The difference class is very simple. On your rifhgt of speedy trial under the Rules on Criminal Procedure, it should be invoked at ANY time before trial, now, for your right to speedy disposition under the Constitution, it should be invoked at ANY time for so long as the action is PENDING.

Let me now call your attention class to the remedies available. What is your remedy for violation of speedy trial under the Rules on Criminal Procedure. The answer is in the case of **Lumanlao v. Peralta**, Feb13 2006, in the face of extraordinary and compelling reasons it has been held that the availability of another remedy does not preclude a resort to a special civil action under rule65. So your remedy for violation of speedy trial is under rule65. Meaning certiorari, prohibition, mandamus.

What is your remedy for speedy disposition of cases under the Constitution? And assuming that the accused remains to be detained. The case is Caballes v. CA feb 2005, the remedy is Petition for Habeas Corpus.

Now let us look at public trial, and I believe this will be my last point on the rights of the accused. What do you mean by public trial? I will not yet discuss appeals class, it would take me a session, around 45minutes, I will discuss it tomorrow, including that of the SB, kasi dapat hindi na, kaso mga tanong nila last time pati CTA dinamay nila. Ung pati right to preliminary injunction ng SB tinanong nila, u follow, so tomorrow I will be discussing the appeal in ordinary cases and amendment to rule124 sec13, that should be a, b, c, if you only have 2 paragraphs in sec13, punutin nyo at iphotocopy nyo yun tamang rule. Pag hindi yan a, b, c, luma yang hawak nyo. That was brought about by the case of People v. Mateo, nabasa nyo ba yung original non? "e sir kaya nga kayo nandyan e, paliliwanag nyo sa amen yon" that was amended because of this case, tomorrow I will give time to discuss step-by-step, appeals, I will also discuss if we have time, so that it will be easier for you to remember, a comaprison of Criminal and Civil appeals, I will compare. So that when you go home tomorrow, you will have confidence and say "ay madali lang pala yun!" ganon yon, that is the intention and you will realize that its basically the same. I will suggest that tomorrow whoever is in charge to give me mic with a longer chord, I will illustrate tomorrow.

So let us proceed, the right to public trial. Does it mean that the proceedings in court can be viewed as it happens on TV or viewed simulcast around the Philippines? Like the Ampatuan Murder case, is that allowed? NO. if you will note there will only be some pictures or moments before the actual hearing or some sort of a long shot before the actual proceedings because to allow a recording or a viewing in public of the proceedings will violate of what is understood to be a PUBLIC trial. Public trial requires you to be present in court, you cannot record, you cannot tape whether audio or video. "e sir bat may naririnig ako sa mga radio?" – e di pa sila nahuhuli ng juzgado, they could be placed in contempt. This has been answered in the case Kapisanan ng Broadcasters ng Pilipinas, when they filed a Petition with the SC in connection with the Erap Plunder case, "dapat ho mapanood naming yan as it happens!" but you will tell me "sir how bout impeachment?" – impeachment is not a judicial proceeding. It is a Senate or a proceeding before the Congress of the Philippines, its not the same. But in a judicial proceeding you cannot take audio or video recording, in fact the SC said *"to allow a recoding and viewing as it happens will give affect judges because of possible public opinion, and will give an opportunity for lawyers to grand stand"* – tama ba yon? Tama naman sila e, however on a Motion for Reconsideration the SC said *"OK we will allow you to record but for historical and its educational value"* that is why at the time of the Erap Plunder case, PTV4 was allowed to record it but not to be viewed by the public but to be kept so that in the future, for historical and educational value, it could be viewed, can you follow? That is the concept of public trial.

Now before I start with arraignment, let me touch on a few cases. Jusat a few cases more which I believe is important. Stil on bail, **Chua v. CA**, Apr12 2007, "proper recourse in assailing the the trial court's Omnibus order cancelling bail, lets say the court cancelled the bail of your client. Can the court cancel? YES. Your remedy is Motion to Review the said order in the same appeal. So your question on the cancellation of the bail, should be reaised in the same appeal.

Report on the Judicial Audit conducted at the MCTC of the Sapang Dalaga. This is and Administrative Matter, apr27 2007, accused must be discharged upon approval of the bail by the judge with whom it is filed. Once the bial is approved it is incumbent upon the judge to order the release of the accused, are we clear?

And finally still on bail, **Sabella v. Inez**, 2007, when there is no showing of the judge where the action is pending, is unavailable, another judge cannot issue bail. I think we have discussed this.

RULE 116

Let us now proceed to arraignment. Class let me start with the case of People v. Trinidad, March14 2007, what if theres a belated arraignment? Parang belated birthday yun, tapos na ibig sabihin. Biruin nyo belated arraignment, ano sabi ng Court? Was the proceedings invalid? This is what the Court said: *"the procedural defect was cured when his counsel participated in the trial without raising any objection that his client had yet to be arraigned. On fact, his counsel cross-examined the prosecution witnesses, moreoever, no protest was made when appellant was subsequently arraigned."* So to briefly explain to you, what happened was aba hindi nila napansin hindi pala na-arraign, nakuha nyo? They proceeded with trial, there was cross examination of witnesses, and the lawyer actively participated, but once they noticed that the accused was not arraigned, the court required him to be arraigned, that is why there is a belated arraignment. Can you follow? Did the belated arraignment rendered the proceedings null and void? NO, for what reason? There was opportunity to cross and the lawyer participated in the proceedings.

Now, I don't think I need to go through the process of enumerating; the plea of not guilty, youre aware of this right? If the accused refuses to enter a plea, the court will enter for him a plea of not guilty. If an accused enters a

plea of guilt with an exculpatory defense or self-defense, the court will enter a plea of not guilty. If it is a conditional plea, the court will enter a plea of not guilty. Who should be present during arraignment? Kailangan ba andun ang offended party? Basic na basic to class ha. Should the offended party be present during the arraignment such that his absence thereof affects the proceedings? Is that correct? NO! unless the presence of the offended party is required for what purpose: PLEA OF GUILT to a lesser offense, for purposes of determining civil liability. Or when the court requires the attendance of the offended party. As a rule the offende party's attendance is not a requirement, alam nyo yung conclusion pero ano ang reason? Because the offended party is only a witness for the State. The offended party is what you call a *complaining witness.* Therefore his or her absence will not affect the conduct of the proceedings. What is the effect if the accused is absent? Can the proceedings continue in his absence? No, because arraignment should be made personally by the accused. If he's absent the court will simply what, reset the hearing and issue a warrant for his arrest. So the court cannot proceed. "Sir how bout *trial in absentia?*" there could be no trial in absentia class, because the accused has not yet been arraigned.

Kinds of plea of guilt. Improvident plea – if you look at the provision of law, it will not give you the definition, it will only tell you that an improvident plea can be withdrawn at any time before judgment becomes FINAL. But what is it? It is a plea where the consequence thereof is not known to the accused. Therefore, the accused did not intelligently enter his plea, hes not aware of the consequence thereof – that is why the law gives him the opportunity to withdraw before final judgment, and class, if this asked in the bar, in a Fact-question form, always remember the rules. The following rules that I will tell you. If the sole basis of a conviction, is an improvident and it reached the SC, usually in cases involving Life/Reclusion Perpetua, what will the Court do? The SC wil not render judgment but will only remand the case for further proceedings if the sole basis of the conviction is an im[provident plea. Second, if the basis of the conviction is not the improvident plea, though there was an Improvident plea but there are other evidence to point on the culpability of the accused, then? What will the court do? The SC will render a judgment, so take note of an improvident plea.

Plea of guilty to a lesser offense. Has this been mentioned in the rules? Plea of guilty to a lesser offense – this is not the wording in pre-trial, on rule118 the wording is plea bargaining, but the effect is the same. Now what do you understand by plea of guilt to a lesser offense? You plead guilty to the much lesser offense, as I've mentioned yesterday, murder to homicide, q.theft to theft, robbery to theft, attempted murder to serious physical injuries, follow? What are the rules? When can you plead guilty to a lesser offense? During arraignment you could plead. The requirement of the law says for as long there is notice to the offended party and the prosecution, even if the offended party is absent, can the plea of guilt to a lesser offense proceed? YES if it is necessarily included in the offense charged.

> **SEC. 2.** ***Plea of guilty to a lesser offense.*** —At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

After arraignment can there still be a plea of guilty to a lesser offense? YES after arraignment and before trial. The last opportunity to plead guilty to a lesser offense is during pre-trial.

Plea of guilt to a capital offense. What is a capital offense? It is an offense which at the time of application for bail and at the time of commission the penalty for the offense is, Death. Of curse it cannot be imposed at this time, but I would like you to know that the law addresses plea of guilt to a capital offense. Is hearing mandatory? YES, the prosecution, despite the plea of guilt to a capital offense, will still have to present its evidence to establish the exact culpability of the accused. Let me cite to you the case of **People v. Ulit** that outlines to us the requirement of searching inquiry. The

> **SEC. 3.** ***Plea of guilty to capital offense; reception of evidence.***—When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf.

judge should conduct a searching inquiry to make sure that the accused knows the consequence of his plea. Let me walk you through the jurisprudence, there are 5 items enumerated in this case as guidelines:

1. circumstances on custodial investigation and preliminary investigation will have to be inquired upon by the judge. So the conduct of these investigations shall still be inquired by the judge.

2. ask the defense counsel whether he has conferred with, and completely explained to the accused, the consequences of his plea. You will have to ask the accused "do you know the consequences of your plea?" do you need to explain what murder is? Do u need to explain what aggravating circumstances are? Mitigating? YES, the judge will have to explain.

3. elicit information on personality profile of the accused. Does he really know what the plea is all about?

4. inform the accused of exact length of imprisonment or nature of penalty uinder the law. So the accused will have to be informed.

5. require the accused to fully narrate the incident.

Plea of guilt to a non-capital offense. Is a hearing mandatory? NO. Hearing if ever it is conducted, will only proceed for purposes of determining the exact penalty for the offense.

> **SEC. 4.** ***Plea of guilty to non-capital offense; reception of evidence, discretionary.***— When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed.

Now let me ask you this, can an arraignment be suspended? Yung ganito hindi na kayo dapat nagugulat. Kailangan sagot dyan, ganon! Pwede pa bang pigilan ang arraignment? O edi syempre! If an accused is of unsound mind. Therefore, there is no way by which he would know what he is going through. The first requirement of arraignment is what? The accused should've been informed of the nature and cause of accusation against him, so it is very important. What else? Aside from the unsound mental condition of the accused, if there is a PREJUDICIAL QUESTION. So the arraignment could still be suspended if youre able to timely file a motion for suspension of proceedings on the ground of PQ. Again where can you file this? Before the Office of the Prosecutor conducting preliminary investigation or before the court before the prosecution would rest its case, ok.

Third way to suspend is what, you file a petition for review with the DOJ. And for this reason the proceedings will be suspended for 60 days. Ok, I think I have given you the answer a while ago. Therefore arraignment cannot proceed. If the DOJ is unable to complete its resolution within 60days, should the court arraign? The court will arraign. Of course in practice, well I can discuss this with you in a different time when youre already a lawyer in the MCLE iba na presentation ko na, kung paano mo maitutulak yung 60days, but for your purposes for the bar exams, 60days suspended, after the lapse of the period, expect an arraignment.

Let me now touch on this, youre aware that your rule65 has already been amended? Youre aware? In Dec 2007 your rule 65 was amended on 2 important points. "sir bat mo tina-touch yon" e kasi kashit na sabihin natin na a petition for certiorari should not be filed in a criminal case, sometimes they entertain so you have tio know. If youre able to file a petition for certiorari and youre unable to secure a TRO or an Injunction will the trial before the lower court proceed? YES today that is the Rule. A filing for a petition for certiorari will not stall will not stop or hold in abeyance the proceedings, it will not, it will proceed. However take note that the new provision gives you a window of 10days. If you file a petition the court will not act within a period of 10days, but that is not a TRO. Can the period of 60days in certiorari be extended? Cge tignan nyo, sec5 rule65, can it be extended? Meron? Pag nakakita ka dyan ng 15days luma na yan! Anong year yan code mo? That has been amended, we don't have 15

days anymore, it's a straight period of 60days. You cannot extend even for a compelling reason. I hope youre aware of that, baka bigla itanong sa bar yan.

Let us now move on, before I move on to Motion to Quash. Let me touch on the case of **People v. Astrologo**, june 2007, *"any objection, defect, or irregularity attending an arrest must be made before the accused enters his plea or arraignment and having failed to move for the quashing of the information against him before arraignment, appellant is estoppped from questioning the legality of arrest."* So add this to our previous discussion.

Now, when should arraignment take place? Yan, when? Within a period of 30days from the time the court acquires jurisdiction over the person of the accused. How? By arrest or voluntary surrender. But that's incomplete. That is section1 F of Rule 116, but you will also have to look at section1 rule 118 (pre-trial), PT should've taken place within 30days from the time the court acquires jurisdiction over the person of the accused, BUT **after** arraignment, so ganon ang intindi dyan dapat. So ulitin ko ha, the 30days require what, from the time the court acquires jurisdiction over the person of the accused there should be what: ARRAIGNMENT, but within such 30days **but after** arraignment, there should be pre-trial.

What if the person is preventively detained? Pano kung nakakulong yung tao, do we follow the same periods? No the periods are shorter, from the time the information is filed, the case will be set for raffle within 3days, now from the time the raffle is concluded the arraignment will be scheduled within a period of 10days therefrom. And the PT will be scheduled within 10days thereafter. So remember 3:10:10 if the person is preventively detained. If the accused is detained the periods for arraignment and PT are much shorter. 3 from raffle, 10 to arraignment after raffle, and 10 to PT after raffle.

Now, my final point on arraignment will be the accused can demand that records, documents in the possession of the police officerds or the offended party be presented to avoid suppression, surprise or even destruction. You could require by motion the presentation of these documents.

RULE 117

Let us now move on to Motion to Quash. And I will start with the 2009 case of **Los Banos v. Pedro**. You might want to read this in the original its very interesting. It makes a point-by-point comparison of what, a Motion to Quash and a Provisional Dismissal. Before I proceed kelangan ilay ko muna ung basis nung discussion. Ano ba ung Motion to Quash? E ang Provisional Dismissal? Pareho ba yon? "sir ah parang pareho yan dahil epekto nyan dismiss!" – hindi ganon ang sagot. What is a MTQ, when you file a MTQ you would want to what, to quash the information, maybe because its defective or the court has no jurisdiction. Will it result to double jeopardy? NO unless of course there's existing double jeopardy. U follow? It will not.

What is a Provisional Dismissal? It is a dismissal WITH THE CONSENT OF THE ACCUSED. The rule is for double jeopardy to attach, acquittal, conviction or dismissal without the express consent of the accused. Ang provisional dismissal, o tatanugin ka ng juzgado "o akusado okay lang ba sayo? Wala pa yung testigo nila nasa bakasyon pa, dismiss na naten provisionally, is that ok with you?" "yes your Honor" –that is a provisional dismissal. **Any dismissal where the accused consents, whether expressly or impliedly, is a provisional dismissal.** For this reason a Provisional Dismissal can be revived. double jeopardy will not attach, maliwanag? Yan ang konsepto ng provisional dismissal.

> **SEC. 8. *Provisional dismissal.*—** A case shall not be provisionally dismissed except with the express consent of the accused and with notice to the offended party.
>
> The provisional dismissal of offenses punishable by imprison ment not exceeding six (6) years or a fine of any amount, or both, shall become permanent one (1) year after issuance of the order without the case having been revived. With respect to offenses punishable by imprisonment of more than six (6) years, their provisional dismissal shall become permanent two (2) years after issuance of the order without the case having been revived.

Now, our Rules today has given a different treatment on what Provisional Dismissal is. Alam nyo nung estudyante kami ang

Provisional Dismissal ay wala, habang panahong provisionally dismissed. Ma-archive ang kaso mo why? E pag umoo ka pag nagpa permanent dismissal ka the other party will obviously object. But in the light of these problems that has left a lot of cases archived for years, the SC was able to craft a provision. It's a very good provision because at some point in time it will make it permanent. It will make the dismissal permanent, how? First you have to identify what is the penalty for the offense. Mahigit na anim na taon ba? Kung mahigit na anim na taon, from the date of dismissal, after the lapse of 2 years, it will become permanent, there will be a bar. If the penalty for the offense does not exceed 6years, the lapse of 1 year will suffice before it becomes permanent. Now but when, the real question is:"when will the period commence to run?" if you will look at the provision of the law, you will note that the notice of dismissal shall be given only to the offended party.

That was the question raised in the case of Lacson, when he was pushing for the dismissal of the case against him, saying that because of the lapse of time from its dismissal it should've become permanent. But what did the SC say? "Notice to the offended party will not suffice" because it is not the offended party who will revive the case. It is who? The public prosecutor, therefore notice of dismissal should be given to the public prosecutor and the period will only to commence to run once the public prosecutor receives the notice, ok.

Now, let me now walk you through the ruling of the court (**Los Banos v. Pedro**) its very interesting, I need to quote it from the decision: "a first notable feature of sec8 rule 117 is that it does not exactly state what a provisional dismissal is. What I told you is brought about by jurisprudence, the modifier provisional suggest that the dismissals with sec8 essentially refers to those dismissals which are temporary in character, kaya nga provisional e, and not dismissals that are permanent. Based on the law, rules and jurisprudence permanent dismissals are those barred by principle of double jeopardy, by the rule on speedy trial, and dismissals after plea w/o express consent. Therefore, provisional dismissals doesn't (sic) fall on these kinds of dismissals. Are we clear, however, the provision provided for a lapsing of time, with proper notice of dismissal and lapsing of time, it will become permanent.

Second feature, sec8 does not state the grounds that lead to a provisional dismissal. This is marked in contrast to a MTQ that enumerates the grounds for a dismissal. Maaring maraming dahilan, "tulad ng ano sir" 'hindi na ako interesado, hindi na naa-appear' follow? There are no witnesses, repeated absence in court – could lead to a provisional dismissal. A lot of reasons, but in MTQ the grounds are specific.

The third feature. Sana itanong ano? Pina distinguish, because this is the first time that it was distinguished. The third feature focuses on the consequences of a meritorious MTQ. Anu ba yung feature ng meritorious Motion to Quash? If it's a meritorious Motion to Quash, you will have to distinguish what was the ground for the grant. If it's a lack of jurisdiction, could it be re-filed? YES. If the prosecutor ahs no authority, could it be re-filed? YES, u follow? So it would depend on the grant. However, if its based on double jeopardy, could it be re-filed? NO more. If its based on prescription could it be re-filed? NO more.

Now let me now go to the point-by-point distinction of the SC. They have 5 point-by-point distinction:

First, a Motion to Quash is invariably filed by the accused to question the efficacy of the complaint or information. So whats in question is the efficacy of the complaint. In a Provisional Dismissal, it is at the instance of the prosecution or the accused, tignan nyo ah, pwede prosecution or accused or both, subject to the conditions of sec8 rule117, very clear right? In MTQ: accused, in PD: prosecution, accused, or both.

> **SEC. 2.** ***Form and contents.***–The motion to quash shall be in writing, signed by the accused or his counsel and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except lack of jurisdiction over the offense charged.

Second, the form and content of a Motion to Quash are stated in sec2, these grounds are not applicable for a Provisional Dismissal.

Third, a Motion to Quash assails the validity of a criminal complaint or information, a Provisional Dismissal may be grounded on reasons other than the defects of the complaint or information. So in PD the information can stand, but there could be other reasons that would cause its dismissal.

Fourth, a Motion to Quash is allowed before arraignment or plea, yan, there may be Provisional Dismissal of the case even when trial proper is already under way, therefore a PD could be made at any time, even during trial.

And finally, a Provisional Dismissal by its own terms is impermanent until the time-bar applies. In contrast, an information that is quashed stays quashed until revived, unless of course its double jeopardy or prescription.

Siguro naman pag tinanong yan sa bar exams, eh kayang kaya na yan ano?

Now there are various grounds to quash as we mentioned, one is, the information does not constitute an offense.

> **SEC. 3. *Grounds.*–**The accused may move to quash the complaint or information on any of following grounds:
>
> (a) That the facts charged do not constitute an offense;
>
> (b) That the court trying the case has no jurisdiction over the offense charged;
>
> (c) That the court trying the case has no jurisdiction over the person of the accused;
>
> (d) That the officer who filed the information had no authority to do so;
>
> (e) That it does not conform substantially to the prescribed form;
>
> (f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
>
> (g) That the criminal action or liability has been extinguished;
>
> (h) That it contains averments which, if true, would constitute a legal excuse or justification; and
>
> (i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

If this is the ground and it is granted, will the court dismiss it outright? Not yet, the court can order an amendment. The prosecution will be given a time to complete the information. If they fail to do so, it will be dismissed.

Lack of jurisdiction over the person of the accused. Voluntary surrender and arrest, so if he hasn't surrendered or arrested the information can be quashed.

Third, lack of jurisdiction over the offense charged. This goes to the law that confers jurisdiction. BP 22 but filed in the RTC, quash the information. But could it be revived? Yes in the court which has jurisdiction.

Lack of authority, meron ba nun? This was asked last year, and I will cite to you the case of TUringan v. Garfin, 2007, a state prosecutor lacked the authority to file the information because there was neither a directive from the Sec of Justice designating him as a special prosecutor nor the written approval of the information by the city prosecutor. Here, the information suffered from a jurisdictional defect. Therefore, the judge correctly dismissed the case. But class take note, though it was dismissed could it be revived? YES you get the proper authority, an information with the proper authority. It does not comply with the prescribed form, sir anong ibig mo sabihn? Aba'u wala kang akusado, wala kang petsa it goes to the sufficiency of the information. Or, there is no certification, baket sir? A prosecutor should certify the information that he has served a copy of the complaint to the the accused, who then was the respondent, and the accused-respondent was given the opportunity to present his side. That is part of the information.

What else? When the information raises a, an exculpatory defense. Self-defense! OO! Andun ung defense, remember that an information is an accusatory information. Self-defense is a matter of defense, so it should not appear in the information. How bout a mitigating circumstance? Dapat nasa information? OF COURSE NOT. Aggravating yes, but not the mitigating circumstances- problema na ng akusado un e. of course, expect a quashal. If an information contains more than one offense, diba diniscuss natin kahapon, unless a complex crime – motion to quash asahan mo dyan. If the crime has prescribed, MTQ. And finally double jeopardy, di ko na ulit ulitin yang double jeopardy.

Now let me give the general rule: a dismissal with the express consent of the accused will not lead to a double jeopardy, correct? Yes that's the rule. **EXCEPT**: 1. Demurrer to evidence, and 2. Dismissal of the case on grounds of speedy trial. Let me touch on this item of speedy trial, I just hope that in the bar walang computation of periods. Class may periods yan, diba sinimulan ko na kanina, 30days. For preparation for trial 15 days. I will give you a special tool, syempre din a secret alam nyo na andito kayo e. meron akong itututuro sa inyo, dalawa lang tatandaan nyo pag if youre confronted with sankatutak na order, delays titingnan mo pa ilang taon, ano ang tatandaan nyo? Remember 1. VCO – vexatious, capricious and oppressive delays, violation of the right to speedy trial yan. 2. You have to take note, EXCLUSIONS, sec3 rule119. Sir ano yun? Ung iba ang bibilis sumulat "this is new ah!" hindi yan new, haha, matagal nay an andyan sa Code! Meron na ngang jurisprudence yan e. The law mandates that the trial should be completed swiftly, if the case is delayed for one reason or another like theres a petition for certiorari, may extraordinary remedies, or other pending cases, jurisdiction over the person of the accused or other accuseds have not yet been obtained, like delay by reason of other proceedings, like unsound mind of the accused, like unavailability of witnesses or absences of witnesses – these are what you call EXCLUSIONS, pwede mo hingin na ideduct, u follow. In once case decided by the SC, the pre-trial took place after 9 years, akalain nyo un! E pano naka certiorari sa SC. So those are what, exclusions. In another case, the case was rest and rescheduled for 20 times, "sir sobra naman yan" alam nyo nangyari? Ang ganda nung decision ng SC e, there was motion to move for a dismissal on the ground of speedy trial, sabi ng SC di pwede idismiss yan, the SC said it wasn't the fault of the prosecution! Why? Kasi the prosecution made efforts to look for the witnesses who were in the custody of the NBI, it was the NBI who was remissed in its obligation. In fact the prosecution already requested for the issuance of 5 warrants of arrest. What is the common denominator? As long as the prosecution does something the court ordinarily will not dismiss. So remember that.

Pag ginrant ba ang motion, grounded on violation of speedy trial, mare-refile? NO MORE un nga ang exception e! it can no longer be re-filed, it will be barred permanently.

DOUBLE JEOPARDY. What are the requisites? 1. A court of competent jurisdiction, 2. A complaint or information, 3. A valid plea, 4. Acquittal, conviction and dismissal – without the express consent of the accused. However, you have to take note even if theres already a judgment or a plea, if theres a SUPERVENING EVENT that would result to a graver offense, double jeopardy will not apply. Second the facts constituting the graver offense were only discovered after plea. "ay namatay?!" seiour Phy Inj, nasa ospital, nag plea, namatay, edi homicide. There will be no double jeopardy.

Merencillo v. People, could there be double jeopardy if a person charged is simultaneously or successively charged with violation of RA 3019 and the RPC? NO. What if estafa and BP 22? NO. People v. CA feb 21 2007, a verdict of acquittal is immediately final and a re-examination will put the accused in jeopardy. Exceptions: 1. Deprivation of due process and a finding of mistrial. 2. Grave abuse of discretion under rule65, are we clear?

RULE 118

PRE-TRIAL

Lets start ha, o baka ang galing galing nyo sa rule18, pero sorry to say the word ha "banban (ano un?! ☺)" naman kayo sa 118, magkaiba yon! Example dito madalas magakamali ang estudyante e, sec4 &5 of rule 18, they believe it applies to rule 118, ill give an example, if the accused is absent during the PT, can the prosecution present evidence ex-parte? HINDI! Bat kayo natigilan? HINDI. that will be in violation of hir right to due process. That concept of presentation of evidence ex-parte applies only in civil cases. Pag absen akusado, ano, ARREST or

forfeitutre of bail, kaya inuna ko to e, class wag kayo malungkot kung di nyo nasagot no, dahil mismong abogado pag tinatanong ko sa MCLE yan, matapang pa! akalain nyo abaogado na yon a, ok, if you read rule 18, that doesn't apply. Now if the prosecution is absent, the offended party or the counsel, will the case be dismissed, of course not! The offended party is only a complaining witness. Maski absent sya, no worry, unless of course the absence is repeated – yan that might lead to violation of right to speedy trial, and failure to prosecute mga ganong klase. What the law expressly provides is this: if the counsels are absent on the date, sanctions will be imposed.

People v. Ancheta, what is the rule when it comes to admissions by the accused? Dapat to kabisado nyo, an admission could only be taken against the accused if its in writing, and signed by the accused and his counsel. These are mandatory.

Let me walk you through, ah, eto, take note ha, ALL WITNESSES should be named in your PT Brief. All documents should be marked in your PT Brief. Otherwise, it will not be allowed by the court unless, in the interest of justice. Have you heard of Preliminary Conference? Oh yes sir alam ko yan yung sa MTC sa Summary Procedure. Is there a Preliminary Conference in ordinary procedure? YES. O liliwanagin ko to, liwanagin ko ha. This is under the Guidelines and Modes of Discovery of 2004. Whether in civil or criminal cases, there is Preliminary Conference before whom? Before the Clerk of Court (CoC). Class yung alam nyong Preliminary Conference sa Summary Procedure, that's before the judge. However, based on the mandate of the Guidelines, whether civil or criminal there should be a Preliminary Conference before the CoC, for what purpose? Marking of documents, admissions, what else, naming of witnesses, identification of trial dates. Now aside from Preliminary Conference in Summary Procedure and under the Guidelines 2004, can you name another instance wherein the law mentioned Preliminary Conference. O di ko kayo patatawarain nag Civil Procedure na kayo ha, o where? That's right, Preliminary Conference in the Court of Appeals, rule48! Tandaan nyo do not overlook 46-56! Preliminary Conference in the CA. can you have Preliminary Conference in the SC? YES, for what purpose? Stipulation of facts in cases of original actions or where there's a grant for Motion for New Trial.

Can you compromise criminal cases? "of course not sir, sir hindi nyo alam ang rule130 sec 26 or 27?!" an offer of compromise of an accused is an admission of liability, tama ba?! Ang balik ko naman senyo, are you aware of the **JDR RULE?** "hala ngayon ko lang narinig yan sir a!" JUDICIAL DISPUTE RESOLUTION 2006, today class there are certain criminal offenses that by its very nature are allowed by the SC to be compromised as to its civil aspect. Theft, libel, bp22, estafa, criminal negligence- these are allowed to be compromised. Kahit criminal to dumadaan to sa mediation, nirerefer sa mediator, and in courts where the JDR is in effect the judge will explore the possibility of a compromise. If the civil aspect is compromised, will it result to the natural dismissal of the criminal case? NOT because of the compromise of the civil liability. If youre the counsel for the accused what should you do? You should obtain an Affidavit of Desistance from the Offended party, not because he was no longer interested in the case but to show that the crime was not actually committed. This affidavit of desistance will show the weakness of his case and for this reason, there being no prosecution evidence, then the prosecution will move for the dismissal of the case. Wag kayo mag move if youre for the accused because the rule is any dismissal with the express consent of the accused will not lead to double jeopardy. Are we clear? Please make sure that the accused has been arraigned. The rule on the Affidavit of Desistance is this the court usually frowns upon an Affidavit of Desistance, because the thinking of the court is that it was obtained for a consideration, or upon duress, upon an influence, yan ang sabi ng husgado, however, if you could show to the court that it was known to the affiant, the court will accept and affidavit of desistance.

My next point would be People v. Guzman, Rule118 sec4 mandates that the matters agreed upon during the Pre-Trial conference and as stated in the PT Order shall bind the parties. It will affect the parties. We will continue tomorrow, we will start with trial, ill meet you at 9am, ok see you tomorrow.

PART V

RULE 119
TRIAL

Lets start. If you will ask me, the important points under this Rule are as follows:

First the period for the court to conclude a trial, in sec2. The court should conclude trial within a period of 180 days.

> **SEC. 2. *Continuous trial until terminated; postponements.***—Trial once commenced shall continue from day to day as far as practicable until terminated. It may be postponed for a reasonable period of time for good cause. (2a)
>
> The court shall, after consultation with the prosecutor and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time so as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Supreme Court. (sec. 8, cir. 38-98).
>
> The time limitations provided under this section and the preceding section shall not apply where special laws or circulars of the Supreme Court provide for a shorter period of trial.

Second, exclusions, what is the importance of exclusions? The time required by law for you to complete a case is, excludes that portions of delay. The portions of delay are not included. When you have exclusions the periods of delay are not included, for that reason, the delay could be 3, 4, 5 years, but if any of those under sec3 are present the burden is upon whom, the prosecution has the burden to prove that the exclusions are present. Can you follow? For example, you have an unavailable witness, when do you say that hes unavailable? That his whereabouts are known but he's not available for the day's hearing. Follow? When do you say that the witness is absent? It means that his whereabouts are NOT known, therefore you have to look for him. Other instances of exclusions, delays by reason of extraordinary remedies, delays by reason of Pre-Trial for as long as not exceeding 30days, delays by reason of unfitness or inability of the witness to stand trial like he is of unsound mind-all of these are what you call EXCLUSIONS. How will it be asked in the bar exams? I think the closest example I could think of is a scenario of delay, or if they are more reasonable, they will simply ask you to enumerate a number of exclusions. If youre confronted with a wustion on speedy trial try to look for exclusions before you make a conclusion that it's in violation of speedy trial.

Within how many days should trial commence? Within 30days from receipt of the Order of Pre-Trial. My next statement might seem to you to be not so important but this was already asked in the bar exams, Order of Trial or presentation of evidence. What is the order of trial in criminal cases? The prosecution presents evidence first, then the accused presents evidence, if theres a need for rebuttal or sur-rebuttal the court will allow, subject to its discrection. Question: Rebuttal is mandatory, TRUE OR FALSE? FALSE! Presentation of rebuttal evidence is left to the discretion of the court. In the ordinary course of things, class, the prosecution presents first its evidence, then the accused presents its evidence, so sir kelan subject to the court's discretion, when will it allow presentation of rebuttal evidence? If there are new matters presented by the accused in its presentation of evidence, like alibi. Like self defense, the court will or may allow presentation of rebuttal evidence. So if youre asked to define rebuttal evidence, you write it is subject to the discretion of the court and rebuttal evidence is presented if allowed by the court to meet new matters presented in the presentation of the defense's evidence. The same definition applies in civil cases – like payment, waier, prescription, u follow? These could be met by rebuttal evidence. Once the presentation of rebuttal and sur-rebuttals evidence is completed, what do you have? The cour may require the parties to submit memorandum or memoranda. Thereafter the case will be submitted for resolution.

Can the order of presentation be reversed? YES. If the accused presents self defense or exculpatory defenses, but take note it is left to the discretion of the court.

Can the court reset the case? This is something that "ah alam ko nay an!" –may partner provision ba to sa civil procedure? YES, rule30, in civil cases hearings could be cancelled for 2 important reasons: absence or unavailability of material or relevant evidence, and sickness or illness of the party or counsel. And the requisites are that the nature of the illness is that which would render the absence of the party or counsel excusable, and the presence of the party or counsel is indispensable. Same rule sa criminal? The factors to be considered by the court to allow continuance are 2: 1. W/N to grant a continuance will lead to a miscarriage of justice, so papasok din dyan yung may saket ganon, u follow? Walang testigo, walan ebidensya, but it is more generic. 2. The issues presented in the civil case, is so novel, unusual and complex, that it will require more time for tha parties and their counsel to prepare.

Now, lets say you weren't able to prepare because you were out on a party last night, is that a reason for continuance? NO! failure or unavailability of your witness is that a ground for a continuance? NO! congestion of court dockets,ground for continuance? Likewise, NO!

Now, let me now present to you the PERIODS so you could visualize it, para you have a working idea. The rule is class from arraignment, from the time of arrest or the time the court acquires jurisdiction over the person of the accused, the 30day period will commence to run, the next step arraignment. And within the 30days, Pre-trial should also take place, agree with me? Ok. Now based on the provision on sec6, rule119, from the time that the accused was arraigned until before trial you should only have consumed how many days, 80 days. You read that carefully, cause on the 3rd yr of the effectivity of the Rules on Criminal Procedure, arraignment to trial should only be 80 days. So if you compute it, only 110days, that's barely 4months, the period for trial should be when? 180 days and that's 6months, so in less than a year, the case should've been completed and terminated. So kung may tanong sa bar exams where the case has been pending for more than a year, you have to be very careful and you have to ask yourself, was it VCO? And second, are there exclusions? If there are the delays are acceptable.

> **SEC. 6. *Extended time limit.*—** Notwithstanding the provisions of section 1(g), Rule 116 and the preceding section 1, for the first twelve-calendar-month period following its effectivity on September 15, 1998, the time limit with respect to the period from arraignment to trial imposed by said provision shall be one hundred eighty (180) days. For the second twelve-month period, the time limit shall be one hundred twenty (120) days, and for the third twelve-month period, the time limit shall be eighty (80) days.a

Now I wasn't able to ask you this question yesterday, regarding speedy trial. Are the 2 kinds of speedy trial mutually exclusive? (right to speedy disposition of cases under the COnsti and speedy trial under crimpro) Meaning, if you avail of one you can no longer avail of the other, are they mutually exclusive? NO. so denial of one, then you can still avail of the other.

Lets move on to another item. A lawyer can be sanctioned, if he sets a hearing on a date knowing that a witness is unavailable. He can be sanctioned if he moves for a continuance knowing that the grounds are frivolous or unmeritorious. A lawyer can be sanctioned if he misleads the courts, what are the sanctions? 1. If you are a private counsel you can be imposed a fine not exceeding 20, 000, if youre a counsel de officio or Public Attorney, you can be imposed a fine not exceeding 5, 000, in bothe cases, you could be prevented by the court from appearing in his sala within a period not exceeding 30 days, so tandaan nyo yon.

Now let me now touch on class, Conditional Examination of Witnesses. Alam nyo ba yan? Class 2 taon ng may tanong ng modes of discovery, 2008 then in 2009. 2008: can you use modes of discovery in special proceedings? Yes, the provisions on Civil Procedure will apply suppletorily to the provisions of special proceedings. If im

accurate, rule72 sec 2, it says, the rules on civpro will have suppletory application. 2009: True or False, you can apply modes of discovery in civil cases to criminal cases. TRUE, but class take note of the wording, modes of discovery, it covers the entire set of modes of discovery. But in this case of Manguera v. Risos 2008, there was a question on whether you can apply rule23 depositions pending action, note that rule 24 has superseded rule134 the rule on the perpetuation of testimony is in rule 24, rule 25 is interrogatories to parties – this interrogatories is directed only to whom? To the party if youre not a party and youre deposition is to be taken rule23 will apply. Rule 26 request for admission, tignan nyo baka may may tanong e, sayang e. rule27 production and inspection of books papers and documents, pano kung tanong sa bar ganito "the order for the mode of discovery can require entry into premises for purposes of measuring, surveying and photographing the premises. TRUE OR FALSE? True. Rule 27 is not limited to securing or examining books papers and documents it includes entry and exit to the premises. This is not the same as ocular inspection which is the court's exercise of its perception – object evidence. Rule28 is physical mental examination, tanong sa bar, the deponent refuses to answer a deposition question, can he be arrested? Rule 29 ang sagot nyan, he can be arrested. Can he be placed in contempt? Yes. Lets say the person who refuses to be subjected to modes of discovery is of unsound mind, can he be arrested? That is the exception if youd like to avail rule28, and the deponend refuses, you cannot have him arrested that is an exception, ok.

Now lets look at Manguera v. Risos, it is true that rule1 sec3 that the rules on civil procedure applies to all actions, civil criminal and special proceedings, in effect it says, the rule on civil procedure shall have suppletory application to criminal cases, listen to this next statement, however it is likewise true that the criminal proceedings are primarily governed by the Revised Rules on Criminal Procedure considering that rule119 adequately and squarely covers the situation in the instant case we find no cogent reason to apply rule23 suppletorily or otherwise. U follow? What is rule 119 sec 12 and 13 and 15? What do you call these provisions, Conditional Examination of Witnesses for the accused and Conditional Examination of Witnesses for the prosecution.

SEC. 12. ***Application for examination of witness for accused before trial.***— When the accused has been held to answer for an offense, he may, upon motion with notice to the other parties, have witnesses conditionally examined in his behalf. The motion shall state: (a) the name and residence of the witness; (b) the substance of his testimony; and (c) that the witness is sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred (100) kilometers from the place of trial and has no means to attend the same, or that other similar circumstances exist that would make him unavailable or prevent him from attending the trial. The motion shall be supported by an affidavit of the accused and such other evidence as the court may require. (4a)

SEC. 13. ***Examination of defense witness; how made.***— If the court is satisfied that the examination of a witness for the accused is necessary, an order shall be made directing that the witness be examined at a specific date, time and place and that a copy of the order be served on the prosecutor at least three (3) days before the scheduled examination. The examination shall be taken before a judge, or, if not practicable, a member of the Bar in good standing so designated by the judge in the order, or if the order be made by a court of superior jurisdiction, before an inferior court to be designated therein. The examination shall proceed notwithstanding the absence of the prosecutor provided he was duly notified of the hearing. A written record of the testimony shall be taken. (5a)

SEC. 15. ***Examination of witness for the prosecution.***—When it satisfactorily appears that a witness for the prosecution is too sick or infirm to appear at the trial as directed by the court, or has to leave the Philippines with no definite date of returning, he may forthwith be conditionally examined before the court where the case is pending. Such examination, in the presence of the accused, or in his absence after reasonable notice to attend the examination has been served on him, shall be conducted in the same manner as an examination of the trial. Failure or refusal of the accused to attend the examination after notice shall be considered a waiver. The statement taken may be admitted in behalf of or against the accused.

Let me continue with the statement of the Court, "to reiterate the Conditional Examination of a prosecution witness for the purpose of taking his deposition should be made before the court or at least before the judge where the case is pending, such is the clear mandate of rule 119 sec15, we find no necessity to depart from or relax this rule." If you would note the Court has treated Conditional Examination as some sort of deposition taking.

Now furthermore, the Court said "the giving of testimony during the trial is the general rule in a criminal case, the Conditional Examination of a witness outside of trial is only an exception. " ok. And as such calls for a strict construction of the rules.

Class you usually use Conditional Examination of Witnesses when, the witness is, UNAVAILABLE.

Now you will have to distinguish between the Conditional Examination of Witnesses for the accused and Conditional Examination of Witnesses for the prosecution. Can u follow? Kelangang magkahiwalay yon, at kelangan memoryado nyo to. Di pa to tinatanong sa bar mula nung inamend nila yan nung 2000, madali lang to class.

What are the grounds for the Conditional Examination of Witnesses for the accused?

1. the witness is sick or infirm or unavailable.

2. the witness resides more than 100km from the place where the hearing is to be conducted. Sounds familiar correct? Similar to rule23 **sec4**. Class wag kayong pupunta ng bar na hindi nyo memoryado yang section 4 na yan ha!

Where will the Conditional Examination take place? If you get to be confused, tandaan nyo ang batas always favors the accused, therefore you could take Conditional Examination before any judge, ANY JUDGE in the Philippines, second, any member of the Bar in good standing, and if ordered by a superior court directing an inferior court. Maliwanag? Ganon yon. Mas maluwag pag akusado.

Now let us look at the Conditional Examination of Witnesses for the prosecution.

1. the witness is sick or infirm or unavailable.

2. the witness for the prosecution is about to depart from the Philippines, aalis na, with no definite date of returning.

Before whom should deposition be taken? Answered by the Maguera case, it says, quoting the provision of the law, it says "the purpose of taking his deposition should be made before the court of before the judge where the case is pending" this is not something that is declared by jurisprudence this is provided for by law, only reiterated by, jurisprudence. I hope that's clear to you, Conditional Examination of Witnesses.

Now let me proceed to another item, yesterday or was it the other day? I made mention of Yu v. RTC of Tagaytay and I distinguished discharge right, and I gave the requisites of a discharge as a State Witness. I will repeat it for your purpose: there is no direct evidence, there is absolute necessity for the evidence, it could be corroborated in its material points, he is not the most guilty and he hasn't been convicted of an offense involving moral turpitude. And we mentioned that if theres a successful discharge it amounts to an acquittal, and ther will be an affidavit submitted, and the evidence submitted will be rproduced during the trial.

Let me call your attention to another case: **Monghe v. People**, march7 2008, the question in this case is, *"When can the testimony of a Discharged Witness be disregarded?" pwede mo ba idisregard? E discharged na sya eh! The Court said, "the only instance where the testimony of a discharged accused may be disregarded by the court is when he deliberately fails to testify truthfully in court, in accordance with his commitment."* Can you follow? So if he misleads the court, if he makes an untruthful testimony, the court can disregard his discharge as a State Witness and there will be no acquittal.

Now, the next important item, still on trial, that I would like you to take note is of course exclusion you know that, yan ang una nyong natutunan sa practice court diba? ☺ "Your Honor I move to exclude the witnesses for grounds of public moral and decency" yan ang isa, una kong natutunan sa practice court diba? ☺

> **SEC. 21.** ***Exclusion of the public.*** —The judge may, motu proprio, exclude the public from the courtroom if the evidence to be produced during the trial is offensive to decency or public morals. He may also, on motion of the accused, exclude the public from the trial except court personnel and the counsel of the parties.

The next important item that I would like to discuss with you is what, Demurrer to Evidence. This has been asked in the bar exams a number of times! 2003, 3 tanong, yung isa ganito "Motion to Dismiss for insufficiency of evidence" that is demurrer to evidence! Class isang tip ko senyo, wag nyo pahirapin ang buhay ng examiner, may mga estudyante akong nakita ang ugali "yes the action of the court was proper" aba'y iku quote yung buong law! Papipiliin ka kung anong gusto mong kunin don! "therefore the action of the court is proper" bakit ko sinabi? Hindi

masamang iquote nyo, pero hindi nyo naman kelangan iquote lahat e, in fact if your could harmonize, better, so that the examiner would be able to read it, and class, PLEASE do not do this a second error of students, "bahala ka na sir hanapin yung sagot ko!" "is the action of the court proper?" ang sagot "in the case of so and so, in section so and so, " – hindi mo alam ano bang sagot ng batang to talaga?! Yung karamihan ng ganon, hindi tiyak ok lang yun, kung talagang hindi mo alam ang sagot e, kaya mo ginanon yon GUSTO MONG PATUNAYAN NA ALAM MO NAMAN E, TAMA? ☺ pero kung lahat ng sagot mo GANON, naku e delikado ka, nakakita na ko ng ganon! Lahat ng sagot ganon, tapos yung huling linya saka sasagutin. Papagurin mo yung examiner (sir, nagbabadya! Mga signos na ba ito? ☺) remember this: YOU CANNOT APPEAL. Dito sa school pwede kayo mag appeal diba, pakitaan nyo ko ng nakapag-appeal sa bar! Sige yung nakapag appeal tas nireconsider nila, wala! That's why youre professors keep on harping what, good handwriting, good English, good presentation. Just give me a minute on this. And as a professor of long standing, I tell you, I have seen students topped the bar, and its very simple. Class ganito no, yung sa inyo na, alam ko may nangangarap sa inyo na hindi lang pumasa pero mag top, ganito yung nakikita ko sa mga estyudante kong nag-top, "sir bat alam mo kung sino sya?" syempre pag bumalik yung decoded hinahanap ko kung sino sya. Pag bumasa ako ng booklet, pag tingin kong ganyan, para akong hinilamusan, alam nyo yung ganon, ang ganda naman ng sulat nito! I recall a student of mine in FEU, he was the last one who placed in the top10, tahimik lang yon, sa isang sulok lang yon, pero nung nakita ko yung booklet nya, di ako makapaniwalang sya yon e! nunng bina, ang ganda ng Ingles, yung handwriting is so clear, he got a good grade, that's why when he placed in the bar exams I was not surprised. And you know class, there are some of you who have good handwriting, but there are some which appears to be good but not readable, alam nyo yung ganon?! Maganda nga nakakapagod! Walang pinagkaiba yun sa "maganda nga gwapo pero hindi ko gusto e!" – alam nyo yung ganon? Meron yung maaliwalas tignan kahit kagandahan, maaliwalas tignan e, ganun din sa booklet! Believe me, wag nyo masyadong pagdikit-dikitin ang letra.kahit anong ganda sulat mo nakakapagod sa mata e. im not too old but I start to get tired when reading. If your examiner is 50+ its very hard to read. Don't make it hard for them. Make spaces so that they could read, but the danger, this is the danger or downside of a very clear and legible handwriting, pag wala kang sagot, kitang kitang wala kang sagot, (laughter) tama bako? Naku wala, begging the question, inulit so just be reminded of those few things.

So again, when I mention Demurrer to Evidence, in 2003 there was a question, every now and then may tanong e, but the more recent question the I recall is in 2008 or in 2007. "Distinguish Demurrer in civil and criminal" – tinanong yan! Ang mga estudyante ko kabisado yan kahit nakapikit, ipaulit ulit mo pa. o idistinguish natin ha. When can you file a demurrer to evidence in a civil case? After the plaintiff complestes the presentation of his evidence. How bout criminal? When the prosecution has rested its case. Magkaiba ba yon? Hinde pareho lang yon! It only means that you have submitted the formal offer of evidence. The next more important question I will have to ask you is this: " do you need leave of court in a civil case?" NO. you just file your demurrer to evidence, you don't need leave of court, are we clear? Leave of court is required, listen to this, to be able to file demurrer to evidence in a criminal case, true or false? Sir tricky yan a! False, you just file, however if you file there are consequences, you follow? Youre not prevented from filing. If you obtain leave of court, and you were not given leave, you filed demurrer nevertheless, what is the consequence if your demurrer is denied? The court will already render judgment. Lets say you did not obtain leave, you simply filed demurrer to evidence, e denied, will the accused be allowed to present evidence? NO MORE. The court will already render judgment. If you obtain leave of court and the court grants your leave to file demurrer to evidence, and you filed demurrer to evidence and its denied, can you still present evidence? YES ganon simple.

Now can you file a petition for certiorari in a civil case, if your demurrer to evidence is denied? If its tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the denial could be subject to a petition for

certiorari for as long as there was a Motion for Reconsideration. Do we follow the same rule in a criminal case? The answer is NO, sir where did you get that? That's the last line of rule119 sec23. You cannot file an appeal or even a petition for certiorari of a denial of demurrer to evidence in a criminal case. You will have to wait until the completion or the conclusion of the main case.

> **SEC. 23.** ***Demurrer to evidence.***—After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court
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> If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)
>
> The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt.
>
> If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt.
>
> The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment.

Now what is the effect of a grant of demurrer to evidence in a civil case? The case is DISMISSED, is it with prejudice? YES its an adjudication on the merits. Nagpresenta ng ebidensya e! in a criminal case is it an acquittal? Yes it is an ACQUITTAL in a criminal case, therefore it cannot be subject of an appeal.

Salazar v. People, the Court says that in criminal cases, demurrer to evidence partakes of the nature of a Motion to Dismiss the case for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt. In a case class, where the accused files a demurrer to evidence without leave of court according to this case, he waives his right to present evidence, and submits the case for decision on the basis of the evidence of the prosecution, are we clear?

The problem presented to us by the Salazar case, what happened? Class ang nangyari sa kaso na ito ganito, the demurrer to evidence was granted, and the accused was acquitted, can the court award civil liability against the accused? Considering that the demurrer to evidence was granted and accused was acquitted. WAIT, CANT BE, walang ebidensya prinisenta ang akusado e! that will be in violation of his right to due process. Yes he was acquitted, but you cannot award civil liability unless he was heard by the court. That is why the Court said if demurrer to evidence is granted and accused is acquitted by the court, the accused has the right to adduce evidence on the civil aspect of the case. Ok. Unless the court also declares that the act or omission from which the civil liability will arise does not exist. Moreover the Court said, what the trial court should do is to issue an order or partial judgment granting the demurrer to evidence and acquitting the accused, and set the case for continuation of trial for petitioner to adduce evidence in the civil case. Can you follow? So in a demurrer to evidence, considering that the accused has not yet presented evidence, its wrong for the judge to rule on the civil liability of the accused when he was not allowed to present evidence. Are we clear?

RULE 120

JUDGMENT

Now, let us now move on to Judgment. Mahaba ba tong chord ko? Ay hindi, hindi talaga. Ok we'll now discuss judgment and the remedies for adverse judgment. Question:" can you avail of a Petition for Annulment of Judgment in a criminal case?" NO it is only available in a civil case, that is found in rule47.

Ok now, there are a number of things that I would like to highlight in rule120, remember class that a judgment is that which finally disposes of the case, agree with me? By law, it is required that it is the judge himself who pens the decision correct? He may have researchers but he should pen the decision. But what if theres an instance wherein there is a judge who heard the case is not the judge who penned the decision? Will the judgment be rendered invalid? **Resayo v. People** answers the question: the judge who penned the decision only took over from a colleague who earlier presided over the trial. Was there a valid judgment? Yes. The case of **People v. Gallarde**,

the fact that the judge who penned the decision was not the judge who heard the testimony of witnesses is not enough reason to overturn the findings of fact of the trial court, or even their admissibility.

Lets look at the other highlights of rule120. I think I mentioned to you sec3. It refers to an information that consists more than one offense. Can the court render a valid judgment if once information contains more than one offense? The answer is yes for as long as the accused refuses or fails to object. In that case, every offense established and proven can be taken against the accused.

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

Another item that I would like to highlight to you is Promulgation of Judgment. Promulgation has a number of meanings, for purposes of a criminal case in the trial court when we say promulgation, the accused has to be present in court for the reading of judgment, that is promulgation. It is the duty of the court to inform the bondsman if hes (accused) out on bail and of the date of the promulgation.

Now what if the accused had escaped or had jumped bail, is he entitled to notice of promulgation? YES it will be given or sent where, in his last known address. Should the accused be present in the promulgation, can your lawyer take your place? Can a brother take your place? NO that is the general rule, except for light offenses the presence of the accused is not required. GR: the accused should be present.

What is the effect if the accused is absent on the date of promulgation? Can there be promulgation? YES the judgment will be recorded and that has the effect of promulgation. Can you still appeal if you fail to appear during promulgation? Can you still avail of the remedies, like sabi mo "attorney hindi na ho ako dadating, baka maconvict ako e hulihin ako don, pwede ba kayo nalang?" well the rule is promulgation will proceed despite his absence, the question is can he appeal? He FORFEITS ALL OF HIS REMEDIES if hes absence during promulgation. Remember that. Wala wala kang remedy. Ang classic example nyan, more recently, o baka may kakilala kayo nitong example ko ha, I don't want to give this as an example to highlight, but it's a classic example. More recently, Gov. Valencia of Mindoro had a Sandiganbayan case, it came out in the news, and the date of promulgation was scheduled, but he and his co-accused were not present during the day of promulgation. Anong nangyari? He forfeits his remedy under the law. His lawyers realizing the consequence of their absence, 3 araw matapos, aba litaw sila! Because within 15 days from promulgation of judgment you have to come out, otherwise your remedies are forfeited, tandaan nyo yan. Baka may mga advice kayo "don't worry ako na ang present sa promulgation, ako ng bahala ia-appeal na lang naten un!" MALI! Your client should be present if you would like to avail your remedies under the law. Are we clear?

Now, what are the contents of a judgment. Of course the judgment will say the offense that you have committed, the penalty to be imposed, the participation whether principal, accomplice or accessories, the aggravating or mitigating circumstances, if its an acquittal there will be a statement that, if there's complete non-liability or only doubt that led to the acquittal, if theres a statement that the facts from which the civil liability might arise does not exist, it will likewise appear in the judgment. Can a judgment be modified? Yes before it becomes final and executory.

Now, lets proceed. Always remember that when theres a judgment you have available remedies. And I will discuss one at a time. Judgment. If you receive an adverse judgment, your first remedy is, during the reglementary period, is to file an MR. you could also file for a Motion for New Trial, you could also file an APPEAL. Are we clear? What do you understand by an **enrty of judgment**? It is a recording of a judgment that has attained finality in the books of

entry of judgment. In simple words the reglementary period has lapsed. Do we follow the same rule in the trial court and in the appellate court? YES. But I would like to caution you as a future lawyer baka kasi "teka hindi ganon yung sinabi ni sir e" baka magulat kayo "how come its 2months after the judgment became final?" in the CA, in the SC, because the courts give a certain leeway for parties to avail of other remedies, that's why they do not immediately set it on the day after the expiration of the reglementary period. But for their purposes, its already final and executory.

Promulgation in criminal case is different in the appellate courts, tandaan nyo yon! In the CA and SC you will not be required to appear, you will not receive a notice of promulgation. In the appellate courts promulagation means, if a decision is rendered by a Division, it will be forwarded to the Divisison Clerk of Court, he will then, in the CA ha, he will then issue what, notice of promulgation isang papel lang, on such and such a date this Division of the CA rendered a Decision. Do you follow? That is promulgation. So promulgation of judgment is different in the trial courts from promulgation before the appellate courts.

Do you promulgate a judgment in a civil case? In rule 13, sec9, decisions of the civil courts are served they are not promulgated. You are not required to appear. For civil cases, decisions are served to the parties. Decisions in a criminal case in a trial court are promulgated, are we clear?

Now, o pwede na tayo. Let us look at the grounds for an MR in a criminal case. Errors of fact or law which require no further proceedings. Simple lang yon. In a civil case, this is found in rule37, you can file for an MR if the judgment is contrary to law, it is not supported by evidence, the amount of damages awarded is excessive.

Motion for Reconsideration

Civil case	Criminal case
Errors of fact or law which require no further proceedings.	judgment is contrary to law, it is not supported by evidence, the amount of damages awarded is excessive

Motion for New Trial

Civil case	Criminal case
1. FAME – fraud, accident, mistake, excusable negligence and 2. Nelwy discovered evidence	1.Errors of fact or irregularities in the proceedings that will prejudice the rights of the accused And 2. Nelwy discovered evidence

Fraud – external fraud, that which is alleged outside of the pleadings. Meaning you were misled, and because of that you weren't able to participate in the proceedings that's why your right was violated. Considering I mentioned FAME, how many times have these grounds been mentioned in Civil Procedure? FAME ground for the following: Motion to Lift Order of Default, rule9, Motion for New Trial, Motion to Set Aside Order As-in Default – alam nyo ba yan? The defendant was not present during the scheduled Pre-Trial Conference so the court allowed the plaintiff to present evidence ex-parte. How will you set aside that order? Through a motion, by citing the grounds of FAME. Sir where did you get that? Saguid v. CA.

Now what are the requisites of Nelwy discovered evidence? Dapat kabisado nyo to kahit pa nakapitikit, 1. The evidence is material, 2. It wasn't available during trial, despite the exercise of diligence, and 3. To consider the Nelwy discovered evidence will change the outcome of the case.

Now what is the period to file an MR? 15 days. If you file an MR, listen to this, and it is denied how many days do you have to file an appeal? Neypes Ruling 2005, in civil cases your answer is correct. Because they said that rules 40 and 41 will apply, would it apply to criminal cases? NO, if you do not believe, if youre an unbeliever, look for a decision that says so. In fact I had a chance to talk to the ponente, at tinanong ko "Yan ho ba e sinasakop nyan pati criminal?" kasi bothered ako e. He said "what did the decision say?" did the decision include criminal cases? No sir, therefore we do not include criminal cases, until such time as there is a ruling on that, we cannot apply that.

Now let us now move on, remember class you could only file an MR or Motion for New Trial within the reglementary period. Now cam you file for MNT (motion for new trial) in the CA? rule124 sec 14 if im accurate. Can you file MNT in the CA? YES on what ground? Nelwy discovered evidence! That applies to both civil and criminal. Pag di kayo naniniwala buksan nyo rule53, yun din sasabihin nyan! Nelwy discovered evidence, but in criminal cases rule 124 sec13. In the SC can you file a MNT? NO, there is no provision that provides for that. If you file, its left to the SC's sound discretion.

Where can you file a MNT in a criminal case before the CA? can you file it within 15 days within the rendition of the judgment? A. 15 days within rendition of judgment, B. 15 days within receipt of rendition of judgment, C. at any time from the appeal is perfected until the CA lose jurisdiction. C! Sa CA class once appeal is perfected for as long as it has jurisdiction you could file a MNT. The rules is the same even for civil cases.

Let me ask you this, can you extend the period to file an MR? old case of Jabaluyas Enterprises, can you extend the period to file an MR? NO, class hindi yan ine extend. You cannot file an extension.

Lubrica v. People, 2007, citing rule122 sec11, "appeal only applicable insofar as the judgment is favorable and applicable to the accused." That is the rule. Even if the accused does not appeal, but if the other accused appeals, and you did not appeal and its favorable it applies to or covers the non-appealing accused. Can you remember this? However in this case, this was the problem the Decision was appealed, what was filed by the accused is a notice of appeal, not a petition for review on certiorari and was filed out of time. For this reason the judgment became final, now the other accused who appealed obtained a favorable judgment. You appealed but it was denied so the judgment became final, but the other accused who appealed obtained a favorable judgment, will that be taken also in your favor? NO, sinuswerte ka naman ng sobra. Kung hindi ka umappeal pwede tama? Pero umappeal ka, hindi mo alam mag appeal e, na dismiss tuloy ang appeal mo.

RULE 122

APPEAL

Now, let us now proceed with APPEALS.

Ordinary Appeal. When you say ordinary, the appeal is only one step, meaning gawin natin to sa criminal muna.

If it originates from the MTC where can you go? RTC on a Notice of Appeal filed in the MTC, the court that rendered the judgment. Are we clear? Very simple. Obviously here the penalty for the offense does not exceed 6years. Can you file a record on appeal in a criminal case? Of course NOT. You only file a record of appeal in special proceedings and in cases involving multiple appeals. What

SEC. 3. *How appeal taken.—*

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court 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 by serving a copy thereof upon the adverse party.

(b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is reclusion perpetua or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

(d) No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in section 10 of this Rule.

(e) Except as provided in the last paragraph of section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on certiorari under Rule 45.

is a record on appeal? It is a compilation in a sequential order of all the pleadings and orders of that court whose judgment is in question. How many days to file a notice of appeal? 15 days from receipt of judgment.

Now class, what is the other form of ordinary appeal? In the RTC – the court of original judgment where the offense charged carries a penalty which is not punishable by Death, life reclusion perpetua, correct? Where do you go? CA. what will you file? Notice of appeal. These are the 2 kinds of ordinary appeal.

Lets compare this with civil cases. Do you have ordinary appeal in a civil case? Yes 40 and 41. The court of original jurisdiction in rule 40 is MTC. Where will you go from the MTC? RTC. What to file? Notice of appeal within 15 days. Pareho? Pareho. The difference lies here, in a civil case you can file a record on appeal. How many days? 30days to file. Can it be extended? GR: no, unless the court allows an amendment or orders an amendment or an authorized alteration on appeal. So pareho pa. now before I leave this item, I need to discuss perfection.

When is an appeal perfected in a civil case? Upon filing of the notice of appeal. For purposes of notice of appeal, when you file within the reglementary period and you pay the docket fees, appeal is perfected. Do you follow the same rule for a record on appeal? NO, appeal is perfected upon APPROVAL OF THE COURT, maliwanag yan ha.

When does the court loses jurisdiction? Is it from the perfection or from the approval of the record on appeal? No. the court will lose jurisdiction after the expiration of the period of the other party to appeal.

Another ordinary appeal. From the RTC where? CA. what to file? Notice of appeal. My discussion a while ago is exactly the same. (civil pa din to) you can also file a record on appeal.

Class, sa criminal ba what is the conduct of the proceedings in the RTC in the exercise of its appellate jurisdiction? Will there be trial presentation of evidence? NO more, because it's the MTC that heard the case. Will the RTC hear the case again? No more! What will the RTC do? Rule 122 sec9. The RTC will require the parties to submit memorandum. Thereafter the case will be submitted for resolution, memorandum, ok, in a criminal case.

SEC. 9. ***Appeal to the Regional Trial Courts.***—

(a) Within five (5) days from perfection of the appeal, the clerk of court shall transmit the original record to the appropriate Regional Trial Court.

(b) Upon receipt of the complete record of the case, transcripts and exhibits, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(c) Within fifteen (15) days from receipt of said notice, the parties may submit memoranda or briefs, or may be required by the Regional Trial Court to do so. After the submission of such memoranda or briefs, or upon the expiration of the period to file the same, the Regional Trial Court shall decide the case on the basis of the entire record of the case and of such memoranda or briefs as may have been filed.

Now in a civil case, same rule? MTC to RTC? What is the procedure? Rule 40, there will be no hearing, what will be filed? The same, memorandum or Briefs within 15 days from notice, PAREHO. So wag nyo pahirapin ang aral andali lang e!

Next question, RTC to CA, criminal, what is the procedure in the CA in criminal cases? Rule 124! Sa civil rule 44, kung tinatamad ka na magbasa sasabihin ko na, the SAME. You will file what, you will be required to file Appellant's Brief, although the periods are different. In a civil case, the period to file an Appellant's Brief before the CA is 45days same with the Appellee's Brief. The Reply Brief of the appellant, 20 days.

In a criminal case rule 124, perio to file an Appellant's Brief, 30 days, appellee's brief, 30 days, reply brief of the appellant, 20days.

What happens if the Appellant fails to file a Brief, civil or criminal, the rule is the same. The appeal will be dismissed. And if he failed to pay docket fees, dismissed. So pareho. What if the accused jumps bail or absconds, what happens to the appeal? Dismissed. All of these are found in rule 124 and 50. Tandaan nyo ha. What if the Appellant's Brief but theres no assignment of error? Your appeal will be dismissed.

Petition for Review.

Criminal Case. MTC – court of original jurisdiction, elevated to the RTC on a Notice of Appeal before the MTC like slander by deed, slight physical injuries, then it can be elevated to the CA on a Petition for Review. Follow? Where to file it? CA. (rule122 sec3)

Civil Case. Rule42 and rule 43, it works the same way. MTC-renders judgment, ejectment case, elevated to the RTC then to the CA on a Petition for Review. How many days? 15 days to file. What is rule 43? It comes from a decision of a Quasi-Judicial Agency. Like SSS, GSIS, DAR, and there other Q JAs, you go to the CA on a Petition for Review. from the NLRC you go to the CA on a Petition for Review correct? WRONG.You go to the CA on Rule 65 by express provision of law under rule43, petition for review is not a remedy. From a decision of the CTA you go to the CA – WRONG! That has been amended, the CTA now is on the same level as the CA.

There was a Circular in 2005, from a decision of the RTC in the exercise of its original jurisdiction in intra-corporate disputes, where will you go? CA. what to file? Petition for Review, because the SC felt that the court, though a regular court is handling intra-corporate which was originally in the jurisdiction of the SEC. to expedite proceedings in intra-corporate disputes, appeal shall be by a Petition for Review.

Kailangan kong sabihin to sa inyo e maski hindi ko coverage, for rules 42 and 43, please if you could memorize the contents of a Petition please do so, like it should be verified, there should be a certificate against non-forum shopping, parties should be named, the issues should be identified, attachment of pertinent pleadings to the petition, certified true copy of the questioned order, or a duplicate original; copies should be served to whom? To the other parties including the courts, timeliness –means A. the date you received the judgment, B. the date you filed your MR, C. date you received denial of MR. what else? You should make an Explanation. Note that priority of service is personal service, if you cannot do it personally you should make an explanation, otherwise your filing with have no effect. For this reason if you filed a Petition for Review the reglementary period wil not be interrupted. Are we clear? What else, a Community Tax Certificate today is not accepted for purposes of Noatarization. What should be used instead? A valid GOVERNMENT I.D. aside from that you should have an Affidavit of Service, failure to comply with any of those will lead to dismissal of your petition. For rule 43, I will just add one requirement, all attachments to the petition should be CERTIFIED TRUE COPIES. Otherwise, your petition will be dismissed, reason: Q Jas are not part of our courts, therefore our courts have no way to validate W/N the documents submitted in the Petition are are authentic documents.

The next item I will discuss is Rule 124 sec13. Let me start by making this statement: the only way to go up to the SC is through a Petition for Review on Certiorari except if the penaly for the offense is Death, Life, Reclusion Perpetua.

> **SEC. 13.** ***Quorum of the court; certification or appeal of cases to Supreme Court.***—Three (3) Justices of the Court of Appeals shall constitute a quorum for the sessions of a division. The unanimous vote of the three (3) Justices of a division shall be necessary for the pronouncement of a judgment or final resolution, which shall be reached in consultation before the writing of the opinion by a member of the division. In the event that the three (3) Justices can not reach a unanimous vote, the Presiding Justice shall direct the raffle committee of the Court to designate two (2) additional Justices to sit temporarily with them, forming a special division of five (5) members and the concurrence of a majority of such division shall be necessary for the pronouncement of a judgment or final resolution. The designation of such additional Justices shall be made strictly by raffle and rotation among all other Justices of the Court of Appeals.
>
> Whenever the Court of Appeals finds that the penalty of death, reclusion perpetua, or life imprisonment should be imposed in a case, the court, after discussion of the evidence and the law involved, shall render judgment imposing the penalty of death, reclusion perpetua, or life imprisonment as the circumstances warrant. However, it shall refrain from entering the judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.

Do you want to take a break? YESSS ☺ ok break tayo, briefly class ha.

PART VI

My next discussion is an illustration of Rule 124 sec13. Later on I will also discuss the appeal from the Sandiganbayan to the SC. If you read rule45, all you will see is that from SB you go to the SC on a Petition for Review on Certiorari. However class there is what you call a law that created that jurisdiction of the SB, PD 1606 Sec7 which was reiterated by the SC in 2004 in AM No 00-5-03-SC, why was it reiterated, this was brought about by the case of People v. Mateo that led to the amendment of Rule 124 sec13.

Now, class, what I will discuss now is criminal. RTC you know it has jurisdiction for offesnses that carry the penalty of Death, Life, Reclusion Perpetua. Although death cannot be imposed at this time, we have to understand how it operates. Now from a decision of the RTC rendering Death as a penalty, where will you go? CA, "sir diba sabi sa Constitution automatic review?" paliliwanag ko nga sa inyo e. automatic review, you don't need to do anything, but if you want to impress your client, well that's your choice, but youre not required. What happens? The records will be elevated to the CA and what will it do? The CA, as what was said in People v. Mateo, now reproduced in Rule 124 sec13, CA will render judgment but NOT enter. What does it mean? Because the power to review death cases is given only by the Constitution to the Supreme Court. This is the way not to violate the Constitution. Render judgment but not enter. In simple words, the CA is tasked to prepare a decision but not to enter it to its dockets, if the penalty for the offense is DEATH. Of course if the penalty is not death, they can render and enter judgment. Are we clear? So if it will not enter judgment what will it do? It will certify the case to the SC, now there is now compliance with the provisions of the Constitution.

Now what if the penalty is Life or Reclusion Perpetua? Do you need to file a Notice of Appeal? Yes you have to do something. Once the case is in the CA what should it do? The CA should render and enter a judgment. What is your remedy if the CA says Life or Reclusion Perpetua, affirming the decision of the RTC, what will you file? This is something new, this wasn't found prior 2005. The answer is you will file a Notice of Appeal, where? In the CA so that the records will be elevated to the SC, this is the single instance in your Rules that a Notice of Appeal can be filed in an appellate court.

Wht if the penalty for the offense after the CA reviewed it was, ay hindi Reclusion Temporal, its not Life. 18yrs to 20yrs, where will you go? Of course to the SC. What will you file? Petition for Review on Certiorari, why? Because its less than Life or Reclusion Perpetua. Rule 45 last section! Are we clear?

> Sec. 9. Rule applicable to both civil and criminal cases.
>
> The mode of appeal prescribed in this Rule shall be applicable to both civil and criminal cases, except in criminal cases where the penalty imposed is **death, reclusion perpetua or life imprisonment.**

Sandiganbayan. A decision of the SB, a final order or judgment where the penalty is LESS THAN DEATH LIFE RECLUSION PERPETUA. Where will you go? Are they of the same level as the CA? YES! Where will you go? SC on a Petition for Review on Certiorari, nasa rule 45 nga.

Now let us look at the SB having ORIGINAL JURISDICTION. Ito class yung tanong kong una generic question ito, ke appealed case sa SB, ke original case sa SB basta ang penalty less than D, L, R, you go to the SC on a Petition for Review on Certiorari. Now what if its an Original case, we need to distinguish now. The penalty is Life or Reclusion Perpetua. Hindi Death. Where will you go? SC but you are to file a Notice of Appeal, pareho? Pareho ng CA no? on this aspect it is the same with the CA.

what if an original case in the SB but the penalty is DEATH. You don't need to file anything, it is by AUTOMATIC REVIEW.

Now let us look at another scenario, what if an appeal? Pwede ba sir? Bakit? Because if youre not a salary grade 27, though it is in relation to the office, the SB has no jurisdiction. It may have originated from the RTC correct? Now so the SB also has jurisdiction for appealed cases, let us say for appellate jurisdiction the penalty is D, L, R, and it is the exercise of appellate jurisdiction, what should the SB do? The SB should render but NOT ENTER judgment.

Ulitin natin ha:

1. whether on appeal or an original case, if the penalty is below D, L, R, and it is with the SB, go to SC on a Petition for Review on Certiorari, are we clear with that? Ok.

2. Original cases. If in the original case the penalty is Life or Reclusion Perpetua, what is your remedy? A Notice of Appeal and it will be elevated to the SC.

3. Original case and the SB imposed DEATH as a penalty it will be subkect of AUTOMATIC REVIEW.

4. Appealed cases – where the penalty is D, L, R –dito medyo iba sila ng CA tama? D, L, R, the SB will render but will NOT enter judgment, and if that is the penalty, it will be certified to the SC, ok.

Now, before I leave Appeals, let me touch on one case I believe is very important, the case of **Philippine Rabbit v. Heirs of Mangawang**, this covers subsidiary liability. In a criminal case where an employee (EE) is sued for criminal negligence, is the ER impleaded? NO, it is the EE who is the accused. 4 questions were presented and lets try to answer them.

1. can the ER appeal from the civil liability imposed on the EE, considering that the former is subsidiarily liable and that the judgment on the civil liability against the EE is conclusive on the ER not only to the actuality of the liability but also as to the amount. Of course Phil Rabbit cannot be impleaded, sino ba dinedemanda? Aba ung driver, criminal negligence e, ibang usapan pag civil, you can implead the owner, maliwanag?

So can the ER appeal? NO, it is not a party, how can it appeal? Besides to allow the ER to appeal will be in violation to the EE's right to double jeopardy, most especially if the EE did not appeal, as in this case.

2. Since the ER is subsidiarily liable, when can it invoke its right to due process and be heard on the issue of subsidiary liability. Considering its not a party but it has a right to be heard correct? When or at what stage can it be herd? It can occur during the time that the motion for issuance for alias writ of execution is heard.

3. what are the things that the prosecution must prove during the hearing of the motion for the issuance for an alias writ of execution?

1. accused was an EE of the ER;

2. ER was engaged in some kind of industry;

3. the crime was committed by EE in the discharge of his duty;

4. execution against the EE is unsatisfied.

4. can the ER adduce evidence on questions which may be involved in the execution considering that judgment is already final? YES the SC said the ER can still adduce evidence during the hearing of the motion for issuance of alias writ of execution.

RULE 126

SEARCH AND SEIZURE

2005 bar question: an unidentified of marijuana, or shabu that was the wording, but the actual case was for an undetermined amount of Indian hemp. Proper description of items or objects to be seized? YES because the object is identifiable, what is NOT known is the QUANTITY. Therefore the search warrant properly identified the items to be seized.

The other question in the 2007 bar was this, there was a search warrant, but on the way to the premises, there was in plain view of the searching officer, certain illegal substances, follow? Can there be a valid search in plain view? YES.

Now lets go the basics. Search warrant, where will you apply? Again let me call your attention to an amendment which is an exception to rule126, circulated in july2009. Let me first lay the rule, where could you apply for a search warrant? In the place where the crime was committed or within the territorial jurisdiction of the court. However class, can you go outside the territorial jurisdiction of the court in case a crime was committed within the territorial jurisdiction of the court? YES for as long as it is within the JUDICIAL REGION. Remember this phrase it should be for a "COMPELLING REASON" so the rule is punta ka sa juzgado where the crime or whose jurisdiction the crime was committed. Manila, Makati, Pasay are part of one Judicial Region, the crime was committed in Manila, punta ka sa Pasay –general rule hindi pwede, it should've been applied where, in Manila maliwanag? However for compelling reason, the crime was committed in Pasay, you applied where, in Makati, it could be allowed. Sir what is an example of a compelling reason? Well, the participant in the commission of the crime are Councilors of the City or the Local Chief of Police, ah pwede! However in the light of the exception to Rule126 sec2, ok, the SC issued this Circular amending sec12 if, and let me quote it "the Executive Judge and whenever the are on official leave of absence or are not physically present in the station the Vice Executive Judge, sandali nga kilala nyo ba yung Executive Judge? He is in charge of administrative concerns in a multi-sala court, maliwanag? For a single-sala court, aba di isa lang ang court, sa mga provinces, that's what you call a single-sala court, now let me continue, the Vice Executive Judge of the RTCs of Manila and Quezon City shall have authority to act on applications filed by the NBI, PNP, Anti-Crime Task Force, Illegal Gambling, Illegal Possession of Firearms as well as, Comprehensive Dangerous Drugs of 2002, including Intellectual Property Code, and Anti-Money Laundering and Tariff and Customs Code. So itong mga violation na ito class, you can go to the Excutive Judge of Manila and QC, what is the catch? If granted, the search warrant may be served outside of their territotrial jurisdiction. In simple words, it could be served anywhere in the Philippines. Note only in Manila and Quezon City.

> **SEC. 2.** ***Court where application for search warrant shall be filed.***—An application for search warrant shall be filed with the following:
>
> (a) Any court within whose territorial jurisdiction a crime was committed.
>
> (b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.
>
> However, if the criminal action has already been filed, the application shall only be made in the court where the criminal action is pending.

What is the nature of a search warrant? **United Laboratories v. Isip:** a search warrant is a legal process, it is not a criminal case, a search warrant has been likened to a writ of discovery, employed by the State to procure relevant evidence. A search warrant is a police weapon issued in the name of the State.

Dimakuha v. People: 2007: can a private individual or private corporation complaining to the NBI or to a govt agency participate in the exchange of pleadings, in support of an application for a search warrant? Kadalasan kasi ang nag aaply nyan NBI o kaya PDEA, pano kung as in this case, violation of BFAD laws, pwede ba? YES.

Now its important to take not of secs4 and 5. Take note that a search warrant can only be issued with relation to ONE specific offense. That's very basic tandaan nyo yan ha. What does this mean? It means di pwedeng "violation of Dangerous Drugs Law and violation of Illegal Possession Firearms" You will have to get a search warrant for each crime or offense allegedly violated. You cannot have multiple offenses subject of a search warrant. Are we clear? ONE OFFENSE, ONE SEARCH WARRANT.

> **SEC. 4.** ***Requisites for issuing search warrant.*** —A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. (3a)
>
> **SEC. 5.** ***Examination of complainant; record.*** —The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

Second requisite, the propriety of the issuance of a search warrant is to be determined personally by the judge. Affidavit or depositions will not suffice if the judge will not personally examine the affiants and their witnesses. Here you will meet the phrase again "searching inquiry" u follow? When did we first meet this? Yesterday on plea of guilt to a capital offense, the judge should conduct a searching inquiry. Here, on issuance of a search warrant, the judge also has to conduct searching inquiry. It should be under oath or affirmation.

Now, should the place be described with particularity? In one case all that it says is "kilometer 20, barrio san pedro, lets say in Ilocos" for those of you who live in the provinces alam yan, may mga walang address, marker lang yan, will that suffice? If that is the only house or its reasonably described as near the marker of kilometer 20 then it is allowed. However class, if theres a specific description, like in one case, it is in "Apartment A" but what was searched was Apartment C, yung katabi, was there a valid search? Of course not, e basic e.

Now let us look at the concept of searc as an incident of a lawful arrest. People v. Laguio, 2007:the arrest must precede the search, di pwedeng "oi seacrhin nga kita, ah may droga ka ha!" – cant be! The arrest must precede the search, the process cannot be reversed, as in this case where the search preceded the arrest. Nevertheless, the SC held, a search contemporaneous with the arrest, can precede the arrest if the People have probable to cause to make the arrest at the outset of the search. Therefore, there could be a search which is contemporaneous with the arrest, almost simultaneous with the arrest.

Let us look at class, ah, the duty of a searching officer. Class I don't want u to be confused. Rule126 discusses searched with a warrant! That is why the process here start with the issuance of a warrant. When you talk of WARRANTLESS SEARCHES ah hindi ito covered ng 126. But these could be exceptions to the rule on warrants.

Now, let us look at the process. What is the process? The duty of the searching officer will be to carry the search warrant and to serve it upon whom, to the occupant or a member of a family of the occupant. Take note if the occupant or his immediate family is not there, the warrant should be presented to whom, to 2 persons of sufficient age and discretion residing where, in the community. Ok. Now let us say search is effected, and articles have been seized, what is the duty of the searching officer? He has to leave a receipt to the occupant, kelangan iiwan ung resibo sa occupant. If the occupant is not there, you will have to leave the receipt where, to the 2 witnesses? NO, leave it in the PREMISES in the presence of the 2 witnesses of sufficient age and discretion. Pag ito class tinanong ico-codal to. Ang isa pang tanong na pwedeng lumabas dyan yung sa Dangerous Drugs, ok, which is a little bit complicated, but for your purposes, that's the duty of the searching officer.

Now to move on further, what is the duty of the searching officer on the items that he has seized? He has to make an inventory, and to deliver it to the court upon a valid inventory. Failure to do so, well ,he can be liable for contempt. Let me walk you through with the process of inventory in a Dangerous Drugs case scenario, baka bigla kayong tanungin very technical ito e.

In a Dangerous Drugs case scenario class, this is what would happen, even before a search is to be effected, there are various scenarios. The police officers can secure, through the PDEA, a search warrant in court and you will follow the process as to where to file, as ive discussed a while ago. However in instances wherein the search is warrantless, what is the duty? The local police will make a Coordination Report to the PDEA. Class ngayon walang pwedeng search without the coordination with PDEA, because PDEA is in charged of these kinds of crimes. Once a Coordination Report has been made, they will now ready themselves for a scenario of a buy-bust operation, you know what it is right. In the scenario of a buy-operation which is in the nature of an entrapment, should we present in court the Informant? NO, there is no such requirement that he be presented as witness for the

prosecution. Assuming the buy-bust operation was successful there being marked moneys received by the accused or respondents, what is the duty of the police officer? Ito class mahigpit, sa batas ang inventory gagawin ng searching officer correct, submit in court, its not so strict, he could even do it not in the scene of the crime. In a DD case scenario the inventory should be made at the scene of the crime! And in the presence of, police officers, the DOJ, ok the media, if theyre available – in their presence and mark it! Alam nyo ba sabi nung ano, when I spoke before judges more than a month ago, in the Philippine Judicial Academy, this was the discussion point, sabi ng mga pulis because the members of PDEA were there, "sir problema naman yan e, kaya kami napapatay e" bakit? Syempre mag iimbentaryo ka dun sa scene of the crime?! But class I don't even want you to change the rule, the rule: the inventory should be made at the scene of the crime! Mamarkahan lahat yon, imbentaryohin yon to make sure that there is a proper CHAIN OF CUSTODY – from the time of the seizure to the time of presentation in Court, there should be a Chain of Custody. Now lets say drugs have been seized, there was already an inventory of the individuals I have mentioned, what is the duty of the pilice officer? To make a? Physical Science Report, sasubmit nya for what purpose? Either in the NBI or other agency of the govt that could determine tha nature of the substance "ano ba to droga ba o baka naman tawas lang to" u follow? And that examination should be completed within a period of, 24 HOURS. If the quantity is so huge, the period could be extended. That is the rule for DD. The custody should be very clear, so that when it is presented in court there is no question that the substance heave been tampered with. It's a little bit more strict than the usual that you will find in rule126.

Let us now move on, what if youre asked in the bar, what is a Motion to Quash, o MTQ na naman, na meet na ten yan sa 117 tama? Now we meet again a MTQ here, a Motion to Quash a Search Warrant. Take note that a search warrant can only be quashed before it is actually implemented. Once items have been seized you cannot quash anymore. Where can you file the MTQ? In the court that issued the search warrant, assuming that there is yet no criminal case. But once there is already a criminal case, the MTQ could only be filed in that criminal case.

What is a Motion to Suppress? If items have already been seized you will not quash, you will file a MTS items obtained in the conduct of the search. Where will youi file it? In the court that issued the search warrant. But if theres already a pending criminal case, you will file the MTS in that criminal case, are we clear? Can you recall other provision of law where you have come across Motion to Suppress? Never been asked in the bar exams, not part of my coverage, bu id want to touch on it now. IN DEPOSITIONS, if you did not follow the procedure for taking of depositions under rule23, expect a MTSupress Deposition, and that is found in rule23, sec29, last subsection, yan din ang remedy mo.

Lets go to 3 cases. Sony Computer v. Supergreen Inc., this case cited the case of Malaloon v. CA that says "search warrant application is only a special criminal process, yes it's a legal process, but it's a special criminal process. And not a criminal action." What did the Court say? "the imitation of the general appearance of the goods of Sony was done in Cavite, it sold goods in Mandaluyong City, where can you file a search warrant? In any court where the alleged offense was committed. Therefore in any court in the NCR. Why was it addressed by the SC this way? Because it says "if the nature of the violation is a transitory or a continuing offense, therefore you could apply for a search warrant in any of those places"

People v. Bohol, july 28 2008: "considering the legality of Bohol's warrantless arrest, the subsequent warrantless search that resulted in the seizure of the shabu found in his person is valid, in a legitimate warrantless arrest, the arresting police officers are authorized to search and seize from the offender." Examples of valid warrantless searches, search for dangerous weapons, and things which may be used as proof of the commission of the offense. The constitution likewise provides for certain exceptions:

* search as an incident to a lawful arrest

* search of a moving vehicle

* search in violation of Customs Law

* search of evidence in plain view

* search when the accused himself waives his right to unreasonable searches.

* stop and frisk situation

* exigent and emergency circumstances require

* airport searches

How bout class, on the spot tip calls? "sir ano yan?" People v. Ayangao, 2004, it involves an on-the-spot tip call. The informant arrived at the Police Station at 5:30 am, aug13 1999, and informed the police officers that the accused will be arriving at 6am that day. The circumstances called for an immediate response from the police officers and therefore there is no need to obtain a search warrant, this is an example of on the spot tip calls. Considering that the police officers did not know when the appellant was going to arrive exactly, prudence made them act as they acted this way.

RULE 127

PROVISIONAL REMEDIES IN CRIMINAL CASES

5156 my last item now would be Provisional Remedies in criminal cases. Ok patapos na tayo. (yehey!) kita nyo sabi ko senyo matatapos tayo e, what is the rule? The provisional remedies in civil cases are likewise applicable in criminal case, that's the rule! For me EXCEPT REPLEVIN, I don't agree, bakit? You could only apply for replevin at any time before answer, e wala namang, hanapan mo ako ng criminal case na may Answer! U follow? But we folloe the rule: The provisional remedies in civil cases are likewise applicable in criminal. And class, if you would note the provision of the law highlighted attachment but it doesn't mean that this is the only provisional remedy.

Section 1. Grounds upon which attachment may issue.

At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:

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

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

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

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

(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or
(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.

In rule 57 you would recall there is attachment also in civil cases right? And if you will read the provisions of rule 57 sec1, you will find, close to, exactly the same grounds, and what are the grounds? Embezzlement which is estafa, what else? The accused absconds, conceals, removes or destroys, items subject of the case, when the accused is not a resident of the Philippines.

Let me end this discussion in this manner, can you apply for a provisional remedy when there is no principal action? Class the answer is not criminal, I just would want to leave you with this baka biglang tanong sa bar e, can you apply for a Provisional Remedy without a principal action? As a rule you cannot. However

in the light of the ADR LAW it is allowed that a party subject of Arbitration can apply for protective measures in courts in the Philippines in order not to put to waste the arbitration proceedings. If theres a need to attach the property, if theres a need to recover the property by replevin, if theres a need to preserve the property, YES you could apply for a provisional remedy but in a principal action as a general rule.

So I think we have sufficiently covered Criminal Procedure you still have additional 30 minutes to take your lunch. So thank you for your patience, thank you for your time, I know tha this has been a long 12 hours, I wish you good luck and when you ah, I hope to see you when you pass the Bar. In courts when you get to see me, don't be shy, and approach me and tell me that I gave you a lecture in Remedial Law, and if you decide you can also join the IBP of Quezon City. Thank you very much and Good Day ☺

AJA!!!!!!
Jai Ho.
GOD BLESS.

"I was not delivered unto this world in defeat, nor does FAILURE course in my veins.
I am not a sheep waiting to be prodded by my shepherd.
I am a LION and I refuse to talk, to walk, to sleep with the sheep.
I will hear not those who weep and complain, for their disease is contagious.
Let them join the sheep.

The slaughterhouse of FAILURE is NOT MY DESTINY."

---The Scroll Marked III in The Greatest Salesman of The World
by Og Mandino