(Additional Notes from SLU Review Notes)

**SPECIAL PROCEEDINGS**

**SETTLEMENT OF ESTATE OF DECEASED PERSONS**

### RULE 73

### VENUE AND PROCESS

Sec. 1. Where estate of the deceased person settled.

If the decedent was a resident of the Philippines at the time of his death whether a citizen or an alien, the RTC or MTC, as the case may be, of the province in where he resides at the time of his death

If the decedent was not a resident of the Philippines at the time of his death in the RTC or MTC of any province where he has his estate.

* The RTC or MTC is acting as a probate court, therefore it is a court of limited jurisdiction-that it can only decide on matters which are proper, matters that are alien to said proceedings cannot be decided upon.
* Exceptions: Question on ownership may properly be decided upon by the probate court if the conflicting claimants as owners are all heirs of the decedent and they all agree to submit the question of ownership for determination by the probate court
* During the process of inventory of the property of the estate of the decedent, in order to determine whether or not certain

properties should be included in such inventory, as belonging to the decedent’s estate, the probate court may decide prima facie the ownership of said properties.

**RULE 74**

## SUMMARY SETTLEMENT OF ESTATES

What are the requisites in Extrajudicial Settlement by agreement between heirs?

* 1. Decedent left no will and no debts
	2. Heirs are all of age, or the minors are represented by their judicial or legal representatives duly authorized
	3. A public instrument must be filed with the Office of the Register of Deeds
	4. If there is only one heir, he may adjudicate to himself the entire estate by means of an affidavit filed in the Office of the Register of Deeds
	5. A bond must be posted with the Register of Deeds in an amount equivalent to the value of the personal property
		+ The decedent is presumed to have left no debts if no creditor files a petition for letters of administration within 2 years after the death of the decedent..

In Summary Settlement of estates of small value what are the requisites?

1. Gross value of the estate does not exceed P 10,000.00
2. Application is filed in the MTC
3. Publication, once a week for 3 consecutive weeks in a newspaper of general circulation in the province
4. Notice to interested persons
5. Debts, if there be any are all paid
	* Claims should be made within 2 years after the settlement and distribution of the estate
	* If the claimant is a minor or mentally incapacitated or in prison or outside of the Philippines, he may present his claim within one year after such disability is removed.

How may liabilities of the estate or the distributees be enforced?

* + 1. if there has been extrajudicial settlement of the estate, the heir who has been unlawfully deprived of his participation, or a creditor may compel the judicial settlement of the estate, unless they agree otherwise or agree on a repartition or the heir unduly deprived agrees to be paid in money or if he be a creditor, the heirs or distributes agree to pay him.
		2. if thee was summary settlement, the heir or other person unlawfully deprived of participation may file a motion for reopening in the same summary proceeding and the court after hearing, shall order a repartition of said share

**Rule 75**

**PRODUCTION OF WILL. ALLOWANCE OF WILL NECESSARY**

Q : When shall a will pass personal or real properties to the heirs?

A : A will shall pass either real or personal properties to the heirs when it shall have been proved and allowed in court, since the Rules of court provide that no will shall pass either real or personal estate unless it is proved and allowed in the proper court. (Sec. 1). Even if only one heir has been instituted in the will, there must still be the judicial order of adjudication. (Lopez vs. Gonzaga, L-18788, 31 Jan. 1964)

Q : What is meant by probate?

A : Probate is the act of proving before a competent court the due execution of a will by a person possessed of testamentary capacity and the approval thereof by the said court.

Q : What is the nature of a probate proceeding?

A : Probate of a will is proceeding in rem. It cannot be dispensed with and substituted by another proceeding, judicial or extrajudicial, without offending public policy. It is mandatory as no will shall pass either real or personal property unless proved and allowed in accordance with the rules of Court. It is imprescriptible, because it is required by public policy and the estate could not have intended to defeat the same by applying thereto the statute of limitation of actions.(Guevara vs. Guevara, 74 Phil. 479; Mirasol vs. Magsusi, L-12166, April 29,1959; Sec. 1, rule 75; Art. 838, NCC; see also Solivio vs.CA, 129SCRA 119[1990]).

Q : What are the two stages in the probate of a will?

A : They are:

1. The first is the probate proper. This deals with the extrinsic validity of the will where its legal existence will be passed upon. Under this stage, the probate court decides only on the conclusiveness of the will as to its due execution and validity. The court has no power to pass upon the validity of any provision made in the will until after the will has been adjudged first as being extrinsically valid. (Castanede vs. Alemany , 3 Phil. 426)
2. The second stage deals on the inquiry into the intrinsic validity of the provisions of the will and the distribution of the property according to the will. This second stage will commence only if the probate proper allows the will and the order of allowance is final. If the will is disallowed in the probate proper, there is no occasion to proceed to the second stage.

Q : What is the effect of the allowance of a will?

A : The allowance of a will shall be conclusive as to its due execution. (Sec. 1)

Q : X executed his will instituting A, B and C, his children and Y, his wife as heirs. There is a pending case for forgery filed by Y, A and B against C alleging that he forged the signature of his father. At the same time, the will was submitted to probate and it was approved or allowed. State the effect of the allowance of the will.

A : The allowance of the will is conclusive as to its due execution; hence, the allowance shall effect the dismissal of the case of forgery against C.

Q : What is the duty of the custodian of a will after he comes to know of the death of the testator?

A : The person who has custody of a will shall, within 20 days after he knows of the death of the testator, deliver the will to the court having jurisdiction, or to the executor named in the will. (Sec. 2).

Q : What should the executor named in the will do upon his knowledge of the death of the testator or upon knowledge of his having been named as executor?

A : He shall, within 20 days from obtaining knowledge of the death of the testator or of his having been named as executor, present the will to the court having jurisdiction, unless it has reached the court in any other manner, and shall, within such period, signify to the court in writing his acceptance of the trust or his refusal to accept it. (Sec.3).

Q : If the custodian or executor of a will fails to submit the will, what may the court do?

A : If the neglect or failure to produce the will is without satisfactory excuse, the court may fine him in the amount not exceeding P 2,000.00. (Sec. 4)

Q : An order of the court for the custodian of the will of X was issued for the production of the will in court, but he neglected to do it. What may the court do to him?

A : A person having custody of a will after the death of the testator who neglects without reasonable cause to deliver the same, when ordered to do so to the court having jurisdiction, may be committed to prison and there kept until he delivers the will. (Sec. 5).

Q : A, B and C are the heirs of X instituted in his will. After his death, they entered into an extrajudicial settlement of X's estate without the will having been probated. Is their action proper? Why?

A : No, they shall have brought the will to the court first and have it probated, because no will shall pass either real or personal property unless it is proved and allowed in the proper court.

Q : X executed a will instituting his heirs. Can the heirs have an extrajudicial settlement of X's estate?

A : Yes, but they must first submit the will for probate. If admitted, they can divide the estate according to its terms which cannot be varied. The rule is so because probate of a will is compulsory. (Guevara vs. Guevara, 74 Phil. 479).

**Rule 76**

**ALLOWANCE OR DISALLOWANCE OF WILL**

Q : Who may file a petition for allowance of a will?

A : Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed. (Sec. 1) The testator himself may, during his lifetime, petition the court for the allowance of his own will. (Sec.4).

Q : Is there a prescriptive period for the probate of a will?

A : There is no prescriptive period for the probate of a will. The petition for probate is required by public policy and may be filed at any time after the death of the testator. (Guevarra vs. guevarra, 98 Phil. 249)

Q : State the contents of a petition for the allowance of a will.

A : A petition for the allowance of a will must show, so far as known to the petitioner

1. The jurisdictional facts;
2. The names, ages, and residence of the heirs, legatees, and devisees of the testator or decedent;

(c) The probable value and character of the property of the estate;

1. The name of the person for whom letters are prayed;
2. If the will has not been delivered to the court, the name of the person having custody of it.

But no defect in the petition shall render void the allowance of the will, or the issuance of letters testamentary or of administration with the will annexed.

Q : What are the jurisdictional facts required to be alleged in the petition for probate?

A : They are:

1. That a person died leaving a will;
2. In the case of a resident, that he died in his residence within the territorial jurisdiction of the court, or in the case of a non-resident, that he left an estate within such territorial jurisdiction (Cuenco vs. CA, L-24742,26 Oct. 1973);
3. That the will has been delivered to the court (Salazar vs. CFI of Laguna, 64 Phil. 785).

Q : After filing of a petition for probate of a will, what shall the court do?

A : It shall fix a time and place for proving the will where all concerned shall appear to contest the allowance thereof, and shall cause notice of such time and place to be published three (3) weeks successively, in a newspaper of general circulation in the province. (Sec.3). The heirs, devisees, legatees and executors shall also be notified at their places of residence and deposited in the post office at least 20 days before the hearing. It shall also be mailed to the executor if he is not the petitioner. Personal service at least 10 days before the day of hearing is equivalent to mailing (Sec. 4).

 The personal service of notice upon the heirs is a matter of procedural convenience and not a jurisdictional requisite. (In re estate of Johnson, 39 Phil. 156; In re testate estate of Suntay, 95 Phil. 500; Abut vs. abut, L-26743, 31 May 1972) However, individual notice is necessary if the heirs, legatees or devisees are known and such requirement cannot be satisfied by mere publication. (De Aranz vs. Galing, 161 SCRA 628 [1988]).

Q : Who shall be notified if the testator asks for the probate of his will?

A : In that case, notice shall be sent only to his compulsory heirs and no publication is required. (Sec. 4).

Q : Before the hearing of the probate of the will, what should be done?

A : Proof must be shown that notice required has been served. (Sec. 5).

Q : What is the effect if no one appears to contest a notarial will?

A : If no person appears to contest the allowance of a notarial will, the court may grant allowance thereof on the testimony of one of the subscribing witnesses only, if such witness testify that the will was executed as is required by law. (Sec. 5) In the absence of any opposition to such probate, the evidence for the petitioner may be received ex parte. (Cayetano vs. Leonidas, G.R. No. 54919, 30 May 1984)

Q : What is the effect if no one appears to contest a holographic will?

A : In the case of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declares that the will and the signature are in the handwriting of the testator. In the absence of any such competent witness, and if the court deems it necessary, expert testimonies may be resorted to. (Sec. 5)

Q : State the manner of producing the witnesses in case the probate of a notarial will is contested.

A : If a notarial will is contested, all the subscribing witnesses, and the notary, if present in the Philippines and not insane, must be produced and examined, and the death, absence, or insanity of any of them must be satisfactorily shown to the court. If all or some of the witnesses are in the Philippines but outside the province where the will has been filed, their deposition must be taken. If any or all of them testify against the due execution of the will, or do not remember having attested to it, or are otherwise of doubtful credibility, the will may nevertheless, be allowed if the court is satisfied from the testimony of other witnesses and from all the evidence presented that the will was executed and attested in the manner required by law. (Sec. 11) In the case of a contested notarial will, it is the duty of the petitioner to produce all the available attesting witnesses and the notary public but he is not concluded by the testimony of said witnesses even if adverse as the court may still admit the will to probate on the basis of other satisfactory evidence. (Fernandez vs. Tantoco, 48 Phil. 380)

Q : State the manner of proving a holographic will if it is contested.

A : If a holographic will is contested, the same shall be allowed if at least three (3) witnesses who know the handwriting of the testator explicitly declare that the will and the signature are in the handwriting of the testator; in the absence of any competent witnesses, and if the court deems it necessary, expert testimony may be resorted to. (Sec. 11) In the case of a holographic will, it is not mandatory that witnesses be first presented before expert testimony may be resorted to, unlike notarial wills wherein the attesting witnesses must first be presented or accounted for.(Azaola vs. Singson, 109 Phil. 102)

Q : Before a last will may be proved as lost or destroyed, state the requirements that must be complied with.

A : No will shall be proved as lost or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two (2) credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded as other wills are filed and recorded. (Sec. 6).

Q : State the procedure in the probate of a will if the witnesses do not reside in the province where probate is being done.

A : If it appears at the time fixed for the hearing that none of the subscribing witnesses resides in the province, but that the deposition of one or more of them can be taken elsewhere, the court may, on motion, direct it to be taken, and may authorize a photographic copy of the will to be made and to be presented to the witness of his examination, who may be asked the same questions with respect to it, and to the handwriting of the testator and others, as would be pertinent and competent if the original will were present. (Sec. 7).

Q : State the procedure in the probate of a will if the witnesses are dead or insane or do not reside in the Philippines.

A : If it appears at the time fixed for the hearing that the subscribing witnesses are dead or insane, or that none of them resides in the Philippines, the court may admit the testimony of other witnesses to prove the sanity of the testator, and the due execution of the will; and as evidence of the execution of the will, it may admit proof of the handwriting of the testator and of the subscribing witnesses, or of any of them.(Sec. 8).

Q : State the grounds for the disallowance of a will.

A : The will shall be disallowed in any of the following cases:

1. If not executed and attested as required by law;
2. If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution;
3. If it was executed under duress, or the influence of fear, or threats;
4. If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit;
5. If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.(Sec.9).

Q : What should a person contesting the allowance of a will do?

A : Anyone appearing to contest the will must state in writing the grounds for opposing its allowance, and serve a copy thereof on the petitioner and other parties interested in the estate. (Sec. 10)

Q : What proof is necessary if the testator himself files the petition for probate?

A : Where the testator himself petitions for the probate of his holographic will and no contest is filed, the fact that he affirms that the holographic will and the signature are in his own handwriting, shall be sufficient evidence of the genuineness and due execution thereof. If the holographic will is contested, the burden of disproving the genuineness and due execution thereof shall be on the contestant. The testator may, in his turn, present such additional proof as may be necessary to rebut the evidence of the contestant.(Sec. 12).

Q : What shall be done if the will is proved?

A : If the court is satisfied, upon proof taken and filed, that the will was duly executed, and that the testator at the time of its execution was of sound and disposing mind, and not acting under duress, menace, and undue influence, or fraud, a certificate of its allowance, signed by the judge and attested by the seal of the court shall be attached to the will and certificate filed and recorded by the clerk. Attested copies of the will devising real estate and of certificate of allowance thereof, shall be recorded in the register of deeds of the province in which the lands lie.(Sec.13).

**Rule 77**

**ALLOWANCE OF WILL PROVED OUTSIDE OF PHILIPPINES AND ADMINISTRATION OF ESTATE THEREUNDER**

Q. May a will proved in a foreign country be allowed and filed in the Philippines?

A. Yes wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper MTC or RTC in the Philippines.

Q. What shall the court do upon the filing of a petition for allowance of a will allowed outside of the Philippines?

A. The court shall fix the time and place for the hearing, and cause notice thereof to be given as in the case of an original will presented for allowance.(Sec.13).

Q. What must be proven in the re-probate of a will in the Philippines?

A. The following must be proven:

1. That the testator was domiciled in the foreign country;
2. That the will has been admitted to probate in such country;
3. That the foreign court was, under the laws of said foreign country, a probate court with jurisdiction over the proceedings;
4. The law on probate procedure in said foreign country and proof of compliance therewith; and,
5. The legal requirements in said foreign country for the valid execution of the will. (Testate of Suntay, 95 Phil 500)
6. What is the effect if a will allowed in a foreign country is allowed in the Philippines?

A. If it appears at the hearing that the will should be allowed in the Philippines, the court shall so allow it, and certificate of its allowance, signed by the judge, and attested by the seal of the court, to which shall be attached a copy of the will, shall be filed and recorded by the clerk, and the will shall have the same effect as if originally proved and allowed in such court. (Sec 3)

1. What shall be done after a will allowed in a foreign country shall have been allowed in the Philippines?

A. When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration, shall extend to all the estate of the testator in the Philippines. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any shall be disposed of as is provided by law in cases of estates in the Philippines belonging to persons who are inhabitants of another state or country. (Sec. 4).

**RULE 83**

**INVENTORY AND APPRAISAL PROVISION**

**FOR SUPPORT OF FAMILY**

Problem:

 Oppositors-appellants appealed from the two orders of the probate court both dated December 11,1961, one approving the amended inventory of the decedent’s estate filed by the duly appointed administratrix and the other directing the heirs or persons in possession of certain properties of the estate to deliver them to the administratrix. Oppositors-appellants argued that the probate court lacks jurisdiction to approve said inventory filed beyond the three-month period from the date of appointment of the administratrix; that the evaluation of the inventoried properties were fake, fictitious and fantastic; that the inventory is not supported by documentary evidence; that the additional; two houses were nonexistent; that the settlement of the estate can be made summarily because of its small value and that the ordinary civil action is necessary to recover the lands in possession of third persons.**(Sebial v. Sebial, 64 SCRA 385)**

1. Is the contention of the oppositors tenable, that the probate court has no jurisdiction considering that the inventory of the properties of the deceased was filed beyond the three month period as required under law?
2. Why is there a need for the inventory?
3. What is the nature of the inclusion of a property in the inventory?
4. What articles are not included in the inventory?
5. Who are entitled to allowances from the estate?

Answers:

1. The contention of the oppositors are devoid of merit.

**General Rule:** Section 1, Rule 83; *Inventory and appraisal to be returned within three months*.**-** Within three (3) months after his appointment every executor or administrator shall return to the court a true inventory and appraisal of all the real and personal estate of the deceased which has come into his possession or knowledge. In the appraisement of such estate, the court may order one or more of the inheritance tax appraisers to give his or their assistance.

**Exception:** The three month period is not mandatory. After the filing of the petition for the issuance of letters of administration and the publication of the notice of hearing, the probate court acquires jurisdiction over a decedent’s estate and retains that jurisdiction until the proceedings is closed. That the fact that an inventory was filed after the three-month period would not deprive the probate court of jurisdiction to approve it. However, an administrator’s unexplained delay in filing the inventory may be a ground for his removal. **(Sebial v. Sebial; Supra)**

1. This is to aid the court in revising the accounts and determining the liabilities of the executor or administrator and in making a final and equitable distribution of the estate, and otherwise facilitate the distribution of the estate. **(Suy Chong King v. Coll. Of Internal Revenue, 60 Phil. 493).**
2. It is not a competent proof of ownership, but merely *prima facie* and is without prejudice to the

right of interested persons to raise the question in proper court and in the proper proceeding.

 **(Garcila v. Martin, L-9233)**

1. Section 2, Rule 83, The wearing apparel of the surviving husband or wife and minor children, the marriage bed and bedding, and such provisions and other articles as will necessarily be consumed in the subsistence of the family of the deceased, under the direction of the court, shall not be considered as assets, nor administered as such, and shall not be included in the inventory.
2. **General Rule:** Section 3, Rule 83, The widow and minor or incapacitated children of a deceased person, during the settlement of the estate, shall receive therefrom, under the direction of the court, such allowance as are provided by law.

**Exception:** It is settled that allowances for support under this section should not be limited to the “minor” or “incapacitated” children of the deceased. Under Article 188 of the Civil Code (Now Article 133 of the Family Code) during the liquidation of the conjugal partnership, the deceased’s legitimate spouse and children, regardless of their age, civil status or gainful employment are entitled to provisional support from the funds of the estate. The law is rooted on the fact that the right and duty to support especially the right to education, subsist even beyond the age of majority. **(Ruiz v. CA, Gr. No. 118671 January 29, 1996)**

**Note:** The law clearly limits the allowance to “widow and children” and does not extend to grandchildren of the deceased. (Ibid.)

**Rule 84**

**GENERAL POWERS AND DUTIES OF**

**EXECUTORS**

**AND ADMINISTRATORS**

Problem:

 On March 21, 1961, respondent was retained as counsel of record for Felix Leong, one of the heirs of the late Felomina Zerna, who was appointed as administrator of the Testate Estate of the Felomina Zerna. That, a lease contract dated August 13, 1963 was executed between Felix Leong and the "Heirs of Jose Villegas" represented by respondent's brother-in-law Marcelo Pastrano involving, among others, sugar lands of the estate. That Felix Leong was designated therein as administrator and "owner, by testamentary disposition, of 5/6 of all said parcels of land";

That, the lifetime of the lease contract was FOUR (4) sugar crop years, with a yearly rental of TEN PERCENT (10%) of the value of the sugar produced from the leased parcels of land; that, on April 20, 1965, the formal partnership of HIJOS DE JOSE VILLEGAS was formed amongst the heirs of Jose Villegas, of which respondent was a member;

That, on October 18, 1965, another lease contract was executed between Felix Leong and the partnership HIJOS DE JOSE VILLEGAS, containing basically the same terms and conditions as the first contract, with Marcelo Pastrano signing once again as representative of the lessee;

That, on March 14, 1968, after the demise of Marcelo Pastrano, respondent was appointed manager of HIJOS DE JOSE VILLEGAS by the majority of partners;

That, renewals of the lease contract were executed between Felix Leong and HIJOS DE JOSE VILLEGAS on January 13, 1975 and on December 4, 1978, with respondent signing therein as representative of the lessee; and,

That, in the later part of 1980, respondent was replaced by his nephew Geronimo H. Villegas as manager of the family partnership**.(Mananquil v. Villegas, August 30, 1990)**

1. Was the act of the administrator in leasing the property of the deceased acts of administration pursuant to Section 3, Rule 84 of the Rules of Court?
2. What are the powers of the executor/administrator of the estate?
3. What are the restrictions on the power of the administrator/executor?
4. What acts of disposition, ownership and dominion needs special authority from the court?
5. In general, what are the powers and duties of the executor/administrator?
6. State the duty of the executor or administrator with respect to maintenance of tenantable repairs of buildings?
7. How long may the executor or administrator keep the estate of the decedent in his possession?

Answers:

1. **General rule:** Pursuant to Section 3 of Rule 84 of the Revised Rules of Court, a judicial executor or administrator has the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration. He may, therefore, exercise acts of administration without special authority from the court having jurisdiction of the estate. For instance, it has long been settled that an administrator has the power to enter into lease contracts involving the properties of the estate even without prior judicial authority and approval

Thus, considering that administrator Felix Leong was not required under the law and prevailing jurisprudence to seek prior authority from the probate court in order to validly lease real properties of the estate, respondent, as counsel of Felix Leong, cannot be taken to task for failing to notify the probate court of the various lease contracts involved herein and to secure its judicial approval thereto**. (Mananquil v. Villegas, August 30, 1990)**

**Exception:** By virtue of Article 1646 of the new Civil Code, the persons referred to in Article 1491 are prohibited from leasing, either in person or through the mediation of another, the properties or things mentioned in that article, to wit:

* 1. Executors and administrators, the property of the estate under administration;
	2. Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property or rights in litigation or levied upon on execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

The above disqualification imposed on public and judicial officers and lawyers is grounded on public policy considerations which disallow the transactions entered into by them, whether directly or indirectly, in view of the fiduciary relationship involved, or the peculiar control exercised by these individuals over the properties or rights covered

1. 1. To have access to, and examine and take copies of books and papers relating to the partnership in case of a deceased partner.

2. To examine and make invoices of the property belonging to the partnership in case of a deceased partner.

3. To make improvements on the properties under administration with the necessary court approval except for *necessary repairs.*

4. To possess and manage the estate when necessary:

 a. for the payment of debts; and

 b. for payment of expenses of

administration.

c) 1. cannot acquire by purchase, even at public or judicial auction, either in person or mediation of another, the property under administration;

2. cannot borrow money without authority of the court;

3. cannot speculate with funds under administration;

4. cannot lease the property for more than one year;

5. cannot continue the business of the deceased unless authorized by the court; and

6. cannot profit by the increase or decrease in the value of the property under administration

1. [**PB BAILS C**]
	* 1. **P**ayment of debts;
		2. **B**orrowing of money;
		3. **B**uying property;
		4. **A**ll other acts constituting acts of ownership and dominion;
		5. **I**nvestments of part of the estate;
		6. **L**ease of property which will create a real right; [*if more than 6 years, the same must be registered*]
		7. **S**ale of part of the estate; and
		8. **C**ontinuing business in which the deceased was engaged at the time of his death, as the administrator can wind up only the business[the latter he can do without court authority]
2. [1] **Administration**

[a] to handle and marshal all assets of the deceased [**Vasquez v. Porta, 52 OG 7615**]

[b] to manage the estate wisely and economically and in a business-like manner [**Tambunting v. Sanjose, L-8162, August 30, 1955**]

[c] For the purpose of marshalling all assets and property of the deceased, he may bring such action as he may deem necessary [**Chua Tan v. de la Rosa, 57 Phil. 411**]

 [2] **Liquidation**

 [a] Determine assets and properties of the deceased [**Flores v. Flores, 48 Phil. 982**]

 [b] Pay the debts of deceased [ibid.]

 [3] **Distribution**

[a] to distribute the net estate among the known heirs, devisees, legatees and all other persons entitled thereto. [**Sec. 1, Rule 90**]

1. An executor or administrator shall maintain in tenantable repair the houses and other structures and fences belonging to the estate, and deliver the same in such repair to the heirs or devises when directed to do by the court. (Sec.2)
2. An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and expenses of administration. (Sec.3)

**RULE 85**

**ACCOUNT LIABILITY AND COMPENSTION OF**

**EXECUTORS AND ADMINISTRATORS**

Problem:

 Private respondent Rosa Lim Kalaw together with her sisters Victoria and Pura Lim Kalaw filed a motion to remove petitioner as administratrix of their fathers estate and to appoint instead private respondent on the ground of negligence on the part of petitioner in her duties for failing to render an accounting of her administration since her appointment as administratrix more than six years ago in violation of section 8, Rule 85 of the Revised Rules of Court. Petitioner likewise filed her opposition to the motion praying for her removal as administratrix alleging that the delay in rendering said accounting was due to the fact that judge Carlos Sundiam, who was the judge where the intestate proceeding was assigned, had then been promoted to the CA causing said sala to be vacated for a considerable length of time, while newly-appointed Judge Joel Tiongco died of cardiac arrest soon after his appointment to said vacancy, so much so that she did not know to whom to render an accounting report. **(Kalaw v. IAC, September 2, 1992)**

1. Is the contention of petitioner tenable?
2. Is the executor/admintrator accountable to the whole estate of the deceased?
3. When shall the amount paid by the executor or administrator for costs be allowed in his administration cost?
4. Will the executor/administrator profit by the increase or decrease in value of any part of the estate of the deceased?
5. When shall an executor/administrator render an accounting of his administration?

Answers:

1. The contention of petitioner is not tenable.

**General Rule:** Section 8 of the Rule of the Revised Rules of Court provides that:

Every executor or administrator shall render an account of his administration within one year from the time of receiving letters testamentary or of administration, unless the court otherwise directs because of extension of time for presenting claims against, or paying the debts of, the estate, or of disposing of the estate; and he shall render further accounts as the court may require until the estate is wholly settled.

The rendering of an accounting by an administrator of his administration within one year from his appointment is mandatory, as shown by the use “shall” in said rule.

**Exception:** When the court otherwise directs because of extensions of time for presenting claims against the state or of praying the debts or disposing the assets of the estate.

Furthermore, petitioner’s excuse that the sala where the intestate proceeding was pending was vacant most of the time deserves scant consideration since petitioner never attempted to file with said court an accounting report of her administration despite the fact that at one time or another, Judge Sundiam and Judge Tiongco were presiding over said sala during their incumbency.

 Likewise, her subsequent compliance in rendering an accounting report did nor purge her of her negligence in not rendering an accounting for more than six years, which justifies petitioner’s removal as administratrix and the appointment of private respondent in her place as mandated by section 2 of Rule 82 of the Rules of Court.

1. **General Rule:** The executor or administrator is accountable for the whole of the estate of the deceased.

**Exception:** He is not accountable for properties which never came to his possession.

**Exception to the Exception:** When through untruthfulness to the trust or his own fault or for lack of necessary action, the executor or administrator failed to recover part of the estate which came to his knowledge.

1. **General Rule:** Costs charged are allowed against an executor or administrator in actions brought or prosecuted by or against him should be paid out of the deceased.

 **Exception:** If it appears that the action or proceeding in which the costs are taxed was prosecuted or resisted without just cause, and not in good faith.

d)Administrator or executor shall not profit by the increase of the estate nor be liable for any decrease which the estate, without his fault, might have sustained.

1) Within one year from the time of receiving letters testamentary or letters of administration. (Sec 8, Rule 85)

2) He shall render such further accounting as the court may require until the estate is wholly settled. (Ibid.)

3) The court may examine him upon oath with respect to every matter relating to any account rendered by him and shall so examine him as the correctness of his account before the same

 is allowed. (Sec. 9, Rule 85)

**RULE 86**

**CLAIMS AGAINST ESTATE**

*Problem:*

Antonio Tanpoco died in the year 1920 and left a will dividing his estate of over P300,000 among four sons, one-half of which he bequeathed to Tan Kim Hong, the claimant, whom he described in his will as his legitimate son, and the other half he left in equal shares to his three adopted sons, Tan Kimco, Tan Kimbio and Tam Kim Choo, and appointed Go Siu San, a resident of Manila, as executor of his will, which provided that no bond should be required.

November 22, 1920, two Chinese named Tan Kim Lay and Te Sue, one of Tarlac and the other of Manila, were appointed and qualified as commissioners, and later they published the usual notice to creditors to present their claims within six months at the office of Attorney M. G. Goyena, of Manila.

1. What claims may creditors present in court in the testate or intestate proceedings for claims

 against the estate?

1. When may a court issue notices to creditors?
2. When should the claims be filed?
3. What is a belated claim and when should it be filed?
4. What is a contingent claim?
5. If obligation of the decedent is solidary, how is the claim settled?
6. What are the possible remedies of the creditors in case of a mortgage debt due from estate?
7. What is the effect of a judgment allowing the claim filed against the estate?

Answers:

a) 1. Money claims, debts incurred by the deceased during his lifetime arising from contract:

 a) express or implied;

 b) due or not due; and

 c) absolute or contingent

 2. Claims for funeral expenses and for the last illness of the decedent.

**NOTE**: All Claims means Money

b) Notices to creditors are immediately issued after granting letters testamentary or of

 administration

 PURPOSE: The object of the law in fixing the time within which claims against the estate may be filed is for the speedy settlement of the affairs of the deceased person and early delivery of the property of the estate into the hands of the persons entitled to receive it.

* Claims arising after the death cannot be presented except for funeral expenses and expenses of the last sickness of the decedent.
* Claims for taxes due and assessed after the death of the decedent need not be presented in the form of a claim. The court in the exercise of its administrative control over the executor or administrator may direct the latter to pay such taxes. And the heirs, even after distribution are liable for such taxes.
1. Not more than 12 months nor less than six months after the date of the first publication of notice at the discretion of the court.(Sec. 2)

-Failure to file the claim within said period will bar recovery by creditor.

-Statute of Non-claims supersedes the Statute of Limitations insofar as the debts of deceased persons are concerned. However, both statute of Non-Claims and Statute of Limitations must concur in order for a creditor to collect.

1. **BELATED CLAIMS** are claims not filed within the original period fixed by the court. It may not be entertained anymore after the order of distribution is entered. Upon the application of a creditor who has failed to file its claim within the time fixed, the court may, for cause shown and on such terms as are equitable allow such belated claim to be filed within a time NOT exceeding 1 month.
2. **CONTINGENT CLAIM**: uncertainty of liability

-conditional claim or claim that can be enforced upon the happening of a future uncertain event.

-Alternative remedy – creditor who is barred by the Statute Of Non-Claims may file a claim as a counterclaim in any suit that the executor or administrator may bring against the claimant.

1. -Claim should be filed against decedent as if he were the only debtor without prejudice on the

 part of the estate to recover contribution from the other debtor.

 -if obligation is joint the claim must be confined to the portion belonging to the decedent.

1. **REMEDIES OF THE CREDITOR**:
	* 1. Abandon security and prosecute his claim against the estate and share in the same general distribution of the asses of the estate.
		2. Foreclose by action in court making executor or administrator a party defendant and if there is judgment for deficiency he may file a claim against the estate.
		3. Rely solely on his mortgage and foreclose the name at anytime within the period of the statute of limitations but he cannot be admitted as creditor and shall not receive in the distribution of the other assets of the estate;

These remedies are alternative the availment of one bars the availment of other remedies.

1. -Judgment against executor and administrator shall not create any lien upon the property of the estate or does not constitute a specific lien which may be registered on such property.

 -Judgment of a probate court approving or disapproving a claim is appealable.

**NOTE:** the mode of appeal is record on appeal and must be filed within 30 days from notice of judgment

**RULE 87**

**ACTIONS BY AND AGAINT EXECUTORS**

**AND ADMINISTRATORS**

*Problem:*

 Siy Uy maliciously charged Climaco with estafa, and upon being acquitted from such malicious charge, Climaco filed against Siy Uy a civil action for damages due to malicious prosecution. While the case was pending, he died. (**Climaco v. Siy Uy, Nov 27, 1967**)

1. Will the case be continued or at least commenced anew against the administrator of the estate of

deceased defendant Siy Uy?

1. What actions may be brought against the executor/administrator?
2. What actions may be brought by the executor or administrator?
3. When may an heir sue to recover title or possession of land assigned to him?
4. What is the purpose of the examination of the person having known to have concealed, embezzled or fraudulently conveyed the property of the deceased?
5. When may the creditor bring action?

*Answer:*

1. It was held that the same could not be maintained against the administrator because it is not an action to recover property, nor to enforce a lien thereto. It is not also an action to recover damages for an injury to persons or property. **(Climaco v. Siy Uy, Nov. 27, 1967)**

1. An action to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against the executor or administrator. ( Sec. 1, Rule 87)
2. For the recovery or protection of the property or rights of the deceased, an executor or administrator may bring or defend, in the right of the deceased, actions for causes which survive. (Sec. 2)
3. **General Rule:** When an executor or administrator is appointed and assumes the trust, no action to recover the title or possession of lands or for damages done to such lands shall be maintained against him by an heir or devisee until there is an order of the court assigning such lands to such heirs or devisee or until the time allowed for paying debts has expired. (Sec. 3)

**Exception:** In cases of Donee and Reservee.

1. 1. The purpose of the examination as provided in Section 6, Rule87, is to elicit information or secure evidence from the person
2. Suspected of having possession or knowledge of
	* 1. property of the deceased; or
		2. the will of the deceased;
3. who concealed or conveyed away any property of the deceased

The probate court has no authority to decide whether or not the properties belong to the estate or to the person being examined since probate courts are courts of limited jurisdiction.

**Exception:**

a. Provisional determination of ownership of inclusion in the inventory;

b. Submission to the courts jurisdiction(Bernardo v. CA)

1. If after the examination, there is good reason for believing that the person examined has property in his possession belonging to the deceased, the procedure would be for the administrator to recover the same by filing an ordinary action to recover the same from said possessor. (**Alafriz v. Mina, 28 Phil. 137**)
2. And if the administrator desires to obtain possession of documents belonging to the estate which the person examined is supposed to have in possession, the administrator may secure from the court a *subpoena duces tecum*. (**Changco v. Madrilejos, 9 Phil. 356**)
3. When a grantee in a fraudulent conveyance is other than the executor or administrator, a creditor

may commence and prosecute the action if the following requisites are present:

* 1. That the executor or administrator has shown to have no desire to file the action or failed to institute the same within the reasonable time.
	2. Leave is granted by court to creditor as prescribed in Section 10, and
	3. Bond is filed by creditor as prescribed in this provision and;
	4. Action by creditor is in the name of the executor or administrator.

Note: These requisites need not be complied with if the grantee of the fraudulent conveyance is the executor or administrator himself, in which event the action should be in the name of all creditors.

**RULE 92**

**GUARDIANSHIP**

What is GUARDIANSHIP

* Is the power of protective authority given by law and imposed on as individual who is free and in the enjoyment of his rights, over one whose weakness on account of his age or other infirmity renders him unable to protect himself.

## GUARDIAN

* Is a person in whom the law has entrusted the custody and control of the person or estate or both of an infant, insane, or other person incapable of managing his own affairs.
* He is an officer of the court appointing him. He is a creature of the law and has no authority, rights and duties except those conferred or imposed by law.

**Kinds of Guardians:**

*1.Legal Guardian*

 Who is such by provision of law without the need of judicial appointment, as in the case of parents over the persons of their minor children.

*2. Guardian ad litem*

 Who may be any competent person appointed by the court for purposes of a particular action or proceeding involving a minor.

*3. Judicial Guardian*

 Who is a competent person appointed by the court over the person and or property of the ward to represent the latter in all his civil acts and transactions.

***WHERE TO INSTITUTE PROCEEDINGS FOR GUARDIANSHIP:***

* In the RTC of the province where the minor or incompetent person resides.
* If he resides in a foreign country, in the RTC of the province wherein his property or part thereof is situated ( Sec 1, Rule 92; BP 129 ).

*May issues of ownership be threshed out by the guardianship court?*

 NO. Where in a guardianship case, an issue arises as to who has a better right or title to properties conveyed in the course of the guardianship proceedings, the controversy should be threshed out in a separate ordinary action as the dispute is beyond the jurisdiction of the guardianship court (Parco et. al vs. CA , et.al, Jan. 30, 1982).

 However where the right or title of the ward to the property is clear and undisputable, the guardianship court may issue an order directing its delivery or return.

( Paciencte vs. Dacuycuy, June 29, 1982 ).

## WHO ARE INCOMPETENT?

Under Sec. 2, Rule 92, those considered incompetent are the ff:

1. Persons suffering the penalty of civil interdiction

2. Hospitalized lepers

3. Those who are of unsound mind, even though they have lucid intervals

4. Prodigals

5. Persons not being of unsound mind, but by reason of age, disease, weak mind and other similar causes, cannot, without outside aid, take care of themselves and manage their property.

6. Deaf and dumb who are unable to read and write.

**RULE 93**

**APPOINTMENT OF A GUARDIAN**

*WHO MAY PETITION FOR THE APPOINTMENT OF A GUARDIAN?*

1. For resident minor / incompetent

a. Any friend

b. Other person in behalf of a resident minor or incompetent who has no parent or lawful guardian.

c. Any relative

d. The minor himself if 14 years or over.

e. The Secretary of Health in favor of an insane person who should be hospitalized or in favor of a leper person.

2. For non-resident minor / incompetent

a. Any friend

b. Any one interested in the minor’s / incompetent’s estate, in expectancy or otherwise.

c. Any relative

***CONTENTS OF THE PETITION FOR GUARDIANSHIP***

*( Sec. 2 , Rule 93 ):*

1. T he jurisdictional facts.

2. the minority or incompetency rendering the appointment necessary or convenient.

3. the names, ages and residence of the relatives of the minor or incompetent and of the persons having him in their care.

4. The probable value and character of his estate.

5. The name of the person for whom letters of guardianship are prayed.

* The petition should be verified, but no defect in the petition or verification shall void the issuance of letters of guardianship. ( Sec. 2, Rule 93 ).

***PROCEDURE FOR THE PETITION FOR GUARDIANSHIP:***

1. The filing of the petition in the court of proper jurisdiction.( Sec. 1, Rule 93 ).

2. The court shall issue as order setting the date, time and place for the hearing ( Sec.3, Rule 93)

3. Notice of the date, time and place of the hearing is to be given to:

a. Persons mentioned in the petition including the minor himself if 14 years or over or incompetent himself

*b. “Next of kin” only, those residing in the province where the petition is filed ( Sec. 3 Rule 93 )*

4. Any interested person may file written opposition on the following grounds :

 a. majority of the alleged minor

 b. competency of the alleged incompetent

c. unsuitability of persons for whom letters of guardianship are prayed.

 - the opposing party must pray for :

 a. the dismissal of the petition

 b. the issuance of letters of guardianship to him or to any suitable person named in the opposition (Sec. 4, Rule 93 )

5. The court shall receive evidence of the parties (Sec. 5, Rule 93).

6. If the evidence warrants, the court shall appoint a suitable guardian of the person of the minor or incompetent or of his estate or of both in a decision rendered thereafter, after the payment of the bond. ( Sec. 5, Rule 93 ).

NOTE :

 When the names, ages and residence of some of the next of kin were omitted in the petition, but it appears that those omitted joined in the petition for the appointment of a guardian, the defect is cured and the court may proceed.

 Service of notice upon the minor if above 14 years or upon the incompetent person is essential. Without such service of notice, the court acquires no jurisdiction.

( Yanco vs. CFI of Manila, 29 Phil 184; Nery et al vs. Lorenzo, April 27, 1972 ).

 When the incompetent is an insane person and is under the custody of the San Lorenzo Hospital, service of the notice to the Director of the hospital is sufficient.

( In Re Guardianship of JR de Inchausti, 40 Phil 506 )

**The property of the defendant, a minor, was under the guardianship of the petitioner. The minor married. May the court remove the petitioner as guardian?**

 - The court is vested with the power to remove the guardian and may appoint the husband as guardian, provided he is of age and capable of protecting the interest of the minor. ( Lim Chua Lan vs. Lim Chua Kun, 54 Phil 190 ).

**The mother of the children is convicted of adultery. The husband, while the divorce proceeding is pending in court, died. The trial court appointed the grandmother as guardian of the children. Is the trial court correct?**

 - Yes. The SC held that the trial court did not commit any error in the appointment of the grandmother as the guardian of the minor children. (Cortes vs. Castillo et al 41 Phil 466).

**May the court appoint nonresidents as guardians?**

 - No. Because, then, the nonresident are not subject to the jurisdiction of the court

 ( Guerrero vs. Teran 13 Phil 212 )

 The general consideration in the appointment of guardian is the BEST INTEREST of the minor or incompetent. The court shall take into consideration the character and financial condition of the prospective guardian and may not appoint any person whose interest conflict with those of the infant. ( Guerrero vs. Teran IBID ).

**May the court appoint the grandfather of the child as guardian, after the subsequent marriage of the child’s mother to a man other than the child’s father?**

- Yes. There was no error in appointing the child’s grandfather as the guardian, even over the objection of the child’s mother. Under art. 328 and 329 of the NCC, a mother who contracts a subsequent marriage loses parental authority over her children and that when the mother of an illegitimate child marries a man other than the father, the court may appoint a guardian for the child. ( Balatbat vs. Balatbat, Feb. 23, 1956 ).

 In the case of guardianship of a nonresident minor or incompetent, it is the latter’s estate situated here in the Philippines that is subject to guardianship.

 Notice of the petition for guardianship by publication or otherwise, must be given to the nonresident or incompetent. ( Sec. 6, Rule 93 ). Under the same rule, a natural person or a juridical person in the trust business, like trust companies, trust corporations or trust banks may be appointed guardian of the estate.

**PARENTS AS GUARDIANS** (Sec . 7 Rule 93 )

**Is a judicial appointment of parent as guardian of his child’s property required?**

 - It depends.

1. When the property of the child under parental authority is worth P 2,000 or less (under Sec. 225 of the New Family Code, the value is P 50,000 or less), the father or the mother without the necessity of court appointment, shall be his legal guardian. (Sec. 7, Rule 93 ).

2. When the property of the child is worth more than P 2,000.00 ( under Sec. 225 of the New Family Code, the value exceeds P 50,000.00 ), the father or the mother shall be considered guardian of the child’s property, with the duties and obligation of guardians ( Art. 320 & 326 NCC, Sec. 7, Rule 93 ) and shall file a petition for guardianship. For good reasons, however, the court may appoint another suitable person. (Sec. 7, Rule 93).

 \* Where the value of the property or the annual income of the child exceeds P 50,000.00, the parent concerned shall be required to furnish a bond in such amount as the court may determine, but not less than 10 % of the value of the property or annual income, to guarantee the performance of the obligations prescribed for general guardians. ( 2nd par, Art. 225, New Family Code )

 The rights of the parents to be appointed as a guardian is NOT ABSOLUTE and the circumstances of parenthood will not be allowed to outweigh the considerations of the BEST INTEREST of the children, so that, if the character or conduct of the parents or their manner of life is such as render it probable that it will be detrimental to the interest of the infants to be in their custody, their claims will be denied and other persons shall be appointed as guardians.

 Parents, however, are preferred and it is a rule established by judicial decisions and in many jurisdictions by express statute, that when a guardian is appointed by the court, the parents are entitled to preference, over all other persons. The father is preferred and in case he is dead, the mother.

**SERVICE OF JUDGEMENT** ( Sec. 8, Rule 93 )

 If the minor or incompetent resides in the Philippines, service of judgment is upon the civil registrar of the municipality or city where the minor or incompetent resides.

 If the minor or incompetent resides outside of the Philippines, then service of judgment is upon the civil registrar of the place where his property or part thereof is situated.

**BONDS OF GUARDIANSHIP**

 A bond in such sum as the court directs shall be given before a guardian appointed of guardianship shall issue ( Sec. 1, Rule 94 )

**CONDITIONS OF THE BOND** (Sec. 1, Rule 94):

1. To make and return to the court, within 3 months, a true and complete inventory of all estate , and personal, of his ward which shall come to his possession or knowledge or to the possession or knowledge of any other person for him.

2. To faithfully execute the duties of his trust, to manage and dispose of the estate according to these rules for the best interest of the ward and to provide for the proper care, custody of the ward.

3. To render a true and just account of all the estate of the ward in his hands, and of all proceeds or interest derived there from, and of the management and disposition of the same, at the time designated by these rules and such other times as the court directs and at the expiration of his trust, to settle his accounts with the court and deliver and pay over all the estate, effects and moneys remaining in his hands or due from his own such settlement, to the person lawfully entitled thereto.

4. To perform all orders of the court by him to be performed.

NOTA BENE:

 Where the statute requires a guardian to give bond, he can not qualify or become entitled to act as guardian without giving such bond; but his failure to give bond ordinarily does not render his acts void, at least as against third persons without notice.

**OBJECT OF THE BOND**

To provide security to those interested in the proper settlement of the properties of the ward.

The conditions of the guardian’s bond also constitute the duties and obligations of a guardian.

**WHEN IS A NEW BOND REQUIRED?**

Under Sec. 2 , Rule 94, a new bond is required whenever it is deemed necessary by the court.

 Requisites:

 1. After due notice to interested persons.

 2. No injury will result therefrom to those interested in the estate.

**WHERE IS THE BOND FILED?**

In the office of the Clerk of Court ( Sec. 3, Rule 94 )

**IN CASE IT BECOMES LIABLE, WHERE IS IT PROSECUTED?**

It may be prosecuted either in the same proceeding or by a separate action ( Sec. 3, Rule 94 )

**When is a guardian & his bondsmen liable?**

In case a guardian is removed, he and his bondsmen are liable, for the administration of the ward’s property, from the time of acceptance of appointment to the time of removal.

( Guerrero vs. Teran, 13 Phil. 212 )

**In case of separate action on guardian’s bond, should the sureties be made parties?**

 Yes, the sureties should be made parties to bind them on their official bond

 ( Arroyo vs. Jungsay, 34 Phil. 590 )

**SELLING & ENCUMBERING OF THE WARD”S PROPERTY**

 A guardian may petition the court for leave of court to see or encumber the estate of his ward when the income of the ward’s estate is not sufficient:

 1. to maintain the ward and his family

 2. to maintain and educate the ward when a minor

3. when the sale appears to be for the benefit of the ward and that the proceeds of the sale or encumbrance be put at interest or invested in some productive security or in the improvement or security of other real estate of the ward.

**PROCEDURE FOR THE SALE & ENCUMBRANCE OF THE WARD’S PROPERTY:**

1. A verified petition shall be filed which shall be set for hearing. The petition shall set forth facts showing the necessity of the sale or encumbrance and pray that an order issue authorizing such sale or encumbrance. (Sec. 1, Rule 95)

2. A copy of the notice of hearing shall be furnished to the next of kin of the ward and all other persons interested in the estate. (Sec. 2, Rule 95)

3. At the date, time and place of the hearing, evidence shall be received from the petitioner, the next of kin and other persons interested, together with their respective witness. (Sec. 3, Rule 95)

4. The court may grant or refuse the prayer of the petition for authority to sell, as the best interest of the ward requires. (Sec. 3, Rule 95)

5. If the court grants the petition for authority to sell, it shall order the sale or encumbrance and shall indicate the manner in which the proceeds thereof shall be disposed. (Sec. 4, Rule 95)

6. The authority to sell may include directives that the property be sold or disposed of at a public or private sale, subject to conditions as the court may deem most beneficial to the ward. (Sec. 4, Rule 95)

7. The court may direst the guardian to post additional bond as a condition for granting the authority to sell. (Sec. 4, Rule 95)

8. No order of sale shall continue in force for more than one year after the grant of the authority, without a sale being held. (Sec. 4, Rule 95 ). This one year period does not apply to mortgages & other encumbrances.

9. The court may direct the proceeds to be invested and may make such orders for the management, investment & disposition of the estate & effects as circumstances may require.

 ( Sec. 5, Rule 95 )

NOTA BIEN:

 The guardian is clothed with the power to sell or dispose of the personal property of his ward. Ordinarily, a petition for the sale nor a court order to do so, is NOT NECESSARY. The basis of this rule on sale of personalty is that the personal estate of the ward is necessarily subject to ore unlimited control than realty and may be invested, called in and reinvested and changed and otherwise disposed of as the exigencies of the trust in the judgment of the guardian may seem to require.

 The powers of a general guardian extend not only to the custody of the person of the ward, but also to the management of the ward’s personal estate and his control thereover is absolute, within the bounds of a discretion guided by an honest judgment of what the ward’s best interest requires. And in the exercise of that discretion, he may resort to the sale of the principal of the ward’s estate.

**May the guardian sell real estate of the ward merely by reason of his general powers?**

 No. In the absence of any special authority to sell conferred by will, statute, or order of the court, a sale of the ward’s realty by the guardian without authority from the court is void.

( Inton et al vs. Quintana et al . 81 Phil 97 )

**Can a mother sell the realty of her minor child whose estate exceeds P 50,000.00?**

 Yes, provided the mother first petitions for guardianship and subsequently obtain a special authority from the court. ( US adm. Vs. Bustos, 92 Phil 327, Art. 225 of the New Family Code)

**A widow, the mother of minor children sold the latter’s property extrajudicially. Despite being a registered land, the sale was not registered. Later, the mother was appointed as the guardians of the persons and properties of her minor children. Upon petition, she was granted by the court an authority to sell her children’s property. She thus sold the same property sold earlier to another person. Which sale is valid?**

 As between the first and the second sale, the latter is superior. In short, the sale of realty by a guardian with court order gives superior rights to the buyer over other persons. This is of course without prejudice to the right of the first buyer to reimbursement of his money and the value of his improvements, if any. He was after all, a buyer and a builder in good faith.

( Ibarle vs. Po , 92 Phil 72 )

**Can a guardian buy the ward’s property?**

 No, a guardian is prohibited from buying the ward’s property.

**Is notice to the next of kin of the ward regarding the sale of the property of the ward & the date & place of the hearing necessary ?**

 Yes, this is a judicial requirement and the absence thereof is fated. ( Sinco vs. Longa, 51 Phil 507 ). However, such notice is deemed complied with where it appears that all the next of kin, including those not notified, have already agreed to such sale.

( De Tavera vs. El Hogar Filipino )

**Who are the next of kin of the ward?**

 They are the relatives who are or may be entitled to the estate. It includes those claiming per stirpes or the right of representation. ( Lopez vs. Judge Teodoro, May 29, 1950 )

**GENERAL POWERS & DUTIES OF GUARDIAN** ( Rule 96 ) :

1. He is responsible for the care & custody of the person of his ward. ( Sec. 1, Rule 96 )

2. To manage his ward’s estate frugally and without waste and apply the income and profits thereof, so far as may be necessary, to the comfortable & suitable maintenance of the ward & his family. ( Sec. 1, Rule 96 )

3. To settle all accounts of his ward and demand, sue for and receive all debts due him or may, with the approval of the court, compound for the same and give discharge to the debtor, on receiving a fair and just dividend of the estate & effects. ( Sec. 3, Rule 96 )

4. To pay the ward’s just debts out of the latter’s personal estate and the income of his estate, if sufficient. If not, then out of the ward’s real estate, with the approval of the court. ( Sec. 2, Rule 96 )

5. To appear for and represent his ward in all actions and special proceedings, unless another person be appointed for that purposes. ( Sec. 3, Rule 96 )

6. To join in an assent to a partition of real or personal estate held by the ward, jointly or in common with others. ( Sec. 5, Rule 96 )

NOTE: However, when the interest of either parent or guardian in the partition conflicts with that of the children’s or ward’s under their parental authority, such parents or guardians cannot represent them therein, but according to Art. 165 of the NCC, a third party will be appointed to represent them in law & in fact. ( Salonga vs. Evangelista , 20 Phil 273 )

7. To institute complaints against persons suspected of embezzling or concealing property of the ward. ( Sec. 6, Rule 96 )

8. To render to the court an inventory of the estate of his ward within 3 months after his appointment and annually after such appointment, an inventory & account, the rendition of any of which may be compelled upon the application of an interested person. ( Sec. 7, Rule 96 )

9. To receive compensation, if proper. ( Sec. 8, Rule 96 )

NOTA BIEN :

 The judicial guardian has the management of the estate of the ward and as such, he may exercise all acts of administration. The judicial guardians, with or which the approval of the court, can lease real estate with the ward for a period not more than one year, for a longer period is prohibited because the same would not be an act of administration. ( Enriquez vs. Watson Co., 22 Phil 623: Lichauco vs. Tan Pho, 51 Phil 862: Gamboa vs. Lopez Vito, 62 Phil 550 )

 However, a guardian, just like a trustee, is prohibited under Art. 736 of the civil code, from making a donation of the properties entrusted to him. ( Araneta vs. Perez, July 15, 1966 )

 Incidental to the duty of managing the estate of the minor, the guardian is empowered to take possession or recover the same from the possessor thereof. ( Re: Guardianship of Maria Exaltacion Castillo, 64 Phil 839 )

 The guardian is responsible for the management of the estate of the ward from the acceptance thereof to the release or discharge, and should the guardian allow somebody to intervene or to act in his behalf, the guardian shall be held liable for any tortuous act committed by the guardian. ( Guerrero vs. Teran , 13 Phil 212: Mabalacat Sugar Co. vs. Ramirez, 53 Phil 496 )

**Can issue of ownership be dealt with in the same guardianship proceedings ?**

 No, a guardianship court’s sole concern is the ward’s care & custody & proper administration of his properties. Therefore, conflicts regarding ownership or title to such property in the hands of a guardian, in his capacity as such should be litigated in a separate proceeding. ( Viloria vs. Admin. Of Vet. Affairs, 101 Phil 762 )

**In a civil case, the guardian representing the ward confessed judgment in favor of the latter. Is this valid?**

 No, as this is as act of ownership or dominion. The same is not within the powers of guardianship. The court’s authority is needed, otherwise, the ward would not be bound by a judgment obtained through the confession of judgment made by the guardian without court authority.

**A guardian advanced a sum of money for the support of the ward before his appointment as guardian of such ward. Is said guardian entitled to reimbursement?**

 No. The advanced fund cannot be considered as expense incurred in the execution of the guardian’s trust.

 Although under Sec. 8, Rule 96, in the settlement of account, the guardian, other than the parent shall be allowed the amount of his reasonable expenses incurred in the execution of his trust & also such compensation for his services as the court deems just. Not exceeding 15 % of the net income of the ward. Thus, if there is no net income, which accrue to the ward - there is NO COMPENSATION.

### RULE 97

### TERMINATION OF GUARDIANSHIP

## WHEN DOES GUARDIANSHIP TERMINATE?

1. Attainment of competency of the ward as judicially determined.

2. Resignation or removal of the guardian.

3. Marriage of minor or his voluntary emancipation.

*PROCEDURE IN DETERMINING THE COMPETENCY OF THE ALLEGED INCOMPETENT*

1. A verified petition should be filed by the incompetent himself, or his guardian, relative or friend, for a judicial declaration of competency. This is filed in the same guardianship proceeding.

2. The court sets the petition for hearing.

3. Notice shall be given to the guardian & the ward.

4. At the trial, the guardian or relatives of the ward, or any other persons, may contest the

 petition.

5. Witness may be called and examined by the parties or by the court in its own motion.

6. If the ward is found to be no longer incompetent, his competency shall be adjudged & the guardianship ceases.

*GROUNDS FOR THE REMOVAL OF A GUARDIAN :*

1. Insanity of the guardian.
2. Incapability of the guardian to discharge the trust.
3. Unsuitability of the guardian to act as such.
4. Wastage or mismanagement of the estate of the ward.
5. Failure for thirty ( 30 ) days after it is due to render an account or make a return.

*WHEN MAY A GUARDIAN BE ALLOWED TO RESIGN?*

* The guardian may be allowed to resign when it appears proper to allow the same.

# *RULE 98*

# *TRUSTEES*

**What is a *Trust***

Trust is the right to the beneficial enjoyment of property, the legal title to which is vested in another. It is a fiduciary relationship that obliges the trustee to deal with the property for the benefit of the beneficiary. Trust relations between parties may either be express or implied. (SECUYA vs. DE SELMA, GRN 136021 February 22, 2000]

*Parties to a Trust*

1. *Trustor -* the person who establishes the trust. He must have the capacity to convey property.
2. *Trustee -* one who has the Legal Title and holds the property in trust for the benefit of the beneficiary. He must have the capacity to enter into contracts.
3. *Beneficiary –* one who has the Equitable Title or Beneficial Title to the property held by the trustee for his benefit. He must have the capacity to receive gratuitously.

*\** The trustor and the beneficiary may be the same person.

*Classification of Trust*

1. *Express Trust*  - created by the intention of the trustor or of the parties.

How created:

* 1. by an act inter vivos
	2. by an act mortis causa, as in a will
	3. by the admission of the trustee that he merely a trustee to the property of the trust.
1. *Implied Trust* - comes into being by operation of law.

Who may petition?

* + - * Parties beneficially interested.

Grounds :

1. essential in the interest of the petitioner
2. insanity
3. incapability of discharging trustee
4. unsuitability

**RA 8552**

**What is Adoption?**

 Adoption is the process of making a child, whether related or not to the adopter, possess in general , the rights accorded to a legitimate child.

**What is RA 8552?**

 It is a law known as The Domestic Adoption Act of 1998.

**Who May Adopt?**

 A person of legal age, in possession of full civil capacity and legal rights, of good moral character, has not been convicted of any crime involving moral turpitude, emotionally and psychologically capable in caring for children may adopt, provided, he is in a position to support and care for his children in keeping with the means of the family.

 In addition, the adopter must be at least 16 years older than the adoptee, unless the adopter is:

1. the biological parent of the adoptee, or 2) the spouse of the adoptee’s parent. [ sec. 7(a) ]

**May An Alien Adopt?**

An alien may adopt, provided, he possesses the same qualifications as above stated for Filipino nationals, his country has diplomatic relations with the Republic of the Philippines and he complies with the residency and certification requirements. [ sec. 7(b) ]

**What is the Residency Requirement**

The alien must have been living in the Phils. for at least 3 continuous years prior to the filing of the application for adoption and maintains such residence until the adoption decree is entered. [ sec. 7(b) ]

**What is the Certification Requirement?**

 The alien must have been certified by his/her diplomatic or consular office or any government agency that:

1) he/she has the legal capacity to adopt in his/her country and,

1. his/her government allows the adoptee to enter his/her country as his/her adopted child. [ sec. 7(b) ]

**May the Residency and Certification Requirements Be Waived?**

Yes. These requirements may be waived when the adopter is:

1. a former Filipino citizen who seeks to adopt a relative within the 4th degree of consanguinity or affinity; or
2. one who seeks to adopt the legitimate child of his/her Filipino spouse; or
3. married to a Filipino citizen and seeks to adopt jointly with his/her spouse a relative within the 4th degree of consanguinity or affinity of the Filipino spouse. [ sec. 7(b) ]

**May a Guardian Adopt His Ward? Why?**

 Yes. However, he may only do so after the termination of the guardianship and clearance of his financial accountabilities. [ sec. 7(c) ]

 This is to prevent the commission of fraud by the guardian in the handling of the properties of the ward. Adoption might be resorted to as a shield against said fraudulent acts of the guardian, thereby prejudicing the minor.

**How Shall Husband and Wife Adopt?**

 As a rule, adoption must be done jointly by the husband and wife. [ sec. 7 ]

**Is the Rule Absolute? Why?**

It is not absolute.

There are exceptions as when:

1. one spouse seeks to adopt the legitimate son/daughter of the other; or
2. one spouse seeks to adopt the his/her own illegitimate son/daughter, provided that the other spouse has signified his/her consent thereto; or
3. the spouses are legally separated from each other. [ sec. 7 ]

**When May a Person of Legal Age Be Adopted?**

 A person of legal age may be adopted if, prior to the adoption, said person has been consistently considered and treated by the adopter as his/her own child. [ sec. 8(d) ]

**Where Should the Adoption Case be Filed?**

 The case should be filed in the RTC ( Family Court ) of the province/city where the petitioner resides. [ RA 8369 ]

**What is Required Before the Petition for Adoption Be Set For Hearing?**

 The petition shall be set for hearing only when a licensed social worker of the DSWD, the social service office of the local gov’t unit, or any child-placing or child-caring agency has made a CASE STUDY of the adoptee, his/her biological parent/s as well as the adopter/s and has submitted the report and recommendations on the matter to the court hearing such petition.

 The case study of the adoptee shall establish that he/she is legally available for adoption and that the document to support this fact are valid and authentic.

 The case study of the adopter/s shall ascertain his/her genuine intentions and that the adoption is in the best interest of the child. [ sec. 11]

**What is Required Before The Petition For Adoption Can Be Finally Granted?**

Before it can be finally granted, the adopter/s must have been given by the court a SUPERVISED

TRIAL CUSTODY PERIOD for at least 6 months within which the parties are expected to adjust psychologically and emotionally to each other and establish a bonding relationship. During said period, temporary parental authority shall be vested in the adopter/s. [ sec. 12 ]

**When Shall a Decree of Adoption be Entered?**

If, after the publication of the order of hearing has been complied with and no opposition has been interposed with to the petition, and after consideration of the case studies, the qualifications of the adopter/s, trial custody report and the evidence submitted, the court is convinced that the petitioners are qualified to adopt, and that the adoption would redound to the best interest of the adoptee, a decree of adoption shall be entered. [ sec. 13 ]

**When Shall the Decree Be Effective? Why?**

It shall be effective as of the date the original petition was filed. This is to protect the interest of the adoptee

in case the petitioner dies before the issuance of the decree of adoption. [ sec. 13 ]

**What are the Effects of Adoption?**

1. All legal ties between the biological parent/s and the adoptee shall be severed and the same shall then be vested in the adopter/s, except in cases where the biological parent is the spouse of the adopter. [ sec. 16 ]
2. The adoptee shall be considered the legitimate child of the adopter/s for all intents and purposes.

[ sec. 17 ]

1. In legal and intestate succession, the adopter/s and the adoptee shall have reciprocal rights of succession.

[ sec. 18 ]

**What are the Grounds for the Rescission of an Adoption?**

 The adoption may be rescinded on any of the following grounds committed by the adopter/s:

1. repeated physical and verbal maltreatment despite having undergone counseling;
2. attempt on the life of the adoptee;
3. sexual assault or violence; or
4. abandonment and failure to comply with parental obligations. [ sec. 19 ]

**May an Adopter File a Petition for Rescission of Adoption? Why?**

 No. Adoption, being in the best interest of the child, shall not be subject to rescission by the adopter/s. However, the adopter/s may disinherit the adoptee for causes provided in Article 919 of the Civil Code. [ sec. 19 ]

**What are the Effects of Rescission?**

 Parental authority of the adoptee’s biological parent/s, if known, or the legal custody of the DSWD shall be restored if the adoptee is a minor or incapacitated.

 The court shall order the Civil Registrar to cancel the amended certificate of birth of the adoptee and restore his/her original birth certificate.

 Succession rights shall revert to its status prior to adoption, but only as of the date of judgment of judicial rescission. [ sec. 20 ]

**Who are Guilty of Simulation of Birth?**

Any person who shall cause the fictitious registration of the birth of a child under the name/s of a person/s who is not his/her biological parent/s shall be guilty of simulation of birth. [ sec. 21(b) ]

**RULE 107**

**ABSENTEES**

# Kinds of Absence

1. Ordinary Absence
2. Qualified or extraordinary Absence

*Where petition is to be filed*?

 Regional Trial Court of the place where the absentee resided before his disappearance

*What are the Requisites in the Appointment of Representative?*

1. A person disappears from his domicile
2. The whereabouts of such person is unknown
3. Such person has not left an agent to administer his property; or even if he left such agent , the power of such agent has expired
4. His disappearance is less than 2 years yet

Who may petition in relation to Art. 384 and 385 of the New Civil Code?

* If the person is without administrator, 2 years time from his disappearance is sufficient to make a petition for the declaration of his absence.
* If the person left an administrator, 5 years should elapse to declare him absent. The reason for the longer period is the greater probability that the estate or property is being well-taken care of.

*Who are Persons who may petition for declaration of absence?*

1. The spouse present
2. The heirs instituted in a will, who may present an authentic copy of the same
3. The relatives who would succeed by law of intestacy; and,
4. Those who have over the property of the absentee some right subordinated to the condition of his death.

*The following are the requisites:*

1. Jurisdictional facts
2. The names, ages and residences of the heirs instituted in the will, copy of which shall be presented, and of the relatives who would succeed by the law of intestacy
3. The names and residences of creditors and others who may have any adverse interest over the property of the absentee
4. The probable value, location and character of the property belonging to the absentee

## Hearing, Notice and Publication

 It is the duty of the court with whom a petition for appointment of representative or for declaration of absence and appointment of trustee or administrator:

* 1. To fix a date and place for the hearing
	2. To notify and serve notice to the following:
1. known heirs, legatee, devisee
2. creditors
3. other interested persons

such notice must be made at least 10 days before the hearing

* 1. To publish said notice for 3 consecutive weeks in a newspaper of general circulation, in the city or province where absentee resided
		+ Notice and publication are essential to the jurisdiction of the court as this is a proceeding *in rem*

Sec. 6 Proof of Hearing

1. Sec. 4 of this Rule must be first shown
2. If satisfactory, the court shall issue an order granting the same and appoint the representative, trustee or administrator. The powers, obligations and remuneration shall be specified.

\* In case of declaration of absence, the same shall not take effect until 6 months after its publication in a newspaper of general circulation designated by the court and in the Official Gazette.

Sec. 5. Opposition- It must be in writing, the grounds must be stated and a copy must be served to the petitioner and other interested parties before the designated date of hearing.

Who may be appointed in relation to Art.382 and Art. 383 of the Civil Code?

* Preference is given to the spouse present, if there is no legal separation.
* If there is no spouse or if the spouse present is a minor or if the spouse is incompetent the court will appoint any competent person.

Sec. 8 Termination of Administration-The trusteeship or administration of the property of the absentee shall cease upon order of the court in any of the following cases:

1. When the absentee appears personally or by means of an agent;
2. When the death of the absentee is proved and his testate or intestate heirs appears;
3. When a third person appears, showing by a proper document that he has acquired the absentee’s property by purchase or other title.

**RULE 108**

**CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTER**

1. *NATURE*

Proceedings under this rule maybe summary or adversarial in nature. If the correction sought to be made in the civil registry is clerical, the procedure to be adopted is summary. If the rectification affects the civil status, citizenship, or nationality of a party, it is deemed substantial and the procedure to be followed is adversarial.

* **Requisites of Adversarial Proceedings**:
	1. Proper petition is filed where the Civil Registrar and all parties interested are impleaded.
	2. The order of hearing must be published.
	3. Notice thereof must be given to the Solicitor General and all parties affected thereby.
	4. Opportunity to be heard
	5. Full blown trial.
1. *VENUE*
	* + 1. The RTC of the province where the corresponding civil registry is located.
2. *PARTIES TO THE PROCEEDING*
	1. Petitioner;
	2. Civil Registrar
	3. All persons who have direct claim or interest which would be affected thereby.
3. *WHO MAY FILE THE PETITION*
	* + 1. Any person interested in an act, decree, order or event concerning the civil status of persons which has been recorded in the civil register.
4. *ENTRIES SUBJECT TO CANCELLATION OR CORRECTION*

**(Key: BALANCED FLAME DC)**

Birth

Adoptions

Naturalizations

Civil interdiction

Election, loss or recovery of citizenship

Death

Filiation, judicial determination of

Legitimations

Acknowledgement of natural children

Marriages

Emancipation of a minor, voluntary

Declaring Marriages void from the beginning, judgments of

Changes of Name

* **Note**: The procedure in Rule 103 regarding change of name and Rule 108 concerning the cancellation or correction of entries in the civil registry are separate and distinct. The allegations required, the issues involved, and the reliefs that maybe granted in these proceedings are different, hence, they may not be substituted one for the other for purposes of expediency. If both reliefs are to be sought in the same proceedings, all the requisites must be complied with.

**REPUBLIC ACT 9048**

**CORRECTION ERROR LAW**

(Approved March 22,2001)

1. **GENERAL RULE**: No Entry in a Civil Register shall be changed or corrected without judicial authority.
2. **EXCEPTIONS:**
	1. Clerical/Typographical errors
	2. Change of first name/nickname
* “First Name”: refers to a name or a nickname given to a person which may consist of one or more names in addition to the middle and last names.
1. **WHO MAY FILE**

Any person having direct and personal interest in the correction of a clerical or typographical error in an entry and/or change of first name/nickname.

1. **VENUE**
* The petitioner may file in person a verified petition with the local civil registry office of the city or municipality where the record being sought to be corrected or changed is kept.
* If the petitioner has migrated to another place in the country and it is impractical for him to appear in person before the local registrar keeping the records, the petition maybe filed in person with the local civil registrar of the place where the interested party is residing or domiciled.
* Filipino citizens residing or domiciled in foreign countries may file their petition, in person, with the nearest consulate.

**Note:** All the petitions maybe availed of only once.

1. **GROUNDS FOR CHANGE OF NAME**
	1. The petitioner finds the first name or nickname to be ridiculous, tainted with dishonor or extremely difficult to write or pronounce;
	2. The new first name or nickname has been habitually and continuously used by the petitioner and he has been publicly known by that first name or nickname in the community.
	3. Change will avoid confusion.
2. **FORM OF PETITION : Affidavit**
3. **CONTENTS OF PETITION**
	1. Facts necessary to establish the merits of the petition and shall show affirmatively that the petitioner is competent to testify to the matters stated.
	2. Statement of the particular erroneous entry/entries which are sought to be corrected and/or changed sought to be made.
4. **PUBLICATION**

In case of change of first name or nickname, the petition shall be published at least once a week for two consecutive weeks in a newspaper of general circulation.

1. **PERSON WHO MAY IMPUGN THE DECISION OF THE LOCAL CIVIL REGISTRAR GRANTING A PETITION**

The Administrator of the National Statistics Office may impugn, by way of objection such decision on the following grounds:

* 1. Error is not clerical/typographical
	2. The correction of an entry in the civil register is substantial or controversial as it affects the civil status of a person; or
	3. The basis used in changing the first name or nickname of a person does not fall under the 3 authorized grounds enumerated for a change of first name or surname.
		+ If the administrator of the NSO fails to exercise his power to impugn the decision within 10 working days after such receipt, the decision shall become final and executory.
1. **APPEAL**

The petitioner may either appeal the decision to the administrator of NSO or file the appropriate petition with the proper court.

1. **PENALTY CLAU**SE

Violation of the provisions of this act , shall upon conviction be penalized by:

* 1. Imprisonment of not less than 6 years but not more than 12 yrs; or
	2. A fine of not less than P10,000. but not more than P 100,000.; or
	3. Both
		+ In addition, if the person is a gov’t employee, he shall suffer the penalties provided under civil service laws, rules, and regulations.
1. **RETROACTIVITY CLAUSE**

This act shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code and other laws.

**DISTINCTIONS:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | RULE 103 | R.A. 9048  | RULE 108 |
| SUBJECT MATTER | Change of Name | -Clerical Errors-Change of first name/ nickname. | -Clerical Errors-Correction of BALANCED FLAME DC |
| INITIATED BY | Petition | Affidavit | Petition |
| VENUE | RTC where petitioner resides | A. LCR where the record being sought to be corrected/changed is kept.B..LCR where the petitioner resides.C. Nearest consular office(if petitioner is abroad) | RTC where the LCR is located |
| HEARING REQUIREMENT | Necessary | Not necessary; mere investigation | Necessary |
| DECISION | Court renders it | LCR | Court renders it |
| APPEAL | Higher courts | Civil Registrar General(Admin. Of NSO) | Higher courts |
| FINALITY OF JUDGMENT | 15 days after receipt of decision | 10 days after receipt of decision | 30 days after receipt of decision |
| RULE 103 | RULE 108 |
| To be filed in the RTC where the petitioner resides | Verified petition filed in the RTC where the LCR is located |
| SolGen must be notified by the service of a copy of the petition | Civil registrar concerned is made a party to the proceeding as a respondent |
| Petition is filed by person desiring to change his name | By any person interested in any act, event, order, or decree |