Statutory Construction

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FIFTH EDITION 2016



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CHAPTER I

PRELIMINARY CONSIDERATIONS

STATUTORY CONSTRUCTION, DEFINED

In our jurisdiction, statutory construction has been defined as the art or process of discovering and expounding the meaning and intention of the authors of the law with respect to its application to a given case, where that intention is rendered doubtful, among others, by reason of the fact that the given case is not explicitly provided for in the law. (*Caltex [Philippines], Inc. vs. Palomar*, 18 SCRA 247 [1966]). Apparently, this definition was taken from Black's Construction and Interpretation of the Laws which likewise defined interpretation as the art or process of discovering and expounding on the intended signification of the language used, that is, the meaning which the authors of the law designed it to convey to others. (Black, *Construction and Interpretation of the Laws*, p. 1, 2nd ed.). Thus, Justice Martin defines statutory construction as the art of seeking the intention of the legislature in enacting a statute and applying it to a given state of facts. (Martin, *Statutory Construction*, p. 1, 6th ed.).

American jurisprudence defines it as that branch of the law dealing with the interpretation of laws enacted by a legislature. A judicial function is required when a statute is invoked and different interpretations are in contention. Where legislature attempts to do several things one of which is invalid, it may be discarded if the remainder of the act is workable and in no way depends upon the invalid portion,

but if that portion is an integral part of the act, and its excision changes the manifest intent of the act by broadening its scope to include subject matter or territory which was not included therein as enacted, such excision is "judicial legislation" and not "statutory construction." (*Ettinger vs. Studevent*, 219 Ind. 406, 38 N.E. 2d 1000, 1007 [*Black's Law Dictionary*, p. 1412, Centennial ed.]).

CONSTRUCTION AND INTERPRETATION, DISTINGUISHED

Strictly speaking, construction and interpretation are not the same although the two terms are often used interchangeably. Construction, however, to be technically correct, is the drawing of conclusions with respect to subjects that are beyond the direct expression of the text from elements known and given in the text, while interpretation is the process of discovering the true meaning of the language used. Thus, the court will resort to interpretation when it endeavors to ascertain the meaning of a word found in a statute, which when considered with the other words in the statute, may reveal a meaning different from that apparent when the word is considered abstractly or when given its usual meaning. But when the court goes beyond the language of the statute and seeks the assistance of extrinsic aids in order to determine whether a given case falls within the statute, it resorts to construction. The process to be used in any given case will depend upon the nature of the problem presented. And, as is apparent, both processes may be used in seeking the legislative intent in a given statute. If the legislative intent is not clear after the completion of interpretation, then the court will proceed to subject the statute to construction.

It will thus be seen that there is a substantial difference between interpretation and construction as methods for the exegesis of written laws. In strictness, interpretation is limited to exploring the written text, while construction goes beyond and may call in the aid of extrinsic considerations. "Interpretation," says Dr. Lieber, "differs from construction in that the former is the art of finding out the true sense of

any form of words, that is, the sense which their author intended to convey, and of enabling others to derive from them the same idea which the author intended to convey. Construction, on the other hand, is the drawing of conclusions, respecting subjects that lie beyond the direct expressions of the text, from elements known from and given in the text; conclusions which are in the spirit, though not within the letter, of the text." (Black, *Construction and Interpretation of Law*, p. 3).

The distinction, however, between the two processes is often vague, and so far as the courts are concerned apparently has little or no importance. Generally, the whole matter has been largely relegated to the realm of academic discussion, since for most practical purposes it is sufficient to designate the whole process of ascertaining the legislative intent as either interpretation or construction. This appears to be the customary judicial practice. (Crawford, *Construction of Statutes*, p. 241).

SITUS OF CONSTRUCTION AND INTERPRETATION

As aptly discussed above, the purpose of construction and interpretation is to ascertain and give effect to the legislative intent. It further hints to what branch of government does construction and interpretation of written laws belong.

One of the manifestations of a republican government like ours is the observance of the principle of separation of powers and the system of checks and balances.

In our system of government, the legislative power is vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum. (Art. VI, Sec. 1, Phil. Constitution). The executive power is vested in the President of the Philippines. (Art. VII, Sec. 1, Phil. Constitution). The judicial power is vested in one Supreme Court and in such lower courts as may be established by law. (Art. VIII, Sec. 1, Phil. Constitution). In other words, the legislative department

makes the law. The executive department executes the law and the judiciary interprets the law.

Simply stated, the situs of construction and interpretation of written laws belong to the judicial department. Thus, under the principle of checks and balances, courts may declare legislative measures or executive acts unconstitutional.

As earlier stated, the judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the Courts of Justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. (Art. VIII, Sec. 1, *supra*).

It can be viewed from this constitutional provision that the Supreme Court is the one and only Constitutional Court and all other lower courts are statutory courts or one established by statute. Nevertheless, the Supreme Court and such lower courts have the power to construe and interpret written laws.

DUTY OF THE COURTS TO CONSTRUE AND INTERPRET THE LAW; REQUISITES

Not in all occasions, however, are the courts duty bound to construe and interpret the laws. Two (2) requisites must concur:

1. There must be an actual case or controversy, meaning, a case brought to the court by party litigants to hear and settle their disputes. If there is no case or controversy, there is no way for the court to construe or interpret a law.

2. There is ambiguity in the law involved in the controversy. Meaning the law involved is susceptible of two or more interpretations.

There is ambiguity when there is doubtfulness, doubleness of meaning, duplicity, indistinctiveness, or uncertainty of meaning of an expression used in a written instrument. The language used is wanting in clearness or definiteness, difficult to comprehend and distinguish, and of doubtful import.

Ambiguity exists if reasonable persons can find different meanings in a statute, document, etc. (*Laskains vs. City of Wisconsin Dells, Inc.*, App. 389 N. W. 2d. 67, 70, 131 Wis, 2d 525). A patent ambiguity is that which appears on the face of the instrument and arises from the defective, vague, obscure or insensible language used. (*Black's Law Dictionary*, pp. 79-80, Centennial ed.).

Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent. Ambiguity is a condition of admitting two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time. A statute is ambiguous if it is admissible of two or more possible meanings, in which case, the Court is called upon to exercise one of its judicial functions, which is to interpret the law according to its true intent. (*RCBC vs. IAC and BF Homes, Inc.*, 320 SCRA 279, December 09, 1999).

The duty of the court is to apply the law. When the law is clear and unequivocal, the Court has no other alternative but to apply the law and not to interpret (*Verba Legis*). Stated differently, the Court cannot shy away from applying the law when no interpretation is needed no matter how harsh the law may be (*Dura Lex Sed Lex*).

Take for instance the case of a trial judge who was admonished by the Supreme Court for not applying the death penalty law because of his religious conviction.

In fact no judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws. (Art. 9, NCC).

ILLUSTRATIVE CASES:

LITO CORPUZ *vs.* PEOPLE OF THE PHILIPPINES
G.R. No. 180016
April 29, 2014

The primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by judicial legislation and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms.

FACTS: Private complainant Danilo Tangcoy and petitioner met at the Admiral Royale Casino in Olongapo City sometime in 1990. Private complainant was then engaged in the business of lending money to casino players and, upon hearing that the former had some pieces of jewelery for sale, petitioner approached him on May 2, 1991 at the same casino and offered to sell the said pieces of jewelery on commission basis. Private complainant agreed, and as a consequence, he turned over to petitioner the following items: an 18k diamond ring for men; a woman's bracelet; one (1) men's necklace and another men's bracelet, with an aggregate value of P98,000.00, as evidenced by a receipt. They both agreed that petitioner shall remit the proceeds of the sale, and/or, if unsold, to return the same items, within a period of 60 days. The period expired without petitioner remitting the proceeds of the sale or returning the pieces of jewelery. When private complainant was able to meet petitioner, the latter promised the former that he will pay the value of the said items entrusted to him, but to no avail, thus, an information was filed against petitioner for the crime of Estafa.

After trial, the RTC found petitioner guilty beyond reasonable doubt of the crime charged in the Information. Accordingly, the accused was sentenced to an imprisonment under the Indeterminate Sentence Law of

FOUR (4) YEARS AND TWO (2) MONTHS of *Prision Correccional* in its medium period AS MINIMUM, to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS of *Reclusion Temporal* in its minimum period AS MAXIMUM.

Upon review by the Court of Appeals, it denied the appeal of petitioner and affirmed the decision of the RTC, with MODIFICATION on the imposable prison term, such that accused-appellant shall suffer the indeterminate penalty of 4 years and 2 months of *prision correccional*, as minimum, to 8 years of *prision mayor*, as maximum, plus 1 year for each additional P10,000.00, or a total of 7 years.

The case was elevated to the Supreme Court.

While the Court's Third Division was deliberating on this case, the question of the continued validity of imposing on persons convicted of crimes involving property came up. The legislature apparently pegged these penalties to the value of the money and property in 1930 when it enacted the Revised Penal Code. Since the members of the division reached no unanimity on this question and since the issues are of first impression, they decided to refer the case to the Court *en banc* for consideration and resolution. Thus, several *amici curiae* were invited at the behest of the Court to give their academic opinions on the matter. It was raised that the incremental penalty provided by law for the offense committed as tantamount to cruel and unreasonable punishment and violative of equal protection.

ISSUE: Whether or not the Court can adjust the penalties provided under the law to prevent injustice

HELD: There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. However, this Court cannot modify the said range of penalties because that would constitute judicial legislation. What the legislature's perceived failure in amending the penalties provided for in the said crimes cannot be remedied through

this Court's decisions, as that would be encroaching upon the power of another branch of the government.

Verily, the primordial duty of the Court is merely to apply the law in such a way that it shall not usurp legislative powers by *judicial legislation* and that in the course of such application or construction, it should not make or supervise legislation, or under the guise of interpretation, modify, revise, amend, distort, remodel, or rewrite the law, or give the law a construction which is repugnant to its terms. The Court should apply the law in a manner that would give effect to their letter and spirit, especially when the law is clear as to its intent and purpose. Succinctly put, the Court should shy away from encroaching upon the primary function of a co-equal branch of the Government; otherwise, this would lead to an inexcusable breach of the doctrine of separation of powers by means of judicial legislation.

The Petition for Review on *Certiorari* is hereby DENIED.

Pursuant to Article 5 of the Revised Penal Code, a copy of this Decision be furnished the President of the Republic of the Philippines through the Department of Justice. Also the President of the Senate and the Speaker of the House of Representatives.

Where the law speaks in clear and categorical language, there is no room for interpretation, vacillation, or equivocation, there is room only for application.

DIRECTOR OF LANDS *vs.* COURT OF APPEALS
G.R. No. 102858, July 28, 1997
276 SCRA 276

FACTS: On December 8, 1986, Private Respondent Teodoro Abistado filed a petition for original registration of his title over 648 square meters of land under Presidential Decree (PD) No. 1529. The application was docketed as Land Registration Case (LRC) No. 86 and assigned to Branch 44 of the Regional Trial Court of Mamburao, Occidental

Mindoro. However, during the pendency of his petition, applicant died. Hence, his heirs — Margarita, Marissa, Maribel, Arnold and Mary Ann, all surnamed Abistado — represented by their aunt Josefa Abistado, who was appointed their guardian *ad litem*, were substituted as applicants.

The land registration court in its decision dated June 13, 1989 dismissed the petition "for want of jurisdiction." However, it found that the applicants through their predecessors-in-interest had been in open, continuous, exclusive and peaceful possession of the subject land since 1938.

Records show that applicants failed to comply with the provision of Sec. 23(1) of PD 1529 requiring the applicants to publish the notice of initial hearing in a newspaper of general circulation in the Philippines. The initial hearing was published only in the Official Gazette.

> "It bears that the publication requirement under Section 23 (of PD 1529) has a two-fold purpose: the first, which is mentioned in the provision of the aforequoted provision refers to publication in the Official Gazette, and is jurisdictional; while the second, which is mentioned in the opening clause of the same paragraph, refers to publication not only in the Official Gazette but also in a newspaper of general circulation, and is procedural. Neither one nor the other is dispensable. As to the first, publication in the Official Gazette is indispensably necessary because without it, the court would be powerless to assume jurisdiction, over a particular land registration case. As to the second, publication of the notice of initial hearing also in a newspaper of general circulation is indispensably necessary as a requirement of procedural due process; otherwise, any decision that the court may promulgate in the case would be legally infirm."

The Court of Appeals reversed the decision of the Regional Trial Court ruling that the publication in the newspaper of general circulation was merely procedural and that the failure to cause such publication did not deprive

the trial court of its authority to grant the application. Hence, this appeal by *certiorari*.

ISSUE: Whether or not the land registration court can validly confirm and register the title of private respondents in the absence of publication in a newspaper of general circulation.

HELD: The Supreme Court answered this query in the negative. This answer is impelled by the demands of statutory construction and the due process rationale behind the publication requirement.

The law used the term "shall" in prescribing the work to be done by the Commissioner of Land Registration upon the latter's receipt of the court order setting the time for initial hearing. The said word denotes an imperative and thus indicates the mandatory character of a statute. While concededly such literal import ultimately depends upon its context in the entire provision, we hold that in the present case the term must be understood in its normal mandatory meaning.

Admittedly, there was a failure to comply with the explicit publication requirement of the law. Private respondents did not proffer any excuse, even if they had, it would not have mattered because the statute itself allows no excuses. Ineludibly, this court has no authority to dispense with such mandatory requirement. The law is unambiguous and its rationale is clear. Time and again, this Court has declared that where the law speaks in clear and categorical language, there is no room for interpretation, vacillation or equivocation; there is room only for application. There is no alternative. Thus, the application for land registration filed by private respondents must be dismissed without prejudice to reapplication in the future, after all the legal requisites shall have been duly complied with.

When the law is clear, it is not susceptible of interpretation. It must be applied regardless of who may be affected, even if the law may be harsh or erroneous.

The Courts' first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Equity and equitable principles only come into full play when a gap exists in the law and jurisprudence.

SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS AND DISTRICT ENGINEER CELESTINO R. CONTRERAS, *vs.* SPOUSES HERACLEO AND RAMONA TECSON
G.R. No. 179334, April 21, 2015

FACTS: In 1940, the Department of Public Works and Highways (*DPWH*) took respondents-movants' subject property without the benefit of expropriation proceedings for the construction of the MacArthur Highway. In a letter dated December 15, 1994, respondents-movants demanded the payment of the fair market value of the subject parcel of land. Celestino R. Contreras (*Contreras*), then District Engineer of the First Bulacan Engineering District of the DPWH, offered to pay for the subject land at the rate of Seventy Centavos (P0.70) per square meter, per Resolution of the Provincial Appraisal Committee (*PAC*) of Bulacan. Unsatisfied with the offer, respondents-movants demanded the return of their property, or the payment of compensation at the current fair market value.[3] Hence, the complaint for recovery of possession with damages filed by respondents-movants. Respondents-movants were able to obtain favorable decisions in the Regional Trial Court (*RTC*) and the Court of Appeals (*CA*), with the subject property valued at One Thousand Five Hundred Pesos (P1,500.00) per square meter, with interest at six percent (6%) per annum.

ISSUE: Whether or not just compensation should be based on the value of the property at the time of the taking.

HELD: The Court maintain its conclusions in the assailed July 1, 2013 Decision with modification on the

amount of interest awarded, as well as the additional grant of exemplary damages and attorney's fees.

The Court has in the past been confronted with the same issues under similar factual and procedural circumstances. It finds no reason to depart from the doctrines laid down in the earlier cases as we adopted in the assailed decision. In this regard, the Court reiterate the doctrines laid down in the cases of *Forfom Development Corporation (Forfom) v. Philippine National Railways (PNR),*[10] *Eusebio v. Luis,*[11] *Manila International Airport Authority v. Rodriguez,*[12] and *Republic v. Sarabia.*[13] These cases stemmed from similar background, that is, government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation; while the landowners failed for a long period of time to question such government act and later instituted actions for recovery of possession with damages. In these cases, the Court has uniformly ruled that the fair market value of the property at the time of taking is controlling for purposes of computing just compensation.

As in the aforementioned cases, just compensation due respondents-movants in this case should, therefore, be fixed not as of the time of payment but at the time of taking in 1940 which is Seventy Centavos (P0.70) per square meter, and not One Thousand Five Hundred Pesos (P1,500.00) per square meter, as valued by the RTC and CA.

The Court held that putting to rest the issue on the validity of the exercise of eminent domain is neither tantamount to condoning the acts of the DPWH in disregarding the property rights of respondents-movants nor giving premium to the government's failure to institute an expropriation proceeding. This Court had steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms, interpretation being called for only when such literal application is impossible. To entertain other formula for computing just compensation, contrary to those established by law and jurisprudence, would open varying interpretation of economic policies — a matter which this Court has no

competence to take cognizance of. Time and again, we have held that no process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. Equity and equitable principles only come into full play when a gap exists in the law and jurisprudence. As shown above, established rulings of this Court are in place for full application to the case at bar, hence, should be upheld.

Motion for Reconsideration DENIED.

The first and fundamental duty of the Courts is to apply the law.

PEOPLE OF THE PHILIPPINES *vs.*
MARIO MAPA *y* MAPULONG
G.R. No. L-22301, August 30, 1967
20 SCRA 1164

FACTS: Defendant Mapa was charged and convicted of the crime of illegal possession of firearm and ammunition by the Court of First Instance of Manila.

His sole defense (with proper documentary exhibits) is that he is duly appointed secret agent of the then Governor of Batangas dated June 2, 1962 and at the time of the alleged commission of the offense, he had a confidential mission to proceed to Manila, Pasay and Quezon City.

ISSUE: The sole question in this appeal from a judgment of conviction by the lower court is whether or not the appointment to and holding of the position of a secret agent to the provincial governor would constitute a sufficient defense to a prosecution for the crime of illegal possession of firearm and ammunition.

HELD: The law is explicit that except as thereafter specifically allowed, "it shall be unlawful for any person to possess any firearm, detached parts of firearms or ammunition." The next section provides that "firearms and ammunition regularly and lawfully issued to officers, soldiers, sailors, or marines [of the Armed Forces of the

Philippines], the Philippine Constabulary, guards in the employment of the Bureau of Prisons, municipal police, provincial governors, lieutenant governors, provincial treasurers, municipal treasurers, municipal mayors, and guards of provincial prisoners and jails," are not covered "when such firearms are in possession of such officials and public servants for use in the performance of their official duties."

The law cannot be any clearer. No provision is made for a secret agent. As such, he is not exempt. Our task is equally clear. The first and fundamental duty of courts is to apply the law. "Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them." The conviction of the accused must stand. It cannot be set aside.

JUDGMENT AFFIRMED.

The duty of the Courts is to apply the law disregarding their feeling of sympathy or pity for the accused.

PEOPLE OF THE PHILIPPINES *vs.* PATRICIO AMIGO
G.R. No. 116719, January 18, 1996
252 SCRA 43

FACTS: Accused-appellant Patricio Amigo was charged and convicted of murder by the Regional Trial Court of Davao City and was sentenced to the penalty of *reclusion perpetua*.

Accused-appellant claims that the penalty of *reclusion perpetua* is too cruel and harsh as a penalty and pleads for sympathy.

HELD: Courts are not the forum to plead for sympathy. The duty of courts is to apply, disregarding their feeling of sympathy or pity for an accused. *DURA LEX SED LEX*. The remedy is elsewhere — clemency from the executive or an amendment of the law by the legislative, but surely, at this point, this Court cannot but apply the law.

DECISION AFFIRMED.

DIFFERENT KINDS OF CONSTRUCTION AND INTERPRETATION

The science or art of construction and interpretation is called Hermeneutics. The phrase legal hermeneutics is understood to be the systematic body of rules which are recognized as applicable to the construction and interpretation of legal writings. (*Black's Legal Dictionary*, Centennial ed.).

Dr. Lieber in his work on Hermeneutics gives the following classification of the different kinds of interpretation:

Close interpretation is adopted if just reasons connected with the character and formation of the text induce as to take the words in their narrowest meaning. This specie of interpretation is also generally called "literal."

Extensive interpretation, also called liberal interpretation, adopts a more comprehensive signification of the words.

Extravagant interpretation is that which substitutes a meaning evidently beyond the true one. It is therefore not genuine interpretation.

Free or unrestricted interpretation proceeds simply on the general principles of interpretation in good faith, not bound by any specific or superior principle.

Limited or restricted interpretation is when we are influenced by other principles than the strictly hermeneutic ones.

Predestined interpretation takes place if the interpreter, laboring under a strong bias of mind, makes the text subservient to his preconceived views and desires. This include artful interpretation by which the interpreter seeks to give a meaning to the text other than the one he knows to have been intended. (Lieber, *Hermeneutics*, 54-60).

In our jurisdiction, we do not deal so much on the above kinds of interpretations but they are incorporated in

the different rules on statutory construction. More often, our laws are interpreted either literally, strictly or liberally, and prospectively or retrospectively.

Strict and liberal construction and interpretation of statutes will be discussed in Chapter VIII of this book with illustrative jurisprudence. Prospective and retrospective, which is more on the application of laws rather than interpretation, will be presented on Chapter IX and literal interpretation was discussed and presented earlier in this chapter as well as in other chapters of this book.

SUBJECTS OF CONSTRUCTION AND INTERPRETATION

Authorities hold that the most common subjects of construction and interpretation are the constitution and statutes which include ordinances. But we may also add resolutions, executive orders and department circulars.

CHAPTER II

STATUTES

LEGISLATIVE PROCEDURES

The power to make laws is lodged in the legislative department of the government. Our Constitution is explicit on this matter. "The legislative power shall be vested in the Congress of the Philippines which consist of a Senate and a House of Representatives." It has the authority to make laws and to alter or repeal the same.

A statute starts with a bill. A "Bill" is the draft of a proposed law from the time of its introduction in a legislative body through all the various stages in both houses. The draft is the form of a proposed law before it is enacted into law by a vote of the legislative body. An "Act" is the appropriate term for it after it has been acted on and passed by the legislature. It then becomes a statute, the written will of the legislature solemnly expressed according to the form necessary to constitute it as the law of the state. (*Black's Law Dictionary*, Centennial ed.). "Statute Law" is a term often used interchangeably with the word "statute." Statute Law, however, is broader in meaning since it includes not only statute but also the judicial interpretation and application of the enactment. (Crawford, *Construction of Statutes*, p. 2).

HOW DOES A BILL BECOMES A LAW — STEPS

Whether in a parliamentary or presidential system, a bill before it becomes a law must pass the strict

this chapter. These requirements are explicit both in the 1973 Constitution and the 1987 Constitution. We will find out after this short discussion that the enactment of a law is faster and smoother in the parliamentary form of government.

Let us take the passage of a bill in a parliamentary system (unicameral assembly).

a. A member of the National Assembly may introduce the proposed bill to the Secretary of the National Assembly who will calendar the same for the first reading. Of course the proponent must affix his signature in the proposed bill stating his purpose.

b. In the first reading, the bill is read by its number and title only.

c. After the first reading, the bill is referred by the Speaker to the appropriate committee for study. At this stage, the appropriate committee will conduct public hearings. It must call all the necessary parties, persons, organizations or sectors of societies involved to obtain their reactions and feelings on the proposed bill.

Then after the public hearing, the committee shall decide whether or not to report the bill favorably or whether a substitute bill should be considered.

NOTE: Should there be an unfavorable report of the committee, then the proposed bill is dead.

d. Upon favorable action by the appropriate committee, the bill is returned to the National Assembly and shall be calendared for the second reading.

e. In the second reading, the bill is read in its entirety.

f. Immediately after the second reading, the bill is set for open debates where members of the assembly may propose amendments and insertions to the proposed bill.

NOTE: After the amendments and insertions to the proposed bill, the ideal bill as conceived by the author may no longer be an ideal bill or vice versa, *i.e.*, it may become a better bill after deliberations and debates which should be the proper case.

g. After the approval of the bill in its second reading and at least three (3) calendar days before its final passage, the bill is printed in its final form and copies thereof distributed to each of the members of the National Assembly, unless the Prime Minister (President under the present system) certifies in writing as to the necessity of the immediate enactment of the bill to meet a public calamity or emergency. (See Art. VIII, Sec. 19[2], 1973 Constitution and Art. VI, Sec. 26[2], 1987 Constitution).

h. The bill is then calendared for the third and final reading. At this stage, no amendment shall be allowed. Only the title of the bill is read and the National Assembly will then vote on the bill. The yeas or nays are entered in the journal. (Art. VIII, Sec. 19[2], 1973 Constitution; Art. VII, Sec. 2, 1987 Constitution). It appears that only a majority of the members present constituting a quorum is sufficient to pass the bill.

NOTE: Quorum is a sufficient number of members of National Assembly or Congress to transact its daily business. Usually, it is fifty-one percent of the number of the body or fifty percent plus one depending on their internal rules.

NOTE: If the NO vote wins, the proposed bill is dead.

At this stage lies the difference between the parliamentary system enshrined in the 1973 Constitution and the present 1987 Constitution. Under our present set-up, after the third and final reading at one House where the bill originated, it will go to the other House where it will undergo the same process, meaning another three readings on separate days. Moreover, if there is variance in the proposed bill by the House of Representatives and the Senate version of the bill, it may pass through the powerful bicameral conference committee which can introduce amendments to suit both houses of Congress. This is also known as the compromise bill.

NOTE: There can also be a simultaneous parallel discussion of a bill by both houses of congress, which usually happens on urgent legislative measure.

NOTE: At this stage, the original bill conceived by the original author may no longer be his proposed bill.

i. After the bill has been finally passed, it will be submitted to the Prime Minister (President) for his approval. If he approves the same, he shall sign it, otherwise, he shall veto it and return the same with his objections to the National Assembly (House where it originated) and, if approved by two-thirds of all its members, shall become a law. (See Art. VIII, Sec. 20, 1973 Constitution).

Under the present set-up, the house where the bill originated can proceed to reconsider the vetoed bill. After such reconsideration, if two-thirds of all the members of such house shall agree to pass the bill, it shall be sent, together with the objections, to the other house by which it shall likewise be reconsidered, and if it is approved by two-thirds of all the members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas and nays and the names of the members voting for or against shall be entered in its journal. Every bill passed by Congress shall be acted upon by the President within thirty (30) days from receipt thereof. Otherwise, it shall become a law as if he had signed it. (Art. VI, Sec. 27[1], 1987 Constitution). In other words, there can be no presidential inaction or pocket veto under our Constitution.

CONSTITUTIONAL TEST IN THE PASSAGE OF A BILL

There are numerous constitutional limitations or prohibitions in the enactment of a statute such as no *ex post facto* law or bill of attainder shall be enacted, etc. Insofar as the mechanical procedure in the passage of a bill is concerned, there are three (3) very important constitutional requirements.

I. Every bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof. (Art. VI, Sec. 26[1], 1987 Constitution).

The purposes of this constitutional requirement are:

1. To prevent hodge-podge or log-rolling legislation;

2. To prevent surprise or fraud upon the legislature; and

3. To fairly apprise the people, through such publications of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon by petition or otherwise, if they shall so desire. (Cooley, *Constitutional Limitations*, p. 32, 6th ed.).

In *Alalayan vs. National Power Corporation*, 24 SCRA 172 (1968), the Supreme Court dealing on this particular issue declared:

> "This provision is similar to those found in many American State Constitutions. It is aimed against the evils of the so-called omnibus bills and log-rolling legislation as well as surreptitious or unconsidered enactments. Where the subject of a bill is limited to a particular matter, the lawmakers along with the people should be informed of the subject of proposed legislative measures. This constitutional provision thus precludes the insertion of riders in legislation, a rider being a provision not germane to the subject matter of the bill."

ILLUSTRATIVE CASE:

The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object.

REMMAN ENTERPRISES, INC. AND CHAMBER OF REAL ESTATE AND BUILDERS' ASSOCIATION, *vs.* PROFESSIONAL REGULATORY BOARD OF REAL ESTATE SERVICE AND PROFESSIONAL REGULATION COMMISSION
G.R. No. 197676, February 04, 2014

FACTS: R.A. No. 9646, otherwise known as the "Real Estate Service Act of the Philippines" was signed into law on June 29, 2009 by President Gloria Macapagal-Arroyo. It aims to professionalize the real estate service sector under a regulatory scheme of licensing, registration and supervision of real estate service practitioners (real estate brokers, appraisers, assessors, consultants and salespersons) in the country. Prior to its enactment, real estate service practitioners were under the supervision of the Department of Trade and Industry (DTI) through the Bureau of Trade Regulation and Consumer Protection (BTRCP), in the exercise of its consumer regulation functions. Such authority is now transferred to the Professional Regulation Commission (PRC) through the Professional Regulatory Board of Real Estate Service (PRBRES) created under the new law. The implementing rules and regulations (IRR) of R.A. No. 9646 were promulgated on July 21, 2010 by the PRC and PRBRES under Resolution No. 02, Series of 2010. On December 7, 2010, herein petitioners Remman Enterprises, Inc. (REI) and the Chamber of Real Estate and Builders' Association (CREBA) instituted Civil Case No. 10-124776 in the Regional Trial Court of Manila, Branch 42. Petitioners sought to declare as void and unconstitutional. According to petitioners, the new law is constitutionally infirm because it violates Article VI, Section 26 (1) of the 1987 Philippine Constitution which mandates that "[every bill passed by Congress shall embrace only one subject which shall be expressed in the title thereof". On July 12, 2011, the trial court rendered its Decision denying the petition. The trial court held that the assailed provisions are relevant to the title of the law as they are intended to regulate the practice of real estate service in the country by ensuring that those who engage in it shall either be a licensed real estate broker, or under the latter's supervision.

ISSUE: Whether or not [R.A. No. 9646] is unconstitutional for being violative of the "one title-one subject" rule under Article VI, Section 26 (1) of the Philippine Constitution.

HELD: R.A. No. 9646 is entitled "An Act Regulating the Practice of Real Estate Service in the Philippines, Creating for the Purpose a Professional Regulatory Board of Real Estate Service, Appropriate Funds therefor and for other Purposes."

Section 26(1), Article VI of the Constitution states:

> SEC. 26 (1). Every bill passed by the Congress shall embrace only one subject, which shall be expressed in the title thereof.

To determine whether there has been compliance with the constitutional requirement that the subject of an act shall be expressed in its title, the Court laid down the rule that — constitutional provisions relating to the subject matter and titles of statutes should not be so narrowly construed as to cripple or impede the power of legislation. The requirement that the subject of an act shall be expressed in its title should receive a reasonable and not a technical construction. It is sufficient if the title be comprehensive enough reasonably to include the general object which a statute seeks to effect, without expressing each and every end and means necessary or convenient for the accomplishing of that object. Mere details need not be set forth. The title need not be an abstract or index of the Act.

The Court has previously ruled that the one-subject requirement under the Constitution is satisfied if all the parts of the statute are related, and are germane to the subject matter expressed in the title, or as long as they are not inconsistent with or foreign to the general subject and title. An act having a single general subject, indicated in the title, may contain any number of provisions, no matter how diverse they may be, so long as they are not inconsistent with or foreign to the general subject, and may be

considered in furtherance of such subject by providing for the method and means of carrying out the general object.

It is also well-settled that the "one title-one subject" rule does not require the Congress to employ in the title of the enactment language of such precision as to mirror, fully index or catalogue all the contents and the minute details therein. The rule is sufficiently complied with if the title is comprehensive enough as to include the general object, which the statute seeks to effect. Indeed, this Court has invariably adopted a liberal rather than technical construction of the rule "so as not to cripple or impede legislation."

II. No bill passed by either House shall become a law unless it has passed three readings on separate days, and printed copies thereof in its final form have been distributed to each member three days before its passage, except when the President certifies to the necessity of its immediate enactment to meet a public calamity or emergency. Upon the last reading of a bill, no amendment thereto shall be allowed, and the vote thereon shall be taken immediately thereafter, and the yeas and nays entered in the journal. (Art. VI, Sec. 26[2], 1987 Constitution).

The above mechanical procedure is also known as the "three reading" and "no amendment" rules. The powers of the bicameral conference committee of adding or deleting provisions in the House bill and Senate bill after these had passed three readings is not a circumvention of the "no amendment" rule. In the earlier cases of *Philippine Judges Association vs. Prado*, 227 SCRA 703, November 11, 1993, and *Tolentino vs. Secretary of Finance*, 235 SCRA 630, August 25, 1994, the Court held that it is within the power of a conference committee to include in its report an entirely new provision that is not found either in the House bill or in the Senate bill. If the committee can propose an amendment consisting of one or two provisions, there is no reason why it cannot propose several provisions, collectively considered as an "amendment in the nature of a substitute," so long as such amendment is germane to the subject of the bills

before the committee. After all, its report was not final but needed the approval of both houses of Congress to become valid as an act of the legislative department. The charge that in this case the Conference Committee acted as a third legislative chamber is thus without any basis.

Thus, in the recent case of *Abakada Guro Party List vs. Ermita*, 469 SCRA 1, September 1, 2005 held that:

> Petitioners' argument that the practice where a bicameral conference committee is allowed to add or delete provisions in the House bill and Senate bill after these had passed three readings is in effect a circumvention of the "no amendment rule" (Sec. 26[2], Art. VI of the 1987 Constitution), fails to convince the Court to deviate from its ruling in the Tolentino case that:
>
> Nor is there any reason for requiring that the Committee's Report in these cases must have undergone three readings in each of the two houses. If that be the case, there would be no end to negotiation since each house may seek modification of the compromise bill...
>
> **Art. VI, Sec. 26(2) must, therefore, be construed as referring only to bills introduced for the first time in either house of Congress, not to the conference committee report.** (Emphasis supplied)

The Court reiterates here that the *"no amendment rule" refers only to the procedure to be followed by each house of Congress with regard to bills initiated in each of said respective houses, before said bill is transmitted to the other house for its concurrence or amendment.* Verily, to construe said provision in a way as to prescribe any further changes to a bill after one house has voted on it would lead to absurdity as this would mean that the other house of Congress would be deprived of its constitutional power to amend or introduce changes to said bill. Thus, Art. VI, Sec. 26(2) of the Constitution cannot be taken to mean that the introduction by the Bicameral Conference Committee of amendments and modification to disagreeing provisions in

bills that have been acted upon by both houses of Congress is prohibited.

Reason for "three readings" and "no amendment."

This constitutional requirement is mandatory and even explicit both in the 1935 and 1973 Philippine Constitutions. The rule is designed to prevent hasty and improvident legislation and afford the legislators time to study and deliberate the measures. The only exception to the rule is when the President certifies the necessity of the immediate enactment of the bill to meet a public calamity or emergency.

III. Every bill passed by the Congress shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; otherwise, he shall veto it and return the same with his objections to the House where it originated, which shall enter the objections at large in its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members of such House shall agree to pass the bill, it shall be sent, together with the objections, to the other House by which it shall likewise be reconsidered, and if approved by two-thirds of all the members of that House, it shall become a law. In all such cases, the votes of each House shall be determined by yeas or nays, and the names of the members voting for or against shall be entered in its journal. The President shall communicate his veto of any bill to the House where it originated within thirty days after the date of receipt thereof; otherwise, it shall become a law as if he had signed it.

The executive approval and veto power of the President is the third important constitutional requirement in the mechanical passage of a bill. This requirement is mandatory. (See above discussion on steps of a passage of a bill) and can be considered as part of the checks and balance principle.

PARTS OF STATUTE

(a) *Title* — The title of a statute is the heading on the preliminary part, furnishing the name by which the act is individually known. It is usually prefixed to the statute in the form of a brief summary of its contents; as "An Act providing a special procedure for the reconstitutions of Torrens Certificate of Title lost or destroyed."

(b) *Preamble* — That part of a statute explaining the reasons for its enactment and the objects sought to be accomplished. Usually, it starts with the word "whereas." Generally, a preamble is a declaration by the legislature of the reasons for the passage of the statute and is helpful in the interpretation of any ambiguities within the statute to which it is prefixed. (See *People vs. Purisima*, 86 SCRA 542 [1978]).

(c) *Enacting Clause* — That part of the statute which declares its enactment and serves to identify it as an act of legislation proceeding from the proper legislative authority. "Be it enacted" is the usual formula used to start this clause.

(d) *Body* — The main and operative part of the statute containing its substantive and even procedural provisions. Provisos and exceptions may also be found in the body of the statutes after enacting clause "Interpretation clause."

(e) *Repealing Clause* — That part of the statute which announces the prior statutes or specifies provisions which have been abrogated by reason of the enactment of the new law.

(f) *Saving Clause* — A restriction in a repealing act, which is intended to save rights, pending proceedings, penalties, etc., from the annihilation which would result from an unrestricted repeal.

(g) *Separability Clause* — That part of the statute which provides that in the event that one or more provisions are declared void or unconstitutional, the remaining provisions shall still be in force.

(h) *Effectivity Clause* — That part of the statute which announces the effective date of the law.

ILLUSTRATION:

REPUBLIC ACT NO. 7309

AN ACT CREATING A BOARD OF CLAIMS UNDER THE DEPARTMENT OF JUSTICE FOR VICTIMS OF UNJUST IMPRISONMENT OR DETENTION AND VICTIMS OF VIOLENT CRIMES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled.

SECTION 1. *Creation and Composition of the Board.*— There is hereby created a Board of Claims under the Department of Justice, hereinafter referred to as the Board, to be composed of one (1) Chairman and two (2) members to be appointed by the Secretary of the said department.

SEC. 2. *Powers and Functions of the Board.*—The Board shall have the following powers and functions:

a) to receive, evaluate, process and investigate application for claims under this Act;

b) to conduct an independent administrative hearing and resolve application for claims, grant or deny the same;

c) to deputize appropriate government agencies in order to effectively implement its functions; and

d) to promulgate rules and regulations in order to carry out the objectives of this Act.

SEC. 3. *Who may File Claims.*—The following may file claims for compensation before the Board:

a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal;

b) any person who was unjustly detained and released without being charged;

c) any victim of arbitrary or illegal detention by the authorities as defined in the Revised Penal Code under a final judgment of the court; and

d) any person who is a victim of violent crimes. For purposes of this Act, violent crimes shall include rape and shall likewise refer to offenses committed with malice which resulted in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

SEC. 4. *Award Ceiling.*--For victims of unjust imprisonment or detention, the compensation shall be based on the number of months of imprisonment or detention and every fraction thereof shall be considered one month; *Provided, however,* That in no case shall such compensation exceed One Thousand pesos (P1,000.00) per month.

In all other cases, the maximum amount for which the Board may approve a claim shall not exceed Ten thousand pesos (P10,000.00) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to injury, whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws.

SEC. 5. *When to File Claims.*—Any person entitled to compensation under this Act must, within six (6) months after being released from imprisonment or detention, or from the date the victim suffered damage or injury, file his claim with the Department, otherwise, he is deemed to have waived the same. Except as provided for in this Act, no waiver of claim whatsoever is valid.

SEC. 6. *Filing of Claims by Heirs.*—In case of death or incapacity of any person entitled to any award under this Act, the claim may be filed by his heirs, in the following order: by his surviving spouse, children, natural parents, brother and/or sister.

SEC. 7. *Resolution of Claims.*—The Board shall resolve the claim within thirty (30) working days after filing of the application.

The Board shall adopt an expeditious and inexpensive procedure for the claimants to follow in order to secure their claims under this Act.

SEC. 8. *Appeal.*—Any aggrieved claimant may appeal, within fifteen (15) days from receipt of the resolution of the Board, to the Secretary of Justice whose decision shall be final and executory.

SEC. 9. *Funding.*—For purposes of this Act, the initial amount of Ten million pesos (P10,000,000.00) is hereby authorized to be appropriated from the funds of the National Treasury not otherwise appropriated.

The subsequent annual funding shall also partly come from one percent (1%) of the net income of the Philippine Amusement and Gaming Corporation and one percent (1%) of the proceeds and sales and other disposition and military camps on Metro Manila by the Base Conversion and Development Authority.

The proceeds from any contract relating to the depiction of a crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment, of any kind, or in any other form of commercial exploitation of any convict's story, recollection, opinion and emotions with regard to the offense committed shall not be released to convict in a criminal case or his heirs, agents, assignees or successors in interest until full compensation for damages suffered by the victim, his heirs or successors in interest is paid or arranged for, and the state is able to collect/assess fines and costs and any other amounts due it in case of a conviction by final judgment. Such damages shall include, but shall not be limited to, judicial awards, funeral expenses, medical expenses, lost earning and the like.

To ensure the continuity of the funding requirements under this Act, the amount of Five pesos (P5.00) shall be set aside from each filing fee in every civil case filed with the

court, the total proceeds of which shall constitute the Victim Compensation Fund to be administered by the Department of Justice.

SEC. 10. *Repealing Clause.*—All laws, executive orders and executive issuances inconsistent with this Act are hereby deemed repealed or modified accordingly.

SEC. 11. *Separability Clause.*—If for any reason any section or provision of this Act shall be declared unconstitutional or invalid, no other section or provision shall be affected thereby.

SEC. 12. *Effectivity Clause.*—This Act shall take effect after its publication in two (2) newspapers of general circulation.

Approved: March 30, 1992.

KINDS OF STATUTES

General Law — is one that affects the community at large. A law that relates to a subject of a general nature, or that affects all people of the state or all of a particular class.

Special Law — A law is special when it is different from others of the same general kind or designed for a particular purpose, or limited in range or confined to a prescribed field of action on operation.

Local Law — A law which relates or operates over a particular locality instead of over the whole territory of the state.

Public Law — A general classification of law, consisting generally of constitutional, administrative, criminal, and international law, concerned with the organization of the state, the relations between the state and the people who compose it, the responsibilities of public officers to the state, to each other, and to private persons, and the relations of states to one another. Public law may be general, local or special law.

Private Law — Those portions of the law which defines, regulates, enforces and administers relationships among individuals, associations and corporations.

Remedial Statute — A statute providing means or method whereby causes of action may be effectuated, wrongs redressed and relief obtained.

Curative Statute — A form of retrospective legislation which reaches back into the past to operate upon past events, acts or transactions in order to correct errors and irregularities and to render valid and effective many attempted acts which would otherwise be ineffective for the purpose intended.

Penal Statute — A statute that defines criminal offenses and specify corresponding fines and punishments.

Prospective Law — A law applicable only to cases which shall arise after its enactment.

Retrospective Law — A law which looks backward or contemplates the past; one which is made to affect acts or facts occurring, or rights occurring, before it came into force.

Affirmative Statute — A statute couched in affirmative or mandatory terms. One which directs the doing of an act, or declares what shall be done in contrast to a negative statute which is one that prohibits a thing from being done, or declares what shall not be done.

Mandatory Statutes — Generic term describing statutes which require and not merely permit a course of action. They are characterized by such directives as "shall" and not "may."

A "mandatory" provision in a statute is one the omission of which renders the related proceedings void, while a "directory" provision is one the observance of which is not necessary to the validity of the proceedings. It is also said that when the provision of a statute is the essence of the thing required to be done, it is mandatory; otherwise, when it relates to form and manner, and when an act is

incidental or acquired after jurisdiction, it is merely directory.

(**N.B.**: The definition of the above kinds of statutes are taken from *Black's Law Dictionary*, Centennial edition.)

Judicial doctrine — The judicial interpretation of a statute, which constitutes part of the law as of the date it was originally passed since the Court's construction, merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of pre-existing one. (*Roos Industrial Construction, Inc. vs. National Labor Relations Commission*, G.R. No. 172409, February 4, 2008, 543 SCRA 666; *Castro vs. CA*, January 27, 2009)

CONCEPT OF VAGUE STATUTES

As a rule, a statute or act may be said to be vague when it lacks comprehensible standards that men "of common intelligence must necessarily guess at its meaning and differ as to its application." It is repugnant to the Constitution in two respects: (1) it violates due process for failure to accord persons, especially the parties targetted by it, fair notice of the conduct to avoid; and (2) it leaves law enforcers unbridled discretion in carrying out its provisions and becomes an arbitrary flexing of the Government muscle.

But the act must be utterly vague on its face, that is to say, it cannot be clarified by either a saving clause or by construction. Thus, in *Coates vs. City of Cincinnati*, the U.S. Supreme Court struck down an ordinance that had made it illegal for "three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by." Clearly, the ordinance imposed no standard at all "because one may never know in advance what annoys some people but does not annoy others."

Coates, highlights what has been referred to as a "perfectly vague" act whose obscurity is evident on its face. It is to be distinguished, however, from legislations couched in

imprecise language but which nonetheless specifies a standard though defectively phrased in which case, it may be "saved" by proper construction.

It must further be distinguished from statutes that are apparently ambiguous yet fairly applicable to certain types of activities. In that event, such statutes may not be challenged whenever directed against such activities. In *Parker vs. Levy,* a prosecution originally under the U.S. Uniform Code of Military Justice (prohibiting, specifically, "conduct unbecoming an officer and gentleman"), the defendant, an army officer who had urged his men not to go to Vietnam and called the Special Forces trained to fight there thieves and murderers, was not allowed to invoke the void for vagueness doctrine on the premise that accepted military interpretation and practice had provided enough standards, and consequently, a fair notice that his conduct was impermissible. (See *People of the Philippines vs. Eusebio Nazario,* 165 SCRA 186, August 31, 1988).

In upholding the constitutionality of R.A. 7080 (An Act Defining and Penalizing the Crime of Plunder) which was assailed as unconstitutional for being vague, the Supreme Court held: "The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld — not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity, is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings or detailed in its provisions, especially where, because of the nature of the act, it would be impossible to provide all the details in advance as in all other statutes." (*Joseph Ejercito Estrada vs. Sandiganbayan [Third Division] and People of the Philippines,* G.R. No. 148560, November 19, 2001, 369 SCRA 394).

REPEALS OF STATUTE MAY BE EXPRESSED OR IMPLIED

Express repeal is the abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoked and abrogated.

On the other hand, implied repeal happens when a later statute contains provisions so contrary to or irreconcilable with those of the earlier law that only one of the two statutes can stand in force.

It is a rule of legal hermeneutics that "an act which purports to set out in full all that it intends to contain, operates as a repeal of anything omitted which was contained in the old act and not included in the amendatory act."

> "A subsequent statute, revising the whole subject matter of a former statute, and evidently intended as a substitute for it, operates to repeal the former statute." (82 C.J.S. 499). "The revising statute is in effect a legislative declaration that whatever is embraced in the new statute shall prevail, and whatever is excluded therefrom shall be discarded." (82 C.J.S. 500).

The repeal of a penal law deprives the courts of jurisdiction to punish persons charged with a violation of the old penal law prior to its repeal. (*People vs. Tamayo,* 61 Phil. 225 [1935]; *People vs. Sindiong and Pastor,* 77 Phil. 1000 [1947]; *People vs. Binuya,* 61 Phil. 208 [1935]; *U.S. vs. Reyes,* 10 Phil. 423 [1908]; *U.S. vs. Academia,* 10 Phil. 431 [1908]; See dissent in *Lagrimas vs. Director of Prisons,* 57 Phil. 247, 252, 254 [1932]; See *People vs. Almuete,* 69 SCRA 410 [1976]).

A Central Bank Circular cannot repeal a law. Only a law can repeal another law. Art. 7 of the Civil Code of the Philippines provides: "Laws are repealed only by subsequent ones and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary." (*Palanca vs. Court of Appeals,* 238 SCRA 593 [1994]; *First Metro Investment Corp. vs. Este Del Sol Mountain Reserve, Inc.,* 369 SCRA 99 [2001]).

The question of whether a particular law has been repealed or not by a subsequent law is a matter of legislative intent. The lawmakers may expressly repeal a law by incorporating therein a repealing provision which expressly and specifically cites the particular law or laws, and portions thereof, that are intended to be repealed. A declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed is an express repeal; all others are implied repeals.

Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect. Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest, otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment.

There are two categories of repeal by implication. The first is where provision in the two acts on the same subject matter are in an irreconcilable conflict, the later act to the extent of conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is that one law cannot be enforced without nullifying the other.

The fact that a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the prior act, since the new statute may merely be cumulative or a continuation of

the old one. What is necessary is a manifest indication of legislative purpose to repeal.

We come now to the second category of repeal — the enactment of a statute revising or codifying the former laws on the whole subject matter. This is only possible if the revised statute or code was intended to cover the whole subject to be a complete and perfect system in itself. It is a rule that a subsequent statute is deemed to repeal a prior law if it revises the whole subject matter of the former statute. When both intent and scope clearly evince the idea of a repeal, then all parts and provisions of the prior act that are omitted from the revised act are deemed repealed. Furthermore, before there can be an implied repeal under this category, it must be the clear intent of the legislature that the later act be the substitute to the prior act. (*Mecano vs. COA*, 216 SCRA 500 [1992]).

ORDINANCE

An ordinance is an act passed by the local legislative body in the exercise of its law-making authority.

Under the Local Government Code of 1991, the legislative bodies of the local government are the sangguniang barangay (Sec. 390) for each barangay; the sangguniang bayan (Sec. 446) for the municipality; the sangguniang panlungsod (Sec. 457) for the city; and the sangguniang panlalawigan (Sec. 467) for the province.

All these local legislative bodies have the authority to approve ordinances and pass resolutions for effective and efficient local governance.

TEST OF VALID ORDINANCE

The tests of a valid ordinance are well-established. A long line of decisions has held that to be valid, an ordinance must conform to the following substantive requirements:

1. It must not contravene the Constitution or any statute;

2. It must not be unfair or oppressive;

3. It must not be partial or discriminatory;
4. It must not prohibit but may regulate trade;
5. It must be general and consistent with public policy; and
6. It must not be unreasonable.

In case of conflict between an ordinance and a statute, the ordinance must give way.

REASON WHY AN ORDINANCE SHOULD NOT CONTRAVENE A STATUTE

The rationale of the requirement that ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national law making body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal corporations in the state, and the corporation could not prevent it. We know of no limitation on the right so far as to the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature.

This basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy,

we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax, which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it. (*Magtajas vs. Pryce Properties Corporation, Inc., infra.; Tano vs. Socrates*, G.R. No. 110249, August 21, 1997, 278 SCRA 154).

ROLE OF FOREIGN JURISPRUDENCE

The views set forth in American decisions and authorities are not *per se* controlling in the Philippines, the laws of which must necessarily be construed in accordance with the intention of its own lawmakers and such intent may be deduced from the language of each law and the context of other local legislation related thereof. (*Ortigas and Co., Limited Partnership vs. Feati Bank and Trust Co.*, 94 SCRA 533, [1979]).

When a foreign law was not properly pleaded or proved, the presumption of identity or similarity, otherwise known as the *processual presumption*, comes into play. Where foreign law is not pleaded or, even if pleaded, is not proved, the presumption is that foreign law is the same as ours. (*Philippine Export and Foreign Loan Guarantee Corp. v. P. Eusebio Construction, Inc.*, 434 SCRA 202, July 13, 2004; *Lim v. Collector of Customs*, 36 Phil. 472 [1917]; *International Harvester Co. v. Hamburg-American Line*, 42 Phil. 845 (1918); *Miciano v. Brimo*, 50 Phil. 867 [1924]).

ILLUSTRATIVE CASE

The Doctrine of Processual Presumption

NORMA A. DEL SOCORRO *vs.* ERNST JOHAN BRICKMAN VAN WILSEM
G.R. No. 193797,
December 10, 2014

FACTS: Petitioner Norma A. Del Socorro and respondent Ernst Johan Brinkman Van Wilsem contracted marriage in Holland on September 25, 1990. On January 19, 1994, they were blessed with a son name Roderigo Norjo Van Wilsem, who at the time of the filing of the instant petition was sixteen (16) years of age.

Unfortunately, their marriage bond ended on July 19, 1995 by virtue of a Divorce Decree issued by the appropriate Court of Holland. At that time, their son was only eighteen (18) months old. Thereafter, petitioner and her son came home to the Philippines.

Respondent made a promise to provide monthly support to their son in the amount of Two Hundred Fifty (250) Guildene (which is equivalent to Php17,500.00, more or less). However, since the arrival of petitioner and her son in the Philippines, respondent never gave support to the son, Roderigo.

Not long thereafter, respondent came to the Philippines and remarried in Pinamungahan, Cebu, and since then, have been residing thereat. Respondent and his new wife established a business known as Paree Catering, located at Barangay Tajao, Municipality of Pinamungahan, Cebu City, On August 28, 2009, petitioner, through counsel, sent a letter demanding for support from respondent. However, respondent refused to receive the letter. After the demand for support from the respondent failed, petitioner filed a complaint-affidavit with the Provincial Prosecutor of Cebu City against the respondent for violation of Section 5,

paragraph E (2) of R.A. No. 9262 for the latter's unjust refusal to support his minor child with petitioner.

ISSUE: Whether or not a foreign national has an obligation to support his minor child under Philippine law despite the fact that the law of the country of said foreign national do not obliged the parents to support their children.

HELD: In international law, the party who wants to have a foreign law applied to a dispute or case has the burden of proving the foreign law. In the present case, respondent hastily concludes that being a national of the Netherlands, he is governed by such laws on the matter of provision of and capacity to support. While respondent pleaded the laws of the Netherlands in advancing his position that he is not obliged to support his son, he never proved the same.

In view of respondent's failure to prove the national law of the Netherlands in his favor, the doctrine of processual presumption shall govern. Under this doctrine, if the foreign law involved is not properly pleaded and proved, our courts will presume that the foreign law is the same as our local or domestic or internal law. Thus, since the law of the Netherlands as regards the obligation to support has not been properly pleaded and proved in the instant case, it is presumed to be the same with Philippine law, which enforces the obligation of parents to support their children and penalizing the non-compliance therewith.

Moreover, foreign law should not be applied when its application would work undeniable injustice to the citizens or residents of the forum. To give justice is the most important function of law; hence, a law, or judgment or contract that is obviously unjust negates the fundamental principles of Conflict of Laws.

CHAPTER III

BASIC GUIDELINES IN THE CONSTRUCTION AND INTERPRETATION OF LAWS

LEGISLATIVE INTENT

The object of all interpretation and construction of statutes is to ascertain the meaning and intention of the legislature, to the end that the same may be enforced.

This meaning and intention must be sought first of all in the language of the statute itself. For it must be presumed that the means employed by the legislature to express its will are adequate to the purposes and do express that will correctly. (Black, *Construction and Interpretation of Laws*, p. 45, 2nd ed.).

Legislative intent for construction purposes does not mean the collection of the subjective wishes, hopes and prejudices of each and every member of the legislature, but rather the objective footprints left on the trail of legislative enactment. (2 Sutherland, *Statutory Construction*, 3rd ed., p. 322).

In order to determine the true intent of the legislature, the particular clauses and phrases of the statute should not be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts. (*Commissioner of Customs vs. Esso Standard Eastern, Inc.*, 66 SCRA 113 [1975]).

ILLUSTRATIVE CASE:

Legislative intent is determined principally from the language of the statute.

SOCORRO RAMIREZ *vs.* HON. COURT OF APPEALS AND ESTER S. GARCIA
G.R. No. 93833, September 25, 1995
248 SCRA 590

FACTS: A civil case for damages was filed by petitioner Socorro D. Ramirez in the Regional Trial Court of Quezon City alleging that the private respondent, Ester S. Garcia, in a confrontation in the latter's office, allegedly vexed, insulted and humiliated her in a "hostile and furious mood" and in a manner offensive to petitioner's dignity and personality, "contrary to morals, good customs and public policy."

In support of her claim, petitioner produced a verbatim transcript of the event and sought moral damages, attorney's fees and other expenses of litigation in the amount of P610,000.00, in addition to costs, interests and other reliefs awardable at the trial court's discretion. The transcript on which the civil case was based was culled from a tape recording of the confrontation made by petitioner.

As a result of petitioner's recording of the event and alleging that the said act of secretly taping the confrontation was illegal, private respondent filed a criminal case before the Regional Trial Court of Pasay City for violation of Republic Act 4200, entitled "An Act to Prohibit and Penalize Wiretapping and Other Related Violations of Private Communication, and Other Purposes."

Upon arraignment, in lieu of a plea, petitioner filed a Motion to Quash the Information on the ground that the facts charged do not constitute an offense particularly a violation of R.A. 4200. In an order dated May 3, 1989, the trial court granted the Motion to Quash, agreeing with petitioner that: (1) the facts charged do not constitute an offense under R.A. 4200; and that (2) the violation punished

by R.A. 4200 refers to the taping of a communication by a person other than a participant to the communication.

From the trial court's Order, the private respondent filed a Petition for Review on *Certiorari* with this Court, which forthwith referred the case to the Court of Appeals in a Resolution (by the First Division) of June 19, 1989.

On February 9, 1990, respondent Court of Appeals promulgated its assailed Decision declaring the trial court's order of May 3, 1989 null and void, and holding that:

"The allegations sufficiently constitute an offense punishable under Section 1 of R.A. 4200. In thus quashing the information based on the ground that the facts alleged do not constitute an offense, the respondent judge acted in grave abuse of discretion correctible by *certiorari*."

ISSUES: 1) Whether or not R.A. 4200 applies to taping of a private conversation by one of the parties to a conversation.

2) Whether or not the substance must be alleged in the information. Whether or not R.A. 4200 applies to private conversation.

HELD: First, legislative intent is determined principally from the language of a statute. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation would be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice.

Section 1 of R.A. 4200 entitled, "An Act to Prohibit and Penalize Wiretapping and Other Related Violations of Private Communication and Other Purposes," provides:

> "Section 1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or

detectaphone or walkie-talkie or tape recorder, or however otherwise described."

The aforestated provision clearly and unequivocally makes it illegal for any person, not authorized by all the parties to any private communication, to secretly record such communication by means of tape recorder. The law makes no distinction as to whether the party sought to be penalized by the statute ought to be a party other than or different from those involved in the private communication. The statute's intent to penalize all persons unauthorized to make such recording is underscored by the use of qualifier "any." Consequently, as respondent Court of Appeals correctly concluded, "even a (person) privy to a communication who records his private conversation with another without the knowledge of the latter (will) qualify as a violator under this provision."

The unambiguity of the express words of the provision, taken together with the above-quoted deliberations from the Congressional Record, therefore plainly supports the view held by the respondent court that the provision seeks to penalize even those privy to the private communications. Where the law makes no distinctions, one does not distinguish.

Second, the nature of the conversation is immaterial to a violation of the statute. The substance of the same needs to be specifically alleged in the information. What R.A. 4200 penalizes are the acts of secretly overhearing, intercepting or recording private communications by means of the devices enumerated therein. The mere allegation that an individual made a secret recording of a private communication by means of a tape recorder would suffice to constitute an offense under Section 1 of R.A. 4200. As the Solicitor General pointed out in his COMMENT before the respondent court: "Nowhere (in the said law) is it required that before one can be regarded as a violator, the nature of the conversation, as well as its communication to a third person should be professed."

Finally, petitioner's contention that the phrase "private communication" in Section 1 of R.A. 4200 does not include

"private conversations" narrows the ordinary meaning of the word "communication" to a point of absurdity. The word communicate comes from the latin word *communicare*, meaning "to share or to impart." In its ordinary signification, communication connotes the act of sharing or imparting, as in a conversation, or signifies the "process by which meanings or thoughts are shared between individuals through a common system of symbols (as language signs or gestures)." These definitions are broad enough to include verbal or non-verbal, written or expressive communications of "meanings or thoughts" which are likely to include the emotionally-charged exchange, on February 22, 1988, between petitioner and private respondent, in the privacy of the latter's office.

PETITION DENIED.

VERBA LEGIS

It is a rule in statutory construction that if the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without interpretation. (*Republic vs. Lacap*, 517 SCRA 255)

If the language of the statute is plain and free from ambiguity, and expresses a single, definite, and sensible meaning, that meaning is conclusively presumed to be the meaning which the legislature intended to convey. In other words, the statute must be interpreted literally. Even though the court should be convinced that some other meaning was really intended by the law-making power, and even though the literal interpretation should defeat the very purposes of the enactment, still the explicit declaration of the legislature is the law, and the courts must not depart from it. (Black, *Construction and Interpretation of Laws, supra*).

ILLUSTRATIVE CASES:

Plain Meaning Rule or Verba Legis

The primary rule in addressing any problem relating to the understanding or interpretation of a law is to

examine the law itself to see what it plainly says. This is the plain meaning rule of statutory construction.

REQUEST OF COURT OF APPEALS JUSTICES VICENTE S.E. VELOSO, ANGELITA A. GACUTAN AND REMEDIOS A. SALAZAR FERNANDO FOR COMPUTATION/ADJUSTMENT OF LONGEVITY PAY
8-07-CA June 16, 2015;
A.M. No. 12-9-5-SC; A.M. No. 13-02-07-SC

FACTS: The petitioners are all Justices of the Court of Appeals. Justices Veloso and Fernando claim longevity pay for services rendered within and outside the Judiciary as part of their compensation package. Justice Gacutan, who has recently retired, claims deficiency payment of her longevity pay for the services she had rendered before she joined the Judiciary, as well as a re-computation of her retirement pay to include the claimed longevity pay.

The law under which they claim their longevity pay is provided in B.P. 129, Section 42, to wit;

> Section 42. *Longevity pay.*—A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; *Provided*, That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank. The Supreme Court ruled that the only service recognized for purposes of longevity pay under Section 42 of B.P. Blg. 129 is service in the Judiciary, not service in any other branch of government. Hence, their previous positions in the government, specifically both serving as NLRC Commissioners (Justice Veloso and Justice Gacutan) and serving as COMELEC Commissioner (Justice Fernando) cannot be credited in the computation of their longevity pay.

ISSUE: Whether or not Section 42 of BP 129 should be given a liberal interpretation by the Court.

HELD: The primary rule in addressing any problem relating to the understanding or interpretation of a law (in this case, the provision granting longevity pay) is to examine the law itself to see what it plainly says. This is the plain meaning rule of statutory construction.

Section 42 of this law has heretofore been quoted, but for convenience is again quoted below—

> Section 42. *Longevity pay.*—A monthly longevity pay equivalent to 5% of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created for each five years of continuous, efficient, and meritorious service rendered in the judiciary; provided That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank.

As written, the language and terms of this provision are very clear and unequivocal: longevity pay is granted to a judge or justice (and to none other) who has rendered five years of continuous, efficient and meritorious service in the Judiciary. The granted monthly longevity pay is equivalent to 5% of the monthly basic pay.

The plain reading of Section 42 shows that longevity pay is not available even to a judicial officer who is not a judge or justice. It is likewise not available, for greater reason, to an officer in the Executive simply because he or she is not serving as a judge or justice. It cannot also be available to a judge or justice for past services he or she did not render within the Judiciary as services rendered outside the Judiciary for purposes of longevity pay is not contemplated by law.

GLOBE-MACKAY CABLE AND RADIO CORPORATION *vs.* NATIONAL LABOR RELATIONS COMMISSION AND IMELDA SALAZAR
G.R. No. 82511, March 3, 1992
206 SCRA 701

FACTS: In May 1982, private respondent was employed by Globe-Mackay Cable and Radio Corporation (GMCR) as general systems analyst. Also employed by petitioner as

manager for technical operations' support was Delfin Saldivar with whom private respondent was allegedly very close.

Sometime in 1984, petitioner GMCR, prompted by reports that company equipment and spare parts worth thousands of dollars under the custody of Saldivar were missing, caused the investigation of the latter's activities. The report dated September 25, 1984 prepared by the company's internal auditor, Mr. Agustin Maramara, indicated that Saldivar had entered into a partnership styled Concave Commercial and Industrial Company with Richard A. Yambao, owner and manager of Elecon Engineering Services (Elecon), a supplier of petitioner often recommended by Saldivar. The report also disclosed that Saldivar had taken petitioner's missing Fedders airconditioning unit for his own personal use without authorization and also connived with Yambao to defraud petitioner of its property. The airconditioner was recovered only after petitioner GMCR filed an action for replevin against Saldivar.

It likewise appeared in the course of Maramara's investigation that Imelda Salazar violated company regulation by involving herself in transactions conflicting with the company's interests. Evidence showed that she signed as a witness to the articles of partnership between Yambao and Saldivar. It also appeared that she had full knowledge of the loss and whereabouts of the Fedders airconditioner but failed to inform her employer.

Consequently, in a letter dated October 8, 1984, petitioner company placed private respondent Salazar under preventive suspension for one (1) month, effective October 9, 1984, thus giving her thirty (30) days within which to explain her side. But instead of submitting an explanation, three (3) days later or on October 12, 1984, private respondent filed a complaint against petitioner for illegal suspension, which she subsequently amended to include illegal dismissal, vacation and sick leave benefits, 13th month pay and damages, after petitioner notified her in writing that effective November 8, 1984, she was considered dismissed "in view of her inability to refute and disprove these findings."

After due hearing, the Labor Arbiter in a decision dated July 16, 1985, ordered petitioner company to reinstate private respondent to her former or equivalent position and to pay her full backwages and other benefits she would have received were it not for the illegal dismissal. Petitioner was also ordered to pay private respondent moral damages of P50,000.00.

On appeal, public respondent National Labor Relations Commission in the questioned resolution dated December 29, 1987 affirmed the aforesaid decision with respect to the reinstatement of private respondent but limited the backwages to a period of two (2) years and deleted the award for moral damages.

Hence, this petition assailing the Labor Tribunal for having committed grave abuse of discretion in holding that the suspension and subsequent dismissal of private respondent were illegal and in ordering her reinstatement with two (2) years backwages.

HELD: Art. 279 of the Labor Code, as amended, provides:

> "*Security of Tenure.*—In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. *An employee who is unjustly dismissed from work shall be entitled to reinstatement* without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement."

Corollary thereto are the following provisions of the Implementing Rules and Regulations of the Labor Code:

> "Sec. 2. *Security of Tenure.*—In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause as provided in the Labor Code or when authorized by existing laws.
>
> "Sec. 3. *Reinstatement.*—An employee who is unjustly dismissed from work shall be entitled to

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reinstatement without loss of seniority rights and to backwages." (Italics supplied)

In the case at bar, the law is on the side of private respondent. In the first place, the wording of the Labor Code is clear and unambiguous: "An employee who is unjustly dismissed from work shall be entitled to reinstatement. . . and to his full backwages." Under the principles of statutory construction, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This plain meaning rule or *verba legis* derived from the maxim *index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly expresses its intent or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. Neither does the provision admit of any qualification. If in the wisdom of the Court, there may be a ground or grounds for non-application of the above-cited provision, this should be by way of exception, such as when the reinstatement may be inadmissible due to ensuing strained relations between the employer and the employee.

NLRC RESOLUTION AFFIRMED.

When the language of the law is clear, it should be given its natural meaning.

FELICITO BASBACIO *vs.* OFFICE OF THE SECRETARY, DEPARTMENT OF JUSTICE
G.R. No. 109445, November 7, 1994
238 SCRA 5

FACTS: Based on his acquittal, petitioner filed a claim under Rep. Act No. 7309, Sec. 3(a), which provides for the payment of compensation to "any person who was unjustly

accused, convicted, imprisoned but subsequently released by virtue of a judgment of acquittal." The claim was filed with the Board of Claims of the Department of Justice, but the claim was denied on the ground that while petitioner's presence at the scene of the killing was not sufficient to find him guilty beyond reasonable doubt, yet, considering that there was bad blood between him and the deceased as a result of a land dispute and the fact that the convicted murderer is his son-in-law, there was basis for finding that he was "probably guilty."

Petitioner questions the basis of the respondent's ruling that to be able to recover under Sec. 3(a) of the law, the claimant must on appeal be found to be innocent of the crimes of which he was convicted in the trial court. Through counsel, he contends that the language of Sec. 3(a) is clear and does not call for interpretation. The "mere fact that the claimant was imprisoned for a crime which he was subsequently acquitted of is already unjust in itself," he contends. To deny his claim because he was not declared innocent would be to say that his imprisonment for two years while his appeal was pending was justified. Petitioner argues that there is only one requirement for conviction in criminal cases and that is proof beyond reasonable doubt. If the prosecution fails to present such proof, the presumption that the accused is innocent stands and, therefore, there is no reason for requiring that he be declared innocent of the crime before he can recover compensation for his imprisonment.

ISSUE: Whether or not the term "unjustly accused, convicted, imprisoned but subsequently released by virtue of a judgment of acquittal" refer to all kinds of accusation and conviction.

HELD: Petitioner's contention has no merit. It would require that every time an accused is acquitted on appeal he must be given compensation on the theory that he was "unjustly convicted" by the trial court. Such a reading of Sec. 3(a) is contrary to petitioner's professed canon of construction that when the language of the statute is clear it should be given its natural meaning. It leaves out of the

provision in question that qualifying word "unjustly" so that the provision would simply read: "The following may file claims for compensation before the Board: (a) any person who was accused, convicted, imprisoned but subsequently released by virtue of a judgment of acquittal."

But Sec. 3(a) requires that the claimant be "unjustly accused, convicted [and] imprisoned." The fact that his conviction is reversed and the accused is acquitted is not itself proof that the previous conviction was "unjust." An accused may be acquitted for a number of reasons and his conviction by the trial court may, for any of these reasons, be set aside. For example, he may be acquitted not because he is innocent of the crime charged but because of reasonable doubt, in which case he may be found civilly liable to the complainant, because while the evidence against him does not satisfy the quantum of proof required for conviction, it may nonetheless be sufficient to sustain a civil action for damages.

Indeed, Sec. 3(a) does not refer solely to an unjust conviction as a result of which the accused is unjustly imprisoned, but, in addition, to an unjust accusation. The accused must have been "unjustly accused, in consequence of which he is unjustly convicted and then imprisoned. It is important to note this because if from its inception the prosecution of the accused has been wrongful, his conviction by the court is, in all probability, also wrongful. Conversely, if the prosecution is not malicious, any conviction even though based on less than the required quantum of proof in criminal cases may be erroneous but not necessarily unjust.

PETITION DISMISSED.

STATUTES AS A WHOLE

A cardinal rule in statutory construction is that legislative intent must be ascertained from a consideration of the statute as a whole and not merely of a particular provision. For, taken in the abstract, a word or phrase might easily convey a meaning which is different from the one

actually intended. A general provision may actually have a limited application if read together with other provisions. Hence, a consideration of the law itself in its entirety and the proceedings of both Houses of Congress is in order. (*PLDT, Inc. vs. City of Davao,* G.R. No. 143867, August 22, 2001, 363 SCRA 522). A provision or section, which is unclear by itself, may be clarified by reading and construing it in relation to the whole statute. (*Leynes vs. COA,* 418 SCRA 180, December 11, 2003).

Inasmuch as the language of a statute constitutes the depository or reservoir of the legislative intent in order to ascertain or discover that intent, the statute must be considered as a whole, just as it is necessary to consider a sentence in its entirety in order to grasp its true meaning. Consequently, effect and meaning must be given to every part of the statute which is being subjected to the process of construction to every section, sentence, clause, phrase and word. This is a principle based upon human experience with man's modes of expression and the inevitable limitations of our language.

Moreover, a statute should be construed as a whole because it is not to be presumed that the legislature has used any useless words, and because it is a dangerous practice to base the construction upon only a part of it, since one portion may be qualified by other portions.

In addition to being subject to qualification, words are not always used accurately by the legislature. The thought conveyed by the statute in its entirety may reveal the inaccurate use. Hence, the court should, when it seeks the legislative intent, construe all of the constituent parts of the statute together, and seek to ascertain the legislative intention from the whole act, considering every provision thereof in the light of the general purpose and object of the act itself, and endeavoring to make every part effective, harmonious and sensible. This means, of course, that the court should attempt to avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, clause or sentence superfluous, unless such a result is clearly unavoidable. The court must construe the statute in

this manner, for by failing to do so, the statute is not considered in its entirety and the intention of the legislature is likely to be defeated. The legislative intent is just as apt to be lost where a word, phrase or sentence of the statute is rejected as where they are considered separate and apart from the rest of the statute. This is in accord with our use of words. The omission of a word from a sentence may easily cause it to express an idea quite different from the one actually intended and expressed. (Crawford, *Construction of Statutes*, pp. 259-261).

ILLUSTRATIVE CASES:

In interpreting a statute, care should be taken that every part be given effect.

JMM PROMOTIONS AND MANAGEMENT, INC. *vs.* NATIONAL LABOR RELATIONS COMMISSION AND ULPIANO L. DELOS SANTOS
G.R. No. 109835, November 22, 1993
228 SCRA 129

FACTS: In a decision rendered by the Philippine Overseas Employment Administration, petitioner JMM Promotions and Management, Inc. appealed to the respondent NLRC which dismissed the petitioner's appeal on the ground of failure to post the required appeal bond.

The respondent cited the second paragraph of Article 223 of the Labor Code, as amended, providing that:

> "Article 223. In a case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from."

And Rule VI, Section 6 of the new Rules of Procedure of the NLRC, as amended, reading as follows:

> "Section 6. *Bond.*—In case the decision of a Labor Arbiter involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award."

The petitioner contends that the NLRC committed grave abuse of discretion in applying these rules to decisions rendered by the POEA. It insists that the appeal bond is not necessary in the case of licensed recruiters for overseas employment because they are already required under Section 4, Rule II, Book II of the POEA Rules not only to pay a license fee of P30,000.00 but also to post a cash bond of P100,000.00 and a surety bond of P50,000.00.

In addition, the petitioner claims it has placed in escrow the sum of P200,000.00 with the Philippine National Bank in compliance with Section 17, Rule II, Book II of the same Rule, "to primarily answer for valid and legal claims of recruited workers as a result of recruitment violations or money claims."

Required to comment, the Solicitor General sustains the appeal bond requirement but suggests that the rules cited by the NLRC are applicable only to decisions of the Labor Arbiters and not of the POEA. Appeals from decisions of the POEA, he says, are governed by the following provisions of Rule V, Book VII of the POEA Rules:

> "Section 5. *Requisites for Perfection of Appeal.*—The appeal shall be filed within the reglementary period as provided in Section 1 of this Rule; shall be under oath with proof of payment of the required appeal fee and the posting of a cash or surety bond as provided in Section 6 of this Rule; shall be accompanied by a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof; the relief prayed for; and a statement of the date when the appellant received the appealed decision and/or award and proof of service on the other party of such appeal.

"A mere notice of appeal without complying with the other requirements aforestated shall not stop the running of the period for perfecting an appeal."

"Section 6. *Bond.*—In case the decision of the Administration involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in an amount equivalent to the monetary award."

ISSUE: Whether or not petitioner was still required to post an appeal bond to perfect its appeal from a decision of the POEA to the NLRC after having posted a total bond of P150,000.00 and placed in escrow the amount of P200,000.00 as required by the POEA Rules.

HELD: Yes, the POEA Rules are clear. A reading thereof readily shows that in addition to the cash and surety bonds and the escrow money, an appeal in an amount equivalent to the monetary award is required to perfect an appeal from a decision of the POEA. Obviously, the appeal bond is intended to further insure the payment of the monetary award in favor of the employee if it is eventually affirmed on appeal to the NLRC.

It is a principle of legal hermeneutics that in interpreting a statute (or set of rules as in this case), care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. *Ut res magis valeat quam pereat.* Under the petitioner's interpretation, the appeal bond required by Section 6 of the aforementioned POEA Rule should be disregarded because of the earlier bonds and escrow money it has posted. The petitioner would in effect nullify Section 6 as a superfluity but we do not see any such redundancy; on the contrary, we find that Section 6 complements Section 4 and Section 17. The rule is that a construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of a coordinated and harmonious whole.

Accordingly, we hold that in addition to the monetary obligations of the overseas recruiter prescribed in Section 4, Rule II, Book II of the POEA Rules and escrow agreement under Section 17 of the same Rule, it is necessary to post the appeal bond required under Section 6, Rule V, Book VIII of the POEA Rules, as a condition for perfecting an appeal from a decision of the POEA.

PETITION DISMISSED.

Ut res magis valem quam pereat

Ut magis valeat quam pereat or that construction is to be sought which gives effect to the whole of the statute – its every word.

DANILO A. DUNCANO, *vs.* HON. SANDIGANBAYAN (2ND DIVISION), AND HON. OFFICE OF THE SPECIAL PROSECUTOR. G.R. No. 191894, July 15, 2015

FACTS: Petitioner Danilo A. Duncano is, at the time material to the case, the Regional Director of the Bureau of Internal Revenue (BIR) with Salary Grade 26 as classified under Republic Act (R.A.) No. 6758. On March 24, 2009, the Office of the Special Prosecutor, Office of the Ombudsman, filed a criminal case against him for violation of Section 8, in relation to Section 11 of R.A. No. 6713, allegedly failing to disclose in his Sworn Statement of Assets and Liabilities and Networth (SALN) for the year 2002, his financial and business interests/connection in Documail Provides Corporation and Don Plus Trading of which he and his family are the registered owners thereof, and the 1993 Nissan Patrol motor vehicle registered in the name of his son which are part of his assets. Prior to his arraignment, petitioner filed a Motion to Dismiss With Prayer to Defer the Issuance of Warrant of Arrest before respondent Sandiganbayan Second Division. As the OSP alleged, he admitted that he is a Regional Director with Salary Grade 26, but asserted that under Presidential Decree (P.D.) No. 1606, as amended by Section 4 (A) (1) of R.A No. 8249, the Sandiganbayan has no jurisdiction to try and hear the case

because he is an official of the executive branch occupying the position of a Regional Director but with a compensation that is classified as below Salary Grade 27.

In its Opposition, the OSP argued that a reading of Section 4 (A) (1) (a) to (g) of the subject law would clearly show that the qualification as to Salary Grade 27 and higher applies only to officials of the executive branch other than the Regional Director and those specifically enumerated. This is so since the term "Regional Director" and "higher" are separated by the conjunction "and," which signifies that these two positions are different, apart and distinct, words but are conjoined together "relating one to the other" to give effect to the purpose of the law. The fact that the position of Regional Director was specifically mentioned without indication as to its salary grade signifies the lawmakers' intention that officials occupying such position, regardless of salary grade, fall within the original and exclusive jurisdiction of the Sandiganbayan.

On August 18, 2009, the Sandiganbayan Second Division denied the motion to dismiss of petitioner for lack of merit and issued a warrant for his arrest.

Petitioner filed a Motion for Reconsideration, but it was denied; Hence, this petition.

ISSUE: Whether or not, according to P.D. No. 1606, as amended by

Section 4 (A) (1) of R.A No. 8249, only Regional Directors with Salary Grade of 27 and higher, as classified under R.A. No. 6758, fall within the exclusive jurisdiction of the Sandiganbayan

HELD: There is merit in the petition. For the purpose of this case, the relevant provision is Section 4 of R.A. No. 8249, which states:

> SEC. 4. Section 4 of the same decree is hereby further amended to read as follows:

> "SEC. 4. *Jurisdiction.*—The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
>
> "A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:
>
> "(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade '27' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> "(a) Provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads;
>
> "(b) City mayor, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers, and other city department heads;
>
> "(c) Officials of the diplomatic service occupying the position of consul and higher;
>
> "(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;
>
> "(e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintendent or higher;
>
> "(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;
>
> "(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations."
>
> x x x x x x x x x x x x

Based on the afore-quoted, those that fall within the original jurisdiction of the Sandiganbayan are: (1) officials of

the executive branch with Salary Grade 27 or higher, and (2) officials specifically enumerated in Section 4 (A) (1) (a) to (g), regardless of their salary grades. While the first part of Section 4 (A) covers only officials of the executive branch with Salary Grade 27 and higher, its second part specifically includes other executive officials whose positions may not be of Salary Grade 27 and higher but who are by express provision of law placed under the jurisdiction of the Sandiganbayan.

To speed up trial in the Sandiganbayan, Republic Act No. 7975 was enacted for that Court to concentrate on the "larger fish" and leave the "small fry" to the lower courts. This law became effective on May 6, 1995 and it provided a two-pronged solution to the clogging of the dockets of that court, to wit:

It divested the Sandiganbayan of jurisdiction over public officials whose salary grades were at Grade "26" or lower, devolving thereby these cases to the lower courts, and retaining the jurisdiction of the Sandiganbayan only over public officials whose salary grades were at Grade "27" or higher and over other specific public officials holding important positions in government regardless of salary grade.

Following this disquisition, the paragraph of Section 4 which provides that if the accused is occupying a position lower than SG 27, the proper trial court has jurisdiction, can only be properly interpreted as applying to those cases where the principal accused is occupying a position lower than SG 27 and not among those specifically included in the enumeration in Section 4 a. (1) (a) to (g). Stated otherwise, except for those officials specifically included in Section 4 a. (1) (a) to (g), *regardless of their salary grades*, over whom the Sandiganbayan has jurisdiction, all other public officials below SG 27 shall be under the jurisdiction of the proper trial courts "where none of the principal accused are occupying positions corresponding to SG 27 or higher." By this construction, the entire Section 4 is given effect. The cardinal rule, after all, in statutory construction is that the particular words, clauses and phrases should not be studied

as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. And courts should adopt a construction that will give effect to every part of a statute, if at all possible. *Ut magis valeat quam pereat* or that construction is to be sought which gives effect to the whole of the statute – its every word.

Petition for Certiorari GRANTED. The August 18, 2009 Resolution and February 8, 2010 Order of the Sandiganbayan Second Division are REVERSED AND SET ASIDE.

SPIRIT AND PURPOSE OF THE LAW

When the interpretation of a statute according to the exact and literal import of its words would lead to absurd or mischievous consequences, or would thwart or contravene the manifest purpose of the legislature in its enactment, it should be construed according to its spirit and reason, disregarding or modifying, so far as may be necessary, the strict letter of the law.

In accordance with this principle, the courts have power to declare that a case which falls within the letter of a statute is not governed by the statute, because it is not within the spirit and reason of the law and the plain intention of the legislature.

Conversely, statutes may be extended to cases not within the literal import of their terms, if plainly meant to be included; for that which is within the intention of the legislature, in the framing of the statute, is as much within the statute as if it were within its letter.

But where the statute is free from ambiguity and plainly shows what the legislature meant, the letter of it is not to be disregarded under the pretext of pursuing its spirit, and exceptions not made by the legislature cannot be read into it. (Black, *Construction and Interpretation of Laws*, pp. 66-67, 2nd ed.).

ILLUSTRATIVE CASES:

A construction that gives to the language used in a statute a meaning that does not accomplish the purpose for which the statute was enacted should be rejected.

MANUEL T. DE GUIA *vs.* COMMISSION ON ELECTIONS
G.R. No. 104712, May 6, 1992
208 SCRA 420

FACTS: This is a petition for *certiorari* and prohibition assailing the validity and the enforcement by respondent Commission on Elections (COMELEC) of its RESOLUTION NO. 2383, adopting rules and guidelines in the apportionment, by district, of the number of elective members of the Sangguniang Panlalawigan in provinces with only one (1) legislative district and the Sangguniang Bayan of municipalities in the Metro Manila Area for the preparation of the Project of District Apportionment by the Provincial Election Supervisors and Election Registrars (Annex "A," Petition), RESOLUTION NO. 2879, approving the Project of District Apportionment submitted pursuant to Resolution No. 2313 (Annex "B," Petition), and RESOLUTION UND. 92-010 holding that pars. (a), (b), and (c), and the first sentence of par. (d), all of Sec. 3, R.A. No. 7166, apply to the May 11, 1992 elections (Annex "C," Petition).

Petitioner Manuel T. De Guia is an incumbent Member of the Sangguniang Bayan of the Municipality of Parañaque, Metro Manila, having been elected in the January 1988 local elections. He prays, more particularly, for reversal of the position of respondent insofar as it affects the municipality of Parañaque and all the other municipalities in the Metro Manila Area. He claims that the second provision of par. (c), Sec. 3, R.A. No. 7166, which requires the apportionment into district of said municipalities does not specify when the members of their Sangguniang Bayan will be elected by district. He would consequently lean on par. (d) of Sec. 3,

which immediately succeeds par. (c), to support his view that the elected members of these municipalities mentioned in par. (c) should continue to be elected at large in the May 11, 1992 elections.

Paragraph (d) states that "For purposes of the regular elections on May 11, 1992, elective members of the Sangguniang Panlungsod and Sangguniang Bayan shall be elected at large in accordance with existing laws. However, beginning with the regular election in 1995, they shall be elected by district." Petitioner therefore insists that the elected members of the Sangguniang Bayan of Parañaque fall under this category so that they should continue to be elected at large until the 1995 regular elections.

ISSUE: The issue in this case is the proper interpretation of Sec. 3 of R.A. No. 7166, Providing for Synchronized National and Local Elections and for Electoral Reforms for May 11, 1992 elections which provides:

> "Sec. 3. *Elections of Members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan.*—The elective members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan shall be elected as follows:
>
> "(a) For provinces with two or more legislative districts, the elective members of the Sangguniang Panlalawigan shall be elected by legislative districts x x x
>
> "(b) For provinces with only one (1) legislative district, the Commission shall divide them into two (2) districts for purposes of electing the members of the Sangguniang Panlalawigan x x x
>
> "(c) The number and election of elective members of the Sangguniang Panlungsod and Sangguniang Bayan in the Metro-Manila Area, City of Cebu, City of Davao and any other city with two (2) or more legislative districts shall continue to be governed by the provisions of Sections 2 and 3 of Republic Act No. 6636 x x x *Provided, further,* That the Commission shall divide each of the municipalities in Metro-Manila Area into two (2) districts by barangay for purposes of representation in the Sangguniang Bayan x x x and,

> "(d) For purposes of the regular elections on May 11, 1992, elective members of the Sangguniang Panlungsod and Sangguniang Bayan shall be elected at large in accordance with existing laws. However, beginning with the regular elections in 1995, they shall be elected by district x x x."

HELD: We have carefully examined pars. (a), (b), (c) and (d) of Sec. 3, R.A. No. 7166, and its precursor bills on synchronized elections. Senate Bill No. 1861 and House Bill No. 34311, and We realize the web of confusion generated by the seeming abstruseness in the language of the law. Some framers of the law were even fazed at the empirical implications of some of its provisions, particularly Sec. 3 thereof, and they admitted in fact that said provisions were susceptible of varied interpretations, as borne by the sponsorship and explanatory speeches now spread in the Journals of Congress. Hence, we can understand why petitioner would interpret Sec. 3 as he would, but if we pursue his course, we may conclude in absurdity because then there would be no reason for R.A. No. 7166 to single out the single district provinces referred to in par. (b) and the municipalities in the Metro-Manila Area mentioned in the second provision of par. (c), to be apportioned at once into two (2) districts each if the members of their respective sanggunian after all would still be elected at large as they were in the 1988 elections.

No law is ever enacted that is intended to be meaningless, much less inutile. We must therefore, as far as we can, define its meaning, its significance, its reason for being. As it has been held, the key to open the door to what the legislature intended which is vaguely expressed in the language of a statute is its purpose or the reason which induced it to enact the statute. If the statute needs construction, as it does in the present case, the most dominant in that process is the purpose of the act. Statutes should be construed in the light of the object to be achieved and the evil and mischief to be suppressed and they should be given such construction as will advance the object, suppress the mischief, and secure the benefits intended. A

construction should be rejected that gives to the language used in a statute a meaning that does not accomplish the purpose for which the statute was enacted, and that tends to defeat the ends which are sought to be attained by the enactment.

The reason for the promulgation of R.A. No. 7166 is shown in the explanatory note of Senate Bill No. 1861 which stated in part:

> "This bill proposes to set the national and local elections for May 11, 1992, and provide for the necessary implementing details. It also endorses reforms and measures to ensure the conduct of free, orderly, honest, peaceful and credible elections. Specifically, it seeks to: (1) Reduce the number of positions to be voted for by providing therein that the members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan be elected not at large, but by district x x x."

The respondent COMELEC is cognizant of this legislative intent of R.A. No. 7166 as reflected in the "WHEREAS" clause constituting the preamble to Resolution No. 2379.

This avowed policy of having sanggunian members elected by district is also manifest from the four corners of Sec. 3 which shows that the purpose of districting/ apportioning the sanggunian seats is to reduce the number of positions to be voted for in the May 11, 1992 synchronized elections and ensure the efficiency of the electoral process.

PETITION DISMISSED.

Between two statutory interpretations, that which better serves the purpose of the law should prevail.

ELENA SALENILLAS AND BERNARDINO SALENILLAS *vs.* HONORABLE COURT OF APPEALS, ET AL.
G.R. No. 78687, January 31, 1989
169 SCRA 829

FACTS: Spouses Florencia H. Enciso and Miguel Enciso were grantees of free patent. The subject property was covered by OCT No. P-1248. On February 28, 1970, the patentees, the Enciso spouses, by an absolute Deed of Sale, sold the property in favor of the petitioners, the spouses Elena Salenillas and Bernardino Salenillas for a consideration of P900.00. Petitioner Elena Salenillas is a daughter of the Encisos. As a result of the aforementioned sale. Transfer of Title No. T-8104 of the Register of Deeds of Camarines Norte was issued in the name of the Salenillas, cancelling Original Certificate of Title No. P-1248.

On December 4, 1975, the petitioners again mortgaged the property, this time in favor of the Philippine National Bank Branch, Daet, Camarines Norte as security for a loan of P2,500.00.

For failure of the petitioners to pay their loan, extrajudicial foreclosure proceeding, pursuant to Act No. 3135, was instituted by the Philippine National Bank against the mortgage and the property was sold at a public auction held on February 27, 1981. The private respondent. William Guera, emerged as the highest bidder in the said public auction and as a result thereof a "Certificate of Sale" was issued to him by the Ex-Officio Provincial Sheriff of Camarines Norte. Ultimately, on July 12, 1983, a "Sheriff Final Deed" was executed in favor of the private respondent.

On August 17, 1983, the Philippine National Bank filed with the Regional Trial Court of Camarines Norte at Daet, a motion for writ of possession. The public respondent, Judge Raymundo Seva of the trial court, acting on the motion, issued on September 22, 1983 an order for the issuance of a writ of possession in favor of the respondent. When the deputy sheriff of Camarines Norte, however, attempted on November 17, 1983, to place the property in the possession of the private respondent, the petitioners refused to vacate and surrender the possession of the same and instead offered to repurchase it under Section 119 of the Public Land Act. Notwithstanding the petitioners' opposition and formal offer, the trial court judge on October 12, 1984 issued the alias writ of possession prayed for by the private

respondent. The petitioners moved for a reconsideration of the order but their motion was denied. On appeal, the Court of Appeals dismissed the case for lack of merit. The petitioners maintain that contrary to the rulings of the courts below, their right to repurchase within five years under Section 119 of the Public Land Act has not yet prescribed. To support their contention, the petitioners cited the cases of *Paras vs. Court of Appeals* and *Manuel vs. Philippine National Bank, et al."*

On the other side, the private respondent, in support of the appellate court's decision, states that the sale of the contested property by the patentees to the petitioners disqualified the latter from being legal heirs *vis-à-vis* the said property. As such, they (the petitioners) no longer enjoy the right granted to heirs under the provisions of Section 119 of the Public Land Act.

ISSUE: Whether or not petitioners have the right to repurchase the contested property under Section 119 of the Public Land Act; and assuming the answer to the question is in the affirmative, whether or not their right to repurchase had already prescribed.

TAKE NOTE OF THIS RULING

HELD: We rule for the petitioners. They are granted by the law the right to repurchase their property and their right to do so subsists.

Section 119 of the Public Land Act, as amended, provides in full:

> "Sec. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper shall be subject to repurchase by the applicant, his widow, or legal heirs within a period of five years from the date of the conveyance."

From the foregoing legal provision, it is explicit that only three classes of persons are bestowed the right to repurchase — the applicant-patentees, his widow, or other legal heirs. Consequently, the contention of the private respondent sustained by the respondent appellate court that the petitioners do not belong to any of those classes of

repurchasers because they acquired the property not through inheritance but by sale, has no legal basis. These petitioners-spouses are the daughter and son-in-law of the Encisos, patentees of the contested party. At the very least, petitioner Elena Salenillas, being the child of the Encisos, is a "legal heir" of the latter. As such, and even on this score alone, she may therefore validly repurchase. This must be because Section 119 of the Public Land Act, in speaking of "legal heirs," makes no distinction. *Ube lex non distinguit nec nos distinguere debemos.*

Moreover, to indorse the distinction made by the private respondent and the appellate court would be to contravene the very purpose of Section 119 of the Public Land Act which is to give the homesteader or patentee every chance to preserve for himself and his family the land that the State had gratuitously given him as a reward for his labor in clearing and cultivating it. Considering that petitioner Salenillas is a daughter of the spouses Florencia H. Enciso and Miguel Enciso, there is no gainsaying that allowing her (Elena) and her husband to repurchase the property would be more in keeping with the spirit of the law. We have time and again said that between two statutory interpretations, that which better serves the purpose of the law should prevail.

Guided by the same purpose of the law, and proceeding to the other issue here raised, we rule that the five-year period for the petitioners to repurchase their property had not yet prescribed.

PETITION IS GRANTED.

When the reason of the law ceases, the law itself ceases.

B/GEN. JOSE COMMENDADOR, ET AL. *vs.* GEN. RENATO S. DE VILLA, ET AL.
G.R. No. 96948, August 2, 1991
200 SCRA 80

FACTS: Petitioners are officers of the Armed Forces of the Philippines facing prosecutions for their alleged participations

in the failed *coup d'etat* that took place on December 1 to 9, 1989.

The charges against them are violations of Articles of War (AW) 67 (Meeting), AW 96 (Conduct Unbecoming an Officer and Gentleman) and AW 94 (various) crimes in relation to Art. 248 of the Revised Penal Code (Murder).

The charges were referred to General Court Martial No. 14 (GCM No. 14).

At the hearing of May 15, 1990, petitioners manifested that they were exercising their right to raise peremptory challenges against the president and members of GCM No. 14. They invoked Art. 18 of Com. Act No. 408 for this purpose. GCM No. 14 ruled, however, that peremptory challenges had been discontinued under PD 39.

HELD: The peremptory challenge was originally provided for under Article 18 of Com. Act No. 408 (Articles of War), as amended by Rep. Act No. 242, on June 12, 1948, to wit:

> "Art. 18. *Challenges.*—Members of general or special courts-martial may be challenged by the accused or the trial judge advocate for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to the peremptory challenge, but the law member of the court shall not be challenged except for cause."

On September 27, 1972, President Marcos issued General Order No. 8, empowering the Chief of Staff of the Armed Forces to create military tribunals "to try and decide cases of military personnel and such other cases as may be referred to them."

On November 7, 1972, he promulgated P.D. No. 39 (Governing the Creation, Composition. Jurisdiction, Procedure and other matters relevant to Military Tribunals). This decree disallowed the peremptory challenge, thus:

> "No peremptory challenge shall be allowed. Challenges for cause may be entertained to ensure impartiality and good faith. Challenges shall immediately be heard and determined by a majority of the members excluding the challenged member. A tie vote does not disqualify the challenged member. A successfully challenged member shall be immediately replaced."

On June 11, 1978, President Marcos promulgated P.D. No. 1498, or the National Security Code, which was a compilation and codification of decrees, general orders, LOI and policies intended "to meet the continuing threats to the existence, security and stability of the State." The modified rule on challenges under P.D. No. 39 was embodied in this decree.

On January 17, 1981, President Marcos issued Proc. No. 2045 proclaiming the termination of the state of martial law throughout the Philippines. The proclamation revoked General Order No. 8 and declared the dissolution of the military tribunals created pursuant thereto upon final determination of the cases pending therein.

P.D. No. 39 was issued to implement General Order No. 8 and the other general orders mentioned therein. With the termination of martial law and the dissolution of the military tribunals created thereunder, the reason for the existence of P.D. No. 39 ceased automatically.

It is a basic canon of statutory construction that when the reason of the law ceases, the law itself ceases. *Cessante ratione legis, cessat ipsa lex.* This principle is also expressed in the maxim *ratio legis est anima*; the reason of law is its soul.

Applying these rules, we hold that the withdrawal of the right to peremptory challenge in P.D. No. 39 became ineffective when the apparatus of martial law was dismantled with the issuance of Proclamation No. 2045. As a result, the old rule embodied in Article 18 of Com. Act No. 408 was automatically revived and now again allows the right to peremptory challenge.

We do not agree with the respondents that the right to peremptory challenge remains withdrawn under P.D. No. 39. To repeat for emphasis, this decree was itself withdrawn when martial law was lifted on January 17, 1981. Indeed, even if not so withdrawn, it could still be considered no longer operative, having been cast out under the new dispensation as, in the words of the Freedom Constitution, one of the "iniquitous vestiges of the previous regime."

PETITION IS GRANTED, AND THE RESPONDENTS ARE DIRECTED TO ALLOW THE PETITIONERS TO EXERCISE THE RIGHT OF PEREMPTORY CHALLENGE UNDER ART. 18 OF THE ARTICLES OF WAR.

IMPLICATIONS

The implications and intendments arising from the language of a statute are as much a part of it as if they had been expressed. But it is only the necessary implications which may thus be read into the statute. Mere desirability or plausability alone will not meet the test. And while the implication does not need to shut out every other possible conclusion, or be one from which there is no escape, it must be one, which, under all the circumstances is compelled by a reasonable view of the statute, and the contrary of which would be improbable and absurd. In order to meet the test, the implication must be so strong in its probability that the contrary thereof cannot be reasonably supposed. Nor can implications contradict the expressed intent of the statute, for obviously the intent as expressed must prevail over the intent reached by implication. If the intent is expressed, there is nothing that can be implied. Nothing further is needed to reveal the legislative intent. (Crawford, *Construction of Statutes*, pp. 266-267).

ILLUSTRATIVE CASES:

Doctrine of necessary implications. What is implied in a statute is as much a part thereof as that which is expressed.

LYDIA O. CHUA *vs.* THE CIVIL SERVICE COMMISSION, THE NATIONAL IRRIGATION ADMINISTRATION
G.R. No. 88979, February 7, 1992
206 SCRA 65

FACTS: Pursuant to the policy of streamlining and trimming the bureaucracy, Republic Act No. 6683 was approved on 2 December 1988 providing for benefits for early retirement and voluntary separation from the government service as well as for involuntary separation due to reorganization. Deemed qualified to avail of its benefits are those enumerated in Sec. 2 of the Act, as follows:

> "Sec. 2. *Coverage.*—This Act shall cover all appointive officials and employees of the National Government, including government-owned or -controlled corporations with original charters, as well as the personnel of all local government units. The benefits authorized under this Act shall apply to all regular, temporary, casual and emergency employees, regardless of age, who have rendered at least a total of two (2) consecutive years of government service as of the date of separation. Uniformed personnel of the Armed Forces of the Philippines including those of the PC-INP are excluded from the coverage of this Act."

Petitioner Lydia Chua, believing that she is qualified to avail of the benefits of the program, filed an application on 30 January 1989 with respondent National Irrigation Administration (NIA) which, however, was denied. Her appeal for reconsideration was likewise denied by the Civil Service Commission which contends that petitioner's employment is co-terminous with the project per appointment papers kept by the Administrative Service in the head office of NIA (the service record was issued by the Watershed Management and Erosion Control Project [WMECP], Pantabangan, Nueva Ecija). The project, funded by the World Bank, was completed as of 31 December 1988, after which petitioner's position became *functus oficio*, etc.

ISSUE: Whether or not petitioner's status as co-terminous employee is excluded from the benefits of R.A. No. 6683.

HELD: What substantial differences exist, if any, between casual, emergency, seasonal, project, co-terminous or contractual personnel? All are tenurial employees with no fixed term, non-career, and temporary. The 12 May 1989 CSC letter of denial characterized herein petitioner's employment as co-terminous with the NIA project which in turn was contractual in nature.

A co-terminous employee is a non-career civil servant, like casual and emergency employees. We see no solid reason why the latter are extended benefits under the Early Retirement Law but the former are not. It will be noted that Rep. Act No. 6683 expressly extends its benefits for early retirement to regular, temporary, casual and emergency employees. But specifically excluded from the benefits are uniformed personnel of the AFP including those of the PC-INP. It can be argued that, *expressio unius est exclusio alterius*. The legislature would not have made a specific enumeration in a statute had not the intention been to restrict its meaning and confine its terms and benefits to those expressly mentioned or *casus omissus pro omisso habendus est* — A person, object or thing omitted from an enumeration must be held to have been omitted intentionally. Yet adherence to these legal maxims can result in incongruities and in violation of the equal protection clause of the Constitution.

The case of *Fegurin, et al. vs. NLRC, et al.*, 120 SCRA 910 (1983), comes to mind where, workers belonging to a work pool, hired and re-hired continuously from one project to another were considered non-project-regular and permanent employees.

Petitioner Lydia Chua was hired and re-hired in four (4) successive projects during a span of fifteen (15) years. Although no proof of the existence of a work pool can be assumed, her service record cannot be disregarded.

Art. III, Sec. 1 of the 1987 Constitution guarantees: "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."

Applying the criteria set forth above, the Early Retirement Law would violate the equal protection clause were we to sustain respondents' submission that the benefits of said law are to be denied a class of government employees who are similarly situated as those covered by said law. The maxim of *expressio unius est exclusio alterius* should not be the applicable maxim in this case but the doctrine of necessary implication, which holds that:

> "No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding events of the future. The so-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. *Ex necessitate legis.* And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater included the lesser, expressed in the maxim, *in eo plus sit, sunperinest et minus."*

PETITION GRANTED.

CITY OF MANILA AND CITY TREASURER *vs.* JUDGE AMADOR E. GOMEZ OF THE CFI OF MANILA AND ESSO PHILIPPINES, INC.
G.R. No. L-37251, August 31, 1981
107 SCRA 98

FACTS: Section 64 of the Revised Charter of Manila, Republic Act No. 409, which took effect on June 18, 1949,

fixes the annual realty tax at one and one-half percent (1-1/2%).

On the other hand, section 4 of the Special Education Fund Law, Republic Act No. 5447, which took effect on January 1, 1969, imposed "an annual additional tax of one *per centum* on the assessed value of real property in addition to the real property tax regularly levied thereon under existing laws" but "the total real property tax shall not exceed a maximum of three *per centum.*"

That maximum limit gave the municipal board of Manila the idea of fixing the realty tax at three percent. So, by means of Ordinance No. 7125, approved by the city mayor on December 1971 and effective beginning the third quarter of 1972, the Board imposed an additional one-half percent realty tax. The ordinance reads:

> "SECTION 1. An additional annual realty tax of one-half percent (1/2%) or in short a total of three percent (3%) realty tax; 1-1/2% pursuant to the Revised Charter of Manila; 1% per Republic Act No. 5447; and 1/2% per this Ordinance on the assessed value x x x is hereby levied and imposed."

Esso Philippines, Inc. paid under protest the sum of P16,092.69 as additional one-half percent realty tax for the third quarter of 1972 on its land and machineries located in Manila.

On November 9, 1972, Esso filed a complaint in the Court of First Instance of Manila for the recovery of the said amount. It contended that the additional one-half percent tax is void because it is not authorized by the city charter nor by any law. (Civil Case No. 88827).

After hearing, the trial court declared the tax ordinance void and ordered the city treasurer of Manila to refund to Esso the said tax. The City of Manila and its treasurer appealed to this Court under Republic Act No. 5440 (which superseded Rule 42 of the Rules of Court).

ISSUE: The only issue is the validity of the tax ordinance or the legality of the additional one-half percent realty tax.

HELD: In this connection, it is relevant to note that section 39(2) of the Real Property Tax Code, Presidential Decree No. 464, which took effect on June 1, 1974, provides that a city council may, by ordinance, impose a realty tax "of not less than one-half of one percent but not more than two percent of the assessed value of real property."

Section 41 of the said Code reaffirms the one percent tax on real property for the Special Education Fund in addition to the basic two percent realty tax.

So, there is no question now that the additional one-half percent realty tax is valid under the Real Property Tax Code. What is in controversy is the legality of the additional one-half percent realty tax for the two-year period from the third quarter of 1972 up to the second quarter of 1974.

We hold that the doctrine of implications in statutory construction sustains the City of Manila's contention that the additional one-half percent realty tax is sanctioned by the provision in section 4 of the Special Education Fund Law that "the total real property tax shall not exceed a maximum of three *per centum*."

The doctrine of implications means that "that which is plainly implied in the language of a statute is as much a part of it as that which is expressed." (*In re McCulloch Dick*, 38 Phil. 41, 45, 90 [1918]; 82 C.J.S. 632; 73 Am Jur 2nd-404).

While the 1949 Revised Charter of Manila fixed the realty tax at one and a half percent, on the other hand, the 1968 Special Education Fund Law definitely fixed three percent as the maximum real property tax of which one percent would accrue to the Special Education Fund.

The obvious implication is that an additional one-half percent tax could be imposed by municipal corporations. Inferentially, that law fixed at two percent the realty tax that would accrue to a city or municipality.

And the fact that the 1974 Real Property Tax Code specifically fixes the real property tax at two percent confirms the prior intention of the lawmaker to impose two

percent as the realty tax proper. That was also the avowed intention of the questioned ordinance.

As repeatedly observed, Section 4 of the Special Education Fund Law, as confirmed by the Real Property Tax Code, in prescribing a total realty tax of three percent impliedly authorizes the augmentation by one-half percent of the pre-existing one and one-half percent realty tax.

DECISION REVERSED AND SET ASIDE.

CASUS OMISSUS

When a statute makes specific provisions in regard to several enumerated cases or objects, but omits to make any provision for a case or object which is analogous to those enumerated, or which stands upon the same reason, and is therefore within the general scope of the statute, and it appears that such case or object was omitted by inadvertence or because it was overlooked or unforeseen, it is called a "*casus omissus.*" Such omissions or defects cannot be supplied by the courts. (Black, *Construction and Interpretation of Laws*, p. 80, 2nd ed.).

ILLUSTRATIVE CASE:

The rule of *"casus omissus pro omisso habendus est"* can operate and apply only if and when the omission has been clearly established.

PEOPLE OF THE PHILIPPINES *vs.* GUILLERMO MANANTAN
G.R. No. L-14129, July 31, 1962
5 SCRA 684

FACTS: Defendant Guillermo Manantan was charged of violation of Section 54 of the Revised Election Code in the province of Pangasinan.

Section 54 of the said Code reads:

"No justice, judge, fiscal, treasurer, or assessor of any province, no officer or employee of the Army, no

> member of the national, provincial, city, municipal or rural police force, and no classified civil service officer or employee shall aid any candidate, or exert any influence in any manner in any election or take part therein, except to vote, if entitled thereto, or to preserve public peace, if he is a peace officer."

In a second motion to dismiss the case, the defense counsel cited in support thereof the decision of the Court of Appeals in *People vs. Macaraeg* (CA-G.R. No. 15613-R, 54 Off. Gaz., pp. 1873-1876) where it was held that a justice of the peace is excluded from the prohibition of Section 54 of the Revised Election Code. Acting on this second motion to dismiss, the answer of the prosecution, the reply of the defense and the opposition of the prosecution, the lower court dismissed the information against the accused upon the authority of the ruling in the case cited by the defense.

From this order of dismissal of the Court of First Instance of Pangasinan, the Solicitor General appealed,

ISSUE: Whether or not a justice of the peace is included in the prohibition of Section 54 of the Revised Election Code.

HELD: Defendant-appellee argues that a justice of the peace is not comprehended among the officers enumerated in Section 54 of the Revised Election Code. He submits that the aforecited section was taken from Section 449 of the Revised Administrative Code, which provided the following:

> "Section 449. *Persons prohibited from influencing elections.*—No judge of the First Instance, justice of the peace or treasurer, fiscal or assessor of any province and no officer or employee of the Philippine Constabulary, or any Bureau or employee of the classified civil service, shall aid any candidate or exert influence in any manner in any election or take part therein otherwise than exercising the right to vote."

When, therefore, Section 54 of the Revised Election Code omitted the words "justice of the peace," the omission revealed the intention of the Legislature to exclude justices of the peace from its operation.

The above argument overlooks one fundamental fact. It is to be noted that under Section 449 of the Revised Administrative Code, the word "judge" was modified or qualified by the phrase "of First Instance," while under Section 54 of the Revised Election Code, no such modification exists. In other words, justices of the peace were expressly included in Section 449 of the Revised Administrative Code because the kinds of judges therein were specified, *i.e.*, judge of the First Instance and justice of the peace. In Section 54, however, there was no necessity anymore to include justices of the peace in the enumeration because the legislature had availed itself of the more generic and broader term, "judge." It was a term not modified by any word or phrase and was intended to comprehend all kinds of judges, like judges of the Courts of First Instance, judges of the Courts of Agrarian Relations, judges of the Courts of Industrial Relations and justices of the peace.

The rule of *"casus omissus pro omisso habendus est"* is likewise invoked by the defendant-appellee. Under the said rule, a person, object or thing omitted from an enumeration must be held to have been omitted intentionally. If that rule is applicable to the present, then indeed, justices of the peace must be held to have been intentionally and deliberately exempted from the operation of Section 54 of the Revised Election Code.

The rule has no applicability to the case at bar. The maxim "*casus omissus*" can operate and apply only if and when the omission has been clearly established. In the case under consideration, it has already been shown that the legislature did not exclude or omit justices of the peace from the enumeration of officers precluded from engaging in partisan political activities. Rather, they were merely called by another term. In the new law, or Section 54 of the Revised Election Code, justices of the peace were just called "judges."

In insisting on the application of the rule of "*casus omissus*" to this case, defendant-appellee cites authorities to the effect that the said rule, being restrictive in nature, has more particular application to statutes that should be

strictly construed. It is pointed out that Section 54 must be strictly construed against the government since proceedings under it are criminal in nature and the jurisprudence is settled that penal statutes should be strictly interpreted against the state.

Amplifying on the above argument regarding strict interpretation of penal statutes, defendant asserts that the spirit of fair play and due process demand such strict construction in order to give "fair warning of what the law intends to do, if a certain line is passed, in language that the common world will understand." (Justice Holmes, in *McBoyle vs. U.S.*, 283 U.S. 25, L.Ed. 816).

The application of the rule of "*casus omissus*" does not proceed from the mere fact that a case is criminal in nature, but rather from a reasonable certainty that a particular person, object or thing has been omitted from a legislative enumeration. In the present case, and for reasons already mentioned, there has been no such omission. There has only been a substitution of terms.

Our law making body has consistently prohibited justices of the peace from participating in partisan politics. They were prohibited under the old Election Law since 1907 (Act No. 1582 and Act No. 1709). Likewise, they were so enjoined by the Revised Administrative Code. Another law which expressed the prohibition to them was Act No. 3387, and later, Com. Act No. 357.

ORDER OF DISMISSAL IS SET ASIDE. CASE REMANDED FOR TRIAL ON THE MERITS.

STARE DECISIS

Policy of courts to stand by precedent and not disturb settled point. (*Neff vs. George*, 364 Ill. 306, 4 N.E. 2d 388). The doctrine that, when court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same, regardless of whether the parties and property are the same. (*Horne vs. Moody*, Tex. Civ, App., 146 S.W. 2d 505).

Under the doctrine of *stare decisis et non quieta movere*, a point of law already established will, generally, be followed by the same determining court and by all courts of lower rank in subsequent cases where the same legal issue is raised.

The Court has time and again stated that the rule on *stare decisis* promotes stability in the law and should, therefore, be accorded respect. However, blind adherence to precedents, simply as precedent, no longer rules. More important than anything else is that the court is right, thus its duty to abandon any doctrine found to be in violation of the law in force. (*CIR vs. PLDT*, 478 SCRA 61, Dec. 15, 2005).

ILLUSTRATIVE CASE:

Stare Decisis. Follow past precedents and do not disturb what has been settled. Matters already decided on the merits cannot be relitigated again and again.

J.M. TUASON AND CO. INC., ET AL. *vs.* HON. HERMINIO C. MARIANO, MANUELA AQUIAL, MARIA AQUIAL, SPOUSES JOSE M. CORDOVA AND SATURNINA C. CORDOVA
G.R. No. L-33140, October 23, 1978
85 SCRA 644

FACTS: This is another litigation regarding the validity of the much controverted Original Certificate of Title No. 735 covering the Santa Mesa and Diliman Estates of the Tuason mayorazgo or Entail with areas of 877 (879) and 1,625 hectares, respectively. (*Barretto vs. Tuason*, 50 Phil. 888 [1926]; Benin case, *infra*).

On October 1, 1965, Manuela Aquial and Maria Aquial filed a complaint in *forma pauperis* in the Court of First Instance of Rizal, Pasig Branch X, wherein they prayed that they be declared the owners of a parcel of land located at Balara, Marikina, Rizal (now Quezon City) and bounded on the north by Sapang Mapalad, on the south by the land of

Eladio Tiburcio, on the east by Sapang Kolotkolotan, and on the west by Sapang Kuliat. The land, which has an area of three hundred eighty-three quiñones, was allegedly acquired by their father by means of a Spanish title issued to him on May 10, 1877. (Civil Case No. 8943).

They alleged that sometime in 1960, or after J.M. Tuason & Co., Inc. had illegally entered upon that land, they discovered that it had been fraudulently or erroneously included in OCT No. 735 of the Registry of Deeds of Rizal and that it was registered in the names of defendants Mariano, Teresa, Juan, Demetrio and Augusto, all surnamed Tuason, pursuant to a decree issued on July 6, 1914 in Case No. 7681 of the Court of Land Registration.

Plaintiffs Aquial prayed that OCT No. 735 and the titles derived therefrom be declared void due to certain irregularities in the land registration proceeding. They asked for damages.

Defendant J.M. Tuason & Co., Inc. filed a motion to dismiss on the grounds of lack of jurisdiction, improper venue, prescription, laches and prior judgment. The plaintiffs opposed that motion. The lower court denied it. The grounds of the motion to dismiss were pleaded as affirmative defenses in the answer of defendants Tuason and J.M. Tuason & Co., Inc. They insisted that a preliminary hearing be held on those defenses.

On January 25, 1967, the spouses Jose M. Cordova and Saturnina C. Cordova, who had bought eleven hectares of the disputed land from the plaintiffs, were allowed to intervene in the case.

Hence, defendants filed this petition for *certiorari* and prohibition.

ISSUE: Whether or not OCT No. 735 and the titles derived therefrom can be questioned at this late hour by respondents Aquial and Cordova.

HELD: The supposed irregularities in the land registration proceedings, which led to the issuance of the decree upon which OCT No. 735 was based, are the same issues raised in Civil Cases Nos. 3621, 3622 and 3623 of the lower court. The

1965 decision of Judge Eulogio Mencia in those cases, invalidating OCT No. 735, is annexed to the complaint of the Aquials. It is cited by them to support their action and it might have encouraged them to ventilate their action in court.

On appeal to this Court, the decision was reversed and the validity of OCT No. 735 and the titles derived therefrom was once more upheld. (*Benin vs. Tuason*, L-26127; *Alcantara vs. Tuason*, L-26128 and *Pili vs. Tuason*, L-26129, all decided on June 28, 1974, 57 SCRA 531).

The ruling in the Benin, Alcantara and Pili cases was applied in *Mara, Inc. vs. Estrella*, L-40511, July 25, 1975, 65 SCRA 471. That ruling is simply a reiteration or confirmation of the holding on the following cases directly or incidentally sustaining OCT No. 735: *Bank of the P.I. vs. Acuña*, 59 Phil. 183 (1933); *Tiburcio vs. PHHC*, 106 Phil. 477 (1959); *Galvez and Tiburcio vs. Tuason y de la Paz*, 119 Phil. 612; 10 SCRA 344 (1964); *Alcantara vs. Tuazon*, 92 Phil. 796 (1953); *Santiago vs. J.M. Tuason & Co., Inc. vs. Santiago*, 99 Phil. 615 (1956); *J.M. Tuason & Co., Inc. vs. De Guzman*, 99 Phil. 281 (1956); *J.M. Tuason & Co., Inc. vs. Aguirre*, 117 Phil. 110; 7 SCRA 109 (1963); *J.M. Tuason & Co., Inc. vs. Macalindong*, 116 Phil. 1227; 6 SCRA 938 (1962); *J.M. Tuason & Co., Inc. vs. Magdangal*, 114 Phil. 42; 4 SCRA 84 (1962); *Varsity Hills, Inc. vs. Navarro*, L-30889, February 29, 1972, 43 SCRA 503, and *People's Homesite and Housing Corporation vs. Mencias*, L-24114, August 16, 1967, 20 SCRA 1031.

Considering the governing principle of *stare decisis et non quieta movere* (follow past precedents and do not disturb what has been settled) it becomes evident that respondents Aquial and Cordova cannot maintain their action in Civil Case No. 8943 without eroding the long settled holding of the courts that OCT No. 735 is valid and no longer open to attack.

"It is against public policy that matters already decided on the merits be relitigated again and again, consuming the courts' time and energies at the expense of other litigants: *Interest rei publicae ut finis sit litium.*" (*Varsity Hills, Inc. vs. Navarro, supra*).

TRIAL COURT DIRECTED TO DISMISS CIVIL CASE NO. 8943 WITH PREJUDICE.

STARE DECISIS ET NON QUIETA MOVERE, which means to adhere to precedents, and not to unsettle things, which are established.

ROMMEL C. ARNADO *v.* COMMISSION ON ELECTIONS AND FLORANTE CAPITAN
G.R. No. 210164, August 18, 2015

FACTS: Petitioner Arnado is a natural-born Filipino citizen who lost his Philippine citizenship after he was naturalized as citizen of the United States of America (USA). Subsequently, and in preparation for his plans to run for public office in the Philippines, Arnado applied for repatriation under Republic Act No. 9225 (RA 9225) before the Consul General of the Philippines in San Francisco, USA. He took an Oath of Allegiance to the Republic of the Philippines on July 10, 2008 and, on even date, an Order of Approval of Citizenship Retention and Re acquisition was issued in his favor. On April 3, 2009, Arnado executed an Affidavit of Renunciation of his foreign citizenship. On November 30, 2009, Arnado filed his Certificate of Candidacy (CoC) for the mayoralty post of Kauswagan, Lanao del Norte for the May 10, 2010 national and local elections. Linog C. Balua (Balua), another mayoralty candidate, however, filed a petition to disqualify Arnado and/or to cancel his CoC on the ground, among others, that Arnado remained a US citizen because he continued to use his US passport for entry to and exit from the Philippines after executing aforesaid Affidavit of Renunciation. While Balua's petition remained pending, the May 10, 2010 elections proceeded where Arnado garnered the highest number of votes for the mayoralty post of Kauswagan and was proclaimed the winning candidate.

On October 5, 2010, the Comelec First Division issued a Resolution holding that Arnado's continued use of his US passport effectively negated his April 3, 2009 Affidavit of Renunciation. Thus, he was disqualified to run for public office for failure to comply with the requirements of RA 9225. The Comelec First Division accordingly nullified his proclamation. Arnado moved for reconsideration. In the meantime, Casan Macode Maquiling (Maquiling), another mayoralty candidate who garnered the second highest number of votes, intervened in the case.

On February 2, 2011, the Comelec *En Banc* rendered a Resolution reversing the ruling of the Comelec First Division. It held that Arnado's use of his US passport did not operate to revert his status to dual citizenship.

On April 16, 2013, this Court rendered its Decision in *Maquiling*. Voting 10-5, it annulled and set aside the Comelec *En Banc*'s February 2, 2011 Resolution, disqualified Arnado from running for elective position, and declared Maquiling as the duly elected mayor of Kauswagan, Lanao Del Norte in the May 10, 2010 elections. In so ruling, the majority of the Members of the Court opined that in his subsequent use of his US passport, Arnado effectively disavowed or recalled his April 3, 2009 Affidavit of Renunciation. The issuance of this Court's April 16, 2013 Decision sets the stage for the present controversy. On May 9, 2013 or shortly after the Court issued its Decision in *Maquiling*, Arnado executed an Affidavit Affirming Rommel C. Arnado's "Affidavit of Renunciation Dated April3, 2009." The following day or on May 10, 2013, Capitan, Arnado's lone rival for the mayoralty post, filed a Petition seeking to disqualify him from running for municipal mayor of Kauswagan and/or to cancel his CoC based on the ruling of this Court in *Maquiling*. The case was docketed as SPA No. 13-309 (DC) and was raffled to the Comelec's Second Division. The resolution of said petition was, however, overtaken by the May 13, 2013 elections where Arnado garnered 8,902 votes (84% of the total votes cast) while Capitan obtained 1,707 (16% of the total votes cast) votes only. On May 14, 2013, Arnado was proclaimed as the winning candidate.

Unfazed, Capitan filed another Petition this time seeking to nullify Arnado's proclamation in view of the Maquiling

decision, where Arnado is disqualified from serving for any local elective office.

On September 6, 2013, the Comelec Second Division promulgated a Resolution granting the petition in SPA No. 13-309 (DC) and disqualifies Arnado from running in the May 13, 2013 elections. Following Maquiling, it ratiocinated that at the time he filed his CoC on October 1, 2012, Arnado still failed to comply with the requirement of RA 9225 of making a personal and sworn renunciation of any and all foreign citizenship. While he executed the April 3, 2009 Affidavit of Renunciation, the same was deemed withdrawn or recalled when he subsequently traveled abroad using his US passport, as held in *Maquiling*. On December 9, 2013, the Comelec *En Banc* affirmed the ruling of the Comelec Second Division.

ISSUE: Whether or not the doctrine laid down in Maquiling case is applicable.

HELD: The Petition is devoid of merit. The circumstances surrounding the qualification of Arnado to run for public office during the May 10, 2010 and May 13, 2013 elections, to reiterate for emphasis, are the same. Arnado's use of his US passport in 2009 invalidated his oath of renunciation resulting in his disqualification to run for mayor of Kauswagan in the 2010 elections. Since then and up to the time he filed his CoC for the 2013 elections, Arnado had not cured the defect in his qualification. *Maquiling*, therefore, is binding on and applicable to this case following the salutary doctrine of *stare decisis et non quieta movere*, which means to adhere to precedents, and not to unsettle things which are established. Under the doctrine, "when the court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same." It enjoins adherence to judicial precedents and bars relitigation of the same issue.

Petition DISMISSED, the assailed Comelec Resolutions AFFIRMED.

CHAPTER IV

CONSTRUCTION AND INTERPRETATION OF WORDS AND PHRASES

It is now clear that legislative intent can be ascertained from the language of the statute itself. When the language of the statute is clear and unambiguous it must be applied literally. It is also true that ambiguity is caused by the language of the statute itself. More often, the use of words and phrases can cause obscurity in the statute. Philippine jurisprudence have vast repositories on the construction and interpretation of words and phrases, some of which are taken from American jurisprudence.

WHEN THE LAW DOES NOT DISTINGUISH, COURTS SHOULD NOT DISTINGUISH

It is a well-recognized rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos.* The rule, founded on logic, is a corollary of the principle that general words and phrases in a statute should ordinarily be accorded their natural and general significance. The rule requires that a general term or phrase should not be reduced into parts and one part distinguished from the other so as to justify its exclusion from the operation of the law. In other words, there should be no distinction in the application of a statute where none is indicated. For courts are not authorized to distinguish where the law makes no distinction. They should instead administer the law not as they think it ought to be but as they find it and without regard to consequences.

A corollary of the principle is the rule that where the law does not make any exception, courts may not except something therefrom, unless there is a compelling reason apparent in the law to justify. (*Philippine British Assurance Co., Inc. v. The Hon. Intermediate Appellate Court, G.R. No. L-72005, May 29, 1987*)

ILLUSTRATIVE CASES:

When the law does not distinguish, courts should not distinguish. The rule, founded on logic, is a corollary of the principle that general words and phrases of a statute should ordinarily be accorded their natural and general significance.

REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE ARMED FORCES OF THE PHILIPPINES FINANCE CENTER (AFPFC)
***v.* DAISY R. YAHON**
G.R. No. 201043, June 16, 2014

FACTS: Daisy R. Yahon (respondent) filed a petition for the issuance of protection order under the provisions of Republic Act (R.A.) No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," against her husband, S/Sgt. Charles A. Yahon (S/Sgt. Yahon), an enlisted personnel of the Philippine Army who retired in January 2006. Respondent and S/Sgt. Yahon were married on June 8, 2003.

On September 28, 2006, the RTC issued a TEMPORARY PROTECTION ORDER, directing the respondent to, among others, provide reasonable financial support to the petitioner.

On July 23, 2007, the RTC granted the petition and issued a PERMANENT PROTECTION ORDER, ordering respondent, S/Sgt. CHARLES A. YAHON to give to petitioner, DAISY R. YAHON the amount of FOUR THOUSAND PESOS (Php4,000.00) per month by way of spousal support.

Pursuant to the order of the court dated February 6, 2007, respondent, S/Sgt. Charles A. Yahon, is directed to

give it to petitioner 50% of whatever retirement benefits and other claims that may be due or released to him from the government and the said share of petitioner shall be automatically deducted from respondent's benefits and claims and be given directly to the petitioner, Daisy R. Yahon.

Petitioner Armed Forces of the Philippines Finance Center (AFPFC), assisted by the Office of the Judge Advocate General (OTJAG), AFP, filed before the RTC a Manifestation and Motion (To Lift Temporary Protection Order Against the AFP) dated November 10, 2008. Petitioner also informed the RTC that S/Sgt. Yahon's check representing his 36 MLS had been processed and is ready for payment by the AFPFC.

However, petitioner asserted that while it has initially discharged its obligation under the TPO, the RTC had not acquired jurisdiction over the military institution due to lack of summons, and hence the AFPFC cannot be bound by the said court order.

In its Order dated December 17, 2008, the RTC denied the aforesaid motion for having been filed out of time. Petitioner's motion for reconsideration was likewise denied under the RTC's Order dated March 6, 2009.

On May 27, 2009, petitioner filed a petition for *certiorari* before the CA praying for the nullification of the aforesaid orders and decision insofar as it directs the AFPFC to automatically deduct from S/Sgt. Yahon's retirement and pension benefits and directly give the same to respondent as spousal support.

Petitioner contends that the directive under the TPO to segregate a portion of S/Sgt. Yahon's retirement benefits was illegal because said moneys remain as public funds, citing the case of *Pacific Products v. Ong*. In that case, this Court sustained the CA when it held that the garnishment of the amount of P10,500 payable to BML Trading and Supply while it was still in the possession of the Bureau of Telecommunications was illegal and therefore, null and void. The CA therein relied on the previous rulings in *Director of Commerce and Industry v. Concepcion* and

Avendaño v. Alikpala, et al. wherein this Court declared null and void the garnishment of the salaries of government employees.

ISSUE: Whether or not retirement and pension benefits of government employees can be a proper subject of garnishment pursuant to R.A. 9262.

HELD: Section 8(g) of R.A. No. 9262[1] used the general term "employer," which includes in its coverage the military institution, S/Sgt. Yahon's employer. Where the law does not distinguish, courts should not distinguish. Thus, Section 8(g) applies to *all* employers, whether private or government.

It bears stressing that Section 8(g) providing for spousal and child support is a support enforcement legislation. In the United States, provisions of the Child Support Enforcement Act allow garnishment of certain federal funds where the intended recipient has failed to satisfy a legal obligation of child support. As these provisions were designed "to avoid sovereign immunity problems" and provide that "moneys payable by the Government to any individual are subject to child support enforcement proceedings," the law is clearly intended to "create a limited waiver of sovereign immunity so that state courts could issue valid orders directed against Government agencies attaching funds in their possession."

PETITION DENIED.

The rule is well-recognized that where the law does not distinguish, courts should not distinguish.

[1] Sec. 8 (g). Directing the respondent to provide support to the woman and/or child if entitled to legal support. Notwithstanding other laws to the contrary, the court shall order an appropriate percentage of the income or salary of the respondent to be withheld regularly by the respondent's employer for the same to be automatically remitted directly to the woman. Failure to remit and/or withhold or any delay in the remittance of support to the woman and/or child without justifiable cause shall renter the respondent or his employer liable for indirect contempt of court. (R.A. 9262)

JUANITO PILAR *vs.* COMMISSION ON ELECTIONS
G.R. No. 115245, July 11, 1995
245 SCRA 759

FACTS: On March 2, 1992, petitioner Juanito C. Pilar filed his certificate of candidacy for the position of member of the Sangguniang Panlalawigan of the province of Isabela.

On March 25, 1992, petitioner withdrew his certificate of candidacy.

In M.R. Nos. 93-2654 and 94-0065 dated November 3, 1993 and February 13, 1994 respectively, the COMELEC imposed upon petitioner the fine of Ten Thousand Pesos (P10,000.00) for failure to file his statement of contributions and expenditures.

In M.R. No. 94-0594 dated February 24, 1994, the COMELEC denied the motion for reconsideration of petitioner and deemed final M.R. Nos. 93-2654 and 94-0065.

Petitioner went to the COMELEC *En Banc* (UND No. 94-040), which denied the petition in a resolution dated April 28, 1994.

Section 14 of R.A. No. 7166 entitled "An Act Providing for Synchronized National and Local Elections and for Electoral Reforms, Authorizing Appropriations Therefor, and for Other Purposes" provides as follows:

> *"Statement of Contributions and Expenditures Effect of Failure to File Statement.*—Every candidate and treasurer of the political party shall, within thirty (30) days after the day of the election, file in duplicate with the offices of the Commission the full, true and itemized statement of all contributions and expenditures in connection with the election.
>
> "Except candidates for elective barangay office, failure to file the statements or reports in connection with electoral contributions and expenditures as required herein shall constitute an administrative offense for which the offenders shall be liable to pay an administrative fine ranging from One Thousand Pesos

(P1,000.00) to Thirty Thousand Pesos (P30,000.00), in the discretion of the Commission.

"The fine shall be paid within thirty (30) days from receipt of notice of such failure; otherwise, it shall be enforceable by a writ of execution issued by the Commission against the properties of the offender.

"It shall be the duty of every city or municipal election registrar to advise in writing, by personal delivery or registered mail, within five (5) days from the date of election, all candidates residing in his jurisdiction to comply with their obligation to file their statements of contributions and expenditures."

x x x x x x x x x

Petitioner argues that he cannot be held liable for failure to file a statement of contributions and expenditures because he was a "non-candidate," having withdrawn his certificate of candidacy three days after its filing. Petitioner posits that "it is clear from the law that the candidate must have entered the political contest, and should have either won or lost."

ISSUE: Whether or not the petitioner can be considered a candidate despite the withdrawal of his certificate of candidacy.

HELD: Petitioner's argument is without merit.

Section 14 of R.A. No. 7166 states that "every candidate" has the obligation to file his statement of contribution and expenditures.

Well-recognized is the rule that where the law does not distinguish, courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos.* (*Philippine British Assurance Co., Inc. vs. Intermediate Appellate Court*, 150 SCRA 520 [1987]; *cf. Olfato vs. Commission on Elections*, 103 SCRA 741 [1981]). No distinction is to be made in the application of a law where none is indicated. (*Lo Cham vs. Ocampo*, 77 Phil. 635 [1946]).

In the case at bench, as the law makes no distinction or qualification as to whether the candidate pursued his candidacy or withdrew the same, the term "every candidate"

must be deemed to refer not only to a candidate who pursued his campaign, but also to one who withdrew his candidacy.

The COMELEC, the body tasked with the enforcement and administration of all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall (The Constitution of the Republic of the Philippines, Art. IX[C], Sec. 2[1]), issued Resolution No. 2348 in implementation or interpretation of the provisions of Republic Act No. 7166 on election contributions and expenditures. Section 13 of Resolution No. 2348 categorically refers to "all candidates who filed their certificates of candidacy."

Furthermore, Section 14 of the law uses the word "shall." As a general rule, the use of the word "shall" in a statute implies that the statute is mandatory, and imposes a duty which may be enforced, particularly if public policy is in favor of this meaning or where public interest is involved. We apply the general rule. (*Baranda vs. Gustilo*, 165 SCRA 757 [1988]; *Diokno vs. Rehabilitation Finance Corporation*, 91 Phil. 608 [1952]).

PETITION DISMISSED.

If the law makes no distinction, neither should the Court.

PEOPLE OF THE PHILIPPINES *vs.* HON. JUDGE ANTONIO C. EVANGELISTA AND GUILDO S. TUGONON
G.R. No. 110898, February 20, 1996,
253 SCRA 714

FACTS: Private respondent Guildo S. Tugonon was charged and convicted of frustrated homicide in the Regional Trial Court of Misamis Oriental (Branch 21) and was sentenced to one year of *prision correccional* in its minimum period and ordered to pay to the offended party P5,000.00 for medical expense, without subsidiary imprisonment, and the costs. The RTC appreciated in his favor the privileged mitigating circumstances of incomplete self-defense and the mitigating circumstance of voluntary surrender.

On appeal, the Court of Appeals affirmed private respondent's conviction but modified his sentence by imposing on him an indeterminate penalty of 2 months of *arresto mayor*, as minimum to 2 years and 4 months of *prision correccional*, as maximum.

On December 21, 1992, respondent Judge Antonio C. Evangelista of the RTC set the case for repromulgation on January 4, 1993.

On December 28, 1992, private respondent filed a petition for probation.

On February 18, 1993, Chief Probation and Parole Officer Isaias B. Valdehueza recommended denial of private respondent's application for probation on the ground that by appealing the sentence of the trial court, when he could have then applied for probation, private respondent waived the right to make his application. The Probation Officer thought the present case to be distinguishable from *Santos To vs. Paño*, 120 SCRA 8 (1983), in the sense that in this case, the original sentence imposed on private respondent by the trial court (1 year of imprisonment) was probationable and there was no reason for private respondent not to have filed his application for probation then, whereas in *Santos To vs. Paño* the penalty only became probationary after it had been reduced as a result of the appeal.

The RTC set aside the Probation Officer's recommendation and granted private respondent's application for probation in its order of April 23, 1993. Hence, this petition by the prosecution.

ISSUE: Whether or not the RTC committed a grave abuse of its discretion by granting private respondent's application for probation despite the fact that he had appealed from the judgment of his conviction of the trial court.

HELD: The Court holds that it did.

Until its amendment by P.D. No. 1990 in 1986, it was possible under P.D. No. 968, otherwise known as the Probation Law, for the accused to take his chances on appeal by allowing probation to be granted even after an accused had appealed his sentence and failed to obtain an acquittal, just so long as he had not yet started to serve the sentence. Accordingly, in *Santos To vs. Paño*, it was held that the fact that the accused had appealed did not bar him from applying for probation especially because it was as a result of the appeal that his sentence was reduced and made the probationable limit.

The law was, however, amended by P.D. No. 1990 which took effect on January 15, 1986 precisely to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable for the purpose of securing an acquittal and applying for probation only if the accused fails in his bid. Thus, as amended by P.D. No. 1990, Section 4 of the Probation Law now reads:

> "Section 4. *Grant of Probation.*—Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; *Provided*, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.
>
> "Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.
>
> "An order granting or denying probation shall not be appealable." (Emphasis added).

Since private respondent filed his application for probation on December 28, 1992, after P.D. No. 1990 had taken effect, it is covered by the prohibition that "no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction" and that "the filing of the application shall be deemed a waiver of the right to appeal." Having appealed from the judgment of the trial court and having applied for probation

only after the Court of Appeals had affirmed his conviction, private respondent was clearly precluded from the benefits of probation.

Private respondent argues, however, that a distinction should be drawn between meritorious appeals (like his appeal notwithstanding the appellate court's affirmance of his conviction) and unmeritorious appeals. But the law does not make any distinction and so neither should the Court. In fact if an appeal is truly meritorious the accused would be set free and not only given probation.

PETITION GRANTED, JUDGMENT GRANTING PROBATION SET ASIDE.

EXCEPTIONS IN THE STATUTE

When the law does not make any exception, courts may not except something unless compelling reasons exist to justify it.

ILLUSTRATIVE CASE:

CECILIO DE VILLA *vs.* COURT OF APPEALS
G.R. No. 87416, April 8, 1991
195 SCRA 722

FACTS: On October 5, 1987, petitioner Cecilio S. de Villa was charged before the Regional Trial Court of the National Capital Judicial Region (Makati, Branch 145) with violation of Batas Pambansa Bilang 22, the Bouncing Checks Law.

It is undisputed that the check in question was executed and delivered by the petitioner to private respondent at Makati, Metro Manila.

However, petitioner argues that the check in question was drawn against the dollar account of petitioner with a foreign bank, and therefore, not covered by the Bouncing Checks Law. (B.P. Blg. 22).

HELD: It will be noted that the law does not distinguish the currency involved in the case. As the trial court correctly ruled in its order dated July 5, 1988:

> "Under the Bouncing Checks Law (B.P. Blg. 22), foreign checks, provided they are either drawn and issued in the Philippines though payable outside thereof are within the coverage of said law."

It is a cardinal principle in statutory construction that where the law does not distinguish, courts should not distinguish. Parenthetically, the rule is that where the law does not make any exception, courts may not except something unless compelling reasons exist to justify it. (*Phil. British Assurance Co., Inc. vs. IAC*, 150 SCRA 520 [1987]).

PETITION DISMISSED.

GENERAL AND SPECIAL TERMS

General terms in a statute are to receive a general construction, unless restrained by the context or by plain inferences from the scope and purpose of the act.

General terms or provisions in a statute may be restrained and limited by specific terms or provisions with which they are associated.

Special terms in a statute may sometimes be expanded to a general signification by the consideration that the reason of the law is general. (Black, *Construction and Interpretation of Laws*, p. 196).

General terms may be restricted by specific words, with the result that the general language will be limited by specific language which indicates the statute's object and purpose. The rule is applicable only to cases wherein, except for one general term, all the items in an enumeration belong to or fall under one specific class.

ILLUSTRATIVE CASE:

COLGATE-PALMOLIVE PHILIPPINES, INC. *vs.* HON. PEDRO M. GIMENEZ AS AUDITOR GENERAL
G.R. No. L-14787, January 28, 1961
1 SCRA 267

FACTS: The petitioner Colgate-Palmolive Philippines, Inc., is a corporation duly organized and existing under Philippine laws engaged in the manufacture of toilet preparations and household remedies. On several occasions, it imported from abroad various materials such as irish moss extract, sodium benzoate, sodium saccharinate, precipitated calcium carbonate and dicalcium phosphate, for use as stabilizers and flavoring of the dental cream it manufactures. For every importation made of these materials, the petitioner paid to the Central Bank of the Philippines the 17% special excise tax on the foreign exchange used for the payment of the cost, transportation and other charges incident thereto, pursuant to Republic Act No. 601, as amended, commonly known as the Exchange Tax Law.

On March 14, 1956, the petitioner filed with the Central Bank three applications for refund of the 17% special excise tax it had paid in the aggregate sum of P113,343.99. The claim for refund was based on section 2 of Republic Act No. 601, which provides that "foreign exchange used for as payment of the cost, transportation and/or other charges incident to the importation into the Philippines of stabilizer and flavors shall be refunded to any importer making application therefor, upon satisfactory proof of actual importation under the rules and regulations to be promulgated pursuant to section seven thereof." After the applications were processed by the Officer-in-Charge of the Exchange Tax Administration of the Central Bank, that official advised the petitioner of the total sum of P113,343.99 claimed by it for refund. The amount of P23,958.13 representing the 17% special exchange tax on the foreign exchange used to import irish moss extract, sodium

benzoate and precipitated calcium carbonate had been approved. The auditor of the Central Bank, however, refused to pass in audit its claims for refund even for the reduced amount fixed by the Officer-in-Charge of the Exchange Tax Law.

Petitioner appealed to the Auditor General, but the latter on December 4, 1958 affirmed the ruling of the auditor of the Central Bank, maintaining that the term "stabilizer and flavors" mentioned in section 2 of the Exchange Tax Law refers only to those used in the preparation or manufacture of food or food products. Not satisfied, the petitioner brought the case to this Court thru the present petition for review.

ISSUE: Whether or not the foreign exchange used by petitioner for the importation of dental cream stabilizers and flavors is exempt from the 17% special excise tax imposed by the Exchange Tax Law (Republic Act No. 601) so as to entitle it to refund under section 2 thereof.

HELD: Section 2 of Republic Act No. 601 reads as follows:

> "Sec. 2. The tax collected under the preceding section on foreign exchange used for the payment of the cost, transportation and/or other charges incident to importation into the Philippines of rice, flour, canned milk, cattle and beef, canned fish, soya beans, butterfat, chocolate, malt syrup, tapioca, stabilizer and flavors, vitamin concentrate, fertilizer, poultry feed; textbooks, reference books, and supplementary readers approved by the Board of Textbooks and/or established public or private educational institutions; newsprint imported by or for publishers for use in the publication of books, pamphlets, magazines and newspapers; book paper, book cloth, chip board imported for the printing of supplementary readers (approved by the Board of Textbooks) to be supplied to the Government under contracts perfected before the approval of this Act, the quantity thereof to be certified by the Director of Printing; anesthetics, antibiotics, vitamins, hormones, X-Ray films, laboratory reagents, biologicals, dental supplies, and pharmaceutical drugs necessary for compounding medicines; medical and hospital supplies listed in the appendix to this Act, in quantities to be certified by the Director of Hospitals as actually needed by the hospitals applying therefor; drugs and medicines listed in the said appendix; and such other drugs and medicines as may be

certified by the Secretary of Health from time to time to promote and protect the health of the people of the Philippines shall be refunded to any importer making application therefor upon satisfactory proof of actual importation under the rules and regulations to be promulgated pursuant to section seven thereof."

The ruling of the Auditor General that the term "stabilizer and flavors" as used in the law refers only to those materials actually used in the preparation or manufacture of food and food products is based, apparently, on the principle of statutory construction that "general terms must be restricted by specific words, with the result that the general language will be limited by the specific language which indicates the statute's object and purpose." (*Statutory Construction* by Crawford, 1940 ed., pp. 324-325). The rule however, is, in our opinion, applicable only to cases where, except for one general term, all the items in an enumeration belong to or fall under one specific class. In the case at bar, it is true that the term "stabilizer and flavors" is preceded by a number of articles that may be classified as food or food products, but it is likewise true that the other items immediately following it do not belong to the same classification. Thus "fertilizer" and "poultry feed" do not fall under the category of food or food products because they are used in the farming and poultry industries, respectively. "Vitamin concentrate" appears to be more of a medicine than food or food product, for, as a matter of fact, vitamins are among those enumerated in the list of medicines and drugs appearing in the appendix of the law. It should also here be stated that "cattle" which is among those listed preceding the term in question includes not only those intended for slaughter but also for breeding purposes. Again, it is noteworthy that under Republic Act No. 814 amending the above-quoted section of Republic Act No. 601, "industrial starch," which does not always refer to food for human consumption, was added among the items grouped with "stabilizer and flavors." Thus, on the basis of the grouping of the articles alone, it cannot validly be maintained that the term "stabilizer and flavors" as used in the above-quoted provision of the Exchange Tax Law refers

only to those used in the manufacture of food and food products. This view is supported by the principle *"Ubi lex non distinguit nec nos distinguire debemos,"* or "where the law does not distinguish, neither do we distinguish." (*Ligget & Myers Tobacco Company vs. Collector of Internal Revenue*, 53 Off. Gaz. No. 15, page 4831). Since the law does not distinguish between "stabilizer and flavors" used in the preparation of food and those used in the manufacture of toothpaste or dental cream, we are not authorized to make any distinction and must construe the words in their general sense. The rule of construction that general and unlimited terms are restrained and limited by particular recitals when used in connection with them, does not require the rejection of general terms entirely. It is intended merely as an aid in ascertaining the intention of the legislature and is to be taken in connection with other rules of construction. (See *Handbook on Construction and Interpretation of Laws* by Black, pp. 215-216, 2nd ed.).

Bijuda De Ape

Tomas v. Tomas

Salfenillas v. Salfenillas

Same with Black Appendix Case

Study the procedural history/sequence of the case

DECISION REVERSED.

GENERAL TERMS FOLLOWING SPECIAL TERMS (*EJUSDEM GENERIS*)

It is a general rule of statutory construction that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. But this rule must be discarded where the legislative intention is plain to the contrary.

This rule is commonly called the *"ejusdem generis"* rule, because it teaches us that broad and comprehensive expressions in an act, such as "and all others," or "any others," are usually to be restricted to persons or things "of the same kind" or class with those specially named in the preceding words." It is very frequently used and applied in the interpretation of statutes. (Black, *Construction and Interpretation of Laws*, pp. 203-204).

Applying the rule in statutory construction known as *ejusdem generis*, that is where general words follow an enumeration of persons or things, by words of a particular, and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned.

ILLUSTRATIVE CASE: Study

REPUBLIC OF THE PHILIPPINES *vs.* HON. EUTROPIO MIGRINO AND TROADIO TECSON
G.R. No. 89483, August 30, 1990
189 SCRA 289

FACTS: The New Armed Forces of the Philippines Anti-Graft Board was created to "investigate the unexplained wealth and corrupt practices of AFP personnel, both retired and in active service." The Board shall be primarily charged with the task of investigating cases of alleged violations of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019, as amended) and shall make the necessary recommendation to appropriate government agencies and instrumentalities with respect to the action to be taken thereon based on its findings.

Acting on information received by the Board, which indicated the acquisition of wealth beyond his lawful income, private respondent Lt. Col. Troadio Tecson (ret.) was required by the Board to submit his explanation/comment together with his supporting evidence. The Board proceeded with its investigation and submitted its resolution, dated June 30, 1988, recommending that private respondent be prosecuted and tried for violation of Rep. Act No. 3019, as amended, and Rep. Act No. 1379, as amended.

The case was set for preliminary investigation by the PCGG, after the denial of respondent's motion to dismiss and motion for reconsideration by the petitioner PCGG.

On March 13, 1989, private respondent filed a petition for prohibition with preliminary injunction with the Regional Trial Court in Pasig, Metro Manila. Petitioner filed a motion to dismiss and opposed the application for the issuance of a writ of preliminary injunction on the principal ground that the Regional Trial Court had no jurisdiction over the Board, citing the case of *PCGG vs. Peña*, G.R. No. L-77663, April 12, 1988, 159 SCRA 556. Private respondent opposed the motion to dismiss. Petitioner replied to the opposition.

On June 23, 1989, respondent judge denied petitioner's motion to dismiss. On June 26, 1989, respondent judge granted the application for the issuance of a writ of preliminary injunction, enjoining petitioners from investigating or prosecuting private respondents under Rep. Acts Nos. 3019 and 1379 upon the filing of a bond in the amount of Twenty Thousand Pesos (P20,000.00).

Hence, the instant petition for *certiorari*, prohibition and or *mandamus* to review the orders of the Regional Trial Court of Pasig, Metro Manila.

In his pleadings, private respondent's pivotal point is that he is not one of the subordinates contemplated in Executive Orders 1, 2, 14 and 14-A as the alleged illegal acts being imputed to him, that of alleged amassing wealth beyond his legal means while Finance Officer of the Philippine Constabulary, are acts of his own alone, not connected with his being a crony, business associate, etc. or subordinate as the petition does not allege so. Hence, the PCGG has no jurisdiction to investigate him.

ISSUE: Whether or not private respondent may be investigated and caused to be prosecuted by the Board, an agency of the PCGG for violation of Rep. Acts Nos. 3019 and 1379.

HELD: According to petitioners, the PCGG has the power to investigate and cause the prosecution of private respondent because he is a "subordinate" of former President Marcos. They cite the PCGG's jurisdiction over.

(a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate

family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship. [E.O. No. 1, sec. 2].

Undoubtedly, the alleged unlawful accumulation of wealth was done during the administration of President Marcos. However, what has to be inquired into is whether or not private respondent acted as a "subordinate" of Pres. Marcos within the contemplation of E.O. No. 1, the law creating the PCGG, when he allegedly unlawfully acquired the properties.

A close reading of E.O. No. 1 and related executive orders will readily show what is contemplated within the term "subordinate."

The Whereas Clauses of E.O. No. 1 express the urgent need to recover the ill-gotten wealth amassed by former President Ferdinand E. Marcos, his immediate family, relatives, and close associates both here and abroad.

E.O. No. 2 freezes "all assets and properties in the Philippines in which former President Marcos and/or his wife, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees have any interest or participation."

Applying the rule in statutory construction known as *ejusdem generis*, that is "where general words follow an enumeration of persons or things by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same kind or class as those specifically mentioned." (*Smith, Bell & Co., Ltd. vs. Register of Deeds of Davao*, 96 Phil. 53, 58 [1954], citing Black on *Interpretation of Laws*, 2nd Ed. 203).

The term "subordinate" as used in E.O. Nos. 1 and 2 would refer to one who enjoys a close association or relation with former Pres. Marcos and/or his wife, similar to the

immediate family member, relative, and close associate in E.O. No. 1 and the close relative, business associate, dummy, agent, or nominee in E.O. No. 2.

The PCGG is enjoined from proceeding with the investigation and prosecution of private respondent in I.S. No. 37 without prejudice to his investigation and prosecution by the appropriate prosecuting agency.

Rule of *ejusdem generis* merely a tool of statutory construction resorted to when legislative intent is uncertain.

Take note of this Case

THE PEOPLE OF THE PHILIPPINES *vs.* HON. VICENTE B. ECHAVEZ, JR., ET AL.
G.R. Nos. L-47757-61, January 28, 1980
95 SCRA 663

FACTS: The record shows that on October 25, 1977, Fiscal Abundio R. Ello filed with the lower court separate informations against sixteen persons charging them with squatting as penalized by Presidential Decree No. 772.

The decree (which took effect on August 20, 1975) provides:

> "SECTION 1. Any person who, with the use of force, intimidation or threat, or taking advantage of the absence or tolerance of the landowner, succeeds in occupying or possessing the property of the latter against his will for residential, commercial or any other purposes, shall be punished by an imprisonment ranging from six months to one year or a fine of not less than one thousand nor more than five thousand pesos at the discretion of the court, with subsidiary imprisonment in case of insolvency." (2nd paragraph is omitted). (Underscoring ours).

Five of the informations, wherein Ano Dacullo, Geronimo Oroyan, Mario Aparici, Ruperto Cajes and Modesto Suello were the accused, were raffled to Judge

Vicente B. Echaves, Jr. of Branch II. (Criminal Cases Nos. 1824, 1828, 1832, 1833 and 1839, respectively).

Before the accused could be arraigned, Judge Echaves *motu proprio* issued an omnibus order dated December 9, 1977 dismissing the five informations on the grounds (1) that it was alleged that the accused entered the land through "stealth and strategy," whereas under the decree the entry should be effected "with the use of force, intimidation or threat, or taking advantage of the absence or tolerance of the landowner," and (2) that under the rule of *ejusdem generis* the decree does not apply to the cultivation of a grazing land.

Because of that order, the fiscal amended the informations by using in lieu of "stealth and strategy" the expression "with threat, and taking advantage of the absence of the ranch owner and/or tolerance of the said ranch owner." The fiscal asked that the dismissal order be reconsidered and that the amended information be admitted.

The lower court denied the motion. It insisted that the phrase "and for other purposes" in the decree does not include agricultural purposes because its preamble does not mention the Secretary of Agriculture and makes reference to the affluent class.

From the order of dismissal, the fiscal appealed to this Court under Republic Act No. 5440.

ISSUE: Whether or not Presidential Decree No. 772, which penalizes squatting and similar acts, applies to agricultural lands.

HELD: While the Supreme Court affirmed the order of dismissal of the trial court, it declared that the rule of *ejusdem generis* (of the same kind or species) invoked by the trial court does not apply to this case. Here, the intent of the decree is unmistakable. It is intended to apply only to urban communities, particularly to illegal constructions. The rule of *ejusdem generis* is merely a tool of statutory construction which is resorted to when the legislative intent is uncertain.

(*Genato Commercial Corp. vs. Court of Tax Appeals*, 104 Phil. 615, 618; 28 C.J.S. 1049-50).

DECISION AFFIRMED. REVIEW FOOTNOTE OF THE CASE READ FULL TEXT

NOTE: P.D. No. 772 is totally repealed by R.A. No. 8368.

Under the principle of ejusdem generis, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned.

ALTA VISTA GOLF AND COUNTRY CLUB, *vs.* THE CITY OF CEBU, HON. MAYOR TOMAS R. OSMEÑA, IN HIS CAPACITY AS MAYOR OF CEBU, AND TERESITA C. CAMARILLO, IN HER CAPACITY AS THE CITY TREASURER
G.R. No. 180235, January 20, 2016

FACTS: Petitioner is a non-stock and non-profit corporation operating a golf course in Cebu City. On June 21, 1993, the *Sangguniang Panlungsod* of Cebu City enacted City Tax Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu" (Revised Omnibus Tax Ordinance). Section 42 of the said tax ordinance on amusement tax was amended by City Tax Ordinance Nos. 82 and 84 (which were enacted by the *Sangguniang Panlungsod* of Cebu City on December 2, 1996 and April 20, 1998, respectively) to read as follows:

> Section 42. *Rate of Tax.*—There shall be paid to the Office of the City Treasurer by the **proprietors, lessees or operators** of theaters, cinemas, concert halls, circuses and other similar places of entertainment, an amusement tax at the rate of thirty percent (30%), **golf courses and polo grounds at the rate of twenty percent (20%), of their gross receipts on entrance, playing green, and/or admission fees**; xxxx

In an Assessment Sheet dated August 6, 1998, petitioner was originally assessed deficiency business taxes, fees, and other charges for the year 1998, in the total amount of P3,820,095.68, which included amusement tax on its golf course amounting to P2,612,961.24 based on gross receipts of P13,064,806.20. Through the succeeding years, respondent Cebu City repeatedly attempted to collect from petitioner its deficiency business taxes, fees, and charges for 1998, a substantial portion of which consisted of the amusement tax on the golf course. Petitioner steadfastly refused to pay the amusement tax arguing that the imposition of said tax by Section 42 of the Revised Omnibus Tax Ordinance, as amended, was irregular, improper, and illegal. Petitioner reasoned that under the Local Government Code, amusement tax can only be imposed on operators of theaters, cinemas, concert halls, or places where one seeks to entertain himself by seeing or viewing a show or performance.

For failure to heed the demand of the City of Treasurer of Cebu City, on January 12, 2006, petitioner was served with a Closure Order dated December 28, 2005 issued by respondent City Mayor Osmeña due to operating a business without a business permit, non-payment of deficiencies on Business taxes and Amusement tax. The foregoing developments prompted petitioner to file with the RTC on January 13, 2006 a Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, against respondents. On March 14, 2007, the RTC issued a Resolution granting the Motion to Dismiss of respondents.

ISSUE: Whether or not the City of Cebu or any local government can validly impose amusement tax to the act of playing golf

HELD: There is merit in the instant Petition.

The Local Government Code authorizes the imposition by local government units of amusement tax under Section 140, which provides:

> Sec. 140. *Amusement Tax.*—(a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.
>
> x x x x x x x x x x x x x x x x
>
> "Amusement places," as defined in Section 131 (c) of the Local Government Code, "include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performance."

The pronouncements of the Court in *Pelizloy Realty Corporation v. The Province of Benguet*[36] are of particular significance to this case. The Court, in *Pelizloy Realty*, declared null and void the second paragraph of Article X, Section 59 of the Benguet Provincial Code, in so far as it imposes amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots. Applying the principle of *ejusdem generis*, as well as the ruling in the *PBA* case, the Court expounded on the authority of local government units to impose amusement tax under Section 140, in relation to Section 131(c), of the Local Government Code, as follows:

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."

The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class,

although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400].

Petition GRANTED.

EXPRESS MENTION AND IMPLIED EXCLUSION (*EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS*)

It is a general rule of statutory construction (to be applied under proper conditions and with important limitations) that the express mention of one person, thing, or consequence is tantamount to an express exclusion of all others. *Expressio unius est exclusio alterius*. Anything that is not included in the enumeration is excluded therefrom and a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein. The rule proceeds from the premise that the legislature would not have made specific enumeration in a statute if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned. (*San Pablo Manufacturing Corp. v Commissioner of Internal Revenue*, G.R. No. 147749, June 22, 2006, 492 SCRA 192)

The maxim *"expressio unius est exclusio alterius"* is of very important, though limited application in the interpretation of statutes. It is based upon the rules of logic and the natural workings of the human mind. But it is not to be taken as establishing a Procrustean standard to which all statutory language must be made to conform. On the contrary, it is useful only as a guide in determining the probable intention of the legislature, and if it should be clearly apparent, in any particular case, that the legislature did not in fact intend that its express mention of one thing should operate as an exclusion of all others, then the maxim must give way. (Black, *Construction and Interpretation of Laws*, pp. 219-220).

MUNICIPALITY OF NUEVA ERA, ILOCOS NORTE, REP. BY ITS MUNICIPAL MAYOR, CAROLINE ARZADON-GARVIDA *vs.* MUNICIPALITY OF MARCOS, ILOCOS NORTE, REP. BY ITS MUNICIPAL MAYOR, SALVADOR PILLOS, AND THE HONORABLE COURT OF APPEALS

G.R. No. 169435, February 27, 2008
547 SCRA 71

FACTS: The Municipality of Nueva Era was created from the settlements of Bugayong, Cabittaoran, Garnaden, Padpadon, Padsan, Paorpatoc, Tibangran, and Uguis, which were previously organized as *rancherias*, each of which was under the independent control of a chief. Governor General Francis Burton Harrison, acting on a resolution passed by the provincial government of Ilocos Norte, united these *rancherias*, and created the township of Nueva Era by virtue of Executive Order (E.O.) No. 66, dated September 30, 1916.

The Municipality of Marcos, on the other hand, was created on June 22, 1963, pursuant to Republic Act (R.A.) No. 3753, entitled "An Act Creating the Municipality of Marcos in the Province of Ilocos Norte." Section 1 of R.A. No. 3753 provides:

> "Section 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit, in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries:
>
> On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras.

Biluda De Ape
Tomas V. Tomas
Salenillas v. Salenillas
Same with the Abistado Case.
Study the proceedural history/ sequence of the case

> The Municipality of Marcos shall have its seat of government in the barrio of Biding."

Based on the first paragraph of the said Section 1 of R.A. No. 3753, it is clear that Marcos shall be derived from the listed *barangays* of Dingras, namely, Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit. The Municipality of Nueva Era or any of its *barangays* was not mentioned. Hence, if based only on said paragraph, it is clear that Nueva Era may not be considered as a source of territory of Marcos.

There is no issue insofar as the first paragraph is concerned, which named only Dingras as the mother municipality of Marcos. The problem, however, lies in the description of Marcos' boundaries as stated in the second paragraph, particularly in the phrase "on the East, by the Ilocos Norte-Mt. Province boundary."

On the basis of the said phrase, which described Marcos' eastern boundary, Marcos claimed that the middle portion of Nueva Era, which adjoins its eastern side, formed part of its territory. Its reasoning was founded upon the fact that Nueva Era was between Marcos and the Ilocos Norte-Apayao boundary such that if Marcos was to be bounded on the east by the Ilocos Norte-Apayao boundary, part of Nueva Era would consequently be obtained by it.

Marcos did not claim any part of Nueva Era as its own territory until after almost 30 years, or only on March 8, 1993, when its Sangguniang Bayan passed Resolution No. 93-015. Said resolution was entitled "Resolution Claiming an Area which is an Original Part of Nueva Era, But Separated Due to the Creation of Marcos Town in the Province of Ilocos Norte."

Marcos submitted its claim to the Sangguniang Panlalawigan of Ilocos Norte for its consideration and approval. The Sangguniang Panlalawigan, on the other hand, required Marcos to submit its position paper.

On March 29, 2000, the Sangguniang Panlalawigan of Ilocos Norte ruled in favor of Nueva Era, by dismissing the

case of Marcos. This decision was affirmed by the Regional Trial Court of Ilocos Norte.

In a Decision dated June 6, 2005, the Court of Appeals partly reversed the Regional Trial Court decision with the following disposition:

> "**WHEREFORE**, we **partially GRANT** the petition treated as one for *certiorari*. The **Decisions of both the Sangguniang Panlalawigan and Regional Trial Court of Ilocos Norte are REVERSED and SET ASIDE** insofar as they made the eastern boundary of the municipality of Marcos coterminous with the eastern boundary of Dingras town, and another is rendered extending the said boundary of Marcos to the boundary line between the province of Ilocos Norte and Kalinga-Apayao, **but the same Decisions are AFFIRMED** with respect to the denial of the claim of Marcos to the detached northern portion of *barangay* Sto. Niño, which should, as it is, hereby ordered to remain with the municipality of Nueva Era."

ISSUE: Whether or not the eastern boundary of Marcos extends over and covers a portion of Nueva Era.

HELD: Only the barrios (now *barangays*) of Dingras from which Marcos obtained its territory are named in R.A. No. 3753. To wit:

> "Section 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos."

Since only the *barangays* of Dingras are enumerated as Marcos' source of territory, Nueva Era's territory is, therefore, excluded.

Under the maxim *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the things upon which it is to operate, everything else must necessarily

and by implication be excluded from its operation and effect. This rule, as a guide to probable legislative intent, is based upon the rules of logic and natural workings of the human mind.

Had the legislature intended other *barangays* from Nueva Era to become part of Marcos, it could have easily done so by clear and concise language. Where the terms are expressly limited to certain matters, it may not by interpretation or construction be extended to other matters. The rule proceeds from the premise that the legislature would not have made specific enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.

Moreover, since the *barangays* of Nueva Era were not mentioned in the enumeration of *barangays* out of which the territory of Marcos shall be set, their omission must be held to have been done intentionally. This conclusion finds support in the rule of *casus omissus pro omisso habendus est*, which states that a person, object, or thing omitted from an enumeration must be held to have been omitted intentionally.

In the *Office of the Ombudsman vs. Valera*, 471 SCRA 715 (2005), where the authority of the Special Prosecutor to preventively suspend any officer or employee under his authority pending an investigation, it was held that R.A. No. 6770 has invariably mentioned the Special Prosecutor alongside the Ombudsman and/or the Deputy Ombudsman with respect to the manner of appointment, qualifications, term of office, grounds for removal from office, prohibitions and disqualifications and disclosure of relationship requirement. However, with respect to the grant of the power to preventively suspend. Section 24 of R.A. No. 6770[2] makes

[2] Sec. 24. *Preventive Suspension.*—The Ombudsman and his Deputy may preventively suspend any officer or employee under his authority pending an investigation. If in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more that six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

no mention of the Special Prosecutor. The obvious import of this exclusion is to withhold from the Special Prosecutor the power to preventively suspend. It is a basic precept of statutory construction that the express mention of one person, thing, act or consequence excludes all others as expressed in the familiar maxim *expressio unius est exclusio alterius*.

While R.A. No. 6770 accords the Special Prosecutor the same rank as that of the Deputy Ombudsman, Section 24 thereof expressly grants only to the Ombudsman and the Deputy Ombudsman the power to place under preventive suspension government officials and employees under their authority pending an administrative investigation.

However, if the Ombudsman delegates his authority to conduct administrative investigation to the Special Prosecutor and the latter finds that the preventive suspension of the public official or employee subject thereof is warranted, the Special Prosecutor may recommend to the Ombudsman to place the said public officer or employee under preventive suspension.

NOTE: Where a statute appears on its face to limit the operation of its provisions to particular persons or things by enumerating them, but no reason exists why other persons or things not so enumerated should not have been included, and manifest injustice will follow by not so including them, the maxim *expressio unius est exclusio alterius*, should not be invoked. (*People vs. Manantan*, 5 SCRA 684 (1962), citing *Blevius vs. Mullally*, 135 p. 307, 22 Cal. App. 59).

ASSOCIATED WORDS (*NOSCITUR A SOCIIS*)

Associated words explain and limit each other. When a word used in a statute is ambiguous or vague, its meaning may be made clear and specific by considering the company in which it is found and the meaning of the terms which are associated with it.

It is an ancient and fundamental rule in the construction of statutes that the meaning of a doubtful word or phrase may be ascertained by reference to the meaning of other words or phrases with which it is associated and that, where several things are referred to, they are presumed to be of the same class when connected by a copulative conjunction, unless a contrary intent plainly appears.

This rule is analogous to that which requires the words of a statute to be construed with reference to the subject matter of the act, but is not identical with it. That rule directs us to seek the exact meaning of a doubtful word or phrase by a consideration of the tenor of the whole law and the object and purpose of the legislature in enacting it; but the present rule is rather one of verbal criticism and applies to the case of several terms grouped together and mutually qualifying each other. It is expanded in the maxim *"noscitur a sociis."* (Black, *Construction and Interpretation of Laws*, p. 194).

GREEN: NA DISCUSS

Where a particular word is equally susceptible of various meanings, its correct construction may be made specific by considering the company of terms in which it is found or with which it is associated.

DRA. BRIGIDA S. BUENASEDA, ET AL. *vs.* SECRETARY JUAN FLAVIER, ET AL.
G.R. No. 106719, September 21, 1993
226 SCRA 645

FACTS: In a petition for *certiorari*, prohibition and *mandamus*, petitioner seeks to nullify the order of the Ombudsman dated January 7, 1992, directing the preventive suspension of petitioners Dra. Brigida S. Buenaseda, Chief of Hospital III and others.

The questioned order was issued in connection with the administrative complaint filed with the Ombudsman (OBM-ADM-0-91-0151) by the private respondents against the petitioners for violation of the Anti-Graft and Corrupt Practices Act.

Respondents argue that the power of preventive suspension given the Ombudsman under Section 24 of R.A. No. 6770 was contemplated by Section 13(8) of Article XI of the 1987 Constitution, which provides that the Ombudsman shall "exercise such other power or perform such functions or duties as may be provided by law."

On the other hand, the Solicitor General and the petitioners claim that under the 1987 Constitution, the Ombudsman can only recommend to the heads of the departments and other agencies the preventive suspension of officials and employees facing administrative investigation conducted by his office. Hence, he cannot order the preventive suspension himself.

They invoke Section 13(3) of the 1987 Constitution which provides that the Office of the Ombudsman shall have *inter alia* the power, function, and duty to:

> "Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure or prosecution, and ensure compliance therewith."

ISSUE: Whether or not the Ombudsman has the power to suspend government officials and employees working on the offices other than the Office of the Ombudsman, pending the investigation of the administrative complaints filed against said officials and employees.

HELD: The line of argument of the Solicitor General is a siren call that can easily mislead, unless one bears in mind that what the Ombudsman imposed on petitioners was not a punitive but only a preventive suspension.

When the Constitution vested on the Ombudsman the power "to recommend the suspension" of a public official or employees (Sec. 13[3]), it referred to "suspension" as punitive measure. All the words associated with the word "suspension" in said provision referred to penalties in administrative cases, *e.g.*, removal, demotion, fine, censure. Under the rule *Noscitur a sociis*, the word "suspension" should be given the same sense as the other words with which it is associated. Where a particular word is equally susceptible of various meanings, its correct construction may be made specific by considering the company of terms in which it is found or with which it is associated. (*Co Kim Chan vs. Valdez Tan Keh*, 75 Phil. 371 [1945]; *Caltex [Phils.], Inc. vs. Palomar*, 18 SCR A 247 [1966]).

Section 24 of R.A. No. 6770, which grants the Ombudsman the power to preventively suspend public officials and employees facing administrative charges before him is a procedural, not a penal statute. The preventive suspension is imposed after compliance with the requisites therein set forth, as an aid in the investigation of the administrative charges.

Under the Constitution, the Ombudsman is expressly authorized to recommend to the appropriate official the discipline or prosecution of erring public officials or employees. In order to make an intelligent determination whether to recommend such actions, the Ombudsman has to conduct such investigation in an expeditious and efficient manner, he may need to suspend the respondent.

The need for the preventive suspension may arise from several causes, among them, the danger of tampering or destruction of evidence in the possession of respondent; the intimidation of witnesses, etc. The Ombudsman should be given the discretion to decide when the persons facing administrative charges should be preventively suspended.

The purpose of R.A. No. 6770 is to give the Ombudsman such powers as he may need to perform efficiently the task committed to him by the Constitution. Such being the case, said statute, particularly its provisions dealing with

procedure, should be given such interpretation that will effectuate the purposes and objectives of the Constitution. Any interpretation that will hamper the work of the Ombudsman should be avoided.

PETITION DISMISSED.

USE OF NEGATIVE WORDS

Negative words and phrases regarded as mandatory while those in the affirmative are mere directory.

MANOLO P. FULE *vs.*
THE HONORABLE COURT OF APPEALS
G.R. No. L-79094, June 22, 1988
162 SCRA 446

FACTS: Petitioner was convicted of violation of Batas Pambansa Blg. 22 (The Bouncing Checks Law) by the Regional Trial Court of Lucena City on the basis of stipulation of facts entered into between the prosecution and the defense during the pre-trial conference.

It appears that the stipulation of facts was not signed by the petitioner, nor by his counsel. However, petitioner waived his right to present evidence and, in lieu thereof, submitted a memorandum confirming the stipulation of facts.

On appeal, respondent Court of Appeals upheld the stipulation of facts and affirmed the judgment of conviction.

HELD: The 1985 Rules on Criminal Procedure, which became effective on January 1, 1985, is applicable to this case since the pre-trial was held on August 8, 1985, provides:

> "Sec. 4. *Pre-trial agreements must be signed.*—No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by him and his counsel." (Rule 118).

By its very language, the Rule is mandatory. Under the rule of statutory construction, negative words and phrases are to be regarded as mandatory while those in the affirmative are merely directory. (*McGee vs. Republic*, 94 Phil. 830 [1954]). The use of the term "shall" further emphasizes its mandatory character and means that it is imperative, operating to impose a duty which may be enforced. (*Bersabal vs. Salvador*, No. L-35910, July 21, 1978, 84 SCRA 176). And more importantly, penal statutes whether substantive and remedial or procedural are, by consecrated rule, to be strictly applied against the government and liberally in favor of the accused. (*People vs. Terrado*, No. L-23625, November 25, 1983, 125 SCRA 648).

The conclusion is inevitable, therefore, that the omission of the signature of the accused and his counsel, as mandatorily required by the Rules, renders the Stipulation of Facts inadmissible in evidence. The fact that the lawyer of the accused, in his memorandum, confirmed the Stipulation of Facts does not cure the defect because Rule 118 requires both the accused and his counsel to sign the Stipulation of Facts. What the prosecution should have done, upon discovering that the accused did not sign the Stipulation of Facts, as required by Rule 118, was to submit evidence to establish the elements of the crime, instead of relying solely on the supposed admission of the accused in the Stipulation of Facts. Without said evidence independent of the admission, the guilt of the accused cannot be deemed established beyond reasonable doubt.

Judgment is reversed and the case is ordered reopened and remanded to the appropriate Branch of the Regional Trial Court of Lucena City for further reception of evidence.

THE USE OF THE WORD "MAY" AND "SHALL" IN THE STATUTE

Use of word "may" in the statute generally connotes a permissible thing while the word "shall" is imperative.

PURITA BERSABAL *vs.* HON. JUDGE SERAFIN SALVADOR
G.R. No. L-35910, July 21, 1978
84 SCRA 176

READ THIS

FACTS: For failure of the petitioner to file her memorandum on time as required by the Court of First Instance of Caloocan City pursuant to the R.A. No. 6031, her appeal was dismissed.

ISSUE: Whether or not the mere failure of an appellant to submit on time the memorandum mentioned in the same paragraph would empower the Court of First Instance to dismiss the appeal on the ground of failure to prosecute; or, whether it is mandatory upon said Court to proceed to decide the appealed case on the basis of the evidence and records transmitted to it, the failure of the appellant to submit a memorandum on time notwithstanding.

HELD: The second paragraph of Section 45 of R.A. No. 296, otherwise known as the Philippine Judiciary Act of 1948, as amended by R.A. No. 6031 provides, in part, as follows:

> "Courts of First Instance shall decide such appealed cases on the basis of the evidence and records transmitted from the city or municipal courts; *Provided*, That the parties may submit memoranda and/or brief with oral argument if so requested x x x."

The foregoing provision is clear and leaves no room for doubt. It cannot be interpreted otherwise than that the submission of memoranda is optional on the part of the parties. Being optional on the part of the parties, the latter may so choose to waive submission of the memoranda. And as a logical concomitant of the choice given to the parties, the Court cannot dismiss the appeal of the party waiving the submission of the said memorandum. If the appellant so chooses not to submit the memorandum, the Court of First Instance is left with no alternative but to decide the case on the basis of the evidence and records transmitted from the city or municipal courts. In other words, the Court is not empowered by law to dismiss the appeal on the mere failure

of an appellant to submit his memorandum, but rather it is the Court's mandatory duty to decide the case on the basis of the available evidence and records transmitted to it.

As a general rule, the word "may" when used in a statute is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. (*Dizon vs. Encarnacion*, L-18615, Dec. 24, 1963, 9 SCRA 714, 716-717). The implication is that the Court is left with no choice but to decide the appealed case either on the basis of the evidence and records transmitted to it, or on the basis of the latter plus memoranda and/or brief with oral argument duly submitted and/or made on request.

Moreover, memoranda, briefs and oral arguments are not essential requirements. They may be submitted and/or made only if so requested.

ORDER OF RESPONDENT JUDGE SET ASIDE AND DIRECTED TO DECIDE THE CASE ON THE MERITS.

The term "shall" may be read either as mandatory or directory depending upon a consideration of the entire provision in which it is found, its object and the consequences that would follow from construing it one way or the other. (*De Mesa vs. Mencias*, 18 SCRA 533 [1966]).

The use of the word "shall" in the last paragraph of Article 213 of the Family Code which contains a similar provision found in Rule 99, Section 6 of the Revised Rules of Court which states: "No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise" connotes a mandatory character. It prohibits in no uncertain terms the separation of a mother and her child below seven years, unless such separation is grounded upon compelling reasons as determined by a court. (*Perez vs. Court Appeals*, 255 SCRA 661 [1996]).

The use of the word "may" clearly shows it is directory in nature and not mandatory.

OFFICE OF THE OMBUDSMAN *vs.* MERCEDITAS DE SAHAGUN, MANUELA T. WAQUIZ AND RAIDIS J. BASSIG
G.R. No. 167982, August 13, 2008
562 SCRA 122

READ THIS

ISSUE: Whether or not Section 20 (5) of R.A. No. 6770 prohibits administrative investigations in cases filed more than one year after commission.

HELD: Well-entrenched is the rule that administrative offenses do not prescribe. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government.

Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:

> "Section 20. *Exceptions.*—The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:
>
> x x x x
>
> (5) The complaint was filed after one year from the occurrence of the act or omission complained of." (Emphasis supplied)

proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

In *Melchor v. Gironella* (451 SCRA 476 [2005]), the Court held that the period stated in Section 20 (5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion. Where the words of a statute are clear, plain and free from ambiguity,

they must be given their literal meaning and applied without attempted interpretation.

In *Filipino v. Macabuhay* (508 SCRA 50 [2006]), the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

> "Petitioner argues that based on the aforementioned provision (Section 20 [5] of R.A. 6770), respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.
>
> Petitioner's argument is without merit.
>
> The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty, which may be enforced. Applying Section 20 (5), therefore, ***it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription."*** (Emphasis supplied)

The declaration of the Court of Appeals in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not" becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

As the Court recently held in *Office of the Ombudsman v. Court of Appeals*, Section 20 of R.A. No. 6770 has been clarified by Administrative Order No. 17, which amended Administrative Order No. 7, otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III of the amended Rules of Procedure of the Office of the Ombudsman reads:

> "Section 4. *Evaluation.*—Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:
>
> ***a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal thereof is not mandatory and shall be discretionary on the part of the Ombudsman or the Deputy Ombudsman concerned;***
>
> x x x x x x x x"
>
> (Emphasis supplied)

It is, therefore, discretionary upon the Ombudsman whether or not to conduct an investigation of a complaint even if it was filed after one year from the occurrence of the act or omission complained of.

USE OF THE WORD "MUST"

The word "must" in a statute like "shall" is not always imperative and may be consistent with an exercise of discretion.

LOYOLA GRAND VILLAS HOMEOWNERS (SOUTH) ASSOCIATION, INC. *vs.* COURT OF APPEALS
G.R. No. 117188, August 7, 1997
276 SCRA 681

FACTS AND ISSUE: Loyola Grand Villas Homeowners Association (LGVHAI for brevity) was organized on February 8, 1983 as the association of homeowners and residents of the Loyola Grand Villas. It was registered with the Home Financing Corporation, the predecessor of herein respondent HIGC, as the sole homeowners' organization in the said subdivision under Certificate of Registration No. 04-197. It was organized by the developer of the subdivision and its first president was Victorio V. Soliven, himself the owner of the developer. For unknown reasons, however, LGVHAI did not file its corporate by-laws.

In July 1989, when Soliven inquired about the status of LGVHAI, Atty. Joaquin A. Bautista, the head of the legal department of the HIGC, informed him that LGVHAI had been automatically dissolved for two reasons. *First*, it did not submit its by-laws within the period required by the Corporation Code; and *second*, there was non-user of corporate charter because HIGC had not received any report on the association's activities. Apparently, this information resulted in the registration of the South Association with the HIGC on July 27, 1989 covering Phases West I, East I and East II. It filed its by-laws on July 26, 1989.

These developments prompted the officers of the LGVHAI to lodge a complaint with the HIGC. They questioned the revocation of LGVHAI's certificate of registration without due notice and hearing and concomitantly prayed for the cancellation of the certificate of registration of the North and South Associations by reason of the earlier issuance of a certificate of registration in favor of LGVHAI.

On January 26, 1993, after due notice and hearing, private respondents obtained a favorable ruling from the HIGC Hearing Officer.

The South Association appealed to the Appeals Board of the HIGC. In its Resolution of September 8, 1993, the Board dismissed the appeal for lack of merit.

Rebuffed, the South Association in turn appealed to the Court of Appeals, raising two issues. *First*, whether or not LGVHAI's failure to file its by-laws within the period prescribed by Section 46 of the Corporation Code resulted in the automatic dissolution of LGVHAI. *Second*, whether or not two homeowners' associations may be authorized by the HIGC in one "sprawling subdivision." However, in the Decision of August 23, 1994 being assailed here, the Court of Appeals affirmed the Resolution of the HIGC Appeals Board.

Undaunted, the South Association filed the instant petition for review on *certiorari*. It elevates as sole issue for resolution the first issue it had raised before the Court of Appeals, *i.e.*, whether or not the LGVHAI's failure to file its

by-laws within the period prescribed by Section 46 of the Corporation Code had the effect of automatically dissolving the said corporation.

Petitioner contends that, since Section 46 uses the word "must" with respect to the filing of by-laws, noncompliance therewith would result in "self-extinction" either due to non-occurrence of a suspensive condition "under the hypothesis that (by) the issuance of the certificate of registration alone, the corporate personality is deemed already formed." It asserts that the Corporation Code provides for a "gradation of violations of requirements." Hence, Section 22 mandates that the corporation must be formally organized and should commence transactions within two years from date of incorporation. Otherwise, the corporation would be deemed dissolved. On the other hand, if the corporation commences operations but becomes continuously inoperative for five years, then it may be suspended or its corporate franchise revoked.

HELD: The pertinent provision of the Corporation Code that is the focal point of controversy in this case states:

> "Sec. 46. *Adoption of by-laws.*—Every corporation formed under this Code, must within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission, adopt a code of by-laws for its government not inconsistent with this Code. For the adoption of by-laws by the corporation, the affirmative vote of the stockholders representing at least a majority of the outstanding capital stock or of at least a majority of the members, in the case of non-stock corporations, shall be necessary. The by-laws shall be signed by the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to the stockholders or members voting for them and shall be kept in the principal office of the corporation, subject to inspection of the stockholders or members during office hours; and a copy thereof, shall be filed with the Securities and Exchange Commission which shall be attached to the original articles of incorporation."

Notwithstanding the provisions of the preceding paragraph, by-laws may be adopted and filed prior to incorporation; in such case, such by-laws shall be approved and signed by all the incorporators and submitted to the Securities and Exchange Commission, together with the articles of incorporation.

In all cases, by-laws shall be effective only upon the issuance by the Securities and Exchange Commission of a certification that the by-laws are not inconsistent with this Code.

As correctly postulated by the petitioner, interpretation of this provision of law begins with the determination of the meaning and import of the word "must" in this section. Ordinarily, the word "must" connotes an imperative act or operates to impose a duty which may be enforced. It is synonymous with "ought" which connotes compulsion or mandatoriness. However, the word "must" in a statute, like "shall," is not always imperative. It may be consistent with an exercise of discretion. In this jurisdiction, the tendency has been to interpret "shall" as the context or a reasonable construction of the statute in which it is used demands or requires. This is equally true as regards the word "must." Thus, if the language of a statute considered as a whole and with due regard to its nature and object reveals that the legislature intended to use the words "shall" and "must" to be directory, they should be given that meaning.

Taken as a whole and under the principle that the best interpreter of a statute is the statute itself (*optima statuti interpretatix est ipsum statutum*). Section 46 aforequoted reveals the legislative intent to attach a directory, and not mandatory, meaning for the word "must" in the first sentence thereof. Note should be taken of the second paragraph of the law which allows the filing of the by-laws even prior to incorporation. This provision in the same section of the code rules out mandatory compliance with the requirement of filing the by-laws "within one (1) month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission." It necessarily follows that failure to file the by-laws within that period does not

imply the "demise" of the corporation. By-laws may be necessary for the "government" of the corporation but these are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes. There are in fact cases where by-laws are unnecessary to corporate existence or to the valid exercise of corporate powers, thus:

> "In the absence of a charter or statutory provisions to the contrary, by-laws are not necessary either to the existence of a corporation or to the valid exercise of the powers conferred upon it, certainly in all cases where the charter sufficiently provides for the government of the body; and even where the governing statute in express terms confers upon the corporation the power to adopt by-laws, the failure to exercise the power will be ascribed to mere non-action which will not render void any acts of the corporation which would otherwise be valid."

PETITION DENIED.

THE USE OF THE TERM "AND" AND THE WORD "OR"

They cannot co-exist

"And" means conjunction connecting words or phrases expressing the idea that the latter is to be added to or taken along with the first. (*Black's Law Dictionary*, p. 86, Centennial ed.).

It is basic in legal hermeneutics that the word "and" is not meant to separate words but is a conjunction used to denote a joinder or union. Thus, the employment of the word "and" between "facilities," improvements, infrastructures and "other forms of development" is not meant to separate words but is a conjunction used to denote a joinder or union. (*Mapa vs. Arroyo*, 175 SCRA 76 [1989]).

On the other hand, the word "or" is a disjunctive particle used to express as alternative or to give a choice of one among two or more things. It is also used to clarify what has already been said, and in such cases, means "in other words," "to wit," or "that is to say." The word "or" is to be used as a function word to indicate an alternative between different or unlike

things. (*Black's Law Dictionary*, p. 1095, Centennial ed., citing *City of Toledo vs. Lucas County Budget Commission*, 33 Ohio St., 2nd ed., 62 294 N.E. 2 ed. 661, 663).

In the recent case of *Romulo, Mabanta, Sayoc and Delos Angeles vs. Home Development Mutual Fund*, 333 SCRA 777, June 19, 2000, held that the word "and" and the word "or" are to be used interchangeably.

The controversy lies in the legal signification of the words "and/or."

In the instant case, the legal meaning of the words "and/or" should be taken in its ordinary signification, *i.e.*, "either and or" *e.g.*, butter and/or eggs means butter and eggs or butter or eggs.

> "The term 'and/or' means that the effect shall be given to both the conjunctive 'and' and the disjunctive 'or'; or that one word or the other may be taken accordingly as one or the other will best effectuate the purpose intended by the legislature as gathered from the whole statute. The term is used to avoid a construction which by the use of the disjunctive 'or' alone will exclude the combination of several of the alternatives or by the use of the conjunctive 'and' will exclude the efficacy of any one of the alternatives standing alone."

Accordingly, it is ordinarily held that the intention of the legislature in using the term "and/or" is that the word "and" and the word "or" are to be used interchangeably. (See also *China Banking Corp. vs. The Members of the Board of Trustees of the HDMF*, 307 SCRA 443, May 19, 1999).

The word "only" means exclusive.

ROOS INDUSTRIAL CONSTRUCTION, INC. *vs.*
NATIONAL LABOR RELATIONS COMMISSION
G.R. No. 172409, February 4, 2008
543 SCRA 666

FACTS: On 9 April 2002, private respondent Jose Martillos (respondent) filed a complaint against petitioners for illegal

dismissal and money claims such as the payment of separation pay in lieu of reinstatement plus full backwages, service incentive leave, 13th month pay, litigation expenses, underpayment of holiday pay and other equitable reliefs before the National Capital Arbitration Branch of the National Labor Relations Commission (NLRC), docketed as NLRC NCR South Sector Case No. 30-04-01856-02.

The Labor Arbiter ruled that respondent had been illegally dismissed after finding that he had acquired the status of a regular employee as he was hired as a driver with little interruption from one project to another, a task which is necessary to the usual trade of his employer.

The Labor Arbiter ordered petitioners to pay respondent the aggregate sum of P224,647.17 representing backwages, separation pay, salary differential, holiday pay, service incentive leave pay, and 13th month pay.

Petitioners received a copy of the Labor Arbiter's decision on 17 December 2003. On 29 December 2003, the last day of the reglementary period for perfecting an appeal, petitioners filed a Memorandum of Appeal before the NLRC and paid the appeal fee. However, instead of posting the required cash or surety bond within the reglementary period, petitioners filed a Motion for Extension of Time to Submit/Post Surety Bond. Petitioners stated that they could not post and submit the required surety bond as the signatories to the bond were on leave during the holiday season, and made a commitment to post and submit the surety bond on or before 6 January 2004. The NLRC did not act on the motion. Thereafter, on 6 January 2004, petitioners filed a surety bond equivalent to the award of the Labor Arbiter.

In a Resolution dated July 29, 2004, the Second Division of the NLRC dismissed petitioners' appeal for lack of jurisdiction. The NLRC stressed that the bond is an indispensable requisite for the perfection of an appeal by the employer and that the perfection of an appeal within the reglementary period and in the manner prescribed by law is mandatory and jurisdictional. In addition, the NLRC restated

that its Rules of Procedure proscribes the filing of any motion for extension of the period within which to perfect an appeal. The NLRC summed up that considering that petitioners' appeal had not been perfected, it had no jurisdiction to act on said appeal and the assailed decision, as a consequence, has become final and executory. The NLRC likewise denied petitioners' Motion for Reconsideration for lack of merit in another Resolution. On 11 November 2004, the NLRC issued an entry of judgment declaring its resolution final and executory as of 9 October 2004. On respondent's motion, the Labor Arbiter ordered that the writ of execution be issued to enforce the award. On 26 January 2005, a writ of execution was issued.

Petitioners elevated the dismissal of their appeal to the Court of Appeals by way of a special civil action of certiorari. They argued that the filing of the appeal bond evinced their willingness to comply and was in fact substantial compliance with the rules. They likewise maintained that the NLRC gravely abused its discretion in failing to consider the meritorious ground for their motion for extension of time to file the appeal bond. Lastly, petitioners contended that the NLRC gravely erred in issuing an entry of judgment, as the assailed resolution is still open for review. On 12 January 2006, the Court of Appeals affirmed the challenged resolution of the NLRC. Hence, the instant petition.

ISSUE: Whether or not the motion for extension of time to file cash or surety bond before the NLRC toll the reglementary period to appeal.

HELD: The Court reiterates the settled rule that an appeal from the decision of the Labor Arbiter involving a monetary award is only deemed perfected upon the posting of a cash or surety bond within ten (10) days from such decision. Article 223 of the Labor Code states:

> Art. 223. *Appeal.*—Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders...
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

Contrary to petitioners' assertion, the appeal bond is not merely procedural but jurisdictional. Without said bond, the NLRC does not acquire jurisdiction over the appeal. Indeed, non-compliance with such legal requirements is fatal and has the effect of rendering the judgment final and executory. It must be stressed that there is no inherent right to an appeal in a labor case, as it arises solely from the grant of statute.

Evidently, the NLRC did not acquire jurisdiction over petitioners' appeal within the ten (10) day reglementary period to perfect the appeal as the appeal bond was filed eight (8) days after the last day thereof. Thus, the Court cannot ascribe grave abuse of discretion to the NLRC or error to the Court of Appeals in refusing to take cognizance of petitioners' belated appeal.

While indeed the Court has relaxed the application of this requirement in cases where the failure to comply with the requirement was justified or where there was substantial compliance with the rules, the overpowering legislative intent of Article 223 remains to be for a strict application of the appeal bond requirement as a requisite for the perfection of an appeal and as a burden imposed on the employer. As the Court held in the case of *Borja Estate vs. Ballad:*

> "The intention of the lawmakers to make the bond as indispensable requisite for the perfection of an appeal by the employer is underscored by the provision that an appeal may be perfected 'only upon the posting of a cash or surety bond.' The word 'only' makes it perfectly clear that the LAWMAKERS intended the posting of a cash or surety bond by the employer to be the exclusive means by which an employer's appeal may be considered completed. The law however does not require its outright

payment but only the posting of a bond to ensure that the award will be eventually paid should the appeal fail. What petitioners have to pay is a moderate and reasonable sum for the premium of such bond."

COMPUTATION OF TIME

When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months of thirty days; days of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included (Art. 13, New Civil Code).

For purposes of determining whether or not a crime has prescribed pursuant to the provisions of Article 90 of the Revised Penal Code, the term month shall be understood as a 30-day month and not a calendar month.

On the question of whether a month mentioned in Article 90 of the Revised Penal Code should be considered a calendar month or a 30-day month, the Supreme Court in *Federico Quizon vs. Hon. Jose L. Baltazar,* 76 SCRA 560 (1977) citing *People vs. del Rosario* (G.R. No. L-7234, 97 Phil. 67 [1955]) held:

It is to be noted that no provision of the Revised Penal Code defines the length of the month. Article 7 of the Old Civil Code provided that a month shall be understood as containing 30 days; but this concept was modified by section 13 of the Revised Administrative Code which provides that month means the civil or calendar month and not the regular 30-day month. (*Gutierrez vs. Carpio,* 53 Phil. 334 [1929]). With the approval of the Civil Code of the Philippines (R.A. No. 386), however, we have reverted to the provisions of the Spanish Civil Code in accordance with which a month is to be considered as the regular 30-day month (Article 13). This provision of the New Civil Code has

been intended for general application in the interpretation of the laws. As the offense charged in the information in the case at bar took place on May 28, 1953, after the New Civil Code had come into effect, this new provisions should apply, and in accordance therewith the month in Article 90 of the Revised Penal Code should be understood to mean the regular 30-day month.

A "week" means a period of seven consecutive days without regard to the day of the week on which it begins.

STUDY/READ

PHILIPPINE NATIONAL BANK *vs.* COURT OF APPEALS

G.R. No. 98382, May 17, 1993
222 SCRA 134

FACTS: To secure payment of his loans, private respondent mortgages two lots located at Bocaue, Bulacan to the petitioner bank. For failure to pay the obligation, petitioner bank extrajudicially foreclosed the mortgaged property and won the highest bidder at the auction sale. Eventually a final deed of sale was registered in the Bulacan Registry of Property on March 19, 1965 in favor of the petitioner bank and later sold the said lots to third persons.

It appears that the Notices of Sale of appellant's foreclosed properties were published on March 28, April 11, and April 12, 1969 issues of the newspaper "Daily Record." The date March 28, 1969 falls on a Friday while the dates April 11 and 12, 1969 are on a Friday and Saturday, respectively. Section 3 of Act No. 3135 requires that the notice of auction sale shall be "published once a week for at least three consecutive weeks." Evidently, defendant-appellee bank failed to comply with this legal requirement.

ISSUE: Whether or not the petitioner bank complied with the requirement of weekly publication of notice of extra-judicial foreclosure of mortgages.

HELD: It must be conceded that Article 13 is completely silent as to the definition of what is a "week." In *Concepcion*

vs. Zandueta (36 O.G. 3139 [1938]; Moreno, *Philippine Law Dictionary*, second ed., 1972, p. 660), this term was interpreted to mean as a period of time consisting of seven consecutive days — a definition which dovetails with the ruling in *E.M. Derby and Co. vs. City of Modesto, et al.* (38 Pac. Rep. 900 [1984]). The publication effected on April 19, 1969 cannot be construed as sufficient advertisement for the second week because the period for the first week should be reckoned from March 28, 1969 until April 3, 1969 while the second week should be counted from April 4, 1969 until April 10, 1969. It is clear that the announcement on April 11, 1969 was both theoretically and physically accomplished during the first day of the third week and cannot thus be equated with compliance in law. Indeed, where the word is used simply as a measure of duration and without reference to the calendar, it means a period of seven consecutive days without regard to the day of the week on which it begins. (1 Tolentino, *supra* at p. 467 citing Derby).

Certainly, it would have been absurd to exclude March 28, 1969 as reckoning point, in line with the third paragraph of Article 13 of the New Civil Code, for the purpose of counting the first week of publication as to make the last day thereof fall on April 4, 1969 because this will have the effect of extending the first week by another day. This incongruous repercussion could not have been the unwritten intention of the lawmakers when Act No. 3135 was enacted. Verily, inclusion of the first day of publication is in keeping with the computation in *Bonnevie vs. Court of Appeals* (125 SCRA 122 [1983]) where this Court had occasion to pronounce, through Justice Guerrero, that the publication of notices on June 30, July 7 and July 14, 1968 satisfied the publication requirement under Act No. 3135.

Respondent court cannot, therefore, be faulted for holding that there was no compliance with the strict requirements of publication independently of the so-called admission *in judicio*.

PETITION FOR *CERTIORARI* DISMISSED. AUCTION SALE OF MORTGAGED PROPERTY DEEMED VOID AND OF NO LEGAL EFFECT.

FUNCTION OF THE PROVISO

Proviso is a clause or part of a clause in the statute, the office of which is either to except something from the enacting clause, or to qualify or restrain its generality, or to exclude some possible ground of misinterpretation of its extent. "*Provided*" is the word used in introducing a proviso. (*Black's Law Dictionary*, pp. 1224-1225, Centennial ed.; See also *Borromeo vs. Mariano*, 41 Phil. 322 [1921]; *Calo vs. Roldan*, 76 Phil. 445 [1946]; and *Tavora vs. Veloso*, 117 SCRA 613' [1982]; CP. p. 321, *Arenas vs. City of San Carlos [Pangasinan]*, 82 SCRA 318 [1978]).

ALU-TUCP *vs.* NATIONAL LABOR RELATIONS COMMISSION AND NATIONAL STEEL CORPORATION
G.R. No. 109902, August 2, 1994
234 SCRA 678

FACTS: On 5 July 1990, petitioners filed separate complaints for unfair labor practice, regularization and monetary benefits with the NLRC, Sub-Regional Arbitration Branch XII, Iligan City. The complaints were consolidated and after hearing, the Labor Arbiter in a Decision dated 7 June 1991, declared petitioners "regular project employees who shall continue their employment as such for as long as such [project] activity exists," but entitled to the salary of a regular employee pursuant to the provisions in the collective bargaining agreement. It also ordered payment of salary differentials.

Both parties appealed to the NLRC from that decision. Petitioners argued that they were regular, not project employees. Private respondent, on the other hand, claimed that petitioners are project employees as they were employed to undertake a specific project NSC's Five-Year Expansion Program. (FAYEP I and II).

The NLRC in its questioned resolutions modified the Labor Arbiter's decision. It affirmed the Labor Arbiter's holding that petitioners were project employees since they were hired to perform work in a specific undertaking the Five-

Year Expansion Program, the completion of which had been determined at the time of their engagement and which operation was not directly related to the business of steel manufacturing. The NLRC, however, set aside the award to petitioners of the same benefits enjoyed by regular employees for lack of legal and factual basis.

The law on the matter is Article 280 of the Labor Code which reads in full:

> "Article 280. *Regular and Casual Employment.*— The provisions of the written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment had been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> "An employment shall be deemed to be casual if it is not covered by the preceding paragraph; *Provided*, That, any employee who has rendered at least one year service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists."

ISSUE: Whether or not petitioners are properly characterized as "project employees" rather than "regular employees" of NSC. This issue relates, of course, to an important consequence: the services of project employees are co-terminous with the project and may be terminated upon the end or completion of the project for which they were hired. Regular employees, in contract, are legally entitled to remain in the service of their employer until that service is terminated by one or another of the recognized modes of termination of service under the Labor Code.

HELD: Petitioners next claim that their service to NSC of more than six (6) years should qualify them as regular employees. We believe this claim is without legal basis. The simple fact that the employment of petitioners as project employees had gone beyond one (1) year, does not detract from, or legally dissolve, their status as project employees. The second paragraph of Article 280 of the Labor Code, quoted above, providing that an employee who has served for at least one (1) year, shall be considered a regular employee, relates to casual employees, not to project employees.

In the case of *Mercado, Sr. vs. National Labor Relations Commission*, 201 SCRA 322 (1991), this Court ruled that the proviso in the second paragraph of Article 280 relates only to casual employees and is not applicable to those who fall within the definition of said article's first paragraph, *i.e.*, project employees. The familiar grammatical rule is that a proviso is to be construed with reference to the immediately preceding part of the provision to which it is attached, and not to other sections thereof, unless the clear legislative intent is to restrict or qualify not only the phrase immediately preceding the proviso but also earlier provisions of the statute or even the statute itself as a whole. No such intent is observable in Article 280 of the Labor Code, which has been quoted earlier.

PETITION IS DISMISSED.

CHAPTER V

PRESUMPTIONS IN AID OF CONSTRUCTION AND INTERPRETATION

First presumption: Law is constitutional
But subject to counterarguments. One who opposes the assumption must make the suffiicient proof that the oppositiion is a valid proposition.

PRESUMPTIONS

In construing a doubtful or ambiguous statute, the Courts will presume that it was the intention of the legislature to enact a valid, sensible and just law, and one which should change the prior law no further than may be necessary to effectuate the specific purpose of the act in question. The construction should be in harmony with this assumption whenever possible. But presumptions of this kind cannot prevail against the clear and explicit terms of the law. (Black, *Construction and Interpretation of Laws*, p. 103, 2nd ed.). In other words, if the language of the law is clear, courts should not resort to presumptions.

PRESUMPTION AGAINST UNCONSTITUTIONALITY

Laws are presumed constitutional. To justify nullification of a law, there must be a clear and unequivocal breach of the constitution, not a doubtful and argumentative implication; a law shall not be declared invalid unless the conflict with the constitution is clear beyond reasonable doubt. (*Aris [Phil.], Inc. vs. NLRC*, 200 SCRA 246 [1991]). The reason for this case can be traced to the doctrine of separation of powers which enjoins on each department a proper respect for the acts of the other departments. The theory is that, as the joint act of the legislative and executive

authorities, a law is supposed to have been carefully studied and determined to be constitutional before it was finally enacted. Hence, as long as there is some other basis that can be used by the courts for its decision, the constitutionality of the challenged law will not be touched upon and the case will be decided on other available grounds. (*La Union Electric Cooperative, Inc. vs. Yaranon*, 179 SCRA 828 [1989]).

The onerous task of rebutting the presumption weighs heavily on the party challenging the validity of the statute. He must demonstrate beyond any tinge of doubt that there is indeed an infringement of the constitution, for in the absence of such a showing, there can be no finding of unconstitutionality. A doubt, even if well-founded, will hardly suffice. As tersely put by Justice Malcolm, "To doubt is to sustain." (*Joseph Ejercito Estrada vs. Sandiganbayan [Third Division] and People of the Philippines*, G.R. No. 148560, November 19, 2001, 369 SCRA 394). Every law enjoys in its favor the presumption of constitutionality. The Court cannot strike down a law as unconstitutional simply because of its yokes. (*Abakada Guro Party List vs. Ermita*, 469 SCRA 1, September 1, 2005).

ILLUSTRATIVE CASES:

ARIS (PHIL.), INC. *vs.* NATIONAL LABOR RELATIONS COMMISSION, ET AL.
G.R. No. 90501, August 5, 1991
200 SCRA 246

FACTS: On April 11, 1998, private respondents who were employees of the petitioner lodged a protest action against the management concerning their working surroundings which had become detrimental and hazardous. For these actions, private respondents were dismissed for violation of company rules and regulations.

Private respondents filed a complaint for illegal dismissal against the petitioner with the NLRC.

After due trial the Labor Arbiter ruled in favor of the private respondents with order of reinstatement, etc. Pending appeal by petitioner, private respondents move for the issuance of a writ of execution pursuant to Section 12 of R.A. No. 6715.

Petitioner assails the constitutionality of the amendment introduced by Section 12 of Republic Act No. 6715 to Article 223 of the Labor Code of the Philippines (PD No. 442, as amended) allowing execution pending appeal of the reinstatement aspect of a decision of a Labor Arbiter reinstating a dismissed or separated employee and of Section 2 of the NLRC Interim Rules on Appeals under R.A. No. 6715 implementing the same. It also questions the validity of the Transitory Provision (Section 17) of the said Interim Rules.

The challenged portion of Section 12 of Republic Act No. 6715, which took effect on 21 March 1989, reads as follows:

> "SEC. 12. Article 223 of the same code is amended to read as follows:
>
> ART. 223. *Appeal.*
>
> x x x
>
> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, in so far as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided therein."

HELD: The validity of the questioned law is not only supported and sustained by the foregoing consideration. As contended by the Solicitor General, it is a valid exercise of the police power of the State. Certainly, if the right of an employer to freely discharge his employees is subject to regulation by the State, basically in the exercise of its

permanent police power on the theory that the preservation of the lives of the citizens is a basic duty of the State, that is more vital than the preservation of corporate profits. Then, by and pursuant to the same power, the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat of danger to the survival or even the life of the dismissed or separated employee and his family.

The charge then that the challenged law as well as the implementating rule are unconstitutional is absolutely baseless. Laws are presumed constitutional. To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative implication; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt. In *Paredes, et al. vs. Executive Secretary*, 128 SCRA 6 (1984), the Court stated:

> "For one thing, it is in accordance with the settled doctrine that between two possible construction, one avoiding a finding of unconstitutionality and the other yielding such a result, the former is to be preferred. That which will save, not that which will destroy, commends itself for acceptance. After all, the basic presumption all these years is one of validity. The onerous task of proving otherwise is on the party seeking to nullify a statute. It must be proved by clear and convincing evidence that there is an infringement of a constitutional provision, save in those cases where the challenged act is void on its face. Absent such a showing there can be no finding of unconstitutionality. A doubt, even if well-founded, does not suffice. Justice Malcolm's aphorism is *apropos*: 'To doubt is to sustain.'"

This is a new paragraph ingrafted into this Article.

Sections 2 and 17 of the "NLRC Interim Rules on Appeals Under R.A. No. 6715, Amending the Labor Code,"

which the National Labor Relations Commission (NLRC) promulgated on 8 August 1989, provide as follows:

> "Section 2. *Order of Reinstatement and Effect of Bond.*—In so far as the reinstatement aspect is concerned, the decision of the Labor Arbiter reinstating a dismissed or separated employee shall immediately be executory even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or, at the option of the employer, merely be reinstated in the payroll.
>
> The posting of a bond by the employer shall not stay the execution for reinstatement.
>
> "Section 17. *Transitory provision.*—Appeals filed on or after March 21, 1989, but prior to the effectivity of these Interim Rules must conform to the requirements as herein set forth as may be directed by the Commission."

The issue concerning Section 17 of the NLRC Interim Rules does not deserve a measure of attention. The reference to it in the Order of the Labor Arbiter of 5 October 1989 was unnecessary since the procedure of the appeal proper is not involved in this case. Moreover, the questioned interim rules of the NLRC, promulgated on 8 August 1989, can validly be given retroactive effect. They are procedural or remedial in character, promulgated pursuant to the authority vested upon it under Article 218(a) of this Labor Code of the Philippines, as amended. Settled is the rule that procedural laws may be given retroactive effect. There are no vested rights in rules of procedure. A remedial statute may be made applicable to cases pending at the time of its enactment.

PETITION DISMISSED.

All laws are presumed valid and constitu-tional until or unless otherwise ruled by the Court.

STUDY/READ

HON. ALFREDO S. LIM *vs.* HON. FELIPE G. PACQUING AND ASSOCIATED DEVELOPMENT CORPORATION
G.R. No. 115044, January 27, 1995

TEOFISTO GUINGONA, JR. AND DOMINADOR CEPEDA, JR. *vs.* HON. VETINO REYES AND ASSOCIATED DEVELOPMENT CORPORATION
G.R. No. 117263, January 27, 1995
240 SCRA 649

FACTS: The Charter of the City of Manila was enacted by Congress on 18 June 1949. Section 18 thereof provides:

> "Section 18. *Legislative Powers.*—The Municipal Board shall have the following legislative powers:
>
> (JJ) To tax, license, permit and regulate wagers or betting by the public on boxing, sipa, bowling, billiards, pools, horse and dog races, cockpits, jai-alai, roller or ice-skating or any sporting or athletic contests, as well as grant exclusive rights to establishments for this purpose, notwithstanding any existing law to the contrary."

On 1 January 1951, Executive Order No. 392 was issued transferring the authority to regulate jai-alais from local governments to the Games and Amusements Board (GAB).

On 20 June 1953, Congress enacted Republic Act No. 954, entitled "An Act to Prohibit Certain Activities in Connection with Horse Races and Basque Pelota Games (Jai-Alai), And To Prescribe Penalties For Its Violation." The provisions of Republic Act No. 954 relating to jai-alai are as follows:

> "Sec. 4. No person, or group of persons other than the operator or maintainer of a fronton with legislative franchise to conduct basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event.
>
> Sec. 5. No person, operator or maintainer of a fronton with legislative franchise to conduct basque pelota games shall offer, take, or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event outside the place, enclosure, or fronton where the basque pelota game is held."

On 07 September 1971, however, the Municipal Board of Manila nonetheless passed Ordinance No. 7065 entitled "An Ordinance Authorizing the Mayor To Allow And Permit The Associated Development Corporation To Establish, Maintain And Operate A Jai-Alai In The City Of Manila, Under Certain Terms and Conditions And For Other Purposes."

On 20 August 1975, Presidential Decree No. 771 was issued by then President Marcos. The decree, entitled "Revoking All Powers And Authority of Local Government(s) To Grant Franchise, License or Permit And Regulate Wagers Or Betting By The Public On Horse And Dog Races, Jai-Alai Or Basque Pelota, And Other Forms Of Gambling," in Section 3 thereof, expressly revoked all existing franchises and permits issued by local governments.

On 16 October 1975, Presidential Decree No. 810, entitled "An Act Granting The Philippine Jai-Alai And Amusement Corporation A Franchise To Operate, Construct And Maintain A Fronton For Basque Pelota And Similar Games Of Skill In The Greater Manila Area," was promulgated.

On 08 May 1987, then President Aquino by virtue of Article XVIII, Section 6 of the Constitution, which allowed the incumbent President to continue exercising legislative powers until the first Congress was convened, issued Executive Order No. 169 expressly repealing PD No. 810 and revoking and cancelling the franchise granted to the Philippine Jai-Alai and Amusements Corporation.

In May 1998, Associated Development Corporation tried to operate a Jai-Alai. The government through the Games and Amusement Board intervened and invoked Presidential Decree 771, issued on August 20, 1975, Sec. 3 of which

expressly revoked all existing franchises and permits to operate all forms of gambling facilities including (Jai-Alai) issued by local governments. ADC assails the constitutionality of PD No. 771 as violative of equal protection and non-impairment clauses of the Constitution.

HELD: The time-honored doctrine is that all laws (PD No. 771 included) are presumed valid and constitutional until or unless otherwise ruled by this Court. Not only this; Article XVIII, Section 3 of the Constitution states:

> "Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked."

There is nothing on record to show or even suggest that PD No. 771 has been repealed, altered or amended by any subsequent presidential issuance (when the executive still exercised legislative powers).

Neither can it be tenably stated that the issue of the continued existence of ADC's franchise by reason of the unconstitutionality of PD No. 771 was settled in G.R. No. 115044, for the decision of the Court's First Division in said case, aside from not being final, cannot have the effect of nullifying PD No. 771 as unconstitutional, since only the Court *En Banc* has that power under Article VIII, Section 4(2) of the Constitution.

And on the question of whether or not the government is estopped from contesting ADC's possession of a valid franchise, the well-settled rule is that the State cannot be put in estoppel by the mistake or errors, if any, of its officials or agents. *(Republic vs. Intermediate Appellate Court,* 209 SCRA 90 [1992]).

Consequently, in the light of the foregoing expostulation, we conclude that the Republic (in contra distinction to the City of Manila) may be allowed to intervene in G.R. No. 115044 in the exercise of its government functions to protect public morals and promote the general welfare.

The burden of proving the invalidity of a law rests on those who challenge it.

STUDY/READ

JOVENCIO LIM AND TERESITA LIM, *vs.* THE PEOPLE OF THE PHILIPPINES, THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 217, THE CITY PROSECUTOR OF QUEZON CITY, AND WILSON CHAM
G.R. No. 149276, September 27, 2002
390 SCRA 194

ISSUE: The constitutionality of PD 818,[1] a decree which amended Article 315 of the Revised Penal Code by increasing the penalties for *Estafa* committed by means of bouncing checks, is being challenged in this petition for *certiorari,* for being violative of the due process clause, the right to bail and the provision against cruel, degrading or inhuman punishment enshrined under the Constitution.

HELD: When a law is questioned before the Court, the presumption is in favor of its constitutionality. To justify its nullification, there must be a clear and unmistakable breach of the Constitution, not a doubtful and argumentative one. The burden of proving the invalidity of a law rests on those who challenge it. In this case, petitioners failed to present

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[1] Section 1. Any person who shall defraud another by means of false pretenses or fraudulent acts as defined in paragraph 2(d) of Article 315 of the Revised Penal Code, as amended by Republic Act No. 4885, shall be punished by:

1st. The penalty of *reclusion temporal* if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos but the total penalty which may be impose shall in no case exceed thirty years. In such cases, and in connection with the accessory penalties which may be imposed under the Revised Penal Code, the penalty shall be termed *reclusion perpetua*; xxx xxx xxx.

clear and convincing proof to defeat the presumption of constitutionality of PD 818.

PRESUMPTION AGAINST INJUSTICE

We test a law by its results and likewise, we may add, by its purposes. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.

Thus, we interpret and apply the law not independently of, but in consonance with, justice. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a particular case because of its peculiar circumstances. In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.

As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence. "Courts are apt to err by sticking too closely to the words of a law," so we are warned, by Justice Holmes again, "where these words import a policy that goes beyond them." While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to "the letter that killeth" but to "the spirit that vivifieth," to give effect to the lawmaker's will. *(Alonzo vs. IAC, infra).*

ILLUSTRATIVE CASES:

In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.

KAREN E. SALVACION *vs.*
CENTRAL BANK OF THE PHILIPPINES
G.R. No. 94723, August 21, 1997
278 SCRA 27

FACTS: On February 4, 1989, Greg Bartelli y Northcott, an American tourist coaxed and lured petitioner Karen Salvacion, then 12 years old to go with him to his apartment. Therein, Greg Bartelli detained Karen Salvacion for four days, or up to February 7, 1989 and was able to rape the child once on February 4, and three times each day on February 5, 6 and 7, 1989. On February 7, 1989, after policemen and people living nearby rescued Karen, Greg Bartelli was arrested and detained at the Makati Municipal Jail. The policemen recovered from Bartelli the following items: 1) Dollar Check No. 368, Control No. 021001678-1166111303, US$3,903.20; 2) COCOBANK Bank Book No. 104-108758-8 (Peso Acct.); 3) Dollar Account-China Banking Corp., US$/A#54105028-2; 4) ID-12230-8877; 5) Philippine Money (P234.00) cash; 6) Door Keys, 6 pieces; and 7) Stuffed Doll (Teddy Bear) used in seducing the complainant.

On February 16, 1989, criminal cases for serious illegal detention and four (4) counts of rape and the corresponding Civil Case No. 89-3214 for damages with preliminary attachment was filed against Greg Bartelli.

On February 24, 1989, Greg Bartelli escaped from jail. In the meantime, the Trial Court issued a writ of preliminary attachment and notice of garnishment was served to China Banking Corporation where Bartelli maintains a dollar account. China Banking Corporation invoked Sec. 113 of Central Bank Circular 960 to the effect that the dollar deposits of defendant Bartelli are exempt from attachment.

COAXED
READ the Original/Full Text
Total of 10 rapes in 4 days
COAXED
- to persuade someone gently to do something or go somewhere, by being kind and patient, or by appearing to be: coax someone into doing something
Study the facts, Issues. Mentioned nga pwede maguwa sa exam

Eventually, judgment by default was rendered against the defendant Bartelli where he was ordered to pay the plaintiffs, Karen Salvacion and her parents, moral damages, attorney's fees, litigation expenses and costs of the suit. The corresponding writ of execution was issued but respondents China Banking Corporation and Central Bank of the Philippines refused to honor the writ of execution on the strength of the following provision of Central Bank Circular 960:

> "Sec. 113. *Exemption from attachment.*—Foreign currency deposits shall be exempt from attachment, garnishment or any other order or process of any court, legislative body, government agency or any administrative body whatsoever."

The reason advanced by the Central Bank is to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines. Thus, it will encourage the inflow of foreign currency deposits into the banking institution. This applies to all foreign currency deposits made by any person and does not violate the equal protection clause.

ISSUE: Whether or not Sec. 113 of Central Bank Circular 960 and Sec. 8 of RA 6426 as amended by PD 1246 otherwise known as the "Foreign Currency Deposit Act" be made applicable to a foreign transient.

HELD: The application of the law depends on the extent of its justice. Eventually, if we rule that the questioned Sec. 113 of Central Bank Circular No. 960 which exempts from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever, is applicable to a foreign transient injustice would result especially to a citizen aggrieved by a foreign guest like accused Greg Bartelli. This would negate Article 10 of the New Civil Code which provides that "in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail. *"Ninguno non deue enriquecerse fortizaramente condano de otro."* Simply stated, when the

statute is silent or ambiguous, this is one of those fundamental solutions that would respond to the vehement urge of conscience. (*Padilla vs. Padilla*, 74 Phil. 377 [1943]).

It would be unthinkable, that the questioned Sec. 113 of Central Bank Circular 960 would be used as a device by accused Greg Bartelli for wrongdoing and in doing so, acquitting the guilty at the expense of the innocent.

PETITION GRANTED.

A law should not be interpreted so as to cause an injustice.

Biiuda De Ape
Tomas v. Tomas
Sallenillas v. Sallenillas

CARLOS ALONZO AND CASIMIRA ALONZO *vs.*
INTERMEDIATE APPELLATE COURT AND TECLA PADUA
G.R. No. L-72873, May 28, 1987
150 SCRA 259

Same with the Abistado Case

Study the procedural history/sequence of the case

FACTS: Five brothers and sisters inherited in equal *pro indiviso* shares a parcel of land registered in the name of their deceased parents under OCT No. 10977 of the Registry of Deeds of Tarlac.

On March 15, 1963, one of them, Celestino Padua, transferred his undivided share to the herein petitioners for the sum of P550.00 by way of absolute sale. One year later, on April 22, 1964, Eustaquia Padua, his sister, sold her own share to the same vendee, in an instrument denominated "Con Pacto de Retro Sale," for the sum of P440.00.

By virtue of such agreements, the petitioners occupied, after the said sales, an area corresponding to two-fifths of the said lot, representing the portions sold to them. The vendees subsequently enclosed the same with a fence. In 1975, with their consent, their son Eduardo Alonzo and his wife built a semi-concrete house on a part of the enclosed area.

On February 25, 1976, Mariano Padua, one of the five co-heirs, sought to redeem the area sold to the spouses Alonzo, but his complaint was dismissed when it appeared

that he was an American citizen. On May 27, 1977, however, Tecla Padua, another co-heir, filed her own complaint invoking the same right of redemption claimed by her brother.

The trial court also dismissed this complaint, now on the ground that the right had lapsed, not having been exercised within thirty days from notice of the sales in 1963 and 1964. Although there was no written notice, it was held that actual knowledge of the sales by the co-heirs satisfied the requirement of the law.

In reversing the trial court, the respondent court declared that the notice required by the said article was written notice and that actual notice would not suffice as a substitute. Citing the same case of *De Conejew vs. Court of Appeals* applied by the trial court, the respondent court held that that decision, interpreting a like rule in Article 1623, stressed the need for written notice although no particular form was required.

ISSUE: Was there a valid notice? Granting that the law requires the notice to be written, would such notice be necessary in this case? Assuming there was a valid notice although it was not in writing, would there be any question that the 30-day period for redemption had expired long before the complaint was filed in 1977? Take note of the Ruling

HELD: In the face of the established facts, we cannot accept the private respondents' pretense that they were unaware of the sales made by their brother and sister in 1963 and 1964. By requiring written proof of such notice, we would be closing our eyes to the obvious truth in favor of their palpably false claim of ignorance, thus exalting the letter of the law over its purpose. The purpose is clear enough to make sure that the redemptioners are duly notified. We are satisfied that in this case the other brothers and sisters were actually informed, although not in writing, of the sales made in 1963 and 1964 and that such notice was sufficient.

Now, when did the 30-day period of redemption begin?

While we do not here declare that this period started from the dates of such sales in 1963 and 1964, we do say that sometime between those years and 1976, when the first complaint for redemption was filed, the other co-heirs were actually informed of the sale and that thereafter the 30-day period started running and ultimately expired. This could have happened any time during the interval of thirteen years, when none of the co-heirs made a move to redeem the properties sold. By 1977, in other words, when Tecla Padua filed her complaint, the right of redemption had already been extinguished because the period for its exercise had already expired.

We realize that in arriving at our conclusion today, we are deviating from the strict letter of the law, which the respondent court understandably applied pursuant to existing jurisprudence. The said court acted properly as it has no competence to reverse the doctrines laid down by this Court in the above-cited cases. In fact, and this should be clearly stressed, we ourselves are not abandoning the *De Conejero and Buttle doctrines*. What we are doing simply is adopting an exception to the general rule, in view of the peculiar circumstances of this case.

PETITION GRANTED.

(See also *Hermoso vs.* CA, G.R. No. 108580, Dec. 29, 1998, 300 SCRA 516).

PRESUMPTION AGAINST IMPLIED REPEALS

Well-settled is the rule that repeals of laws by implication is not favored and that courts must generally assume their congruent application. The two laws must be absolutely incompatible, and clear finding thereof must surface, before the inference of implied repeal may be drawn. The rule is expressed in the maxim, *interpretare et concordare leqibus est optimus interpretendi, i.e.*, every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence. The fundament is that the legislature should be presumed to have known the existing laws on the subject and not to have

enacted conflicting statutes. Hence, all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject. (*Hon. Juan M. Hagad vs. Hon. Mercedes Gozo Dadole*, G.R. No. 108072, Dec. 12, 1995, 251 SCRA 242).

Similarly in *Agujetas vs. CA*, 261 SCRA 17 (1996), it declared:

In order to effect a repeal by implication, the later statute must be so irreconcilably inconsistent and repugnant with the existing law that they cannot be made to reconcile and stand together. The clearest case possible must be made before the inference of implied repeal may be drawn, for inconsistency is never presumed. "It is necessary," says the court in a case, "before such repeal is deemed to exist that it be shown that the statutes or statutory provisions deal with the same subject matter and that the latter be inconsistent with the former. There must be a showing of repugnance clear and convincing in character. The language used on the later statute must be such as to render it irreconcilable with what had been formerly enacted. An inconsistency that falls short of that standard does not suffice." For it is a well-settled rule of statutory construction that repeals of statutes by implication are not favored. The presumption is against inconsistency or repugnance and, accordingly, against implied repeal. For the legislature is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes.

ILLUSTRATIVE CASE:

In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.

Repeal by implication is not favored by law and is only resorted to in case of irreconcilable inconsistency and repugnancy between the new law and the old law

ALELI C. ALMADOVAR, GENERAL MANAGER ISAWAD, ISABELA CITY, BASILAN PROVINCE, *v.* CHAIRPERSON MA. GRACIA M. PULIDO-TAN, COMMISSION ON AUDIT
G.R. No. 213330, November 16, 2015

FACTS: Isabela Water District (*ISAWAD*) is a government owned and controlled corporation (*GOCC*) created pursuant to the provisions of Presidential Decree (P.D.) No. 198, or the "Provincial Water Utilities Act of 1973" (*PWUA*), as amended by Republic Act (R.A.) No. 9286. Aleli G. Almadovar (petitioner) is the General Manager (*GM*) of ISAWAD.

On January 25, 2007, Catalino S. Genel (Genel), Audit Team Leader for ISAWAD, Isabela City, gave notice that the payment of salary increase for the GM, ISAWAD, from P20,823.00 to P35,574-00 per month, from August to December, 2005,was without legal basis.

On April 26, 2007, petitioner filed an appeal with the Regional Cluster Director, Cluster III-Public Utilities, Corporation Government Sector, which was indorsed to the COA Regional Office. Petitioner insisted that the increase in her salary and her RATA was in accordance with R.A. No. 9286, or the law, which amended the PWUA.

On October 28, 2010, the COA Regional Office rendered a decision affirming the assailed NDs. It explained that the compensation of the GMs of local water districts (*LWDs*) was still subject to the provisions of R.A. No. 6758, or the Salary Standardization Law (*SSL*). Thus, it found that the increase in petitioner's salary was improper as it ran afoul with the provisions of R.A. No. 6758. The case was automatically elevated for review to the COA pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedures of the COA. On December 29, 2011, the COA rendered the assailed decision affirming the ruling of the COA Regional Office. Aggrieved, petitioner moved for reconsideration of the decision but her motion was denied by the COA *En Banc* in its assailed resolution, dated April 4, 2014.

Petitioner insists that her salary increase was proper because LWDs were exempt from the coverage of the SSL as

Section 23 of R.A. No. 9286, a later law, empowered the board of directors of LWDs to fix the salary of its GM, thereby impliedly repealing R.A. No. 6758.

ISSUE: Whether or not petitioner' s salary increase was proper

HELD: The increase in the salary of the petitioner was correctly disallowed because it contravened the provisions of the SSL. In *Mendoza*, the Court ruled that the salaries of GMs of LWDs were subject to the provision of the SSL, to wit:

> The Salary Standardization Law applies to all government positions, including those in government-owned or controlled corporations, without qualification. The exception to this rule is when the government-owned or controlled corporation's charter specifically exempts the corporation from the coverage of the Salary Standardization Law. x x x
>
> The Court is not convinced that Section 23 of Presidential Decree No. 198, as amended, or any of its provisions, exempts water utilities from the coverage of the Salary Standardization Law. In statutes subsequent to Republic Act No. 6758, Congress consistently provided not only for the power to fix compensation but also the agency's or corporation's exemption from the Salary Standardization Law. If Congress had intended to exempt water utilities from the coverage of the Salary Standardization Law and other laws on compensation and position classification, it could have expressly provided in Presidential Decree No. 198 an exemption clause similar to other GOCC.
>
> Congress could have amended Section 23 of Presidential Decree No. 198 to expressly provide that the compensation of a general manager is exempted from the Salary Standardization Law. However, Congress did not. Section 23 was amended to emphasize that the general manager "shall not be removed from office, except for cause and after due process."

This does not mean that water utilities cannot fix the compensation of their respective general managers. Section 23 of Presidential Decree No. 198 clearly provides that a water utility's board of directors has the power to define the duties and fix the compensation of a general manager. However, the compensation fixed must be in accordance with the position classification system under the Salary Standardization Law.

Petitioner claims that R.A. No. 9286, being a later law, repealed the SSL. The Court, however, notes that R.A. No. 9286 did not expressly repeal the SSL. Neither did R.A. No. 9286 impliedly repeal the SSL because repeal by implication is not favored by law and is only resorted to in case of irreconcilable inconsistency and repugnancy between the new law and the old law. As clearly pointed out in *Mendoza*, there is no irreconcilable inconsistency between R.A. No. 9286 and the SSL. It is conceded though that the board of directors has full discretion in fixing the salary of the GM, but it is always subject to the limits under the SSL, unless the charter of the LWD exempts it from the coverage of the said law.

The December 29, 2011 Decision of the Commission on Audit is AFFIRMED.

REPEALS OF STATUTE BY IMPLICATION NOT FAVORED

ILLUSTRATIVE CASE:

Melchor v. Commission on Audit/Review as well

ANTONIO A. MECANO *vs.* COMMISSION ON AUDIT
G.R. No. 103982, December 11, 1992
216 SCRA 500

FACTS: Antonio A. Mecano, through a petition for *certiorari*, seeks to nullify the decision of the Commission on Audit (COA, for brevity) embodied in its 7th Indorsement, dated January 16, 1992, denying his claim for reimbursement under Section 699 of the Revised Administrative Code (RAC), as amended, in the total amount of P40,831.00.

Petitioner, a Director II of the National Bureau of Investigation (NBI), was hospitalized for cholecystitis (service-connected) from March 26, 1990 to April 7, 1990, on account of which he incurred medical and hospitalization expenses, the total amount of which he is claiming from the COA.

COA Chairman Eufemio C. Domingo, in his 7th Indorsement of January 16, 1992 denied petitioner's claim on the ground that Section 699 of the RAC has been repealed by the Administrative Code of 1987 solely for the reason that the same section was not restated nor reenacted in the Administrative Code of 1987.

ISSUE: Whether or not the enactment of the Administrative Code of 1987 (Exec. Order No. 292) operates to repeal the Revised Administrative Code of 1917.

HELD: In the case of the two Administrative Codes in question, the ascertainment of whether or not it was the intent of the legislature to supplant the old Code with the new Code partly depends on the scrutiny of the repealing clause of the new Code. This provision is found in Section 27, Book VII (Final Provisions) of the Administrative Code of 1987 which reads: Take note of the Ruling

> "Sec. 27. *Repealing Clause.*—All laws, decrees, orders, rules and regulations, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly."

The question that should be asked is: What is the nature of this repealing clause? It is certainly not an express repealing clause because it fails to identify or designate the act or acts that are intended to be repealed. Rather, it is an example of a general repealing provision, as stated in Opinion No. 73, S. 1991. It is a clause which predicates the intended repeal under the condition that a substantial conflict must be found in existing and prior acts. The failure to add a specific repealing clause indicates that the intent was not to repeal any existing law, unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws. This latter situation falls under the category of an implied repeal.

Comparing the two Codes, it is apparent that the new Code does not cover nor attempt to cover the entire subject matter of the Old Code. There are several matters treated in the Old Code which are not found in the new Code, such as the provisions on notaries public, the leave law, the public bonding law, military reservations, claims for sickness benefits under Section 699 and still others.

Lastly, it is a well-settled rule of statutory construction that repeals of statutes by implication are not favored. The presumption is against inconsistency and repugnancy for the legislature is presumed to know the existing laws on the subject and not to have enacted inconsistent or conflicting statutes.

This Court, in a case, explains the principle in detail as follows: "Repeals by implication are not favored, and will not be decreed unless it is manifest that the legislature so intended. As laws are presumed to be passed with deliberation with full knowledge of all existing ones on the subject, it is but reasonable to conclude that in passing a statute it was not intended to interfere with or abrogate any former law relating to some matter, unless the repugnancy between the two is not only irreconcilable, but also clear and convincing, and flowing necessarily from the language used, unless the later act fully embraces the subject matter of the earlier, or unless the reason for the earlier act is beyond peradventure renewed. Hence, every effort must be used to make all acts stand and if, by any reasonable construction, they can be reconciled, the later act will not operate as a repeal of the earlier."

PETITION GRANTED AND RESPONDENT WAS ORDERED TO GIVE DUE COURSE TO PETITIONER'S CLAIM FOR BENEFITS.

PRESUMPTION AGAINST INEFFECTIVENESS

It is presumed that the legislature intends to impart to its enactments such a meaning as will render them operative and effective, and to prevent persons from eluding or defeating them. Accordingly, in case of any doubts or obscurity, the construction will be such as to carry out those objects. (Black, *Construction and Interpretation of Laws*, p. 132, 2nd ed.).

ILLUSTRATIVE CASE:

In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective statute.

DANILO E. PARAS *vs.* COMMISSION ON ELECTIONS
G.R. No. 123169, November 4, 1996
264 SCRA 49

FACTS: Petitioner Danilo E. Paras is the incumbent Punong Barangay of Pula, Cabanatuan City who won during the last regular barangay election in 1994. A petition for his recall as Punong Barangay was filed by the registered voters of the barangay. Acting on the petition for recall, public respondent Commission on Elections (COMELEC) resolved to approve the petition, scheduled the petition signing on October 14, 1995, and set the recall election on November 13, 1995. At least 29.30% of the registered voters signed the petition, well above the 25% requirement provided by law. The COMELEC, however, deferred the recall election in view of petitioner's opposition.

Petitioner's argument is simple and to the point. Citing Section 74(b) of Republic Act No. 7160, otherwise known as the Local Government Code, which states that "no recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election," petitioner insists that the scheduled January 13, 1996 recall election is now barred as

the Sangguniang Kabataan (SK) election was set by Republic Act No. 7808 on the first Monday of May 1996, and every three years thereafter. In support thereof, petitioner cites *Associated Labor Unions vs. Letrondo-Montejo*, 237 SCRA 621 (1994), where the Court considered the SK election as a regular election. Petitioner maintains that as the SK election is a regular local election, hence no recall election can be had for barely four months separate the SK election from the recall election.

ISSUE: Whether or not SK election can be considered a regular local election.

HELD: The subject provision of the Local Government Code provides:

> "SEC. 74. *Limitations on Recall.*—(a) Any elective local official may be the subject of a recall election only once during his term of office for loss of confidence.
>
> "(b) No recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election."

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. The evident intent of Section 74 is to subject an elective local official to recall election once during his term of office. Paragraph (b) construed together with paragraph (a) merely designates the period when such elective local official may be subject of a recall election, that is, during the second year of his term of office. Thus, subscribing to petitioner's interpretation of the phrase "regular local election" to include the SK election will unduly circumscribe the novel provision of the Local Government Code on recall, a mode of removal of public officers by initiation of the people before the end of his term. And if the SK election which is set by R.A. No. 7808 to be held every three years from May 1996 were to be deemed within the purview of the phrase "regular local election," as erroneously insisted by petitioner, then no

recall election can be conducted rendering inutile the recall provision of the Local Government Code.

In the interpretation of a statute, the Court should start with the assumption that the legislature intended to enact an effective law, and the legislature is not presumed to have done a vain thing in the enactment of a statute. An interpretation should, if possible, be avoided under which a statute or provision being construed is defeated, or is otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative or nugatory.

Nevertheless, recall at this time is no longer possible because of the limitation stated under Section 74(b) of the Code considering that the next regular election involving the barangay office concerned is barely seven (7) months away, the same having been scheduled on May 1997.

ACCORDINGLY, the petition is hereby dismissed for having become moot and academic. The temporary restraining order issued by the Court on January 12, 1996, enjoining the recall election should be as it is hereby made permanent.

PRESUMPTION AGAINST ABSURDITY

Statutes must receive a sensible construction such as will give effect to the legislative intention so as to avoid an unjust or absurd conclusion.

ILLUSTRATIVE CASES:

COMMISSIONER OF INTERNAL REVENUE *vs.* ESSO STANDARD EASTERN, INC. AND THE COURT OF TAX APPEALS
G.R. Nos. 28502-03, April 18, 1989
172 SCRA 364

FACTS: ESSO overpaid its 1959 income tax by P221,033.00. It was accordingly granted a tax credit in this

amount by the Commissioner on August 5, 1964. However, ESSO's payment of its income tax for 1960 was found to be short by P367,994.00. So, on July 10, 1964, the Commissioner wrote to ESSO demanding payment of the deficiency tax, together with interest thereon for the period from April 18, 1961 to April 18, 1964. On August 10, 1964, ESSO paid under protest the amount alleged to be due, including the interest as reckoned by the Commissioner. It protested the computation of interest, contending it was more than that properly due. It claimed that it should not have been required to pay interest on the total amount of the deficiency tax, P367,994.00 but only on the amount of P146,961.00 — representing the difference between said deficiency, P367,994.00, and ESSO's earlier overpayment of P221,033.00 (for which it had been granted a tax credit). ESSO thus asked for a refund.

The Internal Revenue Commissioner denied the claim for refund. ESSO appealed to the Court of Tax Appeals. As aforestated, that Court ordered payment to ESSO of its "refund claim in the amount of P39,787.94 as overpaid interest. Hence, this appeal by the Commissioner.

HELD: The fact is that, as respondent Court of Tax Appeals has stressed, as early as July 15, 1960, the Government already had in its hands the sum of P221,033.00 representing excess payment. Having been paid and received by mistake, as petitioner Commissioner subsequently acknowledged, that sum unquestionably belonged to ESSO, and the Government had the obligation to return it to ESSO. That acknowledgment of the erroneous payment came some four (4) years afterwards in no wise negates or detracts from its actuality. The obligation to return money mistakenly paid arises from the moment that payment is made, and not from the time that the payee admits the obligation to reimburse. The obligation of the payee to reimburse an amount paid to him results from the mistake or recognition of the obligation to reimburse. In other words, since the amount of P221,033.00 belonging to ESSO was already in the hands of the Government as of July, 1960, although the latter had no right whatever to the

amount and indeed was bound to return it to ESSO, it was neither legally nor logically possible for ESSO thereafter to be considered a debtor of the Government in the amount of P221,033.00 and whatever other obligation ESSO might subsequently incur in favor of the Government would have to be reduced by that sum, in respect of which no interest could be charged. To interpret the words of the statute in such a manner as to subvert these truisms simply can not and should not be countenanced. "Nothing is better settled than that courts are not to give words a meaning which would lead to absurd or unreasonable consequences. That is a principle that goes back to *In re Allen* (2 Phil. 630) decided on October 29, 1903, where it was held that a literal interpretation is to be rejected if it would be unjust or lead to absurd results." "Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or absurd conclusion."

PETITION FOR REVIEW DENIED.

The accused is enttiled to have a copy of the charges filed against him for him to respond accordingly to the charges

Presumption against undesirable consequences were never intended by a legislative measure.

Go over the case

CESARIO URSUA *vs.* COURT OF APPEALS
G.R. No. 112170, April 10, 1996
256 SCRA 147

FACTS: On 1 August 1989, Atty. Francis Palmones, counsel for petitioner, wrote the Office of the Ombudsman in Davao City requesting that he be furnished copy of the complaint against petitioner. Atty. Palmones then asked his client Ursua to take his letter-request to the Office of the Ombudsman because his law firm's messenger, Oscar Perez, had to attend to some personal matters. Before proceeding to the Office of the Ombudsman, petitioner talked to Oscar Perez and told him that he was reluctant to personally ask for the document since he was one of the respondents before the Ombudsman. However, Perez advised him not to worry as he could just sign his (Perez) name if ever he would be required to acknowledge receipt of the complaint.

When petitioner arrived at the Office of the Ombudsman in Davao City, he was instructed by the security officer to register in the visitor's logbook. Instead of writing down his name, petitioner wrote down the name "Oscar Perez" after which he was told to proceed to the Administrative Division for the copy of the complaint he needed. He handed the letter of Atty. Palmones to the Chief of the Administrative Division. Ms. Loida Kahulugan, who then gave him a copy of the complaint, receipt of which he acknowledged by writing the name "Oscar Perez."

Before petitioner could leave the premises he was greeted by an acquaintance, Josefa Amparo, who also worked in the same office. They conversed for a while then he left. When Loida learned that the person who introduced himself as "Oscar Perez" was actually petitioner Cesario Ursua, a customer of Josefa Amparo in her gasoline station, Loida reported the matter to the Deputy Ombudsman who recommended that petitioner be accordingly charged.

On 18 December 1990, after the prosecution had completed the presentation of its evidence, petitioner without leave of court filed a demurrer to evidence alleging that the failure of the prosecution to prove that his supposed alias was different from his registered name in the local civil registry was fatal to its cause. Petitioner argued that no document from the local civil registry was presented to show the registered name of accused which according to him was a condition *sine qua non* for the validity of his conviction.

The trial court rejected his contentions and found him guilty of violating Sec. 1 of C.A. No. 142 as amended by R.A. No. 6085. His conviction was affirmed by the Court of Appeals.

ISSUE: Whether or not the use of a different name belonging to another in isolated transaction falls within the prohibition of C.A. No. 142.

HELD: Time and again we have decreed that statutes are to be construed in the light of the purposes to be achieved and the evils sought to be remedied. Thus, in construing a

statute, the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.

The objective and purpose of C.A. No. 142 have their origin and basis in Act No. 3883, An Act to Regulate the Use in Business Transactions of Names other than True Names, Prescribing the Duties of the Director of the Bureau of Commerce and Industry in its Enforcement, Providing Penalties for Violations thereof, and for Other Purposes, which was approved on 14 November 1931 and amended by Act No. 4147.

For a bit of history, the enactment of C.A. No. 142 as amended was made primarily to curb the common practice among the Chinese of adopting scores of different names and aliases which created tremendous confusion in the field of trade. Such a practice almost bordered on the crime of using fictitious names which for obvious reasons could not be successfully maintained against the Chinese who, rightly or wrongly claimed they possessed a thousand and one names. C.A. No. 142 thus penalized the act of using an alias name unless such alias was duly authorized by proper judicial proceeding and recorded in the civil register.

Clearly, therefore, an alias is a name or names used by a person or intended to be used by him publicly and habitually usually in business transaction in addition to his real name by which he is registered at birth or baptized the first time or substitute name authorized by a competent authority. A man's name is simply the sound or sounds by which he is commonly designated by his fellows and by which they distinguish him but sometimes a man is known by several different names and these are known as aliases. Hence, the use of fictitious name or a different name belonging to another person in a single instance without any sign or indication that the user intends to be known by this name in addition to his real name from that day forth does not fall

within the prohibition contained in C.A. No. 142 as amended. This is so in the case at bench.

While the act of the petitioner may be covered by other provisions of law, such does not constitute an offense within the concept of C.A. No. 142 as amended under which he is prosecuted. The confusion and fraud in business transactions which the anti-alias law and its related statute seek to prevent are not present here as the circumstances are peculiar and distinct from those contemplated by the legislature in enacting C.A. No. 142 as amended. There exists a valid presumption that undesirable consequences were never intended by a legislative measure and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil and injurious consequences.

JUDGMENT REVERSED AND SET ASIDE, PETITIONER ACQUITTED.

PRESUMPTION AGAINST VIOLATION OF INTERNATIONAL LAW

This presumption is in conformity with the Declaration of Principles and State Policies in our Constitution. It states that the Philippines as a democratic and republican state adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations. (Art. II, Sec. 2, Phil. Constitution).

Thus, Letter of Instruction No. 229 requiring the installation of early warning devices, (EWD) to vehicles was held to be a valid police power measure. Moreover, it is in conformity with the 1968 Vienna Convention on Road Signs and Signals which was ratified by the Philippine Government in P.D. 207. "It is not for this country to repudiate a commitment to which it had pledged its word." (*Agustin vs. Edu*, G.R. No. L-49112, February 2, 1979, 88 SCRA 195).

In another case involving the holding of a rally in front of the U.S. Embassy, it was held that the Philippines is a

signatory of the Vienna Convention on Diplomatic Relation adopted in 1961. It provides that the receiving State is under a special duty to take appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity. To that extent that the Vienna convention is a restatement of the generally accepted principles of international law, it should be a part of the law of the land. That being the case, if there were a clear and present danger of any intrusion or damage, or disturbance of the peace of the mission, or impairment of its dignity, there would be a justification for the denial of the permit insofar as the terminal point would be the embassy. (*Reyes vs. Bagatsing*, No. L-65366, November 9, 1983, 125 SCRA 553).

CHAPTER VI

INTRINSIC AIDS IN CONSTRUCTION AND INTERPRETATION

INTRINSIC AIDS

The very term "intrinsic" means internal or within. Intrinsic aids, therefore, are those aids within the statute. Time and again, it must be emphasized that intrinsic aids are resorted to only if there is ambiguity in the statute. If the language of the statute is clear and unequivocal there is no need to resort to intrinsic aids.

In resorting to intrinsic aids, one must go back to the parts of the statute, the title, preamble, context or body of the statute, chapter and section headings, punctuation and interpretation clause. All these are resorted to in order to determine the intention of the legislature.

THE TITLE OF A LAW IS A VALUABLE INTRINSIC AID IN DETERMINING LEGISLATIVE INTENT

In intervention, the Republic of the Philippines through the Games and Amusement Board contends that Manila Ordinance No. 7065 which purported to grant to ADC a franchise to conduct jai-alai operations is void and *ultra vires* since Republic Act No. 954 approved on June 20, 1953, or very much earlier than said Ordinance No. 7065, the latter approved on September 7, 1971, in Section 4 thereof, requires a legislative franchise, not a municipal franchise, for the operation of Jai-Alai.

In his dissenting opinion, Justice Puno said that a 20-20 visual reading of R.A. No. 954 will not yield the suggested interpretation by petitioners.

The title of R.A. No. 954 will immediately reveal that the law was enacted to achieve a special purpose. It states: "An Act To Prohibit Certain Activities In Connection With Horse Races and Basque Pelota Games (Jai-Alai), And To Prescribe Penalties For Its Violation." The prohibited activities related to jai-alai games are specified in Sections 4 to 6, *viz.*:

> "SEC. 4. No person, or group of persons, other than the operator or maintainer of a fronton with legislative franchise to conduct basque pelota games (Jai-Alai), shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event.
>
> SEC. 5. No person, operator, or maintainer of a fronton with legislative franchise to conduct basque pelota games shall offer, take or arrange bets on any basque pelota game or event, or maintain or use a totalizator or other device, method or system to bet or gamble on any basque pelota game or event outside the place, enclosure, or fronton where the basque pelota game is held.
>
> SEC. 6. No person or group of persons shall fix a basque pelota game for the purpose of insuring the winning of certain determined pelotari or pelotaris."

The title of R.A. No. 954 does not show that it seeks to limit the operation of jai-alai only to entities with franchise given by Congress. What the title trumpets as the sole subject of the law is the criminalization of certain practices relating to jai-alai games. The title of a law is a valuable intrinsic aid in determining legislative intent.

TEXT OF THE STATUTE AS INTRINSIC AID

To top it all, the text of R.A. No. 954 itself does not intimate that it is repealing any existing law, especially Section 18 of R.A. No. 409, otherwise known as the Charter

of Manila. Indeed, R.A. No. 954 has no repealing provision. The reason is obvious — it simply prohibited certain practices in jai-alai then still unregulated by the laws of the land. It did not regulate aspects of jai-alai already regulated by existing laws, like the matter of whether it is the national government alone that should issue franchises to operate jai-alai games. (*Lim vs. Pacquing*, 240 SCRA 649 [1995]).

NOTE: Although this is a dissenting opinion, nevertheless it is persuasive and to stress the point that title and text of the statute is a valuable intrinsic aid in determining legislative intent.

ILLUSTRATIVE CASE:

Subtitle of the statute as intrinsic aid in determining legislative intent.

READ. NAPASADAHAN

MIRIAM DEFENSOR SANTIAGO, ET AL. *VS.* COMMISSION ON ELECTIONS, JESUS DELFIN, ALBERTO PEDROSA AND CARMEN PEDROSA
G.R. No. 127325, March 19, 1997
270 SCRA 106

READ THE CONTENT AND RULING

In the above case, an issue was raised whether R.A. No. 6735, entitled, "An Act Providing for a System of Initiative and Referendum and Appropriating Funds Therefor," was intended to include or cover initiative on amendments to the Constitution; and if so, whether the Act, as worded, adequately covers such initiative.

The majority opinion is on the negative view saying:

While the Act provides subtitles for National Initiative and Referendum (Subtitle II) and for Local Initiative and Referendum (Subtitle III), no subtitle is provided for initiative on the Constitution. This conspicuous silence as to the latter simply means that the main thrust of the Act is initiative and referendum on national and local laws. If Congress intended R.A. No. 6735 to fully provide for the implementation of the initiative on amendments to the

Constitution, it could have provided for a subtitle therefor, considering that in the order of things, the primary of interest, or hierarchy of values, the right of the people to directly propose amendments to the Constitution is far more important than the initiative on national and local laws.

On the other hand, the dissenting view is that:

The argument that R.A. No. 6735 does not include people's initiative to amend the Constitution simply because it lacks a subtitle on the subject should be given the weight of helium. Again, the hoary rule in statutory construction is that headings prefixed to titles, chapters and sections of a statute may be consulted in aid of interpretation, but inferences drawn therefrom are entitled to very little weight, and they can never control the plain terms of the enacting clauses.

NOTE: Be that as it may, title and subtitle can be used as intrinsic aid in determining legislative intent.

PREAMBLE AS INTRINSIC AID

The intent of the law as culled from its preamble and from the situation, circumstances and conditions it sought to remedy, must be enforced.

ILLUSTRATIVE CASES: Just Read/ Wala na Discuss

FLORENCIO EUGENIO *vs.* EXECUTIVE SECRETARY FRANKLIN M. DRILON, HOUSING AND LAND USE REGULATORY BOARD AND PROSPERO PALMIANO
G.R. No. 109404, January 22, 1996
252 SCRA 106

FACTS: On May 10, 1972, private respondent purchased on installment basis from petitioner and his co-owner/developer Fermin Salazar, two lots in the E & S Delta Village in Quezon City.

Acting on complaints for non-development docketed as NHA Cases Nos. 2619 and 2620 filed by the Delta Village Homeowners' Association, Inc., the National Housing Authority rendered a resolution on January 17, 1979 *inter alia* ordering petitioner to cease and desist from making further sales of lots in said village or in any project owned by him.

While NHA Cases Nos. 2619 and 2620 were still pending, private respondent filed with the Office of Appeals, Adjudication and Legal Affairs (OAALA) of the Human Settlements Regulatory Commission (HSRC), a complaint (Case No. 80-589) against petitioner and spouses Rodolfo and Adelina Relevo alleging that, in view of the above NHA resolution, he suspended payment of his amortizations, but that petitioner resold one of the two lots to the said spouses Relevo, in whose favor title to the said property was registered. Private respondent further alleged that he suspended his payments because of petitioner's failure to develop the village. Private respondent prayed for the annulment of the sale to the Relevo spouses and for reconveyance of the lot to him.

On October 11, 1983, the OAALA rendered a decision upholding the right of petitioner to cancel the contract with private respondent and dismissed private respondent's complaint.

On appeal, the Commission Proper of the HSRC reversed the OAALA and, applying P.D. 957, ordered petitioner to complete the subdivision development and to reinstate private respondent's purchase contract over one lot, and as to the other, "it appearing that Transfer Certificate of Title No. 269546 has been issued to spouses Rodolfo and Adelina Relevo, the management of E & S Delta Village is hereby ordered to immediately refund to the complainant-appellant (herein private respondent) all payments made thereon, plus interests computed at legal rates from date of receipt hereof until fully paid."

The respondent Executive Secretary, on appeal, affirmed the decision of the HSRC and denied the

subsequent Motion for Reconsideration for lack of merit and for having been filed out of time. Petitioner has now filed this Petition for review before the Supreme Court.

Under Revised Administrative Circular No. 1-95, "appeals from judgments or final orders of the Office of the President may be taken to the Court of Appeals." However, in order to hasten the resolution of this case, which was deemed submitted for decision one and a half years ago, the Court resolved to make an exception to the said Circular in the interest of speedy justice.

In his Petition before this Court, petitioner avers that the Executive Secretary erred in applying P.D. 957 and in concluding that the non-development of the E & S Delta Village justified private respondent's non-payment of his amortizations. Petitioner avers that inasmuch as the land purchase agreements were entered into in 1972, prior to the effectivity of P.D. 957 in 1976, said law cannot govern the transaction.

ISSUE: Whether or not the failure to develop a subdivision constitute legal justification for the non-payment of amortizations by a buyer on installment under land purchase agreements entered into prior to the enactment of P.D. 957, "The Subdivision and Condominium Buyers' Protective Decree."

HELD: We hold otherwise, and herewith rule that respondent Executive Secretary did not abuse his discretion, and that P.D. No. 957 is to be given retroactive effect so as to cover even those contracts executed prior to its enactment in 1976.

P.D. No. 957 did not expressly provide for retroactivity in its entirety, but such can be plainly inferred from the unmistakable intent of the law.

The intent of the law, as culled from its preamble and from the situation, circumstances and conditions it sought to remedy, must be enforced.

It goes without saying that, as an instrument of social justice, the law must favor the weak and the disadvantaged, including, in this instance, small lot buyers and aspiring

homeowners. P.D. No. 957 was enacted with no other end in view than to provide a protective mantle over helpless citizens who may fall prey to the manipulations and machinations of unscrupulous subdivision and condominium sellers and such intent is nowhere expressed more clearly than in its preamble, pertinent portions of which read as follows:

> "WHEREAS, it is the policy of the State to afford its inhabitants the requirements of decent human settlement and to provide them with ample opportunities for improving their quality of life;
>
> WHEREAS, numerous reports reveal that many real-estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water systems, lighting systems, and other similar basic requirements, thus endangering the health and safety of home and lot buyers;
>
> WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value."

From a dedicated reading of the preamble, it is manifest and unarguable that the legislative intent must have been to remedy the alarming situation by having P.D. No. 957 operate retrospectively even upon contracts already in existence at the time of its enactment. Indeed, a strictly prospective application of the statute will effectively emasculate it, for then the State will not be able to exercise its regulatory functions and curb fraudulent schemes and practices perpetrated under or in connection with those contracts and transactions which happen to have been entered into prior to P.D. No. 957, despite obvious prejudice to the very subdivision lot buyers sought to be protected by said law. It is hardly conceivable that the

legislative authority intended to permit such a loophole to remain and continue to be a source of misery for subdivision lot buyers well into the future.

PETITION DISMISSED.

Preamble used as a guide in determining the intent of the lawmaker.

THE PEOPLE OF THE PHILIPPINES *vs.* HON. VICENTE B. ECHAVES, JR., ET AL.
G.R. Nos. L-47757-61, January 28, 1980
95 SCRA 663

FACTS: The record shows that on October 25, 1977 Fiscal Abundio R. Ello filed with the lower court separate informations against sixteen persons charging them with squatting as penalized by Presidential Decree No. 772.

The decree (which took effect on August 20, 1975) provides:

> "SECTION 1. Any person who, with the use of force, intimidation or threat, or taking advantage of the absence or tolerance of the landowner, succeeds in occupying or possessing the property of the latter against his will for *residential commercial or any other purposes*, shall be punished by an imprisonment ranging from six months to one year or a fine of not less than one thousand nor more than five thousand pesos at the discretion of the court." (2nd paragraph is omitted). (Underscoring ours)

Five of the informations, wherein Ano Dacullo, Geronimo Oroyan, Mario Aparici, Ruperto Cajes and Modesto Suello were the accused, were raffled to Judge Vicente B. Echaves. Jr. of Branch II (Criminal Cases Nos. 1824, 1828, 1832, 1833 and 1839, respectively).

Before the accused could be arraigned, Judge Echaves *motu proprio* issued an omnibus order dated December 9, 1977 dismissing the five information on the grounds: (1) that it was alleged that the accused entered the land through

"stealth and strategy," with the use of force, intimidation or threat, or taking advantage of the absence or tolerance of the landowner, and (2) that under the rule of *ejusdem generis* the decree does not apply to the cultivation of a grazing land.

Because of that order, the fiscal amended the information by using in lieu of "stealth and strategy" the expression "with threat, and taking advantage of the absence of the ranchowner and/or tolerance of the said ranchowner." The fiscal asked that the dismissal order be reconsidered and that the amended information be admitted.

The lower court denied the motion. It insisted that the phrase "and for other purposes" in the decree does not include agricultural purposes because its preamble does not mention the Secretary of Agriculture and makes reference to the affluent class.

From the order of dismissal, the fiscal appealed to this Court under Republic Act No. 5440.

ISSUE: Whether or not Presidential Decree No. 772, which penalizes squatting and similar acts, applies to agricultural lands.

HELD: The appeal is devoid of merit. We hold that the lower court correctly ruled that the decree does not apply to pasture lands because its preamble shows that it was intended to apply to squatting in urban communities or more particularly to illegal constructions in squatter areas made by well-to-do individuals. The squatting complained of involves pasture lands in rural areas.

The Preamble of the decree is quoted below:

> "WHEREAS, it came to my knowledge that despite the issuance of Letter of Instruction No. 19 dated October 2, 1972, directing the Secretaries of National Defense, Public Works and Communications, Social Welfare and the Director of Public Works, the PHHC General Manager, the Presidential Assistant on Housing and Rehabilitation Agency, Governors, City and Municipal Mayors, and City and District Engineers, 'to remove all illegal constructions including buildings on

and along esteros and river banks, those along railroad tracks and those built without permits on public and private property,' squatting is still a major problem in urban communities all over the country;

"WHEREAS, many persons or entities found to have been unlawfully occupying public and private lands belong to the affluent class;

"WHEREAS, there is a need to further intensify the government's drive against this illegal and nefarious practice."

It should be stressed that Letter of Instruction No. 19 refers to illegal constructions on public and private property. It is complemented by Letter of Instruction No. 19-A which provides for the relocation of squatters in the interest of public health, safety and peace and order.

On the other hand, it should be noted that squatting on public agricultural lands, like the grazing lands involved in this case, is punished by Republic Act No. 947 which makes it unlawful for any person, corporations or association to forcibly enter or occupy public agricultural lands.

ORDER OF DISMISSAL AFFIRMED.

CHAPTER VII

EXTRINSIC AIDS IN CONSTRUCTION AND INTERPRETATION

EXTRINSIC AIDS

Extrinsic aids are existing aids from outside sources, meaning outside of the four corners of the statute. If there is any doubt as to the meaning of the statute, the interpreter must first find that out within the statute. That is, the interpreter must avail all the necessary intrinsic aids to determine the intention of the legislature. If after availing all the intrinsic aids and still there remain some ambiguity in the statute, then extrinsic aids may be consulted.

Extrinsic aids therefore are resorted to after exhausting all the available intrinsic aids and still there remain some ambiguity in the statute.

As gathered from the illustrative jurisprudence cited below, extrinsic aids resorted to by the courts are: (1) history of the enactment of the statute; (2) opinions and rulings of officials of the government called upon to execute or implement administrative laws; (3) contemporaneous construction by executive officers; (4) actual proceedings of the legislative body; (5) individual statements by members of congress; (6) the author of the law; and (7) explanatory note of the bill.

Other sources of extrinsic aids can be the reports and recommendations of legislative committees; public policy; judicial construction; and construction by the bar.

ILLUSTRATIVE CASES:

It is a well-accepted principle that where a statute is ambiguous, courts may examine both the printed pages of the published Act as well as those extrinsic matters that may aid in construing the meaning of the statute, such as the history of its enactment, the reasons for the passage of the bill and purposes to be accomplished by the measure.

COMMISSIONER OF CUSTOMS *vs.* ESSO STANDARD EASTERN, INC.
G.R. No. L-28329, August 7, 1975
66 SCRA 113

Just Read

FACTS: Respondent ESSO is the holder of Refining Concession No. 2, issued by the Secretary of Agriculture and Natural Resources on December 9, 1957, and operates a petroleum refining plant in Limay, Bataan. Under Article 103 of Republic Act No. 387 which provides: "During the five years following the granting of any concession, the concessionaire may import free of customs duty, all equipment, machinery, material, instruments, supplies and accessories," respondent imported and was assessed the special import tax which it paid under protest.

The Collector of Customs on February 16, 1962, held that respondent ESSO was subject to the payment of the special import tax provided in Republic Act No. 1394, as amended by R.A. No. 2352, and dismissed the protests.

On March 1, 1962, respondent appealed the ruling of the Collector of Customs to the Commissioner of Customs who, on March 19, 1965, affirmed the decision of said Collector of Customs.

Upon review, the Court of Tax Appeals, on September 30, 1967, reversed the decision of herein petitioner Commissioner of Customs and ordered refund of the amount of P775.62 to respondent ESSO which the latter had paid under protest.

The Court emphasized that the true legislative intent must be determined by considering the statute as a whole, rather than examining isolated words or clauses.

ISSUE: Whether or not the exemption enjoyed by herein private respondent ESSO Standard Eastern, Inc. from customs duties granted by Republic Act No. 387, or the Petroleum Act of 1949, should embrace or include the special import tax imposed by R.A. No. 1394, or the Special Tax Law.

HELD: It is a well-accepted principle that where a statute is ambiguous, as Republic Act No. 1394 appears to be, courts may examine both the printed pages of the published Act as well as those extrinsic matters that may aid in construing the meaning of the statute, such as the history of its enactment, the reasons for the passage of the bill and purposes to be accomplished by the measure.

Republic Act No. 387, the Petroleum Act of 1949, has this for its title, to wit:

> AN ACT TO PROMOTE THE EXPLORATION DEVELOPMENT, EXPLOITATION, AND UTILIZATION OF THE PETROLEUM RESOURCES OF THE PHILIPPINES, TO ENCOURAGE THE CONSERVATION OF SUCH PETROLEUM RESOURCES; TO AUTHORIZE THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES TO CREATE AN ADMINISTRATION UNIT AND A TECHNICAL BOARD IN THE BUREAU OF MINES; TO APPROPRIATE FUNDS THEREFOR; AND FOR OTHER PURPOSES.

Art. 103 of said Act reads:

> "Art. 103. *Customs duties.*—During the five years following the granting of any concessions, the concessionaire may import free from customs duty, all equipment, machinery, material, instrument, supplies and accessories.
>
> "x x x

Art. 102 of the same law insofar as pertinent, provides:

> "ART. 102. *Work obligations, taxes, royalties not to be charged.*—x x x nor shall any other special taxes or levies be applied to such concessions, nor shall concessionaires under this Act be subjected to any

provincial, municipal, or other local taxes or levies, nor shall any sales tax be charged on any petroleum produced from the concession or portion thereof, manufactured by the concessionaire and used in the working of his concession, x x x"

Art. 104, still of the same Act, reads:

"ART. 104. *No export tax to be imposed.*—No export tax shall be levied upon petroleum produced from concessions granted under this Act."

The title of Republic Act No. 387 and the provisions of its three articles give a clue to the intent of the Philippine legislature, which is to encourage the exploitation and development of the petroleum resources of the country. Through the instrumentality of said law, it declared in no uncertain terms that the intensification of the exploration for petroleum must be carried on unflinchingly even if, for the time being, no taxes, both national and local, may be collected from the industry. This is the unequivocal intention of the Philippine Congress when the language of the Petroleum Act is examined. Until this law or any substantial portion thereof is clearly amended or repealed by subsequent statutes, the intention of the legislature must be upheld.

Against this unambiguous language of R.A. No. 387, there is the subsequent legislation, R.A. No. 1394, the Special Import Tax Law.

Republic Act No. 1394, otherwise known as the Special Import Tax Law, is entitled as follows:

"AN ACT TO IMPOSE A SPECIAL IMPORT TAX ON ALL GOODS, ARTICLES OR PRODUCTS IMPORTED OR BROUGHT INTO THE PHILIPPINES, AND TO REPEAL REPUBLIC ACTS NUMBERED SIX HUNDRED AND ONE, EIGHT HUNDRED AND FOURTEEN, EIGHT HUNDRED AND SEVENTY-ONE, ELEVEN HUNDRED AND SEVENTY-FIVE, ELEVEN HUNDRED AND NINETY-SEVEN AND THIRTEEN HUNDRED AND SEVENTY-FIVE."

The title indicates unmistakably that it is repealing six prior statutes. All these laws dealt with the imposition of a special excise tax on foreign exchange or other form of levy on importation of goods into the country.

As can be seen from the foregoing, in one fell swoop, Republic Act No. 1394 repealed and revoked six earlier statutes which had something to do with the imposition of special levies and/or exemption of certain importations from the burden of the special import taxes or levies. On the other hand, it is apparent that R.A. No. 387, the Petroleum Act, had been spared from the pruning knife of Congress, although this latter law had granted more concessions and tax exemption privileges than any of the statutes that were amended, repealed or revoked by R.A. No. 1394. The answer must be that the Congress of the Philippines saw fit to preserve the privileges granted under the Petroleum Law of 1949 in order to keep the door open to the exploitation and development of the petroleum resources of the country with such incentives as are given under that law.

Having this in mind, particularly the manner in which extrinsic aids, the history of the enactment of the statute and purpose of the legislature in employing a clause or provision in the law had been applied in determining the true intent of the lawmaking body. We are convinced that R.A. No. 387, The Petroleum Act of 1949, was intended to encourage the exploitation, exploration and development of the petroleum resources of the country by giving it the necessary incentive in the form of tax exemptions. This is the *raison d'etre* for the generous grant of tax exemptions to those who would invest their financial resources towards the achievement of this national economic goal.

PETITION DENIED.

Opinions and rulings of officials of the government called upon to execute or implement administrative laws command much respect and weight.

Raison d'etre- is purpose, meaning a reason or justification for being

MISAEL P. VERA, AS COMMISSIONER OF INTERNAL REVENUE, AND THE FAIR TRADE BOARD *vs.* HON. SERAFIN R. CUEVAS, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, BRANCH IV, INSTITUTE OF EVAPORATED FILLED MILK MANUFACTURERS OF THE PHILIPPINES, INC., CONSOLIDATED MILK COMPANY (PHIL.), INC., AND MILK INDUSTRIES, INC.
G.R. Nos. L-33693-94, May 31, 1979
90 SCRA 379

FACTS: This is a petition for *certiorari* with preliminary injunction to review the decision rendered by respondent judge in Civil Case No. 52276 and in Special Civil Action No. 52383 both of the Court of First Instance of Manila.

The controversy arose from the order of defendant, Commissioner of Internal Revenue now petitioner herein, requiring plaintiff's private respondents to withdraw from the market all of their filled milk products which do not bear the inscription required by Section 169 of the Tax Code within fifteen (15) days from receipt of the order with the explicit warning that failure of plaintiffs-private respondents to comply with said order will result in the institution of the necessary action against any violation of the aforesaid order. Section 169 of the Tax Code reads as follows:

> "Section 169. *Inscription to be placed on skimmed milk.*—All condensed skimmed milk and all milk in whatever form, from which the fatty part has been removed totally or in part, sold or put on sale in the Philippines shall be clearly and legibly marked on its immediate containers, and in all the language in which such containers are marked, with the words, 'This milk is not suitable for nourishment for infants less than one year of age,' or with other equivalent words."

On April 16, 1971, the respondent court issued its decision perpetually restraining the defendant, Commissioner of Internal Revenue, his agents, or employees from requiring plaintiffs to print on the labels of their filled milk products the words: "This milk is not suitable for nourishment for infants less than one year of age" or words with equivalent import and declaring as null and void and without authority in law the order of said defendant dated September 28, 1961, and the Ruling of the Secretary of Finance, dated November 12, 1962.

HELD: Skimmed milk is different from filled milk. According to the "Definitions, Standards of Purity, Rules and Regulations of the Board of Food Inspection," skimmed milk is milk in whatever form from which the fatty part has been removed. Filled milk, on the other hand, is any milk, whether or not condensed, evaporated concentrated, powdered, dried, dessicated, to which has been added or which has been blended or compounded with any fat or oil other than milk fat, so that the resulting product is an imitation or semblance of milk cream or skimmed milk. The difference, therefore, between skimmed milk and filled milk is that in the former, the fatty part has been removed while in the latter, the fatty part is likewise removed but is substituted with refined coconut oil or corn oil or both. It cannot then be readily or safely assumed that Section 169 applies both to skimmed milk and filled milk.

The Board of Food Inspection way back in 1961 rendered an opinion that filled milk does not come within the purview of Section 169, it being a product distinct from those specified in the said Section since the removed fat portion of the milk has been replaced with coconut oil and Vitamins A and D as fortifying substances. This opinion bolsters the Court's stand as to its interpretation of the scope of Section 169. Opinions and rulings of officials of the government called upon to execute or implement administrative laws command much respect and weight. (*Asturias Sugar Central, Inc. vs. Commissioner of Customs*, G.R. No. L-19337, September 30, 1969, 29 SCRA 617; *Tan, et al. vs. The Municipality of Pagbilao, et al.*, L-14264, April 30, 1963, 7 SCRA 887; *Grapilon vs. Municipal Council of Carigara*, L-12347, May 30, 1961, 2 SCRA 103).

DECISION AFFIRMED *IN TOTO*.

Contemporaneous construction placed upon a statute by executive officers charged with implementing and enforcing the provisions of the statutes should be given controlling weight, unless such interpretation is clearly erroneous.

PHILIPPINE ASSOCIATION OF FREE LABOR UNIONS (PAFLU) *vs.* BUREAU OF LABOR RELATIONS, HONORABLE CARMELO C. NORIEL, NATIONAL FEDERATION OF FREE LABOR UNIONS (NAFLU), AND PHIL. BLOOMING MILLS CO., INC.
G.R. No. L-43760, August 21, 1976
72 SCRA 396

FACTS: In a certification election on February 27, 1976 respondent NAFLU obtained 429 votes as against 414 votes of petitioner PAFLU. Under the rules and regulations implementing the present Labor Code, a majority of the valid votes cast suffices for certification of the victorious labor union as the sole and exclusive bargaining agent. For this reason, respondent Director of Labor Relations, Carmelo C. Noriel, certified that respondent NAFLU is the exclusive bargaining agent of all the employees in the Philippines Blooming Mills Co., Inc.

Petitioner in a *certiorari* proceedings objected and relied upon the doctrine in the case of *Allied Workers Association of the Philippines vs. CIR* that spoiled ballots should be counted in determining the valid votes cast. Since there were seventeen spoiled ballots, it is the contention that there was a grave abuse of discretion on the part of the respondent Director.

HELD: Implicit in the comment of respondent Director of Labor Relations, considered as an answer, is the controlling weight to be accorded the implementing rule above-cited, no inconsistency being shown between such rules and the present Labor Code. Under such a view, the ruling in the Allied Workers Association case that arose during the period when it was the Industrial Peace Act that was in effect and not

the present law, no longer possesses relevance. It cannot and should not be applied.

The conclusion reached by us derives further support from the deservedly high repute attached to the construction placed by the executive officials entrusted with the responsibility of applying a statute. The Rules and Regulations implementing the present Labor Code were issued by Secretary Blas Ople of the Department of Labor and took effect on February 3, 1975, the present Labor Code having been made known to the public as far as May 1, 1974. This Court certainly cannot ignore the interpretation thereafter embodied in the rules. As far back as *In re Allen*, a 1903 decision, Justice McDonough, as *ponente*, cited this excerpt from the leading American case of *Pennyover vs. McConnaughy*, decided in 1891: "The principle that the contemporaneous construction of a statute by the executive officers of the government whose duty is to enforce it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisprudence that no authorities need be cited to support it.

Assuming ambiguity in the applicable statute, it must receive a construction in accordance with and not in disregard of the cardinal postulate of a public office being a public trust. Moreover, if there is any other principle of legal hermeneutics that can be invoked, it is that of contemporaneous construction. "Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty is to enforce it, and unless such interpretation is clearly erroneous, will ordinarily be controlled thereby." (*Orencia vs. Enrile*, L-28997, February 22, 1974, 55 SCRA 580).

PETITION DISMISSED.

Courts may avail themselves of the actual proceedings of the legislative body to assist in determining the construction of a statute of doubtful meaning.

CECILIO S. DE VILLA *vs.* COURT OF APPEALS
G.R. No. 87416, April 8, 1991
195 SCRA 722

FACTS: On October 5, 1987, petitioner Cecilio S. de Villa was charged before the Regional Trial Court of the National Capital Judicial Region (Makati Banch 145) with violation of Batas Pambansa Bilang 22.

It is undisputed that the check in question was executed and delivered by the petitioner to private respondent at Makati, Metro Manila.

However, petitioner argues that the check in question was drawn against the dollar account of petitioner with a foreign bank, and is therefore, not covered by the Bouncing Checks Law. (B.P. Blg. 22).

HELD: It is well-established that courts may avail themselves of the actual proceedings of the legislative body to assist in determining the construction of a statute of doubtful meaning. (*Palanca vs. City of Manila*, 41 Phil. 125 [1920]). Thus, where there is doubt as to what a provision of a statute means, the meaning put to the provision during the legislative deliberation or discussion on the bill may be adopted. (*Arenas vs. City of San Carlos*, 82 SCRA 318 [1978]).

The records of the Batasan, Vol. III, unmistakably show that the intention of the lawmakers is to apply the law to whatever currency may be the subject thereof. The discussion on the floor of the then Batasang Pambansa fully sustains this view, as follows:

"x x x x x x x x x

"THE SPEAKER: The Gentleman from Basilan is recognized.

"MR. TUPAY: Parliamentary inquiry, Mr. Speaker.

"THE SPEAKER: The Gentleman may proceed.

"MR. TUPAY: Mr. Speaker, it has been mentioned by one of the Gentlemen who interpellated that any

check may be involved, like U.S. dollar checks, etc. We are talking about checks in our country. There are U.S. dollar checks, checks in our currency, and many others.

"THE SPEAKER: The Sponsor may answer that inquiry.

"MR. MENDOZA: The bill refers to any check, Mr. Speaker, and this check may be a check in whatever currency. This would not even be limited to U.S. dollar checks. The check may be in French francs or Japanese yen or deut schunorhs. (sic) If drawn, then this bill will apply.

"MR. TUPAY: So, it includes U.S. dollar checks.

"MR. MENDOZA: Yes, Mr. Speaker."

PETITION DISMISSED.

In case of doubt as to what a provision of a statute means, the meaning put to the provision during the legislative deliberations may be adopted.

THE NATIONAL POLICE COMMISSION *vs.* HONORABLE JUDGE SALVADOR DE GUZMAN, JR., ET AL.
G.R. No. 106724, February 9, 1994
229 SCRA 801

FACTS: The case at bar had its origin in the implementation of the compulsory retirement of PNP officers as mandated in Sec. 39, RA 6975, otherwise known as "An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government," which took effect on January 2, 1991. Among others, RA 6975 provides for a uniform retirement system for PNP members. Section 39 thereof reads:

"SEC. 39. *Compulsory Retirement.*—Compulsory retirement, for officer and non-officer shall be upon the attainment of age fifty-six (56); *Provided,* That in case of any officer with the rank of chief superintendent, director or deputy director general, the Commission may

allow his retention in the service for an unextendible period of one (1) year."

Based on the above provision, petitioners sent notices of retirement to private respondents who are all members of the defunct Philippine Constabulary and have reached the age of fifty-six (56).

In response, private respondents filed a complaint on December 19, 1991 for declaratory relief with prayer for the issuance of an *ex parte* restraining order and or injunction (docketed as Civil Case No. 91-3498) before the Regional Trial Court of Makati, Branch 142. In their complaint, respondents aver that the age of retirement set at fifty-six (56) by Section 39 of RA 6975 cannot be applied to them since they are also covered by Sec. 89 thereof which provide:

"Any provision hereof to the contrary notwithstanding, and within the transition period of four (4) years following the effectivity of this Act, the following members of the INP shall be considered compulsorily retired:

"a) Those who shall attain the age of sixty (60) on the first year of the effectivity of this Act.

"b) Those who shall attain the age of fifty-nine (59) on the second year of the effectivity of this Act.

"c) Those who shall attain the age of fifty-eight (58) on the third year of the effectivity of this Act.

"d) Those who shall attain the age of fifty-seven (57) on the fourth year of the effectivity of this Act."

It is the submission of respondents that the term "INP" includes both the former members of the Philippine Constabulary and the local police force who were earlier constituted as the Integrated National Police (INP) by virtue of PD 765 in 1975.

On the other hand, it is the belief of petitioners that the 4-year transition period provided in Section 89 applies only to the local police forces who previously retire, compulsorily, at age sixty (60) for those in the ranks of Police/Fire Lieutenant

or higher (Sec. 33, PD 1184); while the retirement age for the PC had already been set at fifty-six (56) under AFP law.

The Regional Trial Court ruled in favor of the private respondents.

Petitioners disagree and claim that the use of the term INP in Sec. 89 does not imply the same meaning contemplated under PD 765 wherein it is provided:

"Section 1. *Constitution of the Integrated National Police.*—There is hereby established and constituted the Integrated National Police (INP) which shall be composed of the Philippine Constabulary as the nucleus, and the integrated police forces as established by Presidential Decrees Nos. 421, 482, 531, 585 and 641, as components, under the Department of National Defense.

On the other hand, private respondents assert that being the nucleus of the Integrated National Police (INP) under PD 765, former members of the Philippine Constabulary (PC) should not be discriminated against from the coverage of the term "INP" in Sec. 89, RA 6975. Clearly, it is argued, the term "INP" found in Section 89 of RA 6975 refers to the INP in PD 765. Thus, where the law does not distinguish, the courts should not distinguish.

ISSUE: Whether or not RA 6975 distinguishes INP from PC.

HELD: From a careful perusal of the above provisions, it appears therefore that the use of the term INP is not synonymous with the PC. Had it been otherwise, the statute could have just made a uniform reference to the members of the whole Philippine National Police (PNP) for retirement purposes and not just the INP. The law itself distinguishes INP from the PC and it cannot be construed that "INP" as used in Sec. 89 includes the members of the PC.

Having defined the meaning of INP, the trial court need not have belabored on the supposed dubious meaning of the term. Nonetheless, if confronted with such a situation, courts are not without recourse in determining the construction of the statute with doubtful meaning for they

may avail themselves of the actual proceedings of the legislative body. In case of doubt as to what a provision of a statute means, the meaning put to the provision during the legislative deliberations may be adopted. (*De Villa vs. Court of Appeals*, 195 SCRA 722 [1991], citing *Palanca vs. City of Manila*, 41 Phil. 125 [1920]; *Arenas vs. City of San Carlos*, 82 SCRA 318 [1978]).

Courts should not give a literal interpretation to the letter of the law if it runs counter to the legislative intent. (*Yellow Taxi and Pasay Transportation Workers Assn. vs. Manila Yellow Taxi Cab Co.*, 80 Phil. 83 [1948]).

Examining the records of the Bicameral Conference Committee, we find that the legislature did intend to exclude the members of the PC from the coverage of Sec. 89 insofar as the retirement age is concerned, thus:

> "THE CHAIRMAN (SEN. MACEDA): Well, it seems what people really want is one common rule, so if it is fifty-six, fifty-six; of course, the PC wants sixty for everybody. Of course, it is not acceptable to us in the sense that we tied this up really to the question of: If you are lax in allowing their (the PC) entry into the PNP, then tighten up the retirement. If we will be strict in, like requiring examinations and other conditions for their original entry, then since we have sifted out a certain amount of undersirables, then we can allow a longer retirement age. That was the rationale, that was the tie-up. Since we are relaxing the entry, we should speed up ...
>
> "THE CHAIRMAN (REP. GUTANG): Exit.
>
> "THE CHAIRMAN (SEN. MACEDA): ... the retirement, the exit.
>
> "THE CHAIRMAN (REP. GUTANG): So let me get it very clear, Mr. Chairman. Fifty-six, let's say, that will not make any adjustment in the PC because there (they) are (retireable at age) fifty-six.
>
> "THE CHAIRMAN (SEN. MACEDA): *Kaya nga, wala na silang masasabi.*
>
> "THE CHAIRMAN (REP. GUTANG): In the case of the Police, since they are retireable now at sixty, for the officers, it will be applicable to them on a one year basis for a total period of four years transition." (Bicameral Conference Committee on National Defense, March 12, 1990).
>
> "REP. GUTANG: On the first year of effectivity, the police will retire at 60 years.
>
> "THE CHAIRMAN (SEN. MACEDA): Sixty.
>
> "REP. GUTANG: On the second year, 59.
>
> "THE CHAIRMAN (SEN. MACEDA): *Oo.*
>
> "REP. GUTANG: On the third year, 58.
>
> "THE CHAIRMAN (SEN. MACEDA): *Fifty-eight. So yung 55, on the third year, 58, doon siya re-retire.*
>
> "REP. GUTANG: *Oo.*
>
> "SEN. SAGUISAG: *So kung* 55, when the law becomes effective.
>
> "THE CHAIRMAN (SEN. MACEDA): He will retire at 58, *doon siya aabot.*
>
> "REP. UNICO: *Puede.*
>
> "SEN. SAGUISAG: *Dahil 'yon, may time to ...*
>
> "THE CHAIRMAN (SEN. MACEDA): *Walang problema dito sa transition ng pulis, acceptable ito, eh.*
>
> "THE CHAIRMAN (REP. COJUANGCO): *Sa PC?*
>
> "THE CHAIRMAN (SEN. MACEDA): *PC walang mawawala sa kanila, 56 ang retirement age nilang talaga, eh. Kaya ayaw ko ngang dagdagan yung 56 nila at yon din ang Armed Forces, 56.* (*Ibid.*, May 22, 1990).

In applying the provisions of Sec. 89 in favor of the local police force as established in PD 765, the Court does not, in any manner, give any undue preferential treatment in favor of the other group. On the contrary, the Court is merely giving life to the real intent of the legislators based on the deliberations of the Bicameral Conference Committee that precede the enactment of R.A. 6575.

PETITION GRANTED. ASSAILED DECISION REVERSED AND SET ASIDE.

Individual statements by members of Congress on the floor do not necessarily reflect legislative intent.

CASCO PHILIPPINE CHEMICAL CO., INC. *vs.* HON. PEDRO GIMENEZ, IN HIS CAPACITY AS AUDITOR GENERAL OF THE PHILIPPINES
G.R. No. L-17931, February 28, 1963
7 SCRA 347

FACTS: In November and December 1959 and May 1960 petitioner Casco Philippine Chemical Co., Inc. which is engaged in the manufacture of synthetic resin glues, used in bonding lumber and veneer by plywood and hardwood producers bought foreign exchange for the importation of urea and formaldehyde which are main raw materials in the production of said glues and paid the corresponding margin fee imposed by the Central Bank in the amount of P33,765.41 and P6,345.72. Petitioner sought the refund of these margin fee relying upon Resolution No. 1529 of the Monetary Board of the Central Bank dated November 3, 1959, declaring that separate importation of urea and formaldehyde is exempt from said fee.

Although the Central Bank issued the corresponding margin fee vouchers for the refund of said amounts, the Auditor of the Bank refused to pass in audit and approve said vouchers, upon the ground that the exemption granted by the Monetary Board for petitioner's separate importations of urea and formaldehyde is not in accord with the provisions of Section 2, paragraph XVIII of Republic Act No. 2609. On appeal taken by petitioner, the Auditor General subsequently affirmed said action of the Auditor of the Bank. Hence, this petition for review.

ISSUE: Whether or not "urea" and "formaldehyde" are exempt by law from the payment of the aforesaid margin fee.

HELD: The pertinent portion of Section 2 of Republic Act No. 2609 reads:

> "The margin established by the Monetary Board pursuant to the provision of section one hereof shall not be imposed upon the sale of foreign exchange for the importation of the following:
>
> x x x x x x x x x
>
> "XVIII. Urea formaldehyde for the manufacture of plywood and hardboard when imported by and for the exclusive use of end-users."

Petitioner maintains that the term "urea formaldehyde" appearing in this provision should be construed as "urea and formaldehyde" and that respondents herein, the Auditor General and the Auditor of the Central Bank, have erred in holding otherwise. In this connection, it should be noted that, whereas "urea" and "formaldehyde" are the principal raw materials in the manufacture of synthetic resin glues, the National Institute of Science and Technology has expressed, through its Commissioner, the view that urea formaldehyde is a finished product, which is patently distinct and different from "urea" and "formaldehyde," as separate articles used in the manufacture of the synthetic resin known as "urea formaldehyde." Petitioner contends, however, that the members of congress intended to exempt "urea" and "formaldehyde" separately as essential elements in the manufacture of the synthetic resin glue called "urea formaldehyde," not the latter as a finished product, citing in support of this view the statements made on the floor of the Senate, during the consideration of the bill before said House, by members thereof. But, said individual statements do not necessarily reflect the view of the Senate. Much less do they indicate the intent of the House of Representatives. (See *Song Kiat Chocolate Factory vs. Central Bank*, 54 Off. Gaz., 615; *Mayon Motors, Inc. vs. Acting Commissioner of Internal Revenue*, L-15000, March 29, 1961, 1 SCRA 918; *Manila Jockey Club, Inc. vs. Games & Amusements Board*, L-12727, February 29, 1960, 107 Phil. 151). Furthermore, it is well-settled that the enrolled bill — which uses the term "urea formaldehyde" instead of "urea and formaldehyde" — is conclusive upon the courts as regards the tenor of the measure passed by Congress and approved by the President.

(*Primicias vs. Paredes*, 61 Phil. 118 [1934]; *Mabanag vs. Lopez Vito*, 78 Phil. 1 [1947]; *Matias vs. Comm. on Elections*, L-18684, September 14, 1961, 3 SCRA 1). If there has been any mistake in the printing of the bill before it was certified by the officers of Congress and approved by the Executive — on which we cannot speculate, without jeopardizing the principle of separation of powers and undermining one of the cornerstones of our democratic system — the remedy is by amendment or curative legislation, not by judicial decree.

DECISION APPEALED FROM AFFIRMED.

In *Kilosbayan, Incorporated vs. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, legislative deliberation was considered by the majority opinion in interpreting Section 1 of R.A. No. 1169 thus:

In G.R. No. 113375 it was held that the PCSO does not have the power to enter into any contract which would involve it in any form of "collaboration, association or joint venture" for the holding of sweepstakes races, lotteries and other similar activities. This interpretation must be reexamined especially in determining whether petitioner must have a cause of action.

We hold that the charter of the PCSO does not absolutely prohibit it from holding or conducting lottery in "collaboration, association or joint venture" with another party. What the PCSO is prohibited from doing is to invest in a business engaged in sweepstakes races, lotteries and similar activities, and it is prohibited from doing so whether in "collaboration, association or joint venture" with others or "by itself." The reason for this is that these are competing activities and the PCSO should not invest in the business of a competitor.

It will be helpful to quote the pertinent provisions of R.A. No. 1169, as amended by B.P. Blg. 42:

> "1. *The Philippine Charity Sweepstakes Office.*— The Philippine Charity Sweepstakes Office, hereinafter designated the Office, shall be the principal government agency for raising and providing for funds for health programs, medical assistance and services and charities of national character, and as such shall have the general powers conferred in section thirteen of Act Numbered One Thousand Four Hundred Fifty-Nine, as amended, and shall have the authority:
>
> "A. To hold and conduct charity sweepstakes races, lotteries and other similar activities, in such frequency and manner, as shall be determined, and subject to such rules and regulations as shall be promulgated by the Board of Directors.
>
> "B. Subject to the approval of the Minister of Human Settlements, to engage in health and welfare-related investments, programs, projects and activities which may be profit-oriented, by itself or in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign, except for the activities mentioned in the preceding paragraph (A), for the purpose of providing for permanent and continuing sources of funds for health programs, including the expansion of existing ones, medical assistance and services, and/or charitable grants; *Provided*, That such investments will not compete with the private sector in areas where investments are adequate as may be determined by the National Economic and Development Authority."

When parsed, it will be seen that Section 1 grants the PCSO authority to do any of the following: (1) to hold or conduct charity sweepstakes races, lotteries and similar activities; and/or (2) to invest — whether "by itself or in collaboration, association or joint venture with any person, association, company or entity" in "health and welfare-related investments, programs, projects and activities which may be profit-oriented," except "the activities mentioned in the preceding paragraph (A)," *i.e.*, sweepstakes races, lotteries and similar activities. The PCSO is prohibited from investing in "activities mentioned in the preceding paragraph (A)" because, as already stated, these are competing activities.

The subject matter of Section 1(B) is the authority of the PCSO to invest in certain projects for profit in order to

enable it to expand its health programs, medical assistance and charitable grants. The exception in the law refers to investment in businesses engaged in sweepstakes races, lotteries and similar activities. The limitation applies not only when the investment is undertaken by the PCSO "in collaboration, association or joint venture" but also when made by the PCSO alone, "by itself." The prohibition can not apply to the holding of a lottery by the PCSO itself. Otherwise, what it is authorized to do in par. (A) would be negated by what is prohibited by par. (B).

To harmonize pars. (A) and (B), the latter must be read as referring to the authority of the PCSO to invest in the business of others. Put in another way, the prohibition in Sec. 1(B) is not so much against the PCSO entering into any collaboration, association or joint venture with others as against the PCSO investing in the business of another franchise holder which would directly compete with PCSO's own charity sweepstakes races, lotteries or similar activities. The prohibition applies whether the PCSO makes the investment alone or with others.

The contrary construction given to Section 1 in the previous decision is based on remarks made by then Assemblyman, now Mr. Justice Davide, during the deliberations on what later became B.P. Blg. 42, amending R.A. No. 1169. It appears, however, that the remarks were made in connection with a proposal to give the PCSO the authority "to engage in any and all investments." It was to provide exception with regard to the type of investments which the PCSO is authorized to make that the Davide amendment was adopted. It is reasonable to suppose that the members of the Batasang Pambansa, in approving the amendment, understood it as referring to the exception to par. (B) of Sec. 1 giving the PCSO the power to make investments. Had it been their intention to prohibit the PCSO from entering into any collaboration, association or joint venture with others even in instances when the sweepstakes races, lotteries or similar activities are operated by it ("itself"), they would have made the amendment not in par.

(B), but in par. (A), of Sec. 1, as the logical place for the amendment.

The following excerpt from the record of the discussion on Parliamentary Bill No. 6222, which became B.P. Blg. 42, bears out this conclusion:

> "MR. ZAMORA: On the same page, starting from line 18 until line 23, delete the entire paragraph from 'b to engage in any and all investment...' until the words 'charitable grants' on line 23 and in lieu thereof insert the following:
>
> "SUBJECT TO THE APPROVAL OF THE MINISTER OF HUMAN SETTLEMENTS, TO ENGAGE IN HEALTH-ORIENTED INVESTMENTS, PROGRAMS, PROJECTS AND ACTIVITIES WHICH MAY BE PROFIT-ORIENTED, BY ITSELF OR IN COLLABORATION, ASSOCIATION, OR JOINT VENTURE WITH ANY PERSON, ASSOCIATION, COMPANY OR ENTITY, WHETHER DOMESTIC OR FOREIGN, FOR THE PURPOSE OF PROVIDING FOR PERMANENT AND CONTINUING SOURCES OF FUNDS FOR HEALTH PROGRAMS, INCLUDING THE EXPANSION OF EXISTING ONES, MEDICAL ASSISTANCE AND SERVICES AND OR CHARITABLE GRANTS.
>
> "I move for the approval of the amendment, Mr. Speaker.
>
> "MR. DAVIDE: Mr. Speaker.
>
> "THE SPEAKER: The gentleman from Cebu is recognized.
>
> "MR. DAVIDE: May I introduce an amendment to the committee amendment. The amendment would be to insert after "foreign" in the amendment just read the following EXCEPT FOR THE ACTIVITY IN LETTER (A) ABOVE.
>
> "When it is a joint or in collaboration with any other entity such collaboration or joint venture must not include activity letter (a) which is the holding and conducting of sweepstakes races, lotteries and other similar acts.
>
> MR. ZAMORA: We accept the amendment, Mr. Speaker.
>
> MR. DAVIDE: Thank you, Mr. Speaker.

THE SPEAKER: Is there any objection to the amendment. (Silence). The amendment, as amended, is approved.

MR. ZAMORA: Continuing the line, Mr. Speaker, after 'charitable grants' change the period (.) into a semi-colon (;) and add the following proviso: PROVIDED THAT SUCH INVESTMENTS, PROGRAMS, PROJECTS AND ACTIVITIES SHALL NOT COMPETE WITH THE PRIVATE SECTOR IN AREAS WHERE PRIVATE INVESTMENTS ARE ADEQUATE.

May I read the whole paragraph, Mr. Speaker.

MR. DAVIDE: May I introduce an amendment after 'adequate.' The intention of the amendment is not to leave the determination of whether it is adequate or not to anybody. And my amendment is to add after 'adequate' the words AS MAY BE DETERMINED BY THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY. As a matter of fact, it will strengthen the authority to invest in these areas, provided that the determination of whether the private sector's activity is already adequate must be determined by the National Economic and Development Authority.

MR. ZAMORA: Mr. Speaker, the committee accepts the proposed amendment.

MR. DAVIDE: Thank you, Mr. Speaker.

THE SPEAKER: May the sponsor now read the entire paragraph?

MR. ZAMORA: May I read the paragraph, Mr. Speaker?

'Subject to the Minister of Human Settlements, to engage in health and welfare-oriented investment programs, projects, and activities which may be profit-oriented, by itself or in collaboration, association or joint venture with any person, association, company or entity, whether domestic or foreign, EXCEPT FOR THE ACTIVITIES MENTIONED IN PARAGRAPH (a) for the purpose of providing for permanent and continuing sources of funds for health programs, including the expansion of existing ones, medical assistance and services and/or charitable grants: PROVIDED THAT SUCH INVESTMENTS, HEALTH PROGRAMS, PROJECTS AND ACTIVITIES SHALL NOT COMPETE WITH THE PRIVATE SECTOR IN AREAS WHERE PRIVATE INVESTMENTS ARE ADEQUATE AS MAY BE DETERMINED BY THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY.'

THE SPEAKER: Is there any objection to the amendment?

MR. PELAEZ: Mr. Speaker.

THE SPEAKER: The Gentleman from Misamis Oriental is recognized.

MR. PELAEZ: Mr. Speaker, may I suggest that in that proviso, we remove "health programs, projects and activities," because the proviso refers only to investment activities — "provided that such investments will not compete with the private sector in areas where investments are adequate..."

MR. ZAMORA: It is accepted, Mr. Speaker.

THE SPEAKER: Is there any objection?

MR. PELAEZ: Mr. Speaker, may I propose an improvement to the amendment of the Gentleman from Cebu, just for style. I would suggest the insertion of the word PRECEDING before the word "paragraph." The phrase will read "the PRECEDING paragraph."

MR. ZAMORA: It is accepted, Mr. Speaker.

THE SPEAKER: Very well. Is there any objection to the committee amendment, as amended? (Silence). The Chair hears none; the amendment is approved.

The construction given to Section 1 in the previous decision is insupportable in light of both the text of Section 1 and the deliberations of the Batasang Pambansa which enacted the amendatory law.

In his dissenting opinion, HON. JUSTICE HILARIO G. DAVIDE, JR., now the Chief Justice of the Supreme Court, declared:

"I respectfully submit that the best authority on the intention or rationale of a legislative amendment is

its author. Fortunately, I happened to be the author of the exception clause in said provision. The language of that clause is very short and simple, and the elaboration given therefor, as earlier shown, is equally short and simple. The sponsor of the measure, then Assemblyman, now Congressman, Ronaldo Zamora did not even ask for an explanation or clarification; he readily accepted the amendment. Nobody from the floor interpellated me for an explanation or clarification.

"I regret then to say that neither the letter nor the spirit of the exception clause in paragraph B supports the interpretation proposed in the majority opinion. The reason given in the majority opinion for the alleged prohibition from investing in 'activities mentioned in the preceding paragraph (A)' (*i.e.*, the holding or conducting of charity sweepstakes races, lotteries, and other similar activities) is that 'these are competing activities.' In that aspect alone, the majority opinion has clearly misconstrued the exception clause. The prohibition is not directed against such activities, since they are in fact the franchised primary activities of the PCSO. What is prohibited is the conduct or holding thereof 'in collaboration, association, or joint venture with any person, association, company, or entity, whether domestic or foreign.' In the first lotto case, this Court explained the principal reasons for such prohibition. If the purpose of the prohibition in the exception clause is indeed to prevent competition, it would be with more reason that no other person, natural or juridical, should be allowed to share in the PCSO's franchise to hold and conduct lotteries. In short, the argument in the majority opinion sustains the rationale of the prohibition."

NOTE: This dissenting opinion is very persuasive following the rule that the best interpreter of the law or any of its provisions is the author of the law.

Courts may resort to the explanatory note to clarify the ambiguous and ascertain the purpose and intent of the statute.

MUNICIPALITY OF NUEVA ERA, ILOCOS NORTE, REP. BY ITS MUNICIPAL MAYOR, CAROLINE ARZADON-GARVIDA *vs.* MUNICIPALITY OF MARCOS, ILOCOS NORTE, REP. BY ITS MUNICIPAL MAYOR, SALVADOR PILLOS, AND THE HONORABLE COURT OF APPEALS
G.R. No. 169435, February 27, 2008
547 SCRA 71

FACTS: The Municipality of Nueva Era was created from the settlements of Bugayong, Cabittaoran, Garnaden, Padpadon, Padsan, Paorpatoc, Tibangran, and Uguis, which were previously organized as *rancherias*, each of which was under the independent control of a chief. Governor General Francis Burton Harrison, acting on a resolution passed by the provincial government of Ilocos Norte, united these *rancherias*, and created the township of Nueva Era by virtue of Executive Order (E.O.) No. 66, dated September 30, 1916.

The Municipality of Marcos, on the other hand, was created on June 22, 1963, pursuant to Republic Act (R.A.) No. 3753, entitled "An Act Creating the Municipality of Marcos in the Province of Ilocos Norte." Section 1 of R.A. No. 3753 provides:

"Section 1. The barrios of Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit, in the Municipality of Dingras, Province of Ilocos Norte, are hereby separated from the said municipality and constituted into a new and separate municipality to be known as the Municipality of Marcos, with the following boundaries:

On the Northwest, by the barrios Biding-Rangay boundary going down to the barrios Capariaan-Gabon boundary consisting of foot path and feeder road; on the Northeast, by the Burnay River which is the common boundary of barrios Agunit and Naglayaan; on the East, by the Ilocos Norte-Mt. Province boundary; on the South, by the Padsan River which is at the same time the boundary between the municipalities of Banna and Dingras; on the West and Southwest, by the boundary between the municipalities of Batac and Dingras.

The Municipality of Marcos shall have its seat of government in the barrio of Biding."

Based on the first paragraph of the said Section 1 of R.A. No. 3753, it is clear that Marcos shall be derived from the listed *barangays* of Dingras, namely, Capariaan, Biding, Escoda, Culao, Alabaan, Ragas and Agunit. The Municipality of Nueva Era or any of its *barangays* was not mentioned. Hence, if based only on said paragraph, it is clear that Nueva Era may not be considered as a source of territory of Marcos.

There is no issue insofar as the first paragraph is concerned, which named only Dingras as the mother municipality of Marcos. The problem, however, lies in the description of Marcos' boundaries as stated in the second paragraph, particularly in the phrase "on the East, by the Ilocos Norte-Mt. Province boundary."

On the basis of the said phrase, which described Marcos' eastern boundary, Marcos claimed that the middle portion of Nueva Era, which adjoins its eastern side, formed part of its territory. Its reasoning was founded upon the fact that Nueva Era was between Marcos and the Ilocos Norte-Apayao boundary such that if Marcos was to be bounded on the east by the Ilocos Norte-Apayao boundary, part of Nueva Era would consequently be obtained by it.

Marcos did not claim any part of Nueva Era as its own territory until after almost 30 years, or only on March 8, 1993, when its Sangguniang Bayan passed Resolution No. 93-015. Said resolution was entitled "Resolution Claiming an Area which is an Original Part of Nueva Era, But Separated Due to the Creation of Marcos Town in the Province of Ilocos Norte."

Marcos submitted its claim to the Sangguniang Panlalawigan of Ilocos Norte for its consideration and approval. The Sangguniang Panlalawigan, on the other hand, required Marcos to submit its position paper.

On March 29, 2000, the Sangguniang Panlalawigan of Ilocos Norte ruled in favor of Nueva Era, by dismissing the

case of Marcos. This decision was affirmed by the Regional Trial Court of Ilocos Norte.

In a Decision dated June 6, 2005, the Court of Appeals partly reversed the Regional Trial Court decision with the following disposition:

"**WHEREFORE**, we **partially GRANT** the petition treated as one for *certiorari*. The **Decisions of both the Sangguniang Panlalawigan and Regional Trial Court of Ilocos Norte are REVERSED and SET ASIDE** insofar as they made the eastern boundary of the municipality of Marcos coterminous with the eastern boundary of Dingras town, and another is rendered extending the said boundary of Marcos to the boundary line between the province of Ilocos Norte and Kalinga-Apayao, **but the same Decisions are AFFIRMED** with respect to the denial of the claim of Marcos to the detached northern portion of *barangay* Sto. Niño, which should, as it is, hereby ordered to remain with the municipality of Nueva Era."

ISSUE: Whether or not the eastern boundary of Marcos extends over and covers a portion of Nueva Era.

HELD: Where there is ambiguity in a statute, as in this case, courts may resort to the explanatory note to clarify the ambiguity and ascertain the purpose and intent of the statute.

An examination of the Congressional Records during the deliberations of the R.A. 3753 (House Bill No. 3721) shows the Explanatory Note of Congressman Simeon M. Valdez, 2nd District, Ilocos Norte, to wit:

"EXPLANATORY NOTE

This bill seeks to create in the Province of Ilocos Norte a new municipality to be known as the Municipality of Marcos, to be comprised by the present barrios of Capariaan, Biding, Escoda, Culao, Albaan, Ragas and Agunit, all in the Municipality of Dingras of the same province. The seat of government will be in the sitio of San Magro in the present barrio of Ragas.

x x x x

On the other hand, the Municipality of Dingras will not be adversely affected too much because its finances will still be sound and stable. Its capacity to comply with its obligations, especially to its employees and personnel, will not be diminished nor its operations paralyzed. On the contrary, economic development in both the mother and the proposed municipalities will be accelerated.

In view of the foregoing, approval of this bill is earnestly requested.

(Sgd.) SIMEON M. VALDEZ
Congressman, 2nd District"

Only Dingras is specifically named by law as source territory of Marcos. Hence, the said description of boundaries of Marcos is descriptive only of the listed *barangays* of Dingras as a compact and contiguous territory.

Considering that the description of the eastern boundary of Marcos under R.A. No. 3753 is ambiguous, the same must be interpreted in light of the legislative intent.

Atty should: Make further investigation to make sure the client tells really what happened and make extra effort to found out what really happened.

When a bank grants a loan, the loan value of the property is lowest of the free value which the banks gives to the offered collateral.

Tomas v. Tomas and Biuda de ape vs court of appeals'

ocular visit, fair market value as declared in the tax declaration

Alyssa Gregorio

CHAPTER VIII

STRICT AND LIBERAL CONSTRUCTION AND INTERPRETATION OF STATUTES

GENERAL PRINCIPLES

If a statute should be strictly construed, nothing should be included within the scope that does not come clearly within the meaning of the language used. Its language must be given its exact and technical meaning, with no extension on account of implications or equitable considerations; or, as has been aptly asserted, its operation must be confined to cases coming clearly within the letter of the statutes as well as within its spirit or reason.

But the rule of strict construction is not applicable where the meaning of the statute is certain and unambiguous, for under these circumstances, there is no need for construction. If the language is clear, it is conclusive of the legislative intent, for the object of all construction is simply to ascertain that intent, and, of course, the rule of strict construction is subordinate thereto.

On the other hand, there are many statutes which will be liberally construed. Where this is the case, the meaning of the statute may be extended to matters which come within the spirit or reason of the law or within the evils which the law seeks to suppress or correct, although, of course, the statute can under no circumstances be given a meaning inconsistent with, or contrary to the language used by the legislators. Consequently, any matter reasonably within the statute's meaning may be included within the

The principle **"In case of doubt, it is liberally interpreted in favor of the employee"** is a principle of Philippine Labor Law.
It means that when there is genuine doubt about the interpretation or application of labor laws, the doubt should generally be resolved in favor of the employee rather than the employer. This principle is based on **Article 4 of the Labor Code of the Philippines**, which provides that all doubts in the implementation and interpretation of the Labor Code, including its implementing rules and regulations, shall be resolved in favor of labor.
Alyssa Gregorio

statute's scope unless the language necessarily excludes it. (Crawford, *Construction of Statutes*, pp. 450-451).

Sutherland in his work on statutory construction lists some guidelines on whether a statute or some of its provisions should be liberally or strictly construed such as (1) the former law on the matter; (2) persons or rights with which it deals; (3) the letter or language of the law; and (4) the purposes and objects of the statute. (2 Sutherland, *Statutory Construction*, p. 34).

In our jurisdiction, some of our laws expressly provide whether the construction should be liberally or strictly interpreted.

The Labor Code of the Philippines expressly provides that all doubts in the implementation and interpretation of the provision of this code, including its implementing rules and regulations, shall be resolved in favor of labor. (Art. 4, Labor Code of the Philippines).

The Local Government Code of 1991 provides the following rules of interpretation thus:

> "SEC. 5. *Rules of Interpretation.*—In the interpretation of the provisions of this Code, the following rules shall apply:
>
> (a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned;
>
> (b) In case of doubt, any tax ordinance or revenue measure shall be construed strictly against the local government unit enacting it, and liberally in favor of the taxpayer. Any tax exemption, incentive or relief granted by any local government unit pursuant to the provisions of this Code shall be construed strictly against the person claiming it;
>
> (c) The general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community."
>
> x x x x x x x x x

The 1997 Rules of Civil Procedure shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. (Sec. 6, Rule 1, Rules of Court).

The COMELEC rules of procedure shall be liberally construed in order to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

Liberal interpretation or construction of the law or rules, however, is not a free commodity that may be availed of in all instances under the cloak of rendering justice. Liberality in the interpretation and application of Rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. (*Luna vs. Mirafuente*, 471 SCRA 3 [2005]).

PENAL STATUTES

It is a well-entrenched rule that penal laws are to be construed strictly against the state and in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. If the statute is ambiguous and admits of

not all evidence produce proof

two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment. (*Centeno vs. Villalon-Pernillos, infra*).

The maxim that penal statutes should be strictly construed against the state and liberally in favor of the accused, truly, may not be a mere cliché but, so also, is not meant to wrongly shield an accused from criminal liability. (*Celia M. Meriz vs. People of the Philippines*, G.R. No. 134498, November 13, 2001, 368 SCRA 524).

ILLUSTRATIVE CASES:

MARTIN CENTENO *vs.* HON. VICTORIA VILLALON-PERNILLOS AND THE PEOPLE OF THE PHILIPPINES
G.R. No. 113092, September 1, 1994
236 SCRA 197

FACTS: The records of this case reveal that sometime in the last quarter of 1985, the officers of a civic organization known as the Samahang Katandaan ng Nayon ng Tikay launched a fund drive for the purpose of renovating the chapel of Barrio Tikay, Malolos, Bulacan. Petitioner Martin Centeno, the chairman of the group, together with Vicente Yco, approached Judge Adoracion G. Angeles, a resident of Tikay, and solicited from her a contribution of P1,500.00. It is admitted that the solicitation was made without a permit from the Department of Social Welfare and Development.

As a consequence, based on the complaint of Judge Angeles, an information was filed against petitioner Martin Centeno, together with Religio Evaristo and Vicente Yco, for violation of Presidential Decree No. 1564, or the Solicitation Permit Law, before the Municipal Trial Court of Malolos,

Bulacan, Branch 2, and docketed as Criminal Case No. 2602. Petitioner filed a motion to quash the information on the ground that the facts alleged therein do not constitute an offense, claiming that Presidential Decree No. 1564 only covers solicitations made for charitable or public welfare purposes, but not those made for a religious purpose such as the construction of a chapel. This was denied by the trial court, and petitioner's motion for reconsideration having met the same fate, trial on the merits ensued.

On December 29, 1992, the said trial court rendered judgment finding accused Vicente Yco and petitioner Centeno guilty beyond reasonable doubt and sentencing them to each pay a fine of P200.00. Nevertheless, the trial court recommended that the accused be pardoned on the basis of its finding that they acted in good faith, plus the fact that it believed that the latter should not have been criminally liable were it not for the existence of Presidential Decree No. 1564 which the court opined it had the duty to apply in the instant case.

Both accused Centeno and Yco appealed to the Regional Trial Court of Malolos, Bulacan, Branch 10. However, accused Yco subsequently withdrew his appeal, hence, the case proceeded only with respect to petitioner Centeno. On May 21, 1993, respondent Judge Villalon-Pernillos affirmed the decision of the lower court but modified the penalty, allegedly because of the perversity of the act committed which caused damage and prejudice to the complainant, by sentencing petitioner Centeno to suffer an increased penalty of imprisonment of 6 months and a fine of P1,000.00, without subsidiary imprisonment in case of insolvency. The motion for reconsideration of the decision was denied by the Court.

Presidential Decree No. 1564 (which amended Act No. 4075, otherwise known as the Solicitation Permit Law) provides as follows:

> "Sec. 2. Any person, corporation, organization, or association desiring to solicit or receive contributions for charitable or public welfare purposes shall first secure a

permit from the Regional Offices of the Department of Social Services and Development as provided in the Integrated Reorganization Plan. Upon the filing of a written application for a permit in the form prescribed by the Regional Offices of the Department of Social Services and Development, the Regional Director or his duly authorized representative may, in his discretion, issue a permanent or temporary permit or disapprove the application. In the interest of the public, he may in his discretion renew or revoke any permit issued under Act 4075."

ISSUE: Whether or not the phrase "charitable purposes" should be construed in its broadest sense so as to include a religious purpose.

HELD: To subsume the "religious" purpose of the solicitation within the concept of "charitable" purpose which under Presidential Decree No. 1564 requires a prior permit from the Department of Social Services and Development, under pain of penal liability in the absence thereof, would be prejudicial to petitioner. Accordingly, the term "charitable" should be strictly construed so as to exclude solicitations for "religious" purposes. Thereby, we adhere to the fundamental doctrine underlying virtually all penal legislations that such interpretation should be adopted as would favor the accused.

The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts. The word "charitable" is a matter of description rather than of precise definition, and each case involving a determination of that which is charitable must be decided on its own particular facts and circumstances. The law does not operate *in vacuo* nor should its applicability be determined by circumstances in the abstract.

DECISION REVERSED AND SET ASIDE AND THE PETITIONER ACQUITTED.

Penal Statutes should be construed strictly against the State and in favor of the accused.

CESARIO URSUA *vs.* COURT OF APPEALS
G.R. No. 112170, April 10, 1996
256 SCRA 147

FACTS: On 1 August 1989, Atty. Francis Palmones, counsel for petitioner, wrote the office of the Ombudsman in Davao City requesting that he be furnished copy of the complaint against petitioner. Atty. Palmones then asked his client Ursua to take his letter-request to the Office of the Ombudsman because his law firm's messenger, Oscar Perez, had to attend to some personal matters. Before proceeding to the office of the Ombudsman petitioner talked to Oscar Perez and told him that he was reluctant to personally ask for the document since he was one of the respondents before the Ombudsman. However, Perez advised him not to worry as he could just sign his (Perez) name if ever he would be required to acknowledge receipt of the complaint.

When petitioner arrived at the Office of the Ombudsman in Davao City he was instructed by the security officer to register in the visitors' logbook. Instead of writing down his name, petitioner wrote the name "Oscar Perez" after which he was told to proceed to the Administrative Division for the copy of the complaint he needed. He handed the letter of Arty. Palmones to the Chief of the Administrative Division, Ms. Loida Kahulugan, who then gave him a copy of the complaint, receipt of which he acknowledged by writing the name "Oscar Perez."

Before petitioner could leave the premises he was greeted by an acquaintance, Josefa Amparo, who also worked in the same office. They conversed for a while then he left. When Loida learned that the person who introduced himself as "Oscar Perez" was actually petitioner Cesario Ursua, a customer of Josefa Amparo in her gasoline station, Loida reported the matter to the Deputy Ombudsman who recommended that petitioner be accordingly charged.

On 18 December 1990, after the prosecution had completed the presentation of its evidence, petitioner without leave of court filed a demurrer to evidence alleging that the failure of the prosecution to prove that his supposed alias

was different from his registered name in the local civil registrar was fatal to its cause. Petitioner argued that no document from the local civil registry was presented to show the registered name of accused which according to him was a condition *sine qua non* for the validity of his conviction.

The trial court rejected his contentions and found him guilty of violating Sec. 1 of C.A. No. 142 as amended by R.A. No. 6085. His conviction was affirmed by the Court of Appeals.

ISSUE: Whether or not the use of a different name belonging to another in isolated transaction falls within the prohibition of C.A. No. 142.

HELD: Time and again we have decreed that statutes are to be construed in the light of the purposes to be achieved and the evils sought to be remedied. Thus in construing a statute the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.

The objective and purposes of C.A. No. 142 have their origin and basis in Act No. 3883, "An Act to Regulate the Use in Business Transactions of names other than True Names, Prescribing the Duties of the Director of the Bureau of Commerce and Industry in its Enforcement, Providing Penalties for Violations Thereof, and for other purposes," which was approved on 14 November 1931 and amended by Act No. 4147.

For a bit of history, the enactment of C.A. No. 142 as amended was made primarily to curb the common practice among the Chinese of adopting scores of different names and aliases which created tremendous confusion in the field of trade. Such a practice almost bordered on the crime of using fictitious names which for obvious reasons could not be successfully maintained against the Chinese who rightly or wrongly, claimed they possessed a thousand and one names. C.A. No. 142 thus penalized the act of using an alias

name, unless such alias was duly authorized by proper judicial proceedings and recorded in the civil register.

Clearly, therefore, an alias is a name or names used by a person or intended to be used by him publicly and habitually usually in business transaction in addition to his real name by which he is registered at birth or baptized the first time or substitute name authorized by a competent authority. A man's name is simply the sound or sounds by which he is commonly designated by his fellows and by which they distinguish him but sometimes a man is known by several different names and these are known as aliases. Hence, the use of fictitious name or a different name belonging to another person in a single instance without any sign or indication that the user intends to be known by this name in addition to his real name from that day forth does not fall within the prohibition contained in C.A. No. 142 as amended. This is so in the case at bench.

C.A. No. 142 is a penal statute and it should be construed strictly against the State and in favor of the accused. The reason for this principle is the tenderness of the law for the rights of individuals and the object is to establish a certain rule by conformity to which mankind, would be safe, and the discretion of the court limited. Indeed, our mind cannot rest easy on the proposition that petitioner should be convicted on a law that does not clearly penalize the act done by him.

JUDGMENT REVERSED AND SET ASIDE. PETITIONER ACQUITTED.

Penal laws are construed liberally in favor of the accused.

PEOPLE OF THE PHILIPPINES *vs.*
WALPAN LADJAALAM *y* MIHAJIL
G.R. Nos. 136149-51, September 19, 2000
340 SCRA 617

FACTS: Appellant Ladjaalam was charged and convicted by the Regional Trial Court of Zamboanga City of the crime of Direct Assault with Multiple Attempted Homicide for firing on unlicensed M-14 rifle at several policemen who were about to enter his house to serve a search warrant. Under the same circumstance, he was likewise charged and convicted for the crime Illegal Possession of Firearm and Ammunition penalized under Presidential Decree 1866, as amended by Republic Act No. 8294.

ISSUE: Whether or not accused appellant can be convicted of Illegal Possession of Firearm under R.A. 8294 when he used said firearm in the commission of another crime.

HELD: Section 1 of R.A. 8294, provides as follows:

> "Section 1. Section 1 of Presidential Decree No. 1866, as amended, is hereby further amended to read as follows:
>
> "Section 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition.*—The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (P15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition; *Provided,* That no other crime was committed.
>
> "The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (P30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .30 caliber and .9 millimeter such as caliber .40, .41, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 centerfire magnum and other firearms with firing capability of full automatic and by burst of two or three; *Provided, however,* That no other crime was committed by the person arrested.
>
> "If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance.
>
> "If the violation of this Section is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted *coup d'etat,* such violation shall be absorbed as an element of the crime of rebellion or insurrection, sedition, or attempted *coup d'etat.*
>
> "The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.
>
> "The penalty of *arresto mayor* shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority thereof."

A simple reading thereof shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple illegal possession of firearms. Hence, if the "other crime" is murder or homicide, illegal possession of firearms becomes merely an aggravating circumstance, not a separate offense. Since direct assault with multiple attempted homicide was committed in this case, appellant can no longer be held liable for illegal possession of firearms.

Moreover, penal laws are construed liberally in favor of the accused. In this case, the plain meaning of R.A. 8292's simple language is more favorable to herein appellant. Verily, no other interpretation is justified, for the language of the new law demonstrates the legislative intent to favor

the accused. Accordingly, appellant cannot be convicted of two separate offenses of illegal possession of firearms and direct assault with attempted homicide. Moreover, since the crime committed was direct assault and not homicide or murder, illegal possession of firearms cannot be deemed an aggravating circumstance.

We reject the OSG's contention that PD 1866, as worded prior to its amendment by RA 8294, should be applied in this case. When the crime was committed on September 24, 1997, the original language of PD 1866 had already been expressly superseded by RA 8294 which took effect on July 6, 1997. In other words, no longer in existence was the earlier provision of PD 1866, which justified a conviction for illegal possession of firearms separate from any other crime. It was replaced by RA 8294 which, among other amendments to PD 1866 contained the specific proviso that "no other crime was committed."

Furthermore, the OSG's reliance on *People vs. Jayson* is misplaced. True this Court sustained the conviction of appellant for illegal possession of firearms, although he had also committed homicide. We explained, however, that "the criminal case for homicide [was] not before us for consideration."

Just as unacceptable is the interpretation of the trial court. We find no justification for limiting the proviso in the second paragraph to murder and homicide. The law is clear: the accused can be convicted of simple illegal possession of firearms, provided that "no other crime was committed by the person arrested." If the intention of the law in the second paragraph were to refer only to homicide and murder, it should have expressly said so, as it did in the third paragraph. Verily, where the law does not distinguish, neither should we.

The Court is aware that this ruling effectively exonerates appellant of illegal possession of an M-14 rifle, an offense which normally carries a penalty heavier than that for direct assault. While the penalty for the first is *prision mayor*, for the second it is only *prision correccional*.

Indeed, the accused may evade conviction for illegal possession of firearms by using such weapons in committing an even lighter offense, like alarm and scandals or slight physical injuries, both of which are punishable by *arresto menor*. This consequence, however, necessarily arises from the language of RA 8294, whose wisdom is not subject to the Court's review. Any perception that the result reached here appears unwise should be addressed to Congress. Indeed, the Court has no discretion to give statutes a new meaning detached from the manifest intendment and language of the legislature. Our task is constitutionally confined only to applying the law and jurisprudence to the proven facts, and we have done so in this case.

Republic Act No. 8294 penalizes simple illegal possession of firearms, provided that the person arrested committed "no other crime." Furthermore, if the person is held liable for murder or homicide, illegal possession of firearms is an aggravating circumstance, but not a separate offense. Hence, where an accused was convicted of direct assault with multiple attempted homicide for firing an unlicensed M-14 rifle at several policemen who were about to serve a search warrant, he cannot be held guilty of the separate offense of illegal possession of firearms. Neither can such unlawful act be considered to have aggravated the direct assault.

JUDGMENT AFFIRMED WITH MODIFICATION.

TAX LAWS

As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who are to pay it. Nevertheless, effective limitations thereon may be imposed by the people through their constitutions. Our Constitution, for instance, provides that the rule of taxation shall be uniform and equitable and Congress shall evolve a progressive system of taxation. So potent indeed is the power that it was once opined that "the power to tax involves the

power to destroy." Verily, taxation is a destructive power which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government. Accordingly, tax statutes must be construed strictly against the government and liberally in favor of the taxpayer. But since taxes are what we pay for civilized society, or are the lifeblood of the nation, the law frowns against exemptions from taxation and statutes granting tax exemptions are thus construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception. However, if the grantee of the exemption is a political subdivision or instrumentality, the rigid rule of construction does not apply because the practical effect of the exemption is merely to reduce the amount of money that has to be handled by the government in the course of its operations.

The power to tax is primarily vested in the Congress; however, in our jurisdiction, it may be exercised by local legislative bodies, no longer merely by virtue of a valid delegation as before, but pursuant to direct authority conferred by Section 5, Article X of the Constitution. Under the latter, the exercise of the power may be subject to such guidelines and limitations as the Congress may provide which, however, must be consistent with the basic policy of local autonomy. Nevertheless, since taxation is the rule and exemption therefrom the exception, the exemption may thus be withdrawn at the pleasure of the taxing authority. The only exception to this rule is where the exemption was granted to private parties based on material consideration of a mutual nature, which then becomes contractual and is thus covered by the non-impairment clause of the Constitution. (*Mactan Cebu International Airport Authority vs. Hon. Ferdinand J. Marcos, The City of Cebu, Mayor Tomas R. Osmeña and Eustaquio B. Cesa*, G.R. No. 120082, September 11, 1996, 261 SCRA 667).

ILLUSTRATIVE CASES:

Taxes must not be imposed beyond what the law expressly and clearly declares as tax laws must be construed strictly against the State and liberally in favor of the taxpayer.

COMMISSIONER OF INTERNAL REVENUE, *vs.* LA TONDEÑA DISTILLERS, INC. (LTDI [NOW GINEBRA SAN MIGUEL]
G.R. No. 175188, July 15, 2015

FACTS: On September 17, 2001, respondent La Toñdena Distillers, Inc. entered into a Plan of Merger with Sugarland Beverage Corporation (SBC), SMC Juice, Inc. (SMCJI), and Metro Bottled Water Corporation (MBWC). As a result of the merger, the assets and liabilities of the absorbed corporations were transferred to respondent, the surviving corporation. Respondent later changed its corporate name to Ginebra San Miguel, Inc. (GSMI). On November 5, 2001, the BIR issued a ruling stating that pursuant to Section 40(C)(2) and (6)(b) of the 1997 National Internal Revenue Code (NIRC), no gain or loss shall be recognized by the absorbed corporations as transferors of all assets and liabilities. However, the transfer of assets, such as real properties, shall be subject to documentary stamp tax (DST) imposed under Section 196 of the NIRC. Consequently, on various dates from October 31, 2001 to November 15, 2001, respondent paid to the BIR DST in the total amount of P14,140,980.00. On October 14, 2003, claiming that it is exempt from paying DST, respondent filed with petitioner Commissioner of Internal Revenue (CIR) an administrative claim for tax refund or tax credit in the amount of P14,140,980.00, representing the DST it allegedly erroneously paid on the occasion of the merger. On the same day, respondent filed with the CTA a Petition for Review. On January 6, 2006, the 2nd Division of the CTA rendered a Decision finding respondent entitled to its claim for tax refund or tax credit in the amount of P14,140,980.00, representing its erroneously paid DST for the taxable year 2001. The 2nd Division of the CTA ruled that Section 196 of

the NIRC does not apply because there is no purchaser or buyer in the case of a merger. Unfazed, petitioner elevated the matter to the CTA En Banc via a Petition for Review. On September 26, 2006, the CTA En Banc, rendered the assailed Decision, finding no reversible error on the part of the 2nd Division of the CTA in granting respondent's claim for tax refund or tax credit.

ISSUE: Whether or not property absorbed by the surviving corporation in a merger is exempt from the payment of Documentary Stamp Tax

HELD: In *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, the Supreme Court already ruled that Section 196 of the NIRC does not include the transfer of real property from one corporation to another pursuant to a merger. It explained that:

We do not find merit in petitioner's contention that Section 196 covers all transfers and conveyances of real property for a valuable consideration. A perusal of the subject provision would clearly show it pertains only to sale transactions where real property is conveyed to a purchaser for a consideration. The phrase "granted, assigned, transferred or otherwise conveyed" is qualified by the word "sold" which means that documentary stamp tax under Section 196 is imposed on the transfer of realty by way of sale and does not apply to all conveyances of real property. Indeed, as correctly noted by the respondent, the fact that Section 196 refers to words "sold", "purchaser" and "consideration" undoubtedly leads to the conclusion that only sales of real property are contemplated therein.

In a merger, the real properties are not deemed "sold" to the surviving corporation and the latter could not be considered as "purchaser" of realty since the real properties subject of the merger were merely absorbed by the surviving corporation by operation of law and these properties are deemed automatically transferred to and vested in the surviving corporation without further act or deed. Therefore, the transfer of real properties to the surviving corporation in pursuance of a merger is not subject to documentary stamp

tax. As stated at the outset, documentary stamp tax is imposed only on all conveyances, deeds, instruments or writing where realty sold shall be conveyed to a purchaser or purchasers. The transfer of SPPC's real property to respondent was neither a sale nor was it a conveyance of real property for a consideration contracted to be paid as contemplated under Section 196 of the Tax Code. Hence, Section 196 of the Tax Code is inapplicable and respondent is not liable for documentary stamp tax.

There is no error on the part of the CTA in granting respondent's claim for tax refund or tax credit in the amount of P14,140,980.00, representing its erroneously paid DST for the taxable year 2001.

The Court stressed that taxes must not be imposed beyond what the law expressly and clearly declares as tax laws must be construed strictly against the State and liberally in favor of the taxpayer.

Petition DENIED.

It cannot be over-emphasized that tax exemption represents a loss of revenue to the government and must, therefore, not rest on vague inference. When claimed, it must be strictly construed against the tax-payer who must prove that he falls under the exception. And, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the state has granted in express terms all it intended to grant at all, and that, unless the privilege is limited to the very terms of the statute the favor would be extended beyond dispute in ordinary cases. (*Commissioner of Internal Revenues v. PLDT (G.R. No. 140230, December 15, 2005)*

In case of doubt, tax statutes are to be construed strictly against the government and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the applicable statute expressly and clearly declares.

REPUBLIC OF THE PHILIPPINES *vs.* INTERMEDIATE APPELLATE COURT AND SPS. ANTONIO AND CLARA PASTOR
G.R. No. 69344, April 26, 1991
196 SCRA 335

FACTS: On April 15, 1980, the Republic of the Philippines, through the Bureau of Internal Revenue, commenced an action in the Court of First Instance (now Regional Trial Court) of Manila, Branch XVI, to collect from the spouses Antonio Pastor and Clara Reyes-Pastor deficiency income taxes for the years 1955 to 1959 in the amount of P17,117.08 with a 5% surcharge and 1% monthly interest, and costs.

The Pastors filed a motion to dismiss the complaint, but the motion was denied. On August 2, 1975, they filed an answer admitting there was an assessment against them of P17,117.08 for income tax deficiency but denying liability therefor. They contended that they had availed of the tax amnesty under P.D. Nos. 23, 213 and 370 and had paid the corresponding amnesty taxes amounting to P10,400 or 10% of their reported untaxed income under P.D. 23, P2,951.20 or 20% of the reported untaxed income under P.D. 213 and a final payment on October 26, 1973 under P.D. 370 evidenced by the Government's Official Receipt No. 1052388. Consequently, the Government is in estoppel to demand and compel further payment of income taxes by them.

On a motion for judgment on the pleadings filed by the Government, which the spouses did not oppose, the trial court rendered a decision on February 28, 1980, holding that the defendants-spouses had settled their income tax deficiency for the years 1955 to 1959, not under P.D. 23 or P.D. 370, but under PD. 213, as shown in the Amnesty Income Tax Returns' Summary Statement and the Tax Payment Acceptance Order for P2,951.20 with its corresponding official receipt, which returns also contain the very assessment for the questioned years. By accepting the payment of the amnesty income taxes, the Government therefore, waived its right to further recover deficiency

income taxes from the defendants under the existing assessment against them.

The government appealed to the Intermediate Appellate Court and on November 23, 1984, the Intermediate Appellate Court rendered a decision dismissing the Government's appeal and affirming the decision of the trial court. Hence, the petition for review.

HELD: The petition is devoid of merit.

Even assuming that the deficiency tax assessment of P17,117.08 against the Pastor spouses were correct, since the latter have already paid almost the equivalent amount to the Government by way of amnesty taxes under P.D. No. 213, and were granted not merely an exemption, but an amnesty, for their past tax failings, the Government is estopped from collecting the difference between the deficiency tax assessment and the amount already paid by them as amnesty tax.

A tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise would be due it, and in this sense, prejudicial thereto, particularly to give tax evaders, who wish to relent and are willing to reform a chance to do so and thereby become a part of the new society with a clean slate. (*Commissioner of Internal Revenue vs. Botelho Shipping Corp. and General Shipping Co., Inc.*, 20 SCRA 487 [1967]).

The rule is that in case of doubt, tax statutes are to be construed strictly against the Government and liberally in favor of the taxpayer, for taxes, being burdens, are not to be presumed beyond what the applicable statute (in this case P.D. 213) expressly and clearly declares. (*Collector of Internal Revenue vs. La Tondeña, Inc.*, 5 SCRA 665 [1962], citing *Manila Railroad Company vs. Collector of Customs*, 52 Phil. 950 [1929]).

PETITION DENIED.

As a rule, any claim for exemption from a tax statute is strictly construed against the taxpayer. However, where the law is clear and unambiguous, the law must be taken as it is, devoid of judicial addition or subtraction.

ACTING COMMISSIONER OF CUSTOMS *vs.* MANILA ELECTRIC COMPANY AND COURT OF TAX APPEALS

G.R. No. L-23623, June 30, 1977
77 SCRA 469

FACTS: The appealed decision set forth that petitioner Manila Electric Co., now private respondent, in appealing from a determination by the then Acting Commissioner of Customs, now petitioner, "claims that it is exempt from the special import tax not only by virtue of Section 6 of Republic Act No. 1934, which exempts from said tax equipment and spare parts for use in industries, but also under Paragraph 9, Part Two of its franchise, which expressly exempts its insulators from all taxes of whatever kind and nature." It then made reference to the franchise of private respondent Manila Electric Co. "Par. 9. The grantee shall be able to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery and personal property as other persons are or may be hereafter required by law to pay. In consideration of Part Two of the franchise herein granted, to wit, the right to build and maintain in the City of Manila and its suburbs a plant for the conveying and furnishing of electric current for light, heat and power, and to charge for the same the grantees shall pay to the City of Manila two and one-half *per centum* of the gross earnings received from the business under this franchise in the city and its suburbs; and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires and transformers, and insulators of the grantee, from which taxes and assessments the grantee is hereby expressly exempted." It noted that the above "exempts it from all taxes of whatever nature, and by whatever authority, with respect to its insulators in consideration for the payment of the percentage tax on its gross earnings."

ISSUE: Whether or not the claim for exemption from tax statute be strictly construed against the respondent Meralco.

HELD: Affirmatively put, "the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*." Such a ruling was reaffirmed in subsequent decisions. It does not mean, however, that petitioner should prevail, for as was unequivocally set forth in the leading case of *Republic Flour Mills vs. Commissioner of Internal Revenue*, 31 SCRA 520 (1970), this Court speaking through Justice J.B.L. Reyes. "It is true that in the construction of tax statutes, tax exemptions (and deductions are of this nature) are not favored in the law, and are construed *strictissimi juris* against the taxpayer. However, it is equally a recognized principle that where the provision of the law is clear and unambiguous, so that there is no occasion for the court's seeking the legislative intent, the law must be taken as it is devoid of judicial addition or subtraction. In this case, we find the provision of Section 186-A — whenever a tax-free product is utilized — all encompassing to comprehend tax-free raw materials, even if imported. Where the law provided no qualification for the granting of the privilege, the court is not at liberty to supply any." That is what was done by respondent Court of Appeals. It showed fealty to this equally well-settled doctrine. It construed the statutory provision as it is written. It is precluded, in the language of the Republic Flour Mills opinion, considering that the law is clear and unambiguous, to look further for any legislative intent, as "the law must be taken as it is, devoid of judicial addition or subtraction." If there is an extended discussion of this point, it is due solely to the emphasis placed on the matter by petitioner.

Tax exemption must be strictly construed against the taxpayer and liberally in favor of the state.

MISAMIS ORIENTAL ASSOCIATION OF COCO TRADERS, INC. *vs.* DEPARTMENT OF FINANCE SECRETARY, COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE (BIR), AND REVENUE DISTRICT OFFICER, BIR, MISAMIS ORIENTAL

G.R. No. 108524, November 10, 1994
238 SCRA 63

FACTS: Petitioner Misamis Oriental Association of Coco Traders, Inc. is a domestic corporation whose members, individually or collectively, are engaged in the buying and selling of copra in Misamis Oriental. The petitioner alleges that prior to the issuance of Revenue Memorandum Circular 47-91 on June 11, 1991, which implemented VAT Ruling 190-90, copra was classified as agricultural food product under Sec. 103(b) of the National Internal Revenue Code and, therefore, exempt from VAT at all stages of production or distribution.

The pertinent provision of the NIRC states:

> "Sec. 103. *Exempt Transactions.*—The following shall be exempt from the value-added tax:
>
> (a) Sale of non-food agricultural, marine and forest products in their original state by the primary producer or the owner of the land where the same are produced;
>
> (b) Sale or importation in their original state of agricultural and marine products, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption, and breeding stock and genetic material therefor."

Under Sec. 103(a), as above-quoted, the sale of agricultural non-food products in their original state is exempt from VAT only if the sale is made by primary producer or owner of the land from which the same are produced. The sale made by any other person or entity, like a trader or dealer, is not exempt from the tax. On the other hand, under Sec. 103(b) the sale of agricultural food products in their original state is exempt from VAT at all stages of production or distribution regardless of who the seller is.

The question is whether copra is an agricultural food or non-food product for purposes of this provisions of the NTRC. On June 11, 1991, respondent Commissioner of Internal Revenue issued the circular in question, classifying copra as an agricultural non-food product and declaring it "exempt from VAT only if the sale is made by the primary producer pursuant to Section 103(a) of the Tax Code, as amended."

The reclassification had the effect of denying to the petitioner the exemption it previously enjoyed when copra was classified as an agricultural food product under Sec. 103(b) of the NIRC.

HELD: We agree with respondents. In interpreting Sec. 103(a) and (b) of the NIRC, the Commissioner of Internal Revenue gave a strict construction consistent with the rule that tax exemptions must be strictly construed against the taxpayer and liberally in favor of the state. Indeed, even Dr. Kintanar said that his classification of copra as food was based on "the broader definition of foods which includes agricultural commodities and other components used in the manufacture/processing of food."

Moreover, as the government agency charged with the enforcement of the law, the opinion of the Commissioner of Internal Revenue, in the absence of any showing that it is plainly wrong, is entitled to great weight. Indeed, the ruling was made by the Commissioner of Internal Revenue in the exercise of his power under Sec. 245 of the NIRC to "make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including rulings on the classification of articles for sales tax and similar purposes."

In the case at bar, we find no reason for holding that respondent Commissioner erred in not considering copra as an "agricultural food product" with the meaning of Sec. 103(b) of the NIRC. As the Solicitor General contends, "copra *per se* is not food, that is, it is not intended for human

consumption. Simply stated, nobody eats copra for food." That previous Commissioners considered it so, is not reason for holding that the present interpretation is wrong. The Commissioner of Internal Revenue is not bound by the ruling of his predecessors. To the contrary, the overruling of decisions is inherent in the interpretation of laws.

PETITION DISMISSED.

Tax exemption strictly construed against the taxpayer.

RESINS, INCORPORATED *vs.* AUDITOR GENERAL OF THE PHILIPPINES AND THE CENTRAL BANK OF THE PHILIPPINES
G.R. No. L-17888, October 29, 1968
25 SCRA 754

Petitioner Resins, Inc. as did petitioner in *Casco Philippine Chemical Co., Inc. vs. Gimenez*, 7 SCRA 347 (1963), would seek a refund from respondent Central Bank on the claim that it was exempt from the margin fee under Republic Act No. 2609 for the importation of urea and formaldehyde, as separate units, used for the production of synthetic glue, of which it was a manufacturer. Since the specific language of the Act speaks of "urea formaldehyde," and petitioner admittedly did import urea and formaldehyde separately, its plea could be granted only if we could construe the above provision of law to read "urea and formaldehyde."

In further denying the petition, the Supreme Court declared:

There is merit in the contention of the Solicitor General, as counsel for respondent Central Bank, and the Auditor General, that as a refund undoubtedly partakes of a nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language. As was held by us in *Commissioner of Internal Revenue vs. Guerrero*, 21 SCRA 180 (1967): "From 1906, in *Catholic Church vs. Hastings*, 5 Phil. 701 (1906), to 1966, in *Esso Standard Eastern, Inc. vs. Acting Commissioner of Customs*, 18 SCRA 488 (1966), it has been the

constant and uniform holding that exemption from taxation is not favored and is never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmatively put, the law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris.*"

PETITION DENIED.

(See also *Cyanamid Phils., Inc. vs. CA*, 322 SCRA 639 [2000]; *Commissioner of Customs vs. CTA*, 328 SCRA 822 [2000])

Statutes granting tax exemptions must be construed *in strictissimi juris* against the tax-payer and liberally in favor of the taxing authority.

In construing a statute, it is the duty of courts to seek the real intent of the legislature, even if, by so doing, they may limit the literal meaning of the broad language.

A claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer.

ROHM APOLLO SEMICONDUCTOR PHILIPPINES,
***vs.* COMMISSIONER OF INTERNAL REVENUE**
G.R. No. 168950, January 14, 2015

FACTS: Petitioner Rohm Apollo is a domestic corporation registered with the Securities and Exchange Commission. It is also registered with the Philippine Economic Zone Authority as an Ecozone Export Enterprise. Rohm Apollo is in the business of manufacturing semiconductor products, particularly microchip transistors and tantalium capacitors at the People's Technology Complex – Special Economic Zone, Barangay Maduya, Carmona Cavite. Further, it is registered with the Bureau of Internal Revenue (BIR) as a value-added taxpayer. Sometime in June 2000, prior to the commencement of its operations on 1 September 2001, Rohm Apollo engaged the services of Shimizu Philippine Contractors, Inc. (Shimizu) for the construction of a factory.

For services rendered by Shimizu, petitioner made initial payments of P198,551,884.28 on 7 July 2000 and P132,367,923.58 on 3 August 2000. It should be noted at this point that Section 112(B), in relation to Section 112(A) of the 1997 Tax Code, allows a taxpayer to file an application for the refund or tax credit of unutilized input VAT when it comes to the purchase of capital goods. The provision sets a time frame for the filing of the application at two years from the close of the taxable quarter when the purchase was made.

Going back to the case, petitioner treated the payments as capital goods purchases and thus filed with the BIR an administrative claim for the refund or credit of accumulated unutilized creditable input taxes on 11 December 2000. As the close of the taxable quarter when the purchases were made was 30 September 2000, the administrative claim was filed well within the two-year prescriptive period. Pursuant to Section 112(D) of the 1997 Tax Code, the Commissioner of Internal Revenue (CIR) had a period of 120 days from the filing of the application for a refund or credit on 11 December 2000, or until 10 April 2001, to act on the claim. The waiting period, however, lapsed without any action by the CIR on the claim. Instead of filing a judicial claim within 30 days from the lapse of the 120-day period on 10 April, or until 10 May 2001, Rohm Apollo filed a Petition for Review with the CTA docketed as CTA Case No. 6534 on 11 September 2002.

On 27 May 2004, the CTA First Division rendered a Decision denying the judicial claim for a refund or tax credit. In support of its ruling, the CTA First Division held, among others, that petitioner must have at least submitted its VAT return for the third quarter of 2001, since it was in that period that it began its business operations. The purpose was to verify if indeed petitioner did not carry over the claimed input VAT to the third quarter or the succeeding quarters. On 22 June 2005, the CTA *En Banc* rendered its Decision denying Rohm Apollo's Petition for Review.

ISSUE: Whether or not the CTA acquired jurisdiction over the claim for the refund or tax credit of unutilized input VAT.

HELD: The Petition is denied on the ground that the taxpayer's judicial claim for a refund/tax credit was filed beyond the prescriptive period.

Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for the refund or tax credit of input VAT. The legal provision speaks of two periods: the **period of 120 days**, which serves as a waiting period to give time for the CIR to act on the administrative claim for a refund or credit; and the **period of 30 days**, which refers to the period for filing a judicial claim with the CTA. It is the 30-day period that is at issue in this case.

The landmark case of *Commissioner of Internal Revenue v. San Roque Power Corporation* has interpreted Section 112 (D). The Court held that the taxpayer can file an appeal in one of two ways: (1) file the judicial claim within 30 days after the Commissioner denies the claim within the 120-day waiting period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within that period.

In this case, the facts are not up for debate. On 11 December 2000, petitioner filed with the BIR an application for the refund or credit of accumulated unutilized creditable input taxes. Thus, the CIR had a period of 120 days from 11 December 2000, or until 10 April 2001, to act on the claim. It failed to do so, however. Rohm Apollo should then have treated the CIR's inaction as a denial of its claim. Petitioner would then have had 30 days, or until 10 May 2001, to file a judicial claim with the CTA. But Rohm Apollo filed a Petition for Review with the CTA only on 11 September 2002. The judicial claim was thus filed late.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is with the 120+30 day mandatory and jurisdictional periods. **Thus, strict compliance with**

the 120+30 day periods is necessary for such a claim to prosper.

The judicial claim for the refund or credit of unutilized input VAT was belatedly filed. Hence, the CTA lost jurisdiction over Rohm Apollo's claim for a refund or credit.

PETITION DENIED.

Naturalization laws should be rigidly enforced and strictly construed in favor of the government and against the applicant. Read !!!

ONG CHIA *vs.* REPUBLIC OF THE PHILIPPINES
G.R. No. 127240, March 27, 2000
328 SCRA 749

FACTS: Petitioner was born on January 1, 1923 in Amoy, China. In 1932, as a nine-year old boy, he arrived at the port of Manila on board the vessel "Angking." Since then, he has stayed in the Philippines where he found employment and eventually started his own business, married a Filipina, with whom he had four children. On July 4, 1989, at the age of 66, he filed a verified petition to be admitted as a Filipino citizen under C.A. No. 473, otherwise known as the Revised Naturalization Law, as amended. Petitioner, after stating his qualifications as required in Sec. 2, and lack of the disqualifications enumerated in Sec. 3 of the law, stated —

17. That he has heretofore made (a) petition for citizenship under the provisions of Letter of Instruction No. 270 with the Special Committee on Naturalization, Office of the Solicitor General, Manila, docketed as SCN Case No. 031776, but the same was not acted upon owing to the fact that the said Special Committee on Naturalization was not reconstituted after the February, 1986 revolution such that processing of petitions for naturalization by administrative process was suspended.

During the hearings, petitioner testified as to his qualifications and presented three witnesses to corroborate his testimony. So impressed was Prosecutor Isaac Alvero V. Statues prescribing the formalities of the will will be strictly construed. 2 types of will. Notariwl will and holographic will

Moran with the testimony of petitioner that, upon being asked by the court whether the State intended to present any witness against him, he remarked:

> Actually, Your Honor, with the testimony of the petitioner himself which is rather surprising, in the sense that he seems to be well-versed with the major portion of the history of the Philippines, so, on our part, we are convinced. *Your Honor Please, that petitioner really deserves to be admitted as a citizen of the Philippines. And for this reason, we do not wish to present any evidence to counteract or refute the testimony of the witnesses for the petitioner, as well as the petitioner himself.*

Accordingly, on August 25, 1999, the trial court granted the petition and admitted petitioner to Philippine citizenship. The State, however, through the Office of Solicitor General, appealed contending that petitioner: (1) failed to state all the names by which he is or had been known; (2) failed to state all his former places of residence in violation of C.A. No. 473, Sec. 7; (3) failed to conduct himself in a proper and irreproachable manner during his entire stay in the Philippines, in violation of Sec. 2; (4) has no known lucrative trade or occupation and his previous incomes have been insufficient or misdeclared, also in contravention of Sec. 2; and (5) failed to support his petition with the appropriate documentary evidence.

On November 15, 1996, the Court of Appeals rendered its decision which, as already noted, reversed the trial court and denied petitioner's application for naturalization. It ruled that due to the importance of naturalization cases, the State is not precluded from raising questions not presented in the lower court and brought up for the first time on appeal.

ISSUE: Whether or not the documents annexed by the State to its appellant's brief without having been presented and formally offered as evidence under Rule 132, Section 34 of the Revised Rules on Evidence justified the reversal of the Trial Court's decision.

HELD: The contention has no merit. Petitioner failed to note Rule 143 of the Rules of Court which provides that —

> These rules shall not apply to land registration, cadastral and election cases, *naturalization* and insolvency proceedings, and other cases not herein provided for, *except by analogy or in a suppletory character and whenever practicable and convenient.* (Emphasis added)

Prescinding from the above, the rule on formal offer of evidence (Rule 132, Sec. 34) now being invoked by petitioner is clearly not applicable to the present case involving a petition for naturalization. The only instance when said rules may be applied by analogy or suppletorily in such cases is when it is "practicable and convenient." That is not the case here, since reliance upon the documents presented by the State for the first time on appeal, in fact, appears to be the more practical and convenient course of action considering that decisions in naturalization proceedings are not covered by the rule on *res judicata.* Consequently, a final favorable judgment does not preclude the State from later on moving for a revocation of the grant of naturalization on the basis of the same documents.

> xxx xxx The above discussion would have been enough to dispose of this case, but to settle all the issues raised, we shall briefly discuss the effect of petitioner's failure to include the address "J.M. Basa St., Iloilo" in his petition, in accordance with Sec. 7, C.A. No. 473. This address appears on petitioner's Immigrant Certificate of Residence, a document which forms part of the records as Annex A of his 1989 petition for naturalization. Petitioner admits that he failed to mention said address in his petition, but argues that since the Immigrant Certificate of Residence containing it had been fully published, with the petition and the other annexes, such publication constitutes substantial compliance with Sec. 7. This is allegedly because the publication effectively satisfied the objective sought to be achieved by such requirement, *i.e.*, to give investigating agencies of the government the opportunity to check on the background of the applicant and prevent suppression of information regarding any possible misbehavior on his part in any community where he may lived at one time or another. It is settled, however, that naturalization laws should be rigidly enforced and strictly construed in favor of the government and against the applicant. As noted by the State, C.A. No. 473, Sec. 7 clearly provides that the applicant for naturalization shall set forth in the petition his present and former places of residence. This provision and the rule of strict application of the law in naturalization cases defeat petitioner's argument of "substantial compliance" with the requirement under the Revised Naturalization Law. On this ground alone, the instant petition ought to be denied.
>
> PETITION DENIED.

INSURANCE LAW

Contracts of Insurance are to be construed liberally in favor of the insured and strictly against the insurer.

FINMAN GENERAL ASSURANCE CORPORATION *vs.* COURT OF APPEALS
G.R. No. 100970, September 2, 1992
213 SCRA 493

FACTS: On October 22, 1986, deceased Carlie Surposa was insured with petitioner Finman General Assurance Corporation.

While said insurance policy was in full force and effect, the insured Carlie Surposa, died on October 18, 1988 as a result of a stab wound inflicted by one of the three (3) unidentified men without provocation and warning on the part of the former as he and his cousin, Winston Surposa, were waiting for a ride on their way home along Rizal-Locsin Streets, Bacolod City after attending the celebration of the "Maskarra Annual Festival."

Thereafter, private respondent and the other beneficiaries of said insurance policy filed a written notice of claim with the petitioner insurance company which denied

said claim contending that murder and assault are not within the scope of the coverage of the insurance policy.

On February 24, 1989, private respondent filed a complaint with the Insurance Commission which subsequently rendered a decision in their favor.

On July 11, 1991, the appellate court affirmed said decision.

Hence, petitioner filed this petition alleging grave abuse of discretion on the part of the appellate court in applying the principle of "*expressio unius est exclusio alterius*" in a personal accident policy since death resulting from murder and/or assault are impliedly excluded in said insurance policy considering that the cause of death of the insured was not accidental but rather a deliberate and intentional act of the assailant in killing the former.

ISSUE: Whether or not death resulting from assault or murder deemed included in the terms "accident" and "accidental."

HELD: YES. As correctly pointed out by the Court of Appeals, it cannot be pretended that Carlie Surposa died in the course of an assault or murder as a result of his voluntary act considering the very nature of these crimes. In the first place, the insured and his companion were on their way home from attending a festival. They were confronted by unidentified persons. The record is barren of any circumstance showing how the stab wound was inflicted. Nor it can be pretended that the malefactor aimed at the insured precisely because the killer wanted to take his life. In any event, while the act may not exempt the unknown perpetrator from criminal liability, the fact remains that the happening was a pure accident on the part of the victim. The insured died from an event that took place without his foresight or expectation, an event that proceeded from an unusual effect of a known cause and, therefore, not expected. Neither can it be said that there was a capricious desire on the part of the accused to expose his life to danger considering that he was just going home after attending a festival.

Furthermore, the personal accident insurance policy involved herein specifically enumerated only ten (10) circumstances wherein no liability attached to petitioner insurance company for any injury, disability or loss suffered by the insured as a result of any of the stipulated causes. The principle of "*expressio unius est exclusio alterius*" — the mention of one thing implies the exclusion of another thing — is therefore applicable in the instant case since murder and assault, not having been expressly included in the enumeration of the circumstances that would negate liability in said insurance policy cannot be considered by implication to discharge the petitioner insurance company from liability for any injury, disability or loss suffered by the insured. Thus, the failure of the petitioner insurance company to include death resulting from murder or assault among the prohibited risks leads inevitably to the conclusion that it did not intend to limit or exempt itself from liability for such death.

Article 1377 of the Civil Code of the Philippines provides that:

> "The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity."

Moreover, "it is well-settled that contracts of insurance are to be construed liberally in favor of the insured and strictly against the insurer. Thus, ambiguity in the words of an insurance contract should be interpreted in favor of its beneficiary."

PETITION DENIED FOR LACK OF MERIT.

NOTE: When the words and language of documents are clear and plain or readily understandable by an ordinary reader thereof, there is absolutely no room for interpretation or construction anymore. Courts are not allowed to make contracts for the parties; rather, they will intervene only when the terms of the policy are ambiguous, equivocal or uncertain. The parties must abide by the terms of the contract because such terms constitute the measure of the

insured's liability and compliance therewith is a condition precedent to the insured's right of recovery from the insurer.

While it is a cardinal principle of insurance law that a policy or contract of insurance is to be construed liberally in favor of the insured and strictly against the insurer company, yet contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense. Moreover, obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (*New Life Enterprises vs. CA*, G.R. No. 94071, March 31, 1992, 207 SCRA 669).

LABOR AND SOCIAL LEGISLATIONS

The liberal construction and interpretation of labor laws may not be applied where the pertinent provisions of the Labor Code and PD 626 are clear and leave no room for interpretation.

The official agents charged by law to implement social justice guaranteed by the Constitution should adopt a liberal attitude in favor of the employee in deciding claims for compensability.

GOVERNMENT SERVICE INSURANCE SYSTEM *vs.*
MARIAN T. VICENCIO
G.R. No. 176832, May 21, 2009
588 SCRA 138

FACTS: On May 31, 2001, Judge Vicencio died. Per his Death Certificate, the immediate cause of his death was Cardiopulmonary Arrest and the antecedent cause was T/C Fatal Arrhythmia. No underlying cause of death was indicated in his Death Certificate. He was survived by his wife, respondent Mrs. Vicencio, and daughter Mary Joy Celine Vicencio.

Respondent Mrs. Vicencio applied for the death benefits of her late husband with petitioner Government Service Insurance System (GSIS) but her application was denied by Mr. Marcelino S. Alejo, Manager of the GSIS Employees Compensation Department, on the ground that the illness, which caused Judge Vicencio's death, is not considered an occupational disease, and there is no showing that his work as Regional Trial Court (RTC) Judge has increased his risk of contracting said ailment. Respondent Mrs. Vicencio filed a motion for reconsideration but the same was denied.

On June 17, 2002, respondent Mrs. Vicencio appealed to the Employees Compensation Commission (ECC) but the same was dismissed.

Respondent Mrs. Vicencio filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeal (CA). The CA reversed and set aside the Decision of the ECC and ordered the GSIS to grant the claim for the death benefits of Judge Honorato S. Vicencio under the Employees Compensation Act.

ISSUE: Whether or not respondent Mrs. Vicencio's claim for death benefits under Presidential Decree No. 626 (P.D. No. 626), as amended, is compensable.

HELD: The Death Certificate of Judge Vicencio clearly indicates that the cause of his death is Cardiopulmonary Arrest, T/C Fatal Arrhythmia. Whether, however, the same was a mere complication of his lung cancer as contended by petitioner GSIS or related to an underlying cardiovascular disease, is not established by the records of this case, and thus, remains uncertain.

It must be remembered that P.D. No. 626, as amended, is a social legislation whose primordial purpose is to provide meaningful protection to the working class against the hazards of disability, illness and other contingencies resulting in the loss of income. Thus, the official agents charged by law to implement social justice guaranteed by the Constitution should adopt a liberal attitude in favor of the employee in deciding claims for compensability especially where there is some basis in the facts for inferring

a work-connection with the illness or injury, as the case may be. It is only this kind of interpretation that can give meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code, which states that all doubts in the implementation and interpretation of the provisions of the Labor Code, including their implementing rules and regulations, should be resolved in favor of labor.

Guided by this policy, the court therefore holds that Cardiopulmonary Arrest, T/C Fatal Arrhythmia, the cause of death stated in Judge Vicencio's Death Certificate, should be considered as cardiovascular disease—a listed disease under Annex "A" of the Amended Rules on Employees Compensation.

It is well stated that the degree of proof required under P.D. No. 626 is merely substantial evidence, which means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." What the law requires is a reasonable work connection and not a direct casual relation. It is enough that the hypothesis on which the workman's claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in facts for inferring a work connection. Probability, not certainty, is the touchstone. It is not required that the employment be the sole factor in the growth, development or acceleration of a claimant's illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if to a small degree, to the development of the disease.

Doubts in interpretation of Workmen's Compensation and Labor Code should be resolved in favor of the worker.

MARIA E. MANAHAN *vs.* EMPLOYEES' COMPENSATION COMMISSION AND G.S.I.S.
G.R. No. L-44899, April 22, 1981
104 SCRA 198

FACTS: The claimant, petitioner, herein, Maria E. Manahan, is the widow of Nazario Manahan, Jr., who died of "Enteric Fever" while employed as classroom teacher in Las Piñas Municipal High School, Las Piñas, Rizal, on May 8, 1975.

The petitioner filed a claim with the Government Service Insurance for death benefit under Presidential Decree 626. In a letter dated June 19, 1975, the Government Service Insurance denied the claim on a finding that the ailment of Nazario Manahan, Jr., typhoid fever, is not an occupational disease.

The petitioner filed a motion for reconsideration on the ground that the deceased, Nazario Manahan, Jr., was in perfect health when admitted to the service and that the ailment of said deceased was attributable to his employment.

The Government Service Insurance System affirmed the denial of the claim on the ground that enteric fever or paratyphoid is similar in effect to typhoid fever, in the sense that both are produced by Salmonella organisms.

The petitioner appealed to the Employees' Compensation Commission which affirmed the decision of the Government Service Insurance System on a finding that the ailment of the deceased, enteric fever, was not induced by or aggravated by the nature of the duties of Nazario Manahan, Jr. as a teacher.

HELD: The factual findings of the respondent Commission indicate that the deceased was in perfect health when he entered government service on July 20, 1969, and that in the course of his employment in 1974, he was treated for epigastric pain. He succumbed to enteric fever on May 8, 1975.

The medical record of the deceased shows that he had a history of ulcer-like symptoms (p. 3, ECC rec). This buttresses the claimant's claim that her husband had been suffering from ulcer several months before his death on May 8, 1975. This is likewise sustained by the medical certificate (p. 12, ECC rec.) issued by Dr. Aquilles Bernabe to the effect

that "Nazario Manahan was treated for epigastric pain probably due to hyperacidity on December 10, 1974." Epigastric pain is a symptom of ulcer, and ulcer is a common complication of typhoid fever. There is even such a thing as "typhoidal ulcer."

Because of these circumstances, the illness that claimed the life of the deceased could have had its onset months before December 10, 1974. Such being the case, his cause of action accrued before December 10, 1974.

In the case of *Corales vs. ECC* (L-44063, Feb. 27, 1979, 88 SCRA 547), we ruled that:

> "xxx Article 294, Title III (Transitory and Final Provisions) of the New Labor Code provides that all actions and claims accruing prior to the effectivity of this Code shall be determined in accordance with the laws in force at the time of their accrual and under the third paragraph of Article 292, Title II (Prescription of Offenses and Claims), workmen's compensation claims accruing prior to the effectivity of this Code and during the period from November 1, 1974 up to December 31, 1974 shall be processed and adjudicated in accordance with the laws and rules at the time their causes of action accrued. Hence, this Court applied the provisions of the Workmen's Compensation Act, as amended, on passing upon petitioner's claim."

Pursuant to such doctrine and applying now the provisions of the Workmen's Compensation Act in this case, the presumption of compensability subsists in favor of the claimant.

In any case, we have always maintained that in case of doubt, the same should be resolved in favor of the worker, and that social legislations — like the Workmen's Compensation Act and the Labor Code — should be liberally construed to attain their laudable objective, *i.e.*, to give relief to the workman and/or his dependents in the event that the former should die or sustain an injury.

ECC DECISION SET ASIDE.

Basically, social legislation is liberally construed.

SALVADOR LAZO *vs.* EMPLOYEES' COMPENSATION COMMISSION AND G.S.I.S.
G.R. No. 78617, June 18, 1990
186 SCRA 569

FACTS: The petitioner, Salvador Lazo, is a security guard of the Central Bank of the Philippines assigned to its main office in Malate, Manila. His regular tour of duty is from 2:00 o'clock in the afternoon to 10:00 o'clock in the evening. On 18 June 1986, the petitioner rendered duty from 2:00 o'clock in the afternoon to 10:00 o'clock in the evening. But, as the security guard who was to relieve him failed to arrive, the petitioner rendered overtime duty up to 5:00 o'clock in the morning of 19 June 1986, when he asked permission from his superior to leave early in order to take home to Binangonan, Rizal, his sack of rice.

On his way home, at about 6:00 o'clock in the morning of 19 June 1986, the passenger jeepney the petitioner was riding on turned turtle due to slippery road. As a result, he sustained injuries and was taken to the Angono Emergency Hospital for treatment. He was later transferred to the National Orthopedic where he was confined until 25 July 1986.

For the injuries he sustained, petitioner filed a claim for disability benefits under PD 626, as amended. His claim, however, was denied by the GSIS for the reason that petitioner was not at his workplace performing duties when the incident occurred.

It was held that the condition for compensability had not been satisfied.

Upon review of the case, the respondent Employees' Compensation Commission affirmed the decision since the accident which involved the petitioner occurred far from his workplace and while he was attending to a personal matter.

Hence, the present recourse.

The petitioner contends that the injuries he sustained due to the vehicular accident on his way home from work should be construed as "arising out of or in the course of employment" and thus, compensable.

ISSUE: Whether or not petitioner's injury comes within the meaning of and intendment of the phrase "arising out of and in the course of employment." (Section 2, Workmen's Compensation Act).

HELD: In the case at bar, it can be seen that petitioner left his station at the Central Bank several hours after his regular time off, because the reliever did not arrive, and so petitioner was asked to go on overtime. After permission to leave was given, he went home. There is no evidence on record that petitioner deviated from his usual, regular homeward route or that interruptions occurred in the journey.

While the presumption of compensability and theory of aggravation under the Workmen's Compensation Act (under which the Baldebrin case was decided) may have been abandoned under the New Labor Code, it is significant that the liberality of the law in general in favor of the workingman still subsists. As agent charged by the law to implement social justice guaranteed and secured by the Constitution, the Employees' Compensation Commission should adopt a liberal attitude in favor of the employee in deciding claims for compensability, especially where there is some basis in the facts for inferring a work connection to the accident.

This kind of interpretation gives meaning and substance to the compassionate spirit of the law as embodied in Article 4 of the New Labor Code which states that "all doubts in the implementation and interpretation of the provisions of the Labor Code including its implementing rules and regulations shall be resolved in favor of labor."

There is no reason, in principle, why employees should not be protected for a reasonable period of time prior to or after working hours and for a reasonable distance before reaching or after leaving the employer's premises.

If the *Vano* ruling awarded compensation to an employee who was on his way from home to his work station one day before an official working day, there is no reason to deny compensation for accidental injury occurring while he is on his way home one hour after he had left his work station.

We are constrained not to consider the defense of the street peril doctrine and instead interpret the law liberally in favor of the employee because the Employees' Compensation Act, like the Workmen's Compensation Act, is basically a social legislation designed to afford relief to the working men and women in our society.

DECISION REVERSED AND SET ASIDE.

The sympathy of the law on social security is towards its beneficiaries and the law by its own terms, requires a construction of utmost liberality in their favor.

DOMINGO VICENTE *vs.*
EMPLOYEES' COMPENSATION COMMISSION
G.R. No. 85024, January 23, 1991
193 SCRA 190

FACTS: The petitioner, Domingo Vicente, was formerly employed as a nursing attendant at the Veterans Memorial Medical Center in Quezon City. On August 5, 1981, at the age of forty-five, and after having rendered more than twenty-five years of government service, he applied for optional retirement (effective August 16, 1981) under the provisions of Section 12(c) of Republic Act No. 1616, giving as reason therefor his inability to continue working as a result of his physical disability. The petitioner likewise filed with the Government Service Insurance System (GSIS) an application for "income benefits claim for payment" under Presidential Decree (PD) No. 626, as amended. Both applications were accompanied by the necessary supporting papers, among them being a "Physician's Certification" issued by the petitioner's attending doctor at the Veterans

Memorial Medical Center and classified him as being under "permanent total disability."

Petitioner's application for income benefits claim payment was granted only for permanent partial disability by the G.S.I.S. and affirmed by the Employees' Compensation Commission (ECC). Hence, the petition for *certiorari*.

ISSUE: Whether or not the petitioner suffers from permanent total disability as he claims, or from permanent partial disability as held by the respondent Commission.

HELD: It may therefore be inferred from the Court's pronouncements that while "permanent total disability" invariably results in an employee's loss of work or inability to perform his usual work, "permanent partial disability," on the other hand, occurs when an employee loses the use of any particular anatomical part of his body which disables him to continue with his former work. Stated otherwise, the test of whether or not an employee suffers from "permanent total disability" is a showing of the capacity of the employee to continue performing his work notwithstanding the disability he incurred. Thus, if by reason of the injury or sickness he sustained, the employee, is unable to perform his customary job for more than 120 days and he does not come within the coverage of Rule X of the Amended Rules on Employees' Compensability (which, in a more detailed manner, described what constitutes temporary total disability), then the said employee undoubtedly suffers from "permanent total disability" regardless of whether or not he loses the use of any part of his body.

In the case at bar, the petitioner's permanent total disability is established beyond doubt by several factors and circumstance. Noteworthy is the fact that from all available indications, it appears that the petitioner's application for optional retirement on the basis of his ailments had been approved. The decision of the respondent Commission even admits that the petitioner "retired from government service at the age of 45." Considering that the petitioner was only 45 years old when he retired and still entitled, under good

behavior, to 20 more years in service, the approval of his optional retirement application proves that he was no longer fit to continue in his employment. For optional retirement is allowed only upon proof that the court takes this occasion to stress once more its abiding concern for the welfare of government workers, especially the humble rank-and-file, whose patience, industry, and dedication to duty have often gone unheralded, but who, in spite of very little recognition, plod on dutifully to perform their appointed tasks. It is for this reason that the sympathy of the law on social security is toward its beneficiaries, and the law by its own terms, requires a construction of utmost liberality in their favor. It is likewise for this reason that the Court disposes of this case and ends a workingman's struggle for his just dues.

The decision of the respondent Employees' Compensation Commission is SET ASIDE and another one is ENTERED declaring the petitioner to be suffering from permanent total disability. Respondent Employees' Compensation Commission is accordingly ORDERED to award the petitioner the benefits corresponding to his permanent total disability.

RETIREMENT LAWS

Well-settled is the rule that retirement laws are liberally interpreted in favor of the retiree because the intention is to provide for the retiree's sustenance and comfort, when he is no longer capable of earning his livelihood. (*Profeta vs. Drilon*, 216 SCRA 777)

FRANCISCO S. TANTUICO, JR. *vs.*
HON. EUFEMIO DOMINGO
G.R. No. 96422, February 28, 1994
230 SCRA 391

FACTS: On January 26, 1980, petitioner was appointed Chairman of the Commission on Audit (COA) to serve a term of seven years expiring on January 26, 1987. Petitioner had discharged the functions of Chairman of the COA in an acting capacity since 1975.

On December 31, 1985, petitioner applied for clearance from all money, property and other accountabilities in preparation for his retirement. He obtained the clearance applied for, which covered the period from 1976 to December 31, 1985. The clearance had all the required signatures and bore a certification that petitioner was "cleared from money, property and/or other accountabilities by this Commission."

After the EDSA Revolution, petitioner submitted his courtesy resignation to President Corazon C. Aquino. He relinquished his office to the newly appointed Chairman, now Executive Secretary Teofisto Guingona, Jr. on March 10, 1986. That same day, he applied for retirement effective immediately.

Petitioner sought a second clearance to cover the period from January 1, 1986 to March 9, 1986. All the signatures necessary to complete the second clearance, except that of Chairman Guingona, were obtained. The second clearance embodies a certificate that petitioner was "cleared from money, property and/or accountability by this Commission." Chairman Guingona, however, failed to take any action thereon.

Chairman Guingona was replaced by respondent Chairman. A year later, respondent Chairman issued COA Office Order No. 87-10182 which created a committee to inventory all equipment acquired during the tenure of his two predecessors.

On May 7, 1987, respondent Chairman indorsed petitioner's retirement application to the Government Service Insurance System (GSIS), certifying, among other matters, that petitioner was cleared of the money and property accountability. The application was returned to the COA pursuant to R.A. No. 1568, which vests in the COA the final approval thereof.

On September 25, 1987, the inventory committee finally submitted its report, recommending petitioner's clearance from property accountability inasmuch as there

was no showing that he personally gained from the missing property or was primarily liable for the loss thereof.

On January 2, 1988, respondent Chairman created a special audit team for the purpose of conducting a financial and compliance audit of the COA transactions and accounts during the tenure of petitioner from 1976 to 1984. (COA Office Order 88-10677).

In a letter dated December 21, 1989, a copy of which was received by petitioner on December 27, 1989, respondent Chairman informed petitioner of the approval of his application for retirement under R.A. No. 1568, effective as of March 9, 1986. However, respondent withheld one half (1/2) of petitioner's retirement benefits pending final result of petitioner's final accountability as former COA chairman.

ISSUE: Whether or not petitioner's retirement benefits can be withheld pending investigation of his fiscal responsibility.

HELD: Petitioner was already issued an initial clearance during his tenure, effective December 31, 1985. All the required signatures were present. It also bore a certification that petitioner "is cleared from money, property and/or other accountabilities by this Commission."

Petitioner also applied for a second clearance to cover the period from January 1 to March 9, 1986, which application had been signed by all the officials, except the Chairman.

Whatever infirmities or limitations existed in said clearances were cured after respondent Chairman favorably indorsed petitioner's application for retirement to the Government Service Insurance System and recommended its approval to take effect on March 10, 1986. In said indorsement, respondent Chairman made it clear that there were no pending administrative and criminal cases against petitioner.

Regardless of petitioner's monetary liability to the government that may be discovered from the audit concerning his fiscal responsibility or accountability as former COA Chairman, respondent Chairman cannot

withhold the benefits due petitioner under the retirement laws.

In *Romana Cruz vs. Hon. Francisco Tantuico*, 166 SCRA 670 (1988), the National Treasurer withheld the retirement benefits of an employee because of his finding that she negligently allowed the anomalous encashment of falsified treasury warrants.

In said case, where petitioner herein was one of the respondents, we found that the employee had been cleared by the National Treasurer from all money and property responsibility, and held that the retirement pay accruing to a public officer may not be withheld and applied to his indebtedness to the government.

Under Section 4 of R.A. No. 1568 (An Act to Provide Life Pension to the Auditor General and the Chairman or Any Member of the Commission on Elections), the benefits granted by said law to the Auditor General and the Chairman and Members of the Commission on Elections shall not be subject to garnishment, levy or execution. Likewise, under Section 33 of P.D. No. 1146, as amended (The Revised Government Service Insurance Act of 1977), the benefits granted thereunder "shall not be subject, among others, to attachment, garnishment, levy or other processes."

Well-settled is the rule that retirement laws are liberally interpreted in favor of the retiree because the intention is to provide for the retiree's sustenance and comfort, when he is no longer capable of earning his livelihood. (*Profeta vs. Drilon*, 216 SCRA 777 [1992]).

PETITION IS GRANTED INSOFAR AS IT SEEKS TO COMPEL RESPONDENT CHAIRMAN OF COA TO PAY PETITIONER'S RETIREMENT BENEFITS IN FULL.

(See also *Antonio Belicena vs. Secretary of Finance*, G.R. No. 143190, Oct. 17, 2001, 367 SCRA 504)

RETIREMENT LAWS SHOULD BE LIBERALLY CONSTRUED AND ADMINISTERED IN FAVOR OF PERSONS INTENDED TO BE BENEFITED.

the minority prevails over the majority

The Supreme Court in an *en banc* resolution. *In re: Amount of the Monthly Pension of Judges and Justices starting from the sixth year of their retirement and after the expiration of the initial five-year period of retirement* (A.M. No. 90-9-019 SC, October 4, 1990, 190 SCRA 315), held that:

> "It is logical, just and equitable to hold that the monthly pension for retired judges and justices starting on the sixth year of their retirement should include the highest monthly aggregate of transportation, living and representation allowances the retiree was receiving on the date of his retirement. This is definitely more in keeping with and gives substance to the elementary rule of statutory construction that, being remedial in character, retirement laws should be liberally construed and administered in favor of the persons intended to be benefited and all doubts as to the intent of the law should be resolved in favor of the retiree to achieve its humanitarian purposes. (*Bautista vs. Auditor General, etc., et al.*, 104 Phil. 428 [1958]; *Ortiz vs. Commission on Elections, et al.*, 162 SCRA 812 [1988]). Retirement laws are intended to entice competent men and women to enter the government service and to permit them to retire therefrom with relative security, not only for those who have retained their vigor but, more so, for those who have been incapacitated by illness or accident. (See *Abad Santos vs. Auditor General, et al.*, 79 Phil. 176 [1947])."

ELECTION RULES

Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.

VICE-MAYOR MARCELINA S. ENGLE, *vs.* COMMISSION ON ELECTIONS EN BANC AND WINSTON B. MENZON
G.R. No. 215995, January 19, 2016

FACTS: Petitioner and private respondent vied for the position of Vice-Mayor of the Municipality of Babatngon, Province of Leyte in the May 13, 2013 Automated Synchronized National, Local and ARMM Regional Elections

Case Name: *Fortunato R. Pamil v. Hon. Victorino C. Teleron and Rev. Fr. Margarito R. Gonzaga*
G.R. No.: L-34854 (QUIZ as of 10/29/2026)
Alyssa Gregorio

(the May 13, 2013 Elections, for brevity). Petitioner's late husband, James L. Engle, was originally a candidate for said contested position; however, he died of cardiogenic shock on February 2, 2013. Due to this development, petitioner filed her certificate of candidacy on February 22, 2013 as a substitute candidate for her deceased spouse.

In response, private respondent filed, on February 25, 2013, a Petition to Deny Due Course and/or Cancel the Certificate of Candidacy (COC) of petitioner arguing in the main that the latter misrepresented that she is qualified to substitute her husband, who was declared an independent candidate by the COMELEC. It would appear that James L. Engle's Certificate of Nomination and Acceptance (CONA) was signed by (Lakas-CMD) Leyte Chapter President, Ferdinand Martin G. Romualdez (Romualdez). However, Lakas-CMD failed to submit to the COMELEC Law Department the authorization of Romualdez to sign the CONAs of Lakas-CMD candidates in Babatngon as prescribed by Section 6(3) of COMELEC Resolution No. 9518. On May 15, 2013, the Municipal Board of Canvassers issued a certificate of canvass of votes and proclamation of winning candidates for Babatngon Mayor and Vice-Mayor wherein petitioner was declared as the duly elected Vice-Mayor of Babatngon, Leyte.

It was only on July 5, 2013 did the COMELEC Second Division promulgate the assailed Resolution which denied due course to and cancelled petitioner's COC resulting in the annulment of petitioner's previous proclamation as duly-elected Vice-Mayor of Babatngon, Leyte and the declaration of private respondent as winner of the contested position. According to the COMELEC Second Division, the substitution of petitioner as a candidate in place of her deceased husband for the position of Vice-Mayor of Babatngon, Leyte was not a material misrepresentation, which may be a ground for cancellation of her COC under Section 78, in relation to Section 74, of the Omnibus Election Code (OEC). Despite the foregoing finding, the COMELEC Second Division nonetheless found sufficient basis to cancel petitioner's COC on the ground that she

could not have validly substituted her husband, who was deemed an independent candidate for failure of Lakas-CMD to submit to the COMELEC Law Department Romualdez's authority to sign CONAs for and on behalf of the party on or before October 1, 2012 in violation of Section 6 (3) of COMELEC Resolution No. 9518. The COMELEC Second Division noted that the purported authorization of Romualdez to sign CONAs for Lakas-CMD candidates in Leyte was belatedly submitted in connection with the proceedings on the petition to deny due course to, or cancel petitioner's COC. Finally, on the point on who should be declared the winning candidate for the position of Vice-Mayor of Babatngon, the COMELEC Second Division held that private respondent, the second placer, should be declared the winner in line with jurisprudence stating that if the COC of the winning candidate is void ab initio then the votes of the disqualified or ineligible candidate should be considered stray. Aggrieved, petitioner moved for reconsideration of the aforementioned ruling of the COMELEC Second Division with the COMELEC *En Banc*, which the latter denied on January 20, 2015 Resolution.

ISSUE: Whether or not petitioner can validly substitute her husband James Engle after his unexpected demise.

HELD: The petition is granted. Despite finding that there was no false material representation in petitioner's COC, the COMELEC nonetheless cancelled the same on the ground of invalidity of petitioner's substitution for her husband as candidate for Vice-Mayor of Babatngon, Leyte. The COMELEC anchored its action on the fact that Romualdez's authority to sign James L. Engle's CONA was belatedly submitted and thus, the latter should be considered an independent candidate who cannot be substituted under Section 77 of the OEC and Section 15 of COMELEC Resolution No. 9518.

It is on this point that the Court sees fit to overturn the COMELEC's disposition of the present case. The COMELEC relies heavily on Section 6 of COMELEC Resolution No. 9518, which reads:

Section 6. **Filing of Certificate of Nomination and Acceptance of Official Candidates of a Political Party/Coalition of Political Parties.**—The Certificate of Nomination and Acceptance (CONA) of the official candidates of the duly registered political party or coalition of political parties shall be, in five (5) legible copies, attached to and filed simultaneously with the Certificate of Candidacy. The CONA shall also be stamped received in the same manner as the Certificate of Candidacy.

The CONA, sample form attached, **shall be duly signed and attested to under oath, either by the Party President, Chairman, Secretary-General or any other duly authorized officer of the nominating party** and shall bear the acceptance of the nominee as shown by his signature in the space provided therein.

For this purpose, all duly registered political parties or coalition of political parties shall, not later than October 1, 2012, submit to the Law Department, the names and specimen signatures of the authorized signatories of their official party nominations.

No duly registered political party or coalition of political parties shall be allowed to nominate more than the number of candidates required to be voted for in a particular elective position; otherwise, in such a situation, all of the nominations shall be denied due course by the Commission. (Emphases supplied.)

This Court recognizes that the COMELEC is empowered by law to prescribe such rules so as to make efficacious and successful the conduct of elections. However, it is a long standing principle in jurisprudence that rules and regulations for the conduct of elections are mandatory before the election, but when they are sought to be enforced after the election they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. Over time, we have qualified this doctrine to refer only to **matters of form** and cannot be applied to the substantial qualifications of candidates.

As may be recalled, petitioner's deceased husband's name remained on the ballot notwithstanding his death even before the campaign period for the local elections began on March 29, 2013. Yet, he received almost twice the number of votes as the second placer, private respondent, in a decisive victory. Since the people of Babatngon, Leyte could not have possibly meant to waste their votes on a deceased candidate; we conclude that petitioner was the undisputed choice of the electorate as Vice-Mayor on the apparent belief that she may validly substitute her husband. That belief was not contradicted by any official or formal ruling by the COMELEC ***prior*** to the elections.

Technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections. Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results. Thus, we find that the late submission of Romualdez's authority to sign the CONA of James L. Engle to the COMELEC was a mere technicality that cannot be used to defeat the will of the electorate in a fair and honest election.

Petition is GRANTED. COMELEC Resolution REVERSED and SET ASIDE.

Liberal Construction of the Rules of Court

DSM CONSTRUCTION AND DEVELOPMENT CORPORATION, *vs.* COURT OF APPEALS AND MEGAWORLD GLOBUS ASIA, INC.
G.R. No. 166993, December 19, 2005
478 SCRA 618

FACTS: This case springs from this Court's *Decision* dated 2 March 2004 in G.R. No. 153310, 424 SCRA 179, *Megaworld Globus Asia, Inc. vs. DSM Construction and Development Corp. (Megaworld)*, decided in favor of herein petitioner DSM Construction. Said *Decision* having become final and executory, the corresponding entry of judgment was made on 12 August 2004. This petition centers on attempts, regrettably entertained by respondent Court of Appeals, to thwart the execution of a final and executory decision of this Court.

The Petition for *Certiorari* assails the *Resolution* dated 21 February 2005 of the Court of Appeals in CA-G.R. SP No. 88314. Said *Resolution* ordered the issuance of a temporary restraining order (TRO) enjoining the enforcement of an *Alias Writ of Execution* issued by the Construction Industry Arbitration Commission (CIAC) in CIAC Case No. 22-2000 and ordering them to cease and desist from proceeding with the scheduled execution sale on 1 March 2005 of levied condominium units of the Salcedo Park condominium project owned by Megaworld Globus Asia, Inc. (respondent).

As can be gleaned from *Megaworld*, petitioner and respondent entered into agreements for the construction of a condominium project owned by respondent called "The Salcedo Park," with petitioner as contractor. In the course of the project's construction, differences with respect to billings arose between the parties. Petitioner thus filed a complaint for compulsory arbitration before the CIAC claiming payment for approximately P97 Million as the outstanding balance due from respondent pursuant to the agreements. On 19 October 2001, the CIAC rendered a decision partially granting both petitioner's and respondent's claims, with a net award of Sixty Two Million Seven Hundred Sixty Thousand Five Hundred Fifty Eight Pesos and Forty-Nine Centavos (P62,760,558.49) in favor of petitioner.

This award was affirmed by the Court of Appeals, which however permanently enjoined petitioner from registering its contractor's lien on all except six (6) units of the condominium project. This step was in line with respondent's manifestation that the principal award of

P62,760,558.49 in petitioner's favor can be covered by the value of six (6) condominium units. Seven (7) condominium units, however, were eventually levied upon as a result of respondent's act of substituting two (2) units for the one already paid for by the buyer-spouses Shaul and Rina Golan. The execution sale of levied properties did not push through after this Court issued a TRO dated 12 July 2002 upon respondent's filing of a petition in G.R. No. 153310.

Thereafter, the Court promulgated its *Decision* dated 2 March 2004 affirming the judgment of the Court of Appeals and lifting the TRO that was then still in effect. Finding no merit in respondent's motions for reconsideration, the Court subsequently issued an entry of judgment dated 12 August 2004.

Its judgment having become final and executory, the CIAC issued an *Order* dated 3 November 2004 giving the parties ten (10) working days within which to agree on the satisfaction of the arbitral award, otherwise a writ of execution will be issued. As the parties could not come to terms, the CIAC issued an *alias writ of execution* on 22 November 2004.

On 26 November 2004, respondent sought to clarify if the writ of execution shall be limited to six (6) condominium units in consonance with the Court of Appeals' observation in its decision in the first case that the petitioner's claim can be satisfied by the value of only six (6) units. The CIAC replied in the negative. In an *Order* dated 3 December 2003, it stated that nowhere in its *Decision* or in its *Order* dated 3 November 2004 did it provide that the payment of the judgment debt should be made in the form of six (6) condominium units. It expounded that the mention of the six units was only brought up by the appellate court in relation to the provisional remedy of securing the judgment debt which is interim/temporary in nature.

In addition to the initial levy of seven units, which transpired during the pendency of G.R. No. 153310, three additional units were levied upon 20 December 2004 by Sheriffs Villamor R. Villegas and Norberto R. Magsajo of the

Regional Trial Court (RTC) of Makati. Subsequently, a Notice of Sheriff's Sale was published, setting the auction sale of all ten units on 1 March 2005.

On 25 January 2005, respondent filed a Petition with the Court of Appeals to restrain the scheduled execution sale and to nullify to orders of the CIAC issued pursuant thereto. In said Petition, respondent claimed that the sheriffs exceeded their authority when they included in the notice of execution sale five condominium units fully paid for by its buyers. Respondent also asserted that the inclusion of three additional units in the levy on execution was excessive, thereby, rendering the same void.

On 21 February 2005, the Court of Appeals issued the questioned *Resolution* restraining the implementation of the alias writ, as well as the holding of the auction sale for a period of sixty days from notice thereof. Petitioner filed the instant petition imputing grave abuse of discretion on the part of the Court of Appeals in taking cognizance of respondent's petition and in issuing the assailed *Resolution*. Petitioner prayed for the issuance of a temporary restraining order and/or a writ of preliminary injunction to enjoin the Court of Appeals from acting on respondent's petition.

The Court of Appeals rendered a *Decision* granting respondent's petition and declaring the CIAC's assailed order null and void. This decision was rendered on 19 April 2005, three days before the expiration of the TRO. Such Decision of the Court of Appeals was brought to the attention of this Court only on 23 May 2005.

ISSUE: Whether or not the Court of Appeals gravely abused its discretion when it issued the assailed February 21, 2005 Resolution and April 19, 2005 Decision.

HELD: Even assuming that the rules of procedure had somehow not been observed in this case, the Court finds that these objections can be quelled in the higher ends of justice. Rule 1, Section 6 of the Rules of Court provides that the Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. We have at times

relaxed procedural rules in the interest of substantial justice and in so doing, we have pronounced that:

> "A rigid adherence to the technical rules of procedure disregards the fundamental aim of procedure to serve as an aid to justice, not as a means for its frustration, and the objective of the Rules of Court to afford litigants just, speedy and inexpensive determination of their controversy. Thus, excusable imperfections of form and technicalities of procedure or lapses in the literal or rigid observance of a procedural rule or non-jurisdictional deadline provided therein should be overlooked and brushed aside as trivial and indecisive in the interest of fair play and justice when public policy is not involved, no prejudice has been caused the adverse party and the court has not been deprived of its authority or jurisdiction." (*Maqui vs. CA*, 69 SCRA 368, Feb. 24, 1976).

From the outset, it bears stressing that the subject of petitioner and respondent's petition is the execution of a final judgment affirmed by no less than this Court. This being so, the appellate court should have been doubly careful about entertaining an obviously dilatory petition intended merely to delay the satisfaction of the judgment. Any lower court or tribunal that trifles with the execution of a final and executory judgment of the Supreme Court flirts with insulting the highest court of the land. While we do not diminish the availability of judicial remedies to the execution of final judgments of this Court, as may be sanctioned under the Rules of Court, such actions could only prosper if they have basis in fact and in law. Any court or tribunal that entertains such baseless actions designed to thwart the execution of final judgments acts with grave abuse of discretion tantamount to lack of jurisdiction. It is the positive duty of every court of the land to give full recognition and effect to final and executory decisions, much less those rendered by the Supreme Court.

The abuse of discretion amounting to lack or excess of jurisdiction in this case was made manifest by the fact that the appellate court, not only took cognizance of the case and

issued the assailed restraining order, it eventually decided the case in petitioner's (respondent herein) favor as well, notwithstanding the dearth of any basis for doing so.

PETITION GRANTED, RESOLUTION AND DECISION VOIDED AND SET ASIDE.

Final exam coverage Chapter 1-10

CHAPTER IX

PROSPECTIVE AND RETROSPECTIVE STATUTES

GENERAL PRINCIPLES

A statute which operates upon acts and transactions which have not occurred when the statute takes effect, that is, which regulates the future, is a prospective statute. On the other hand, a retrospective or retroactive law is one which takes away or impairs vested rights acquired under existing laws, or creates new obligations and imposes new duties, or attaches new disabilities in respect of transaction already past. (Crawford, *Construction of Statutes*, pp. 109-110).

When we speak of prospective and restrospective statutes we look forward more in its application or operation rather than its construction and interpretation.

A sound canon of statutory construction is that statutes operate prospectively only and never restrospectively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication. (*United States Fidelity and Guaranty Co. vs. Struthers Wells Co.*, 209 U.S. 306 [1907], cited in *Gallardo vs. Borromeo, infra).*

The Civil Code of the Philippines follows the above rule thus: Laws shall have no retroactive effect, unless the contrary is provided. (Art. 4, NCC).

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Read!! Anti dangerous drug act

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The Civil Code of the Philippines follows the above rule thus: Laws shall have no retroactive effect, unless the contrary is provided. (Art. 4, NCC).

The question, therefore, of whether a statute operates retrospectively or only prospectively depends on the legislative intent. There are, however, retrospective statutes prohibited by the Constitution such that no law impairing the obligation of contracts shall be passed (Sec. 10, Art. III, 1987 Constitution), and no *ex-post facto* law or bill of attainder shall be enacted. (Sec. 22, *ibid.*).

Retroactive legislation is looked upon with disfavor, as a general rule and properly so because of its tendency to be unjust and oppressive. (Crawford, *Construction of Statutes*, p. 562). Thus, laws impairing vested rights are not given retrospective application.

PENAL STATUTES

Penal statutes as a rule are applied prospectively. Our penal law, the Revised Penal Code, are prospective in operation in that felonies and misdemeanors are punished under the laws in force at the time of their commission. (Art. 366, RPC). However, as an exception, it can be given retroactive effect if it is favorable to the accused who is not a habitual criminal. (Art. 22, RPC).

PROCEDURAL LAWS ARE RETROSPECTIVE

Well-settled is the rule that statutes regulating the procedure of the Court will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural Laws are retrospective in that sense and to that extent. (*People vs. Sumilang*, 77 Phil. 764 [1946]; *Alday vs. Camilon*, 120 SCRA 521 [1983], cited in *Ocampo vs. Court of Appeals, infra*). However, Rules of Procedure should not be given retroactive effect if it would result in great injustice and impair substantive right. (*Tan, Jr. vs. CA*, 373 SCRA 524, January 16, 2002).

CURATIVE STATUTES

Curative statutes are those which undertake to cure errors and irregularities and administrative proceedings, and

which are designed to give effect to contracts and other transactions between private parties which otherwise would fail of producing their intended consequences by reason of some statutory disability or failure to comply with some technical requirement. They are therefore necessarily retroactive in their character. (Black, *Construction and Interpretation of Laws*, pp. 418-419, 2nd ed.).

Curative statutes are retroactive and validly accepted in this jurisdiction subject to the usual qualification against impairment of vested rights. (*Briad Agro-Development Corporation vs. Dela Cerna, infra*).

ILLUSTRATIVE CASES:

The law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions; that all statutes are to be construed as having only prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used; and that every case of doubt must be resolved against retrospective effect.

[1]ADORACION CAROLINO (SPOUSE AND IN SUBSTITUTION OF THE DECEASED JEREMIAS A. CAROLINO) *vs.* GEN. GENEROSO SENGA, AS CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES (AFP); ET. AL.
G.R. No. 189649, April 20, 2015

FACTS: On December 1, 1976, Jeremias A. Carolino, petitioner's husband, retired from the Armed Forces of the Philippines (*AFP*) with the rank of Colonel under General Order No. 1208 dated November 29, 1976, pursuant to the provisions of Sections 1(A) and 10 of Republic Act (*RA*) No.

340, as amended. He started receiving his monthly retirement pay in the amount of P18,315.00 in December 1976 until the same was withheld by respondents in March 2005. On June 3, 2005, Jeremias wrote a letteraddressed to the AFP Chief of Staff asking for the reasons of the withholding of his retirement pay. In a letter reply, Myrna F. Villaruz, LTC (FS) PA, Pension and Gratuity Officer of the AFP Finance Center, informed Jeremias that his loss of Filipino citizenship caused the deletion of his name in the alpha list of the AFP Pensioners' Payroll effective March 5, 2005; and that he could avail of re-entitlement to his retirement benefits and the restoration of his name in the AFP Pensioners' Masterlist Payroll by complying with the requirements prescribed under RA No. 9225, or the *Dual Citizenship Act.*

It appeared that the termination of Jeremias' pension was done pursuant to Disposition Form dated October 29, 2004, which was approved by the Chief of Staff and made effective in January 2005. In the said Disposition Form, the AFP Judge Advocate General opined that under the provisions of Sections 4, 5, and 6 of RA No. 340, retired military personnel are disqualified from receiving pension benefits once incapable to render military service as a result of his having sworn allegiance to a foreign country. It was also mentioned that termination of retirement benefits of pensioner of the AFP could be done pursuant to the provisions of Presidential Decree (PD) No. 1638 which provides that the name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss. It being in consonance with the policy consideration that all retirement laws inconsistent with the provisions of PD No. 1638 are repealed and modified accordingly.

On August 24, 2006, Jeremias filed with the Regional Trial Court (*RTC*) of Quezon City, a Petition for Mandamus against Gen. Generoso Senga, as Chief of Staff of the AFP, Brig. Gen. Fernando Zabat, as Chief of the AFP Finance Center, Comm. Reynaldo Basilio, as Chief of the AFP-GHQ Management and Fiscal Office, and Comm. Emilio

Marayag, Pension and Gratuity Management Officer, Pension and Gratuity Management Center, AFP Finance Center, seeking reinstatement of his name in the list of the AFP retired officers, resumption of payment of his retirement benefits under RA No. 340. On February 26, 2007, the RTC rendered its Decision[1] granting the petition for mandamus. Ordering the respondents immediately reinstate the name of petitioner in the list of retired AFP Officers, and to resume payment of his retirement benefits under RA 340; and release to [petitioner] all retirement benefits due him under RA 340 which accrued to him from March 2005 continuously up to the time his name is reinstated in the list of AFP retired officers.

The RTC found that the issue for resolution is the applicability of RA No. 340 and PD No. 1638 upon Jeremias' retirement benefits. It found that he retired as a commissioned officer of the AFP in 1976; thus, RA No. 340 is the law applicable in determining his entitlement to his retirement benefits and not PD No. 1638 which was issued only in 1979. Article 4 of the Civil Code provides that "laws shall have no retroactive effect unless the contrary is provided." PD No. 1638 does not provide for such retroactive application.

Aggrieved, respondents elevated the case to the CA. After the submission of the parties' respective memoranda, the case was submitted for decision.

Jeremias died on September 30, 2007 and was substituted by his wife, herein petitioner.

On May 25, 2009, the CA granted respondents' appeal.

In so ruling, the CA found that while it is true that Jeremias retired in 1976 under the provisions of RA No. 340, as amended, which does not contain any provision anent cessation or loss of retirement benefits upon acquiring another citizenship, PD No. 1638, which was signed in 1979, effectively repealed RA No. 340, as amended, Section 27 of PD No. 1638.

ISSUE: Whether or not PD No.1638, be given retrospective application and be considered as impliedly repealing RA No. 340

HELD: PD 1638 should not have been applied and cannot be used against petitioner as her husband's retirement and pension were granted to him by the AFP under RA 340 which was not superseded by PD 1638, a later statute.

Petitioner contends that her husband's retirement from the active service in 1976 was pursuant to the provisions of RA No. No. 340 as PD No. 1638 was not yet in existence then, and there was nothing in RA No. 340 that disqualifies a retired military personnel from receiving retirement benefits after acquiring foreign citizenship. The concept of retirement benefits is such that one is entitled to them for services already rendered and not for those to be made at a future time. Retirement benefits due petitioner's husband under RA No. 340, is an acquired right which cannot be taken away by a subsequent law. PD No. 1638 does not expressly provide for its retroactive application. Respondents, being officers of the AFP tasked to implement the provisions of RA No. 340 have neglected their function thereunder by delisting petitioner's husband as a retiree, thus, mandamus is proper.

PD No. 1638 was signed by then President Ferdinand Marcos on September 10, 1979. Under Article 4 of the Civil Code, it is provided that laws shall have no retroactive effect, unless the contrary is provided. It is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions; that all statutes are to be construed as having only prospective operation, unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used; and that every case of doubt must be resolved against retrospective effect. These principles also apply to amendments of statutes.

PD No. 1638 does not contain any provision regarding its retroactive application, nor the same may be implied from its language. In fact, Section 36 of PD No. 1638 clearly

provides that the decree shall take effect upon its approval. As held in *Parreno v. COA*, there is no question that PD No. 1638, as amended, applies prospectively. Since PD No. 1638, as amended, is about the new system of retirement and separation from service of military personnel, it should apply to those who were in the service at the time of its approval. Conversely, PD No. 1638 is not applicable to those who retired before its effectivity in 1979. The rule is familiar that after an act is amended, the original act continues to be in force with regard to all rights that had accrued prior to such amendment.

Moreover, Section 27 of PD No. 1638 specifically provides for the retirees to whom the law shall be applied, to wit:

> Section 27. **Military personnel retired under Sections 4, 5, 10, 11 and 12** shall be carried in the retired list of the Armed Forces of the Philippines. The name of a retiree who loses his Filipino citizenship shall be removed from the retired list and his retirement benefits terminated upon such loss, (emphasis supplied)

Notably, petitioner's husband did not retire under those above-enumerated Sections of PD No. 1638 as he retired under RA No. 340.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 25, 2009 and the Resolution dated September 10, 2009 of the Court of Appeals are hereby **REVERSED** and **SET ASIDE**.

As a rule, laws cannot be given retroactive effect in the absence of a statutory provision for retroactivity or a clear implication of the law to that effect.

FERNANDO GALLARDO *vs.* JUAN BORROMEO
G.R. No. L-36007, May 25, 1988
161 SCRA 500

FACTS: On December 7, 1963 petitioner Gallardo filed a complaint to terminate the leasehold of the respondent

tenant so he may cultivate it himself as he had retired from his government job as a letter carrier.

The respondent alleged that the petitioner has no knowledge of farming and that his only purpose is to eject the respondent from the landholding.

The trial court in its decision dated April 21, 1971, dismissed the petition and ordered the petitioner to maintain respondent in the peaceful possession of the landholding.

Petitioner appealed to the Court of Appeals which on October 24, 1972, rendered judgment affirming *in toto* the decision of the Court of Agrarian Relations. Applying Section 7, Republic Act No. 6389, it held that the landowner's desire to cultivate the land himself is not a valid ground for dispossessing the tenant.

ISSUE: Whether or not the Court of Appeals correctly gave retroactive application to Section 7 of R.A. No. 6389.

HELD: The applicable law when Gallardo filed supplementary complaint was paragraph (1) of Section 36 of R.A. No. 3844 which provided:

> "Sec. 36. *Possession of landholding; Exceptions.*— Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his disposition has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:
>
> "(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholdings or will convert the landholding, if suitably located, into residential, factory, hospital, or school site or other useful non-agricultural purposes; *Provided,* That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor is not more than five hectares, in which case, instead of disturbance compensation the lessee may be entitled to advance notice of at least one agricultural year before ejectment proceedings are filed against him; *Provided, further,* That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossession."

However, the above provision was amended on September 10, 1971, by Republic Act No. 6389 which eliminated the landowner's desire to personally cultivate the landholdings, as a ground for the ejectment of the tenant.

However, consonant with Article 4 of the New Civil Code which provides that "laws shall have no retroactive effect unless therein otherwise provided," this Court ruled in the cases of *Nilo vs. Court of Appeals,* 128 SCRA 519 (1984) and *Castro vs. Castro,* 128 SCRA 519 (1984) and reiterated in *Diga vs. Adriano,* 133 SCRA 421 (1984), that R.A. No. 6389 cannot be given retroactive effect in the absence of a statutory provision for retroactivity or a clear implication of the law to that effect. As we stated in *Nilo vs. Court of Appeals, supra:*

> "A sound canon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication, x x x No court will hold a statute to be retroactive when the legislature has not said so. x x x" (*Farrel vs. Pingree* [1888], 5 Utah 443; 16 Pac. 843; *Greer vs. City of Asheville* [1984], 114 N.C. 495; *United States Fidelity & Guaranty Co. vs. Struthers Wells Co.* [1907], 209 U.S. 306).

Since Congress failed to express an intention to make Republic Act No. 6389 retroactive, it may not apply to ejectment cases then already pending adjudication by the courts.

We therefore, hold that the 65-year old petitioner, who is a government retiree may terminate the tenancy of the

private respondent and till his own land as provided in Section 36 of R.A. No. 3844, which was the applicable law when he filed his petition.

DECISION OF THE AGRARIAN COURT AND THE COURT OF APPEALS SET ASIDE.

All statutes are to be construed as having only a prospective operation unless the purpose and the intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used.

PIO BALATBAT *vs.* COURT OF APPEALS AND DOMINGO PASION
G.R. No. 36378, January 27, 1992
205 SCRA 419

FACTS: Petitioner is the agricultural lessee of a parcel of land located at Santiago, Sta. Ana, Pampanga containing an area of 18,490 square meters, more or less, which is owned by Daniel Garcia. The latter sold the land to private respondent Domingo Pasion and had it declared for taxation purposes under Tax Declaration No. 126. Sometime after the sale, Domingo Pasion, on a claim that he will personally cultivate the land, filed on 15 June 1970 with the Court of Agrarian Relations, Fifth Regional District, Branch II at San Fernando, Pampanga, a complaint to eject petitioner alleging therein that he had notified petitioner of his intention to personally cultivate the landholding, pursuant to Sec. 36(1) of R.A. No. 3844, but despite the lapse of one (1) agricultural year from receipt of the notice thereof, petitioner refused to vacate the land.

After trial on the merits the agrarian court rendered a decision against the petitioner. The petitioner appealed the decision to the Court of Appeals. On December 16, 1992, the Court of Appeals promulgated its decision affirming the decision of the agrarian court. During the pendency of the appeal in the Court of Appeals, Congress passed Republic Act No. 6389, Section 7 of which amended Section 36(1) of R.A.

No. 3844. As amended,. personal cultivation is no longer a ground to dispossess an agricultural lessee of his landholdings.

Since under the original provision of Section 36(1) of R.A. No. 3844, the dispossession of the agricultural lessee on the ground of personal cultivation by the agricultural lessor-owner can only take place when "authorized by the Court in a judgment that is final and executory," it follows then that since the repeal of the provision took effect before the judgment in this case became final and executory, private respondent may no longer dispossess petitioner on that ground because it had been removed from the statute books.

ISSUE: Whether or not Sec. 7 of R.A. No. 6389 should be given retroactive effect.

HELD: Article 3 of the Old Civil Code (now Article 4 of the New Civil Code) provides that: "Laws shall not have a retroactive effect unless therein otherwise provided." According to this provision of law, in order that a law may have retroactive effect it is necessary that an express provision to this effect be made in the law, otherwise nothing should be understood which is not embodied in the law. Furthermore, it must be borne in mind that a law is a rule established to guide our actions with no binding effect until it is enacted, wherefore, it has no application to past times but only to future time, and that is why it is said that the law looks to the future only and has no retroactive effect unless the legislator may have formally given that effect to some legal provisions. (*Lopez and Lopez vs. Crow*, 40 Phil. 997 [1919]).

As early as 1913, this Court with Justice Moreland as *ponente* announced:

> "The Act contains, as is seen, no express words giving it a retrospective or retroactive effect, nor is there anything found therein which indicates an intention to give it such an effect. Its effect is, rather, by clear intendment, prospective."

It is a rule of statutory construction that all statutes are to be construed as having only a prospective operation unless

the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used. In every case of doubt, the doubt must be solved against the retrospective effect. The cases supporting this rule are almost without number.

The doctrine of non-retroactivity was reiterated in the case of *Segovia vs. Noel* (47 Phil. 543 [1925]). Thus —

> "A sound canon of statutory construction is that a statute operates prospectively only and never retroactively, unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication. Following the lead of the United States Supreme Court and putting the rule more strongly, 'a statute ought not to receive a construction making it act retroactively, unless the words used are so clear, strong, and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot be otherwise satisfied. No court will hold a statute to be retroactive when the legislature has not said so. xxx' (*Farrel vs. Pingree* [1888], 5 Utah, 443; 16 Pac. 843; *Greer vs. City of Asheville* [1894], 114 N.C. 495; *United States Fidelity & Guaranty Co. vs. Struthers Wells Co.* [1907], 209 U.S. 306)."

PETITION DISMISSED.

Laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used.

ERECTORS, INC. *vs.* NATIONAL LABOR RELATIONS COMMISSION, HON. JULIO ANDRES, JR. AND FLORENCIO BURGOS
G.R. No. 104215, May 8, 1996
256 SCRA 629

FACTS: In September 1979, petitioner recruited respondent to work as service contract driver in Saudi Arabia for a period of twelve (12) months with a salary of US$165.00 and

an allowance of US$165.00 per month. They further agreed that private respondent shall be entitled to a bonus of US$1,000.00 if after the 12-month period, he renews or extends his employment contract without availing of his vacation or home leave. Their contract dated September 20, 1979, was duly approved by the Ministry of Labor and Employment.

The aforesaid contract was not implemented. In December 1979, petitioner notified private respondent that the position of service driver was no longer available. On December 14, 1979, they executed another contract which changed the position of private respondent into that of helper/laborer with a salary of US$105.00 and an allowance of US$105.00 per month. The second contract was not submitted to the Ministry of Labor and Employment for approval.

On December 18, 1979, private respondent left the country and worked at petitioner's Buraidah Sports Complex Project in Saudi Arabia, performing the job of a helper/laborer. He received a monthly salary and allowance of US$210.00, in accordance with the second contract. Private respondent renewed his contract of employment after one year. His salary and allowance were increased to US$231.00.

Private respondent returned to the Philippines on August 24, 1981. He then invoked his first employment contract. He demanded from the petitioner the difference between his salary and allowance as indicated in the said contract, and the amount actually paid to him, plus the contractual bonus which should have been awarded to him for not availing of his vacation or home leave credits. Petitioner denied private respondent's claim.

On March 31, 1982, private respondent filed with the Labor Arbiter a complaint against the petitioner for underpayment of wages and nonpayment of overtime pay and contractual bonus.

On May 1, 1982, while the case was still in the conciliation stage, Executive Order (E.O.) No. 797 creating

the Philippine Overseas Employment Administration (POEA) took effect. Section 4(a) of E.O. No. 797 vested the POEA with the "original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of by virtue of any law or contract involving Filipino workers for overseas employment."

Despite E.O. No. 797, respondent Labor Arbiter proceeded to try the case on the merits. On September 23, 1983, he rendered a Decision in favor of private respondent.

Petitioner appealed to respondent National Labor Relations Commission (NLRC). It questioned the jurisdiction of the Labor Arbiter over the case in view of the enactment of E.O. No. 797.

In a resolution dated July 17, 1991, respondent NLRC dismissed the petitioner's appeal and upheld the Labor Arbiter's jurisdiction.

Petitioner filed this special civil action for *certiorari* reiterating the argument that E.O. No. 797 divested the Labor Arbiter of his authority to try and resolve cases arising from overseas employment contract. Invoking this Court's ruling in *Briad Agro-Development Corp. vs. Dela Cerna*, 174 SCRA 524 (1989), petitioner argues that E.O. No. 797 applies retroactively to effect pending cases including the complaint filed by private respondent.

ISSUE: Whether or not Executive Order No. 797 creating the Philippine Overseas Employment Administration be given retroactive effect.

HELD: The petition is devoid of merit.

The rule is that jurisdiction over the subject matter is determined by the law in force at the time of the commencement of the action. On March 31, 1982, at the time private respondent filed his complaint against the petitioner, the prevailing laws were Presidential Decree No. 1691 which vested the Regional Offices of the Ministry of Labor and the Labor Arbiters with "original and exclusive jurisdiction over all cases involving employer-employee relations, including money claims arising out of any law or

contracts involving Filipino workers for overseas employment." At the time of the filing of the complaint, the Labor Arbiter had clear jurisdiction over the same.

E.O. No. 797 did not divest the Labor Arbiter's Authority to hear and decide the case filed by private respondent prior to its effectivity. Laws should only be applied prospectively unless the legislative intent to give them retroactive effect is expressly declared or is necessarily implied from the language used. We failed to perceive in the language of E.O. No. 797 an intention to give it retroactive effect.

The law at bar E.O. No. 797, is not a curative statute. It was not intended to remedy any defect in the law. It created the POEA to assume the functions of the Overseas Employment Development Board, the National Seamen Board and the overseas employment functions of the Bureau of Employment Services. Accordingly, it gave the POEA "original and exclusive jurisdiction over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment, including seamen." The rule on prospectivity of laws should therefore apply to E.O. No. 797. It should not affect jurisdiction over cases filed prior to its effectivity.

PETITION DISMISSED.

The specific terms of a law may provide for its retroactive effect even to contracts and transactions entered into prior to its enactment.

AMBROSIO ROTAIRO (SUBSTITUTED BY HIS SPOUSE MARIA RONSAYRO ROTAIRO, AND HIS CHILDREN FELINA ROTAIRO, ERLINDA ROTAIRO CRUZ, EUDOSIA ROTAIRO CRIZALDO, NIEVES ROTAIRO TUBIG, REMEDIOS ROTAIRO MACAHILIG, FELISA ROTAIRO LEGASPI, JOSEFINA ROTAIRO TORREVILLAS, AND CRISENCIO R. ROTAIRO, MARCIANA TIBAY, EUGENIO PUNZALAN, AND VICENTE DEL ROSARIO, *v.* ROVIRA ALCANTARA AND VICTOR ALCANTARA
G.R. No. 173632, September 29, 2014

FACTS: Civil Case No. 672 was filed by the respondent Rovira Alcantara (Rovira) for the recovery of possession of a parcel of land in *Barangay* San Andres, Cainta, Rizal, measuring 2,777 square meters and originally titled under Transfer Certificate of Title (TCT) No. 481018. Said property was formerly owned by Rovira's father, Victor C. Alcantara (Alcantara), and Alfredo C. Ignacio (Ignacio), who mortgaged the property to Pilipinas Bank and Trust Company (Pilipinas Bank) in 1968. Two years after, the property was parceled out by Alcantara and Ignacio, through their firm Wilfredo S. Ignacio & Company (Ignacio & Co.), and separately sold to different buyers. One of the buyers was Ambrosio Rotairo (Rotairo) who bought a 200-square meter portion on installment basis. Rotairo constructed his house on the property identified as Lot C-1, and after completing payments, a Deed of Absolute Sale was executed on September 25, 1979 in his favor by Ignacio & Co. In the meantime, Alcantara and Ignacio defaulted in their loan obligations causing Pilipinas Bank to foreclose the mortgage on the entire property. Without redemption being made by Alcantara and Ignacio, title was consolidated in the name of Pilipinas Bank, being the highest bidder during the auction sale. Pilipinas Bank then sold the property in a Deed of Absolute Sale dated June 6, 1975 to Rovira, who happens to be Alcantara's daughter. In 1988, Rovira filed her Amended Complaint in Civil Case No. 672 for recovery of possession and damages. RTC dismisses the case and ruled that the transaction between Ignacio & Co. and Rotairo was covered by Presidential Decree (P.D.) No. 957. On appeal, the CA set aside the RTC decision and ordered the turnover of possession of the property to Rovira.

In granting possession in favor of Rovira, the CA held that P.D. No. 957 is not applicable since the mortgage was constituted prior to the sale to Rotairo. According to the CA, Section 18[11] of P.D. No. 957 protects innocent lot buyers, and where there is a prior registered mortgage, the buyer purchases it with knowledge of the mortgage. In the case of Rotairo, P.D. No. 957 does not confer "more" rights to an unregistered buyer like him, as against a registered prior mortgagee like Pilipinas Bank and its buyer, Rovira.

Petitioners insist on the applicability of P.D. No. 957 in this case, and that the transaction between Rotairo and Ignacio & Co. should fall within the protection of the law. On the other hand, Rovira principally relies on the prior registration of the mortgage and the sale in her favor *vis-à-vis* the petitioners' unregistered transactions.

ISSUE: Whether or not P.D. 957 should be given retrospective application.

HELD: The retroactive application of P.D. No. 957 to transactions entered into prior to its enactment in 1976 is already settled. In *Eugenio v. Exec. Sec. Drilon*, which involved a land purchase agreement entered into in 1972, the Court stated that the unmistakable intent of the legislature is to have P.D. No. 957 operate retrospectively. Moreover, the specific terms of P.D. No. 957 provide for its retroactive effect even to contracts and transactions entered into prior to its enactment. In particular, Section 21 of P.D. No. 957 provides:

> Sec. 21. *Sales Prior to Decree.*—In cases of subdivision lots or condominium units sold or disposed of **prior to the effectivity of this Decree**, it shall be incumbent upon the owner or developer of the subdivision or condominium project to complete compliance with his or its obligations as provided in the preceding section within two years from the date of this Decree unless otherwise extended by the Authority or unless an adequate performance bond is filed in accordance with Section 6 hereof.
>
> Failure of the owner or developer to comply with the obligations under this and the preceding provisions shall constitute a violation punishable under Section 38 and 39 of this Decree. (Emphasis ours)

In this case, the contract to sell between Rotairo and Ignacio & Co. was entered into in 1970, and the agreement was fully consummated with Rotairo's completion of payments and the execution of the Deed of Sale in his favor in 1979. Clearly, P.D. No. 957 is applicable in this case.

It was error for the CA to rule that the retroactive application of P.D. No. 957 is "warranted only where the subdivision is mortgaged *after* buyers have purchased individual lots."[15] According to the CA, the purpose of Section 18 requiring notice of the mortgage to the buyers is to give the buyer the option to pay the installments directly to the mortgagee; hence, if the subdivision is mortgaged *before* the lots are sold, then there are no buyers to notify.[16] What the CA overlooked is that Section 21 requires the owner or developer of the subdivision project to complete compliance with its obligations within two years from 1976. The two-year compliance provides the developer the opportunity to comply with its obligation to notify the buyers of the existence of the mortgage, and consequently, for the latter to exercise their option to pay the installments directly to the mortgagee.

Nevertheless, such concomitant obligation of the developer under Section 21 did not arise in this case. It must be noted that at the time of the enactment of P.D. No. 957 in 1976 and as early as 1974, Pilipinas Bank had already foreclosed the mortgage and bought the properties in the foreclosure sale. There was, thus, no mortgage to speak of such that Rotairo should be notified thereof so that he could properly exercise his option to pay the installments directly to Pilipinas Bank.

Under different circumstances, the prior registration of the mortgage between Pilipinas Bank and Alcantara and Ignacio, and Rovira's subsequent purchase of the subject property would have been valid and binding, and could have defeated Rotairo's unregistered claim over it. But given Rovira's privity with her father Victor C. Alcantara and the fact that she had actual knowledge of the disposition of the property and Rotairo's possession thereof, her acquisition of the property cannot be upheld.

Petition is GRANTED. CA Resolution Set Aside.

LIZA M. QUIROG AND RENE L. RELAMPAGOS *vs.* GOVERNOR ERICO B. AUMENTADO
G.R. No. 163443, November 11, 2008
570 SCRA 582

FACTS: On May 28, 2001, Bohol Provincial Governor Rene L. Relampagos permanently appointed Liza M. Quirog as Provincial Government Department Head of the Office of the Bohol Provincial Agriculture (PGDH-OPA). The appointment was confirmed by the Sangguniang Panlalawigan in Resolution No. 2001-199 on June 1, 2001. On even date, Quirog took her oath of office.

Before the issuance of the permanent appointment, the Personnel Selection Board (PSB) of the Human Resource Management and Development Office of Bohol issued a certification that Quirog was one of two candidates qualified for the position of PGDH-OPA.

In the Order dated June 28, 2001, the Director of the Civil Service Commission Regional Office No. VII (CSCROVII) invalidated Quirog's appointment as PGDH-OPA upon finding that the same was part of the bulk appointments issued by then Governor Relampagos after the May 14, 2001 elections allegedly in violation of Item No. 3(d) of Civil Service Commission (CSC) Resolution No. 010988 dated June 4, 2001. The Order pointed out that the prohibition against the issuance of midnight appointments was already laid down as early as February 29, 2000 in CSC Resolution No. 000550.

ISSUE: Whether or not Quirog's appointment violated Item No. 3 of CSC Resolution No. 010988 dated June 4, 2001.

HELD: As to the validity of Quirog's appointment, the CSCROVII disapproved Quirog's appointment for non-compliance with Item No. 3 of CSC Resolution No. 010988, dated June 4, 2001. Item No. 3 refers to the disapproval of appointments unless certain requisites are complied with. Item No. 3 reads:

"3. All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion x x x which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission x x x shall be disapproved unless the following requisites concur relative to their issuance.

a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting.

b) That the appointee is qualified.

c) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety.

d) That the appointment is not one of those mass appointments issued after the elections."

This interpretation by the CSC of its own rules should be given great weight and consideration for after all, it is the agency tasked with interpreting or applying the same.

Records disclose that on May 28, 2001, the PSB of the Human Resource Management and Development Office of Bohol, issued a certification that Quirog was one of two candidates qualified for the position of PGDH-OPA. On the same day, Quirog was appointed by then Governor Relampagos, and on June 1, 2001, she took her oath of office. CSC Resolution No. 010988 was issued three days later, or on June 4, 2001. Evidently, the CSCROVII should not have subjected Quirog's appointment to the requirements under said resolution, as its application is against the prospective application of laws. Having no provision regarding its retroactive application to appointments made prior to its effectivity, CSC Resolution No. 010988 must be taken to be of prospective application. As we have held time and again:

"Since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is expressly declared or is necessarily implied from the language used."

Prescinding therefrom, it cannot be said that Quirog's appointment violated CSC Resolution No. 010988, the said Resolution having taken effect after the questioned appointment was extended.

Criminal statutes with a favorable effect to the accused have, as to him, a retroactive effect.

PEOPLE OF THE PHILIPPINES *v.* JAVIER MORILLA Y AVELLANO
G.R. No. 189833, February 05, 2014

FACTS: On 15 October 2001, Morilla, Mayor Mitra, Willie Yang y Yao (Yang) and Ruel Dequilla y Regodan (Dequilla) were charged in a criminal information as follows:

That on or about October 13, 2001, in Barangay Kiloloran, Municipality of Real, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above–named accused, one of them an incumbent mayor of the Municipality of Panukulan, Quezon Province, who all belong to an organized/syndicate crime group as they all help one another, for purposes of gain in the transport of illegal drugs, and in fact, conspiring and confederating together and mutually aiding and abetting one another, did then and there willfully, unlawfully, and feloniously transport by means of two (2) motor vehicles, namely a Starex van bearing plate number RWT–888 with commemorative plate to read "Mayor" and a municipal ambulance of Panukulan, Quezon Province, methamphetamine hydrochloride, a regulated drug which is commonly known as shabu, and with an approximate weight of five hundred three point sixty eight (503.68) kilos, without authority whatsoever.

After trial, the Regional Trial Court of Quezon City on 1 August 2007 convicted Morilla and his co-accused Mayor Mitra, then incumbent Mayor of Panukulan, Quezon, of illegal transport[5] of *methamphetamine hydrochloride*, commonly known as *shabu*, with an approximate weight of five hundred three point sixty eight (503.68) kilos. However, it absolved Dequilla and Yang due to the prosecution's failure to present sufficient evidence to convict them of the offense charged. The dispositive of the decision reads:

> "Accordingly, both accused Ronnie Mitra y Tena and Javier Morilla y Avellana are sentenced to suffer the penalty of life imprisonment and to pay a fine of P10,000,000.00 each. Accused Willie Yang y Yao and Ruel Dequilla y Regodan are ACQUITTED for failure of the prosecution to prove their guilt beyond reasonable doubt and are ordered immediately released from custody unless held for some other lawful cause."

On 13 July 2009, the appellate court affirmed the ruling of the trial court. It upheld the finding of conspiracy between Mayor Mitra and Morilla in their common intent to transport several sacks containing methamphetamine hydrochloride on board their respective vehicles. The singularity of their intent to illegally transport *methamphetamine hydrochloride* was readily shown when Morilla agreed to drive the ambulance van from Infanta, Quezon to Manila together with Mayor Mitra, who drove the lead vehicle, the Starex van. The appellate court likewise dismissed the argument of lack of knowledge of the illegal contents of the sacks. The claim that the sacks were loaded with wooden tiles was implausible due to the obvious disparity of texture and volume.

ISSUE: Whether or not the penalty of life imprisonment is proper.

HELD: The penalty imposed by the trial court as affirmed by the Court of Appeals is modified.

Originally, under Section 15 of Republic Act No. 6425, the penalty for illegal transportation of *methamphetamine hydrochloride* was imprisonment ranging

from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos. Pursuant to Presidential Decree No. 1683, the penalty was amended to life imprisonment to death and a fine ranging from twenty to thirty thousand pesos. The penalty was further amended in Republic Act No. 7659, where the penalty was changed to *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos.

From the foregoing, the Court sustain the imposed penalty of fine of P10,000,00.00 to be paid by each of the accused but amend the penalty to *reclusion perpetua* following the provisions of Republic Act No. 7659 and the principle of retroactive application of lighter penalty. *Reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon. It also carries with it accessory penalties, namely: perpetual special disqualification, etc. Life imprisonment, on the other hand, does not appear to have any definite extent or duration and carries no accessory penalties.

PETITION DENIED. DECISION OF THE COURT OF APPEALS AFFIRMED WITH MODIFICATION.

Insofar as R.A. No. 8294 is not beneficial to the accused because it unduly aggravates the crime, such new law will not be given retroactive application, lest it acquire the character of an *ex post facto* law.

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, *vs.* PROCULO MEJECA Y MONTALLANA, BALDOMERO QUINTINA, ROMEO SOLARTE, DIOSECORO NARCISO, ADLINA NARCISO, NICOLAS PICACHE, JR., JULIE HILARIO, ARNOLD NARCISO AND DANTE ARAS, ACCUSED. ARNOLD NARCISO, ACCUSED-APPELLANT.
G.R. No. 146425, November 21, 2002
392 SCRA 420

FACTS: Lita Berianas, the vault custodian of the Marikina City Branch of the JTC Pawnshop owned by Victoria T.

Tuparan, was fatally shot as she tried to flee to safety when several armed men barged into the shop and carted away assorted jewelry worth more or less P3,000.000.00.

Initially charged for the felony were Proculo Mejeca *y* Montallana, Baldomero Quintina and Romeo Solarte. The corresponding information for Robbery with Homicide was filed on August 15, 1996.

Subsequently, additional suspects were identified. Thus, indicted for the crime in an Amended Information for Robbery in Band with Homicide were: (1) Proculo Mejeca *y* Montallana, (2) Baldomero Quintina, (3) Romeo Solarte, (4) Diosecoro Narciso, (5) Adelina Narciso, (6) Nicolas Picache, Jr., (7) Julie Hilario, (8) Arnold Narciso, and (9) Dante Aras. The amended information alleges —

> "That on or about the 11th day of July 1996 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, all armed with assorted firearms, conspiring and confederating together and mutually helping and aiding one another, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously enter the premises of JTC Pawnshop and once inside robbed the aforesaid pawnshop of assorted jewelries worth more or less P3,000,000.00; that on the occasion and by reason of said robbery one of the accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shoot LITA BERLANAS, vault custodian of the said JTC Pawnshop thereby inflicting upon the latter gunshot wounds which directly caused her death."

The case then proceeded to trial after which, the court *a quo* rendered judgment, finding the accused ARNOLD NARCISO guilty beyond reasonable doubt of the crime of Robbery with Homicide penalized under Article 294(1) of the Revised Penal Code with the aggravating circumstances of the use of unlicensed firearm and in band, and is sentenced to suffer the maximum penalty of DEATH by lethal injection.

ISSUE: Whether or not R.A. No. 8294, which took effect on July 6, 1997, can be applied against the accused-petitioner.

HELD: In meting out the supreme penalty of death, the trial court appreciated the special aggravating circumstance of use of an unlicensed firearm under Section 1, paragraph 3, of R.A. No. 8294.

R.A. No. 8294 took effect on July 6, 1997, fifteen days after its publication on June 21, 1997. The crime imputed to accused-appellant was committed on July 11, 1996. It is fundamental that laws shall have no retroactive effect, unless the contrary is provided. More importantly, penal laws are construed liberally in favor of the accused. Thus, insofar as R.A. No. 8294 is not beneficial to the accused because it unduly aggravates the crime, such new law will not be given retroactive application, lest it acquire the character of an *ex post facto* law. Stated differently, R.A. No. 8294, which considers the use of an unlicensed firearm in the killing of a victim as an aggravating circumstance, cannot be given retroactive effect because to do so would be unfavorable to the accused.

Procedural Laws are retrospective.

ANICETO C. OCAMPO *vs.* COURT OF APPEALS
G.R. No. 79060, December 8, 1989
180 SCRA 27

FACTS: Petitioner Aniceto Ocampo was charged for violation of PD 772 (Anti-Squatting Law) in an information dated March 25, 1985. Upon arraignment, petitioner pleaded "not guilty."

After the prosecution rested its case, petitioner waived the presentation of his evidence and instead filed a motion to dismiss (demurrer to evidence) on the ground that the prosecution did not present Transfer Certificate of Title No. 192689 to prove ownership of the land in question and that it failed to prove that the land on which the petitioner constructed his house belongs to the University of the Philippines.

The trial court denied the motion to dismiss for lack of merit and on October 7, 1985, the trial court found the petitioner Aniceto Ocampo guilty beyond reasonable doubt of the offense charged.

Accused then appealed to the Court of Appeals alleging that the trial court erred in: (a) applying Section 15, Rule 119 of the 1985 Rules of Criminal Procedure; (b) convicting appellant on the basis of evidence which does not measure to the degree of proof as required by law; and (c) not applying the principle of presumption of innocence in favor of appellant.

Respondent Court of Appeals affirmed the decision of the lower court, finding said appealed decision to be in accordance with law and supported by evidence as well.

ISSUE: Whether or not the Motion to Dismiss filed by accused-petitioner is a bar for him to present evidence.

HELD: The issue was answered in the affirmative.

Section 15, Rule 119 of the Rules on Criminal Procedure, as amended, provides:

> "Section 15. *Demurrer to Evidence.*—After the prosecution rested its case, the court may dismiss the case on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.
>
> "If the court denies the motion for dismissal, the accused may adduce evidence in his defense. When the accused filed such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution."

The amendment to Section 15, Rule 119 of the 1985 Rules on Criminal Procedure took effect only on October 1, 1988, but the same was given retroactive effect in the case of *Bonalos vs. People*, in its Resolution dated September 19, 1988. Well-settled is the rule that "statutes regulating the procedure of the court will be construed as applicable to

actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense and to that extent." (*People vs. Sumilang*, 77 Phil. 764 [1946]; *Alday vs. Camilon*, 120 SCRA 521 [1983]). The amendment would therefore apply in this case.

In the case at bar, nowhere does the record show that accused-petitioner's demurrer to evidence was filed with prior leave of court, the retroactive effect of the amendment aforestated would therefore work against herein petitioner.

By moving to dismiss on the ground of insufficiency of evidence, accused-petitioner waives his right to present evidence to substantiate his defense and in effect submits the case for judgment on the basis of the evidence for the prosecution. This is exactly what petitioner did, and he cannot now claim denial of his right to adduce his own evidence. As the Solicitor General aptly opined, "petitioner gambled on securing an acquittal, a gamble which he lost."

PETITION DENIED.

Procedural laws have retroactive application.

**YAKULT PHILIPPINES AND LARRY SALVADO *vs.*
COURT OF APPEALS
G.R. No. 91856, October 5, 1990
190 SCRA 357**

FACTS: On December 24, 1982, a five-year old boy, Roy Camaso, while standing on the sidewalk of M. dela Fuente Street, Sampaloc, Manila, was sideswiped by a Yamaha motorcycle owned by Yakult Philippines and driven by its employee, Larry Salvado.

Salvado was charged with the crime of reckless imprudence resulting to slight physical injuries in an information that was filed on January 6, 1983 with the then City Court of Manila, docketed as Criminal Case No. 027184. On October 19, 1984 a complaint for damages was filed by Roy Camaso represented by his father, David Camaso, against Yakult Philippines and Larry Salvado in

the Regional Trial Court of Manila docketed as Civil Case No. 84-27317.

In due course, a decision was rendered in the civil case on May 26, 1989 ordering defendants to pay jointly and severally the plaintiff the sum of P13,006.30 for actual expenses for medical services and hospital bills; P3,000.00 attorney's fees and the costs of the suit. Although said defendants appealed the judgment, they nevertheless filed a petition for *certiorari* in the Court of Appeals challenging the jurisdiction of the trial court over said civil case.

Petitioner's thesis is that the civil action for damages for injuries arising from alleged criminal negligence of Salvado, being without malice, cannot be filed independently of the criminal action under Article 33 of the Civil Code. Further, it is contended that under Section 1, Rule III of the 1985 Rules on Criminal Procedure such a separate civil action may not be filed unless reservation thereof is expressly made.

In a decision dated November 3, 1989, the Court of Appeals dismissed the petition. A motion for reconsideration thereof filed by petitioners was denied on January 30, 1990. Hence, this petition.

ISSUE: Whether or not a civil action instituted after the criminal action was filed would prosper even if there was no reservation to file a separate civil action.

HELD: The petition is devoid of merit.

Section 1, Rule III of the 1985 Rules of Criminal Procedure provides as follows:

> "SECTION 1. *Institution of criminal and civil actions.*—When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action."

Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33,

34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

A waiver of any of the civil action extinguished the others, the institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

In no case may the offended party recover damages twice for the same act or omission of the accused.

x x x x x x x x x

Although the incident in question and the actions arising therefrom were instituted before the promulgation of the 1985 Rules of Criminal Procedure, its provisions which are procedural may apply retrospectively to the present case.

In this case, the offended party has not waived the civil action, nor reserved the right to institute it separately. Neither has the offended party instituted the civil action prior to the criminal action. However, the civil action in this case was filed in court before the presentation of the evidence for the prosecution in the criminal action of which the judge presiding on the criminal case was duly informed, so that in the disposition of the criminal action no damages was awarded.

The civil liability sought arising from the act or omission of the accused in this case is a quasi-delict as defined under Article 2176 of the Civil Code.

The aforecited revised rule requiring such previous reservation also covers quasi-delict as defined under Article 2176 of the Civil Code arising from the same act or omission of the accused.

Although the separate civil action filed in this case was without previous reservation in the criminal case, nevertheless since it was instituted before the prosecution

presented evidence in the criminal action, and the judge handling the criminal case was informed thereof, then the actual filing of the civil action is even far better than a compliance with the requirement of an express reservation that should be made by the offended party before the prosecution presents its evidence.

The purpose of this rule requiring reservation is to prevent the offended party from recovering damages twice for the same act or omission.

PETITION DENIED.

Statutes regulating the procedure of the Courts will be construed as applicable to actions pending and undetermined at the time of their passage.

TEOFILO MARTINEZ *vs.* PEOPLE OF THE PHILIPPINES
G.R. No. 132852, May 31, 2000
332 SCRA 694

FACTS: On 23 August 1994, petitioner filed before the Court of Appeals a *Motion to Litigate as Pauper* attaching thereto supporting affidavits executed by petitioner himself and by two (2) ostensibly disinterested person attesting to petitioner's eligibility to avail himself of this privilege. The appellate court subsequently issued its resolution dated 21 March 1997 denying the motion and directing petitioner to remit the docketing fees in the total amount of P420.00 within five (5) days from notice. On April 1997, petitioner filed a *Motion for Reconsideration* of the order denying his motion to litigate as a pauper, but this was similarly denied in the resolution of 8 October 1997. Petitioner then filed a *Manifestation* on 28 October 1997 wherein he stated through counsel that he was transmitting the docket fees required of his client under protest and that the money remitted was advanced by his counsel, Atty. Jesus G. Chavez himself. The transmittal of the amount was evidenced by two (2) postal money orders attached to the Motion to *Litigate as Pauper.*

In the assailed Resolution of 10 November 1997, the Court of Appeals dismissed the petition, citing petitioner's failure to pay the required docket fee. Petitioner moved for reconsideration citing his compliance with the docket fee requirement as alleged in his *Manifestation* adverted to above. However, the Court of Appeals in the second assailed Resolution of 21 January 1998 denied this latest motion on the ground that, per verification by the Judicial Records Division, the amount remitted by petitioner as docket fee was short of P150.00.

ISSUE: Whether or not a motion to litigate as pauper can be entertained by an appellate court.

HELD: When petitioner filed on 23 August 1994, his original motion to appeal as pauper before the appellate court, the applicable rule was the second paragraph of Sec. 16, Rule 41, of the 1964 Revised Rules of Court, which provides —

> "Sec. 16. *Appeal by pauper.*—Where a party desiring to appeal shall establish to the satisfaction of the trial court that he is a pauper and unable to pay the expenses of prosecuting the appeal, and that the case is of such importance, by reason of the amount involved, or the nature of the question raised, that it ought to be reviewed by the appellate court, the trial judge may enter an order entitling the party to appeal as pauper. The clerk shall transmit to the appellate court the entire record of the case, including the evidence taken on trial and the record on appeal, and the case shall be heard in the appellate court upon the original record so transmitted without printing the same.
>
> A petition to be allowed to appeal as pauper shall not be entertained by the appellate court.

Even prior to the adoption of the 1964 Revised Rules of Court, the Court had uniformly frowned upon appellate courts entertaining petitions to litigate as pauper, holding that the question of whether a party-litigant is so poor as to qualify him to litigate as pauper is a question of fact which is best determined by the trial court. The trial court is the court which may require presentation of evidence whether the

appellant is an indigent and may appeal as such, and whether the case is of such importance that, by reason not only of the amount involved but of the nature of the question raised in the court below, it ought to be reviewed by the appellate court.

When the 1997 Rules of Civil Procedure came into effect on 1 July 1997 the provision above-quoted was not re-enacted Sec. 21 of Rule 3, as now worded, outlines the procedure for, as well as the effects of, the grant of a motion to litigate as pauper —

> Sec. 21. *Indigent party.*—A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an *ex parte* application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.
>
> Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien on any judgment rendered in the case favorable to the indigent, unless the court otherwise provides.
>
> Any adverse party may contest the grant of such authority at any time before judgment is rendered by the trial court. If the court should determine after hearing that the party declared as an indigent is in fact a person with sufficient income or property, the proper docket and other lawful fees shall be assessed and collected by the clerk of court. If payment is not made within the time fixed by the court, execution shall issue or the payment thereof, without prejudice to such other sanctions as the court may impose.

On the other hand, Sec. 18 of Rule 141 prescribes the evidentiary requirements for the exemption of pauper litigants from payment of legal fees —

> Sec. 18. *Pauper litigants exempt from payment of legal fees.*—Pauper-litigants (a) whose gross income and

> that of their immediate family do not exceed four thousand (P4,000.00) pesos a month if residing in Metro Manila and three thousand (P3,000.00) pesos a month if residing outside Metro Manila, and (b) who do not own real property with an assessed value of more than fifty thousand (P50,000.00) pesos shall be exempt from the payment of legal fees.
>
> The legal fees shall be a lien on any judgment rendered in the case favorably to the pauper-litigant, unless the court otherwise provides.
>
> To be entitled to the exemption herein provided, the litigant shall execute an affidavit that he and his immediate family do not earn the gross income above-mentioned, nor do they own any real property with the assessed value aforementioned, supported by an affidavit of a disinterested person attesting to the truth of the litigant's affidavit.
>
> Any falsity in the affidavit of a litigant or disinterested person shall be sufficient cause to strike out the pleading of that party, without prejudice to whatever criminal liability may have been incurred.

It cannot be inferred from any of the aforementioned provisions that the restrictive policy enunciated by Sec. 16, Rule 41, of the 1964 Revised Rules of Court was carried over to the 1997 *Rules of Civil Procedure.* Nowhere can we find a provision to the effect that "(a) petition to be allowed to appeal as pauper shall not be entertained by the appellate court."

We resolve to apply the present rules on petitioner retrospectively. Statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. In that sense and to that extent procedural laws are retroactive. We therefore hold that a motion to litigate as an indigent can be made even before the appellate courts, either for the prosecution of appeals, in petitions for review or in special civil actions.

We believe that this interpretation of the present rules is more in keeping with our Bill of Rights, which decrees that,

"(f)ree access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."

RESOLUTION SET ASIDE PETITIONER ALLOWED TO LITIGATE AS PAUPER.

Section 1, Rule 39 of the 1997 Revised Rules of Procedure should not be given retroactive effect in this case as it would result in great injustice to the petitioner.

JAIME TAN, JR., AS JUDICIAL ADMINISTRATOR OF THE INTESTATE ESTATE OF JAIME C. TAN, PETITIONER, *vs.* HON. COURT OF APPEALS (NINTH SPECIAL DIV.) AND JOSE A. MAGDANGAL AND ESTRELLA MAGDANGAL, RESPONDENTS.
G.R. No. 136368, January 16, 2002
373 SCRA 524

FACTS: The operative facts show that in its Decision of June 4, 1991, the trial court held that: (1) the contract between the parties is not an absolute sale but an equitable mortgage; and (2) petitioner Tan should pay to the respondents Magdangal within 120 days after the finality of this decision P59,200.00 plus interest at the rate of 12% *per annum* from May 2, 1988, the date the complaint was filed, until paid.

On September 28, 1995 in CA-G.R. CV No. 33657, the Special Third Division of the Court of Appeals affirmed the decision of the trial court *in toto*. Both parties received the decision of the appellate court on October 5, 1995. On March 13, 1996, the clerk of court of the appellate court entered in the Book of Entries of Judgment the decision in CA-G.R. CV No. 33657 and issued the corresponding Entry of Judgment which, on its face, stated that the said decision "has on October 21, 1995 become final and executory."

The respondents Magdangal filed in the trial court a Motion for Consolidation and Writ of Possession. They alleged that the 120-day period of redemption of the petitioner has expired. They reckoned that the said period began 15 days

after October 5, 1995, the date when the finality of the judgment of the trial court as affirmed by the appellate court commenced to run.

On the other hand, petitioner filed on March 27, 1996 a motion for execution in the appellate court praying that it "direct the court *a quo* to issue the corresponding writ of execution in Civil Case No. 1904988." On April 17, 1996, petitioner deposited with the clerk of court the repurchase price of the lot plus interest as ordered by the decision.

On June 10, 1996, the trial court allowed the petitioner to redeem the lot in question. It ruled that the 120-day period redemption period shall be reckoned from the date of Entry of Judgment in the appellate court or from March 13, 1996. The redemption price was deposited on April 17, 1996. As aforestated, the Court of Appeals set aside the ruling of the trial court and applied the 1997 Revised Rules of Civil Procedure.

From 1991-1996, the years relevant to the case at bar, the rule that governs finality of judgment is Rule 51 of the Revised Rules of Court. Its Sections 10 and 11 provide:

> "Sec. 10. *Entry of judgments and final resolutions.*—If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk of court in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory. (2a, R36)
>
> "Sec. 11. *Execution of judgment.*—Except where the judgment or final order or resolution, or a portion thereof, is ordered to be immediately executory, the motion for its execution may only be filed in the proper court after its entry.

In original actions in the Court of Appeals, its writ of execution shall be accompanied by a certified true copy of the entry of judgment or final resolution and addressed to any appropriate officer for its enforcement.

The 1997 Revised Rules of Civil Procedure, however, amended the rule on finality of judgment by providing in Section 1, Rule 39 as follows:

> "Section 1. *Execution upon judgment or final orders.*—Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. (1a)"

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copy of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

In appealed cases, where the motion for execution pending appeal is filed in the Court of Appeals at a time that it is in possession of the original record or the record on appeal, the resolution granting such motion shall be transmitted to the lower court from which the case originated, together with a certified true copy of the judgment or final order to be executed, with a directive for such court of origin to issue the proper writ for its enforcement.

ISSUE: Whether or not Section 1, Rule 39 of the Revised Rules of Civil Procedure should be given retroactive effect.

HELD: It is evident that if we apply the old rule on finality of judgment, petitioner redeemed the subject property within the 120-day period of redemption reckoned from the appellate court's entry of judgment. The appellate court, however, did not apply the old rule but the 1997 Revised Rules of Civil Procedure. In fine, it applied the new rule retroactively and we hold that, given the facts of the case at bar, this is an error.

There is no dispute that rules of procedure can be given retroactive effect. This general rule, however, has well-delineated exceptions.

Section 1, Rule 39 of the 1997 Revised Rules of Procedure should not be given retroactive effect in this case as it would result in great injustice to the petitioner. Undoubtedly, petitioner has the right to redeem the subject lot and this right is a substantive right. Petitioner followed the procedural rule then existing as well as the decision of this Court governing the reckoning date of the period of redemption when he redeemed the subject lot. Unfortunately for petitioner, the rule was changed by the 1997 Revised Rules of Procedure which, if applied retroactively, would result in his losing the right to redeem the subject lot. It is difficult to reconcile the retroactive application of this procedural rule with the rule of fairness. Petitioner cannot be penalized with the loss of the subject lot when he faithfully followed the laws and the rule on the period of redemption when he made the redemption. The subject lot may only be 34,829 square meters but as petitioner claims, it is the only property left behind by their father, a private law practitioner who was felled by an assassin's bullet.

Petitioner fought to recover this lot from 1988. To lose it because of a change of procedure on the date of reckoning of the period of redemption is iniquitous. The manner of exercising the right cannot be changed and the change applied retroactively if to do so will defeat the right of redemption of the petitioner, which is already vested.

JUDGMENT AND RESOLUTION SET ASIDE.

Procedural provisions of the Local Government Code are retrospective.

WILSON DIU AND DORCITA DIU VS. COURT OF APPEALS
G.R. No. 115213, December 19, 1995
251 SCRA 472

FACTS: Petitioner filed a complaint for sum of money against the private respondents. It appears that when the matter was brought before the Barangay Chairman of Naval, the parties failed to reach an amicable settlement. Accordingly, the barangay chairman issued a certification to file action.

In the Court of Appeals, the case was dismissed on the ground that there was no compliance with P.D. No. 1508 since after the barangay captain's efforts to settle the dispute failed, the Pangkat Tagapagkasundo was not constituted for purposes of settling the matter.

ISSUE: Whether or not the confrontations before the Barangay Chairman of Naval satisfied the requirement therefor in Presidential Decree No. 1508.

HELD: This Court finds for petitioners.

It must be noted that the Presidential Decree No. 1508 has been repealed by codification in the Local Government Code of 1991 which took effect on January 1, 1992. The basic complaint was filed by petitioners before the trial court on July 10, 1991 before the effectivity of the Local Government Code. Nevertheless, Sections 4 and 6 of the former law have been substantially reproduced in Sections 410(b) and 412, respectively, of the latter law.

In the case at bar, it is admitted that the parties did have confrontations before the Barangay Chairman of Naval although they were not sent to the pangkat as the same was not constituted. Their meetings with said barangay chairman were not fruitful as no amicable settlement was reached. This prompted the issuance of the following Certification to File Action.

While no pangkat was constituted, it is not denied that the parties met at the office of the barangay chairman for possible settlement. The efforts of the barangay chairman, however, proved futile as no agreement was reached.

Although no pangkat was formed, we believe that there was substantial compliance with the law. It is noteworthy that under Section 412 of the Local Government Code aforequoted, the confrontation before the Lupon chairman or the pangkat is sufficient compliance with the precondition for filing the case in court.

This is true notwithstanding the mandate of Section 410(b) of the same law that the barangay chairman shall constitute a pangkat if he fails in his mediation efforts. Section 410(b) should be construed together with Section 412, as well as the circumstances obtaining in and peculiar to the case. On this score, it is significant that the barangay chairman or punong barangay is himself the chairman of the lupon under the Local Government Code.

From the foregoing facts, it is undeniable that there was substantial compliance with Presidential Decree No. 1508 which does not require strict technical compliance with its procedural requirements. Under the factual antecedents, it cannot be said that the failure of the parties to appear before the pangkat caused any prejudice to the case for private respondents considering that they already refused conciliation before the barangay chairman and, as will hereafter be discussed their sham insistence for a meeting before the pangkat is merely a ploy for further delay. We are thus forced to remind them that technicalities should not be made to desert their true role in our justice system and should not be used as obstructions thereon.

The court *a quo* was likewise correct in invoking the doctrine in Tijam and, as indicated by the factual scenario in this case, private respondents are clearly in estoppel to assail the jurisdiction of the two lower courts. It is also worth stressing that while the case was filed when Presidential Decree No. 1508 was still in force, the procedural provisions of the Local Government Code, which we have earlier noted as being supportive of the validity of the conciliation proceedings, are also applicable to this case. Statutes regulating procedure in courts are applicable to actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense.

PETITION GRANTED. JUDGMENT OF THE COURT OF APPEALS SET ASIDE AND JUDGMENT OF THE REGIONAL TRIAL COURT REINSTATED.

Curative statutes are validly accepted in this jurisdiction subject to the usual qualification against impairment of vested rights.

MUNICIPALITY OF SAN NARCISO, QUEZON *vs.* HON. ANTONIO V. MENDEZ, SR.
G.R. No. 103702, December 6, 1994
239 SCRA 11

FACTS: On 20 August 1959, President Carlos P. Garcia issued, pursuant to the then Sections 68 and 2630 of the Revised Administrative Code, as amended. Executive Order No. 353 creating the municipal district of San Andres, Quezon, by segregating from the municipality of San Narciso of the same province, the barrios of San Andres, Mangero, Alibijaban, Pansoy, Camflora and Tala along with their respective sitios.

By virtue of Executive No. 174, dated 05 October 1965, issued by President Diosdado Macapagal, the municipal district of San Andres was later officially recognized to have gained the status of a first class municipality beginning 01 July 1963 by operation of Section 2 of Republic Act No. 1515. The executive order added that "(t)he conversion of this municipal district into (a) municipality as proposed in House Bill No. 4864 was approved by the House of Representatives."

On 05 June 1989, the Municipality of San Narciso filed a petition for *quo warranto* with the Regional Trial Court, Branch 62, in Gumaca, Quezon, against the officials of the Municipality of San Andres. Docketed Special Civil Action No. 2014-G, the petition sought the declaration of nullity of Executive Order No. 353 and prayed that the respondent local officials of the Municipality of San Andres be permanently ordered to refrain from performing the duties and functions of their respective offices. Invoking the ruling

of this Court in *Pelaez vs. Auditor General*, 15 SCRA 569 (1965), the petitioning municipality contended that Executive Order No. 353, a presidential act, was a clear usurpation of the inherent powers of the legislature and in violation of the constitutional principle of separation of powers. Hence, petitioner municipality argued, the officials of the Municipality or Municipal District of San Andres had no right to exercise the duties and functions of their respective offices that rightfully belonged to the corresponding officials of the Municipality of San Narciso.

On 27 November 1991, the Municipality of San Andres filed anew a motion to dismiss alleging that the case had become moot and academic with the enactment of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991," which took effect on 01 January 1991. The movant municipality cited Section 442(d) of the law, reading thusly:

> "Sec. 442. *Requisites for Creation.*—x x x.
>
> "(d) Municipalities existing as of the date of the effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective set of elective municipal officials holding office at the time of the effectivity of this Code shall henceforth be considered as regular municipalities."

In its Order of 02 December 1991, the lower court finally dismissed the petition for lack of cause of action on what it felt was a matter that belonged to the State, adding that "whatever defects (were) present in the creation of municipal districts by the President pursuant to presidential issuances and executive orders, (were) cured by the enactment of R.A. No. 7160, otherwise known as Local Government Code of 1991." In an order, dated 17 January 1992, the same court denied petitioner municipality's motion for reconsideration.

HELD: While petitioners would grant that the enactment of Republic Act No. 7160 may have converted the Municipality of San Andres into a *de facto* municipality, they, however,

contend that since the petition for *quo warranto* had been filed prior to the passage of said law, petitioner municipality had acquired a vested right to seek nullification of Executive Order No. 353, and any attempt to apply Section 442 of Republic Act 7160 to the petition would perforce be violative of due process and the equal protection clause of the Constitution.

Petitioner's theory might perhaps be a point to consider had the case been seasonably brought. Executive Order No. 353 creating the municipal district of San Andres was issued on 20 August 1959 but it was only after almost thirty (30) years, or on 05 June 1989, that the municipality of San Narciso finally decided to challenge the legality of the executive order. In the meantime, the Municipal District, and later the Municipality of San Andres, began and continued to exercise the powers and authority of a duly created local government unit. In the same manner that the failure of a public officer to question his ouster of the right of another to hold a position within a one-year period can abrogate an action belatedly filed, so also, if not indeed with greatest imperativeness, must a *quo warranto* proceeding assailing the lawful authority of a political subdivision be timely raised. Public interest demands it.

At the present time, all doubts on the *de jure* standing of the municipality must be dispelled. Under the Ordinance (adopted on 15 October 1986) apportioning the seats of the House of Representatives, appended to the 1987 Constitution, the Municipality of San Andres has been considered to be one of the twelve (12) municipalities composing the Third Districts of the province of Quezon. Equally significant is Section 442(d) of the Local Government Code to the effect that municipal districts "organized pursuant to presidential issuance or executive orders and which have their respective sets of elective municipal officials holding office at the time of the effectivity of (the) Code shall henceforth be considered as regular municipalities." No pretension of unconstitutionality *per se* of Section 442(d) of the Local Government Code is proffered. It is doubtful whether such a pretext, even if made, would

succeed. The power to create political subdivisions is a function of the legislature. Congress did just that when it has incorporated Section 442(d) in the Code. Curative laws, which in essence are retrospective, and aimed at giving "validity to acts done that would have been complied with," are validly accepted in this jurisdiction, subject to the usual qualification against impairment of vested rights.

PETITION DISMISSED.

Curative statutes have retrospective effect.

BRIAD AGRO-DEVELOPMENT CORPORATION *vs.* HON. DIONISIO DELA CERNA
G.R. No. 83225, June 29, 1989
174 SCRA 524

FACTS: This case originated from a complaint filed on February 21, 1987 to recover unpaid wages and wage supplement filed with Regional Director Filomeno Balbin of the Labor Department's Regional Office No. 1 sitting in San Fernando, La Union.

It appears that this case arose out of a complaint filed by TRADE UNION OF THE PHILIPPINES AND ALLIED SERVICES (TUPAS) WFTU Local Chapter No. R01-005, against respondent agricultural firm, for alleged underpayment/nonpayment of minimum wage, ECOLA, overtime pay, legal holiday pay, night shift differential pay, 13th month pay and service incentive leave pay. For failure of the respondent firm to submit controverting evidence despite due notice Director Balbin ruled in favor of the employees and ordered the respondent to pay P5,369,909.30.

In its appeal to the National Labor Relations Commission, Briad Agro-Development contended that the Regional Director has no authority to entertain pecuniary claim of workers, following this Court's ruling in *Zambales Base Metals, Inc. vs. Minister of Labor*, 146 SCRA 50 (1986), in which we held that money claims are the exclusive domain

of the labor arbiters. The National Labor Relations Commission dismissed the appeal on the strength of Executive Order No. 111 amending Article 128(b) of the Labor Code, in which jurisdiction to so act on monetary claims was supposedly granted to regional directors. In its petition to this Court, Briad Agro-Development reiterates its jurisdictional challenge.

The petitioner submit that the jurisdiction over money claims is exclusive on the Labor Arbiters of the National Labor Relations Commission, by force of Article 217 of the Labor Code:

> "ART. 217. *Jurisdiction of Labor Arbiters and the Commission.*—
>
> "(a) The Labor Arbiters shall have the original and exclusive jurisdiction to hear and decide within thirty (30) working days after submission of the case by the parties for decision, the following cases involving all workers, whether agricultural or non-agricultural:
>
> 1. Unfair labor practice cases;
> 2. Those that workers may file involving wages, hours of work and other terms and conditions of employment;
> 3. All money claims of workers, including those based on non-payment or underpayment of wages, overtime compensation, separation pay and other benefits provided by law or appropriate agreement, except claims for employees' compensation, social security, medicare and maternity benefits;
> 4. Cases involving household services; and
> 5. Cases arising from any violation of Article 265 of this Code, including questions involving the legality of strikes and lockouts.
>
> "(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters."

The Solicitor General, on the other hand, relies on the provisions of Executive Order No. 111, amending, among other things. Article 128, paragraph (b) of the Labor Code:

> "(b) The provisions of Article 217 of this Code to the contrary notwithstanding and in cases where the relationship of employer-employee still exists, the Minister of Labor and Employment or his duly authorized representatives shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provision of this Code and other labor legislation based on the findings of labor regulation officers or industrial safety engineers made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of their orders except in case where the employer contests the findings of the labor regulation officer and raises issues which cannot be resolved without considering evidentiary matters that are not verifiable in the normal course of inspection."

HELD: The Court ruled that, in view of the promulgation of Executive Order No. 111, *Zambales Base Metals vs. Minister of Labor, supra,* is no longer a good law. Executive Order No. 111 has the character of a curative law, that is to say, it was intended to remedy a defect that, in the opinion of the legislature (the incumbent Chief Executive in this case, if the exercise of her lawmaking powers under the Freedom Constitution) had attached to the provision subject of the amendment. This is clear from the proviso: "The provisions of Article 217 of this Code to the contrary notwithstanding ..." Plainly, the amendment was meant to make both the Secretary of Labor (or the various Regional Directors) and the Labor Arbiters share jurisdiction.

Curative statutes have long been considered valid in this jurisdiction. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. They are, however, subject to exceptions. For one, they must not be against the Constitution and for another, they cannot impair vested rights or the obligation of contracts. It has not been shown in this case that these exceptions apply.

That Executive Order No. 111 intended to make the jurisdiction to pass upon money claims, among the other cases mentioned by Article 217 of the Labor Code,

concurrent between the Secretary of Labor (or Regional Directors) and the Labor Arbiters is clear from its perambulatory clauses, to wit:

> "WHEREAS, the welfare of the workers is a primary concern of the government.
>
> WHEREAS, it is necessary to amend or repeal provisions of laws that repress the rights of workers and of their trade unions."

Executive Order No. 111, it is obvious, was enacted to widen workers' access to the Government for redress of grievances.

Being a curative statute, the Executive Order in question has retrospective effect. In *Garcia vs. Martinez*, 90 SCRA 331 (1979), we held that legislation "which is in the nature of a curative statute" has "retrospective application to a pending proceeding." Hence, these cases should be decided in the light of the presidential issuance in question, although they might have come pending further proceedings.

PETITION DISMISSED.

The beneficent provisions of R.A. No. 7659 ("Heinous Crimes Law") shall be given retrospective effect.

Remember the ruling/decision

Read !!!

PEOPLE OF THE PHILIPPINES VS. DONALD BALLAGAN
G.R. No. 88278, August 23, 1995
247 SCRA 535

FACTS: On March 30, 1989, appellant Ballagan was convicted of Violation of Sec. 4, Art. II of R.A. No. 6425 (Dangerous Drugs Act of 1972, as amended) in the Regional Trial Court of Baguio and Benguet, Branch 8, La Trinidad, Benguet. The dispositive portion reads as follows:

> "WHEREFORE, the accused, Donald Ballagan *y* Binayan is hereby found guilty beyond reasonable doubt of violating Section 4, Article II of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended; and he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Twenty Thousand Pesos (P20,000.00).
>
> "The dried marijuana leaves subject matter of this case is hereby declared forfeited in favor of the Government, and it is hereby directed that the same be forthwith turned over to the Dangerous Drugs Board for proper disposal.
>
> "SO ORDERED."

Republic Act No. 6425 has been amended further by Republic Act No. 7659 which took effect on December 31, 1993. In *People vs. Simon*, 234 SCRA 555 (1994), the Court explicitly states that the beneficent provisions of the law shall be given retrospective effect, specifically the provision which bases the penalties imposed upon the quantity of the regulated drugs involved subject to certain exceptions particularized therein. Thus, the provisions beneficial to the accused were applied in such cases as *People vs. Martinez*, 235 SCRA 171 (1994), *People vs. Basilgo*, 235 SCRA 191 (1994), *People vs. Cañeja*, 235 SCRA 328 (1994) and *People vs. David*, 235 SCRA 366 (1994).

As amended by Republic Act No. 7659, Sec. 4 of the Dangerous Drugs Act penalizing transportation of prohibited drugs now reads:

> "SEC. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.*—The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.
>
> Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed."

Section 20 of the Act, as amended also by Republic Act No. 7659, provides that the penalty of *reclusion perpetua* to death and a fine ranging from P500,000.00 to P10,000,000.00 shall be imposed upon a violator of Section 14 if the marijuana involved is "750 grams or more." If the quantity is less than 750 grams, the penalty shall "range from *prision correccional* to *reclusion perpetua* depending upon the quantity."

The marijuana transported in this case being more than 750 grams, the penalty imposable shall be *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos. Section 27 of the Revised Penal Code has also been amended by Republic Act No. 7659 such that the duration of *reclusion perpetua* is now "from twenty years and one day to forty years: whereas before its amendment, any person sentenced with the penalty "shall be pardoned after undergoing the penalty of thirty years."

On the other hand, the penalty of life imprisonment, which was correctly imposed on herein appellant because no aggravating or mitigating circumstances were proven, has no definite extent or duration. Thus, in *People vs. Baguio*, 196 SCRA 459 (1991), the Court, through now Chief Justice Andres R. Narvasa, clarifies: "*Reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon, it also carries with it accessory penalties, namely: perpetual special disqualification, etc. It is not the same as 'life imprisonment' which, for one thing, does not appear to have any definite extent or duration." In *People vs. Gerona*, 227 SCRA 547 (1993), which is also a case of prohibited drugs, the Court states:

> "x x x. The penalty prescribed by Section 4, Article II of Republic Act No. 6425 for the commission of the described offense is life imprisonment to death and a fine ranging from twenty to thirty thousand pesos, and not *reclusion perpetua*. Life imprisonment and *reclusion perpetua* are two distinct penalties and are not interchangeable for the latter carries with it the accessory penalties enumerated in Article 41 of the Revised Penal Code. Furthermore, *reclusion perpetua* entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon; whereas life imprisonment does not appear to have any definite extent or duration."

Under these circumstances, which penalty is more favorable to the appellant life imprisonment which, not having a fixed duration, may, therefore, span the rest of the natural life of the convict, or *reclusion perpetua* with a twenty-year minimum penalty? —

First, the wealth of jurisprudence in cases wherein "life imprisonment" is imposed is to the effect that said penalty, unlike *reclusion perpetua*, does not carry accessory penalties. In the event that Republic Act No. 7659 is applied retrospectively to appellant, he has to suffer not only *reclusion perpetua* but also the accessory penalties.

Second, the fine imposed upon appellant is the minimum imposable of twenty thousand pesos (P20,000.00), whereas if he were penalized under the new law, he would have to bear the minimum fine of P500,000.00, Thus, retrospective application of Republic Act No. 7659, the "Heinous Crimes Law," in cases wherein the penalty of "life imprisonment" has been imposed by the trial court, would prove more burdensome upon the appellant and would contradict the basic principle that all penal laws shall be interpreted in favor of the accused.

JUDGMENT AFFIRMED *IN TOTO*.

CHAPTER X

CONFLICTING STATUTES

EFFECT SHOULD BE GIVEN TO THE ENTIRE STATUTE

It may happen that in a statute, conflicting clauses and provisions may arise. A provision or section in an earlier chapter contradicts a provision or section in a later chapter of the statute. If such situation arises, the statute must be construed as a whole as discussed in Chapter III of this book.

It is a principle of legal hermeneutics that in interpreting a statute or set of rules for that matter, care should be taken that every part thereof be given effect, on the theory that it was enacted as an integrated measure and not as a hodge-podge of conflicting provisions. The rule is that a construction that would render a provision inoperative should be avoided; instead, apparently inconsistent provisions should be reconciled whenever possible as parts of coordinated and harmonious whole. (*JMM Promotion and Management, Inc. vs. NLRC, supra).*

STATUTES *IN PARI MATERIA*

It is also not uncommon that statutes relate to the same subject matter, or to the same class of persons or things, or have the same purpose or object. These are statutes *in pari materia*. (*City of Naga vs. Agna*, 71 SCRA 176 [1976]). Statutes *in pari materia* are to be construed together; each legislative act is to be interpreted with reference to other acts relating to the same matter or subject. (Black,

Construction and Interpretation of Laws, p. 331, 2nd ed.). Even if the various statutes have not been enacted simultaneously and do not refer to each other expressly, and although some of them have been repealed or have expired, or held unconstitutional or invalid. (Crawford, *Construction of Statutes*, pp. 432-433). However, if statutes of equal theoretical application to a particular case cannot be reconciled, the statute of later date must prevail being a later expression of legislative will. (*Herman vs. Radio Corporation of the Philippines*, 50 Phil. 490 [1927]). But then again, effort must be exerted to avoid a conflict between statutes. If reasonable construction is possible, the law must be reconciled in that manner. Repeal of laws by implication are not favored, and the mere repugnancy between two statutes should be very clear to warrant the Court in holding that the later in time repeals the other. (*Lopez, Jr. vs. Civil Service Commission, infra*).

GENERAL AND SPECIAL STATUTES

Sometimes we find statutes treating a subject in general terms and another treating a part of the same subject in particularly detailed manner. If this may arise, it is the duty of the court, if possible, to give effect to both. On the other hand, if both statutes are irreconcilable, the general statute must give way to the special or particular provisions as an exception to the general provisions. (*NPC vs. Presiding Judge, RTC, Br. XXV, infra*). This is so even if the general statute is a later enactment of the legislature and broad enough to include the cases in special law unless there is manifest intent to repeal or alter the special law (*Province of Misamis Oriental vs. Cepalco, infra*), such as when the later general law contains a repealing clause which indicates clearly the legislative intent to repeal all prior inconsistent laws on the subject matter, then the aforesaid rule no longer applies. Stated otherwise, the exception to the rule sets in. (*Norma vs. Manalo, et al. vs. Court of Appeals*, G.R. No. 124204, April 20, 2001, 357 SCRA 112).

STATUTE AND ORDINANCE

Again, the rule is that if both the statute and the ordinance can stand together, effect should be given to both. Nevertheless, if there is conflict between an ordinance and a statute, the ordinance must give way.

ILLUSTRATIVE CASES:

In case of conflict between the previous article and later article, the latter will prevail.

VALENTINA A. NUÑEZ, FELIX A. NUÑEZ, FELIXITA A. NUÑEZ, LEONILO A. NUÑEZ, JR., ELIZA A. NUÑEZ, EMMANUEL A. NUÑEZ AND DIVINA A. NUÑEZ, AS HEIRS OF LEONILO S. NUÑEZ, PETITIONERS, *vs.* GSIS FAMILY BANK (FORMERLY COMSAVINGS BANK) AND THE COURT OF APPEALS, RESPONDENTS.
G.R. No. 163988, November 17, 2005
475 SCRA 305

FACTS: Petitioners are the heirs of Leonilo S. Nuñez (Leonilo) who, during his lifetime, obtained three loans from the GSIS Family Bank, formerly ComSavings Bank which in turn was formerly known as Royal Savings and Loan Association (the bank).

The first loan, contracted on April 6, 1976 in the amount of P55,900.00 was secured by a mortgage over a parcel of land covered by TCT NT-139575-A whereon the mortgage was annotated on April 8, 1976.

The second loan, obtained on July 7, 1976 in the amount of P127,000.00, was secured by mortgage of properties covered by TCT Nos. NT-143002, 143003 and 139575.

The third loan, obtained also on July 7, 1976 in the amount of P105,900.00, actually amended the first loan of P55,900.00 to secure which amended loan the same property covered by TCT No. NT-139575-A was mortgaged. The

amended loan, no copy of which forms part of the records, was admitted by the parties during the pre-trial.

On June 30, 1978, when the three loans were maturing, Leonilo purportedly obtained a "fourth loan" in the amount of P1,539,135.00 to secure which he executed a Real Estate Mortgage antedated June 28, 1978 over properties covered by TCT Nos. NT-145734, 143001, 143004, 143005, 143006, 143007.

On the maturity of the three loans or on June 30, 1978, Leonilo executed a Promissory Note in the amount of Pl,539,135.00, due and payable on December 27, 1978.

More than *nineteen (19) years after Leonilo's June 30, 1978 Promissory Note matured* or on December 11, 1997, the bank undertook to extrajudicially foreclose the properties covered by TCT Nos. NT-143002, 143003, 139575 and 139575-A which secured the first two loans.

In its petition for extrajudicial foreclosure, the bank alleged that Leonilo violated the terms and conditions of the loans secured by the Real Estate Mortgages since June 30, 1978 when he failed, despite repeated demands, to pay his principal obligations, and interest due thereon from December 27, 1978, up to the time that the petition was filed.

Acting on the bank's petition for Extrajudicial Foreclosure of Mortgage, the *Ex-Officio* Sheriff of Gapan, Nueva Ecija issued a Notice of Extrajudicial Sale setting the sale of the properties involved at public auction on January 9, 1998.

The auction took place as scheduled, with the bank as the highest and only bidder in the amount of P33,026,100.00. A Certificate of Sale was thus issued in favor of the bank.

On September 1, 1999, on petition of the bank, the mortgage over properties covered by TCT Nos. 143001 and 143007, two of the six parcels of land, which secured the "fourth loan" that matured on December 27, 1978, was extrajudicially foreclosed. At the public auction, the bank was

the highest bidder and a Certificate of Sale dated February 18, 2000 was issued in its name.

Leonilo later filed on June 20, 2000 before the Regional Trial Court (RTC) of Gapan, Nueva Ecija a complaint against the GSIS Family Bank, docketed as Civil Case No. 2269 for Annulment of Extrajudicial Foreclosure Sale, Reconveyance and Cancellation of Encumbrances.

In his complaint, Leonilo denied securing a "fourth loan" but nevertheless alleged that *"for purposes of the action, the same shall be assumed to have been validly secured."*

Invoking prescription, citing Articles 1141[1] and 1142[2] of the Civil Code, Leonilo contended that his first three loans and the "fourth loan" matured on June 30, 1978 and December 27, 1978, hence, they had prescribed on June 28, 1988 and December 25, 1988, respectively. When, on December 11, 1997 and September 1, 1999 then, the bank filed the Petitions for Extrajudicial Foreclosure of Mortgage, Leonilo concluded that it no longer had any right as prescription had set in.

ISSUE: Whether or not the action of the bank in foreclosing the mortgage had prescribed.

HELD: Jurisdictional issue aside, upon the ground of prescription, the bank's case would just the same fail. An action to foreclose a real estate mortgage prescribes in ten years. The running of the period, however, may be interrupted.

A review of the records of the case shows that, as correctly claimed by petitioners, no letter of demand, court action, or foreclosure proceeding was undertaken prior to December 11, 1997 and September 1, 1999.

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[1] Art. 1141. Real actions over immovable prescribe after thirty years. This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

[2] Art. 1142. *A mortgage action* prescribes after ten years.

While the bank included in its Formal Offer of Evidence Exhibits "E" and "H" which are the Petitions for Extrajudicial Foreclosure alleging that "repeated demands" for payment were made after Leonilo defaulted and failed to pay the loan obligations, allegations are not proofs. Unless a demand is proven, one cannot be held in default.

In justifying its failure to file a collection suit, the bank contended that it would have amounted to a waiver of its right to foreclose. But if early on it opted to foreclose the mortgages, why it waited until 1997 and 1999, *more than nineteen years* after the right to do so arise, the bank is glaringly mute.

Clutching at straws, the bank argues that the applicable provision is Article 1141, not Article 1142 of the Civil Code.

Article 1141 of the Civil Code speaks of real actions over immovables or rights. Article 1142 of the Civil Code speaks of a mortgage action, which prescribes in ten years. The strategic location of Article 1142 immediately right after Article 1141 of the same Code, which speaks of real actions, indicates that it is an exception to the rule in the previous article.

That an action for foreclosure of mortgage over real property prescribes in ten years is in fact settled. In *Buhat, et al. vs. Besana, etc. et al.*, 95 Phil. 721 (1954), where an action was instituted on *December 6, 1952* for the foreclosure of mortgage over real property to secure an obligation payable on or before *May 31, 1930*, this Court affirmed the dismissal of the action by the then Court of First Instance as the action was filed *more than ten years* from May 31, 1930 or some 22 years after the obligation had become due and demandable.

PETITION GRANTED, ASSAILED DECISION AND RESOLUTION REVERSED AND SET ASIDE.

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE ARMED FORCES OF THE PHILIPPINES FINANCE CENTER (AFPFC), *vs.* DAISY R. YAHON
G.R. No. 201043, June 16, 2014

FACTS: Daisy R. Yahon (respondent) filed a petition for the issuance of protection order under the provisions of Republic Act (R.A.) No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004," against her husband, S/Sgt. Charles A. Yahon (S/Sgt. Yahon), an enlisted personnel of the Philippine Army who retired in January 2006. Respondent and S/Sgt. Yahon were married on June 8, 2003. The couple did not have any child but respondent has a daughter with her previous live-in partner.

On September 28, 2006, the RTC issued a TPO, ordering, among others that any retirement, pension and other benefits of the respondent be withheld to insure that petitioner can receive her fair share. Meanwhile, as prayed for by respondent who manifested that S/Sgt. Yahon deliberately refused to give her spousal support as directed in the TPO (she claimed that she had no source of livelihood since he had told her to resign from her job and concentrate on keeping their house), the RTC issued another order directing S/Sgt. Yahon to give respondent spousal support in the amount of P4,000.00 per month and fifty percent (50%) of his retirement benefits which shall be automatically deducted and given directly to respondent.

On July 23, 2007, the RTC rendered its Decision, GRANTING the petition, issued a PERMANENT PROTECTION ORDER, and respondent, S/Sgt. CHARLES A. YAHON is ordered to give to petitioner, DAISY R. YAHON the amount of FOUR THOUSAND PESOS (Php4,000.00) per month by way of spousal support. In addition, the respondent is likewise directed to give to the petitioner 50% of whatever retirement benefits and other claims that may be due or released to him from the government and the said share of the petitioner shall be automatically deducted from respondents' benefits and claims and be given directly to the

petitioner. Herein petitioner Armed Forces of the Philippines Finance Center (AFPFC), assisted by the Office of the Judge Advocate General (OTJAG), AFP, filed before the RTC a Manifestation and Motion (To Lift Temporary Protection Order Against the AFP), asserting that while it has initially discharged its obligation under the TPO, the RTC had not acquired jurisdiction over the military institution due to lack of summons, and hence the AFPFC cannot be bound by the said court order. Additionally, petitioner contended that the AFPFC is not a party-in-interest and is a complete stranger to the proceedings before the RTC on the issuance of TPO/PPO. RTC denied the aforesaid motion for having been filed out of time. It noted that the September 28, 2006 TPO and July 23, 2007 Decision granting Permanent Protection Order (PPO) to respondent had long become final and executor. Petitioner's motion for reconsideration was likewise denied. On May 27, 2009, petitioner filed a petition for *certiorari* before the CA praying for the nullification of the aforesaid orders and decision insofar as it directs the AFPFC to automatically deduct from S/Sgt. Yahon's retirement and pension benefits and directly give the same to respondent as spousal support, allegedly issued with grave abuse of discretion amounting to lack of jurisdiction.

After due hearing, the CA's Twenty-Second Division issued a Resolution granting respondent's application, *viz*:

> Upon perusal of the respective pleadings filed by the parties, the Court finds meritorious private respondent's application for the issuance of an injunctive relief. While the 36-month lump sum retirement benefits of S/Sgt. Charles A. Yahon has already been given to him, yet as admitted by petitioner itself, the monthly pension after the mentioned retirement benefits has not yet been released to him. It appears that the release of such pension could render ineffectual the eventual ruling of the Court in this Petition.

ISSUE: Whether or not petitioner AFP Finance Center may be ordered to automatically deduct a percentage from the retirement benefits of its enlisted personnel, and to give the same directly to the latter's lawful wife as spousal support by virtue of a permanent protection order issued by the RTC pursuant to R.A. No. 9262, otherwise known as the Anti-Violence against Women and Children contrary to the existing jurisprudence and pertinent laws on the matter.

Petitioner argues that it cannot comply with the RTC's directive for the automatic deduction of 50% from S/Sgt. Yahon's retirement benefits and pension to be given directly to respondent, as it contravenes an explicit mandate under the law governing the retirement and separation of military personnel.

HELD: The assailed provision is found in Presidential Decree (P.D.) No. 1638,[15] which states:

> Section 31. The benefits authorized under this Decree, except as provided herein, shall not be subject to attachment, garnishment, levy, execution or any tax whatsoever; neither shall they be assigned, ceded, or conveyed to any third person: Provided, That if a retired or separated officer or enlisted man who is entitled to any benefit under this Decree has unsettled money and/or property accountabilities incurred while in the active service, not more than fifty per centum of the pension gratuity or other payment due such officer or enlisted man or his survivors under this Decree may be withheld and be applied to settle such accountabilities. (Emphasis supplied.)

A similar provision is found in R.A. No. 8291, otherwise known as the "Government Service Insurance System Act of 1997," which reads:

> SEC. 39. *Exemption from Tax, Legal Process and Lien.*—x x x
>
> The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies including Commission on Audit (COA) disallowances and from all financial obligations of

the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

In *Sarmiento v. Intermediate Appellate Court,* we held that a court order directing the Philippine National Bank to refrain from releasing to petitioner all his retirement benefits and to deliver one-half of such monetary benefits to plaintiff as the latter's conjugal share is illegal and improper, as it violates Section 26 of CA 186 (old GSIS Law) which exempts retirement benefits from execution.

The foregoing exemptions have been incorporated in the 1997 Rules of Civil Procedure, as amended, which governs execution of judgments and court orders. Section 13 of Rule 39 enumerates those properties which are exempt from execution:

> SEC. 13. *Property exempt from execution.*— **Except as otherwise expressly provided by law**, the following property, and no other, shall be exempt from execution:
>
> x x x x x x x x x x x x x x x x
>
> (l) The right to receive legal support, or money or property obtained as such support, or **any pension or gratuity from the Government**; (Emphasis supplied.)

It is basic in statutory construction that in case of irreconcilable conflict between two laws, the later enactment must prevail, being the more recent expression of legislative will. Statutes must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence. However, if several laws cannot be harmonized, the earlier statute must yield to the later enactment. The later law is the latest expression of the legislative will.

The Court held that Section 8(g) of R.A. No. 9262, being a later enactment, should be construed as laying down an exception to the general rule above-stated that retirement

benefits are exempt from execution. The law itself declares that the court shall order the withholding of a percentage of the income or salary of the respondent by the employer, which shall be automatically remitted directly to the woman "*notwithstanding other laws to* the contrary."

PETITION IS DENIED. CA RESOLUTION AFFIRMED.

Whenever two statutes of different dates and of contrary tenor are of equal theoretical application to a particular case, the statute of later date must prevail being a later expression of legislative will.

PHILIPPINE NATIONAL BANK *vs.* TERESITA CRUZ, ET AL.
G.R. No. 80593, December 18, 1989
180 SCRA 206

FACTS: Sometime in 1980, Aggregate Mining Exponents (AMEX) laid-off about seventy percent (70%) of its employees because it was experiencing business reverses. The retained employees constituting thirty percent (30%) of the work force however, were not paid their wages. This nonpayment of salaries went on until July 1982 when AMEX completely ceased operations and instead entered into an operating agreement with T.M. San Andres Development Corporation whereby the latter would be leasing the equipment and machineries of AMEX.

The unpaid employees sought redress from the Labor Arbiter who, on August 27, 1986 rendered a decision finding their claim valid and meritorious and awarded them the total amount of P219,452.03 in the form of separation pay and backwages.

AMEX and its President, Tirso Revilla did not appeal from this decision. But PNB, in its capacity as mortgagee-creditor of AMEX interposed an appeal with the respondent Commission not being satisfied with the outcome of the case. The appeal was primarily based on the allegation that the workers' lien covers unpaid wages only and not the termination or severance pay which the workers likewise claimed they were entitled to.

In a resolution dated October 27, 1987, the National Labor Relations Commission affirmed the decision appealed from. Hence, the instant petition filed by the petitioner bank based on the following grounds:

> "I. Article 110 of the Labor Code must be read in relation to Articles 2241, 2242, 2243, 2244 and 2245 of the Civil Code concerning the classification, concurrence and preference of credits.
>
> "II. Article 110 of the Labor Code does not purport to create lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer."

ISSUE: Whether or not Art. 110 of the Labor Code applies in the present case.

HELD: The petition is devoid of merit.

Article 110 of the Labor Code provides that:

> "Art. 110. *Worker preference in case of bankruptcy.*—In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their unpaid wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims, shall be paid in full before claims of the government and other creditors may be paid."

This Court must uphold the preference accorded to the private respondents in view of the provisions of Article 110 of the Labor Code which are clear and which admit of no other interpretation. The phrase "any provision of law to the contrary notwithstanding" indicates that such preference shall prevail despite the order set in Articles 2241 to 2245 of the Civil Code. No exceptions were provided under the said article, henceforth, none shall be considered. Furthermore, the Labor Code was signed into Law decades after the Civil Code took effect.

In *Herman vs. Radio Corporation of the Philippines*, 50 Phil. 490 (1927), this Court declared that whenever two statutes of different dates and of contrary tenor are of equal

theoretical application to a particular case, the statute of later date must prevail being a later expression of legislative will. Applying the aforecited case in the instant petition, the Civil Code provisions cited by the petitioner must yield to Article 110 of the Labor Code.

PETITION DISMISSED.

A special law prevails over a general law regardless of their dates of passage, and the special law is to be considered as remaining an exception to the general law.

HON. GEMILIANO C. LOPEZ, JR. *vs.* THE CIVIL SERVICE COMMISSION AND HON. DANILO R. LACUNA
G.R. No. 87119, April 16, 1991
195 SCRA 777

FACTS: On September 13, 1988, the Vice-Mayor of Manila and Presiding Officer of the City Council of Manila, the Hon. Danilo R. Lacuna, submitted to the Civil Service Commission, through the Regional Director of the National Capital Region, the appointments of nineteen officers and employees in the Executive Staff of the Office of the Presiding Officer, City Council of Manila, pursuant to the provisions of Section 15, of said Republic Act No. 409, as amended, which reads:

> "SEC. 15. x x x
>
> x x x The Board shall appoint and the Vice Mayor shall sign all appointments of the other employees of the Board."

The City Budget Officer of Manila later sought from the Personnel Bureau of the Mayor's office "comment and/or recommendation" on whether the payroll of the newly appointed employees of the City Council may be paid on the basis of appointments signed by the Vice-Mayor. The Personnel Bureau then forwarded the query to the City Legal Officer who, in a 3rd endorsement dated September 19, 1988, rendered an opinion that the proper appointing

officer is the City Mayor and not the City Council. This opinion was transmitted by the Secretary to the City Mayor to the Commission.

On February 1, 1989, the Commission promulgated Resolution No. 89-075, and held that contrary to the opinion of the City Legal Officer, it is the City Council to which the appointing power is vested.

ISSUE: Whether or not the City Council of Manila still has the power to appoint Council officers and employees under Republic Act No. 409, otherwise known as the Charter of the City of Manila, or whether the power is now vested with the City Mayor pursuant to Republic Act No. 5185, the Decentralization Law, and Batas Pambansa Blg. 337, the Local Government Code.

HELD: As the petitioner contends, Section 15 of Republic Act No. 409 as amended has supposedly been repealed by Republic Act No. 5185, specifically, Section 4 thereof, which we quote, in part:

> x x x x x x x x x
>
> "The City Assessor, City Agriculturist, City Chief of Police and City Chief of Fire Department and other heads of offices entirely paid out of city funds and their respective assistants or deputies shall subject to civil service law, rules and regulations, be appointed by the City Mayor; *Provided, however,* That this section shall not apply to Judges, Auditors, City Treasurers, City Health Officers and City Engineers."
>
> x x x x x x x x x
>
> All other employees, except teachers, paid out of provincial, city or municipal general funds, road and bridge funds, school funds, and other local funds, shall, subject to civil service law, rules and regulations, be appointed by the Provincial Governor, City or Municipal Mayor upon recommendation of the office head concerned. x x x"

And by Batas Pambansa Blg. 337, we likewise quote:

> "SEC. 171. *Chief Executive, Compensation, Powers, and Duties.*—xxx xxx xxx
>
> (2) The city mayor shall:
>
> x x x x x x x x x
>
> (h) Appoint, in accordance with civil service law, rules and regulations, all officers and employees of the city, whose appointments are not otherwise provided in this Code";

There is no doubt that Republic Act No. 409, which provides specifically for the organization of the Government of the City of Manila, is a special law, and whereas Republic Act No. 5185 and Batas Pambansa Blg. 337, which apply to municipal governments in general, are general laws. As the Solicitor General points out, and we agree with him, it is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general.

So also, every effort must be exerted to avoid a conflict between statutes. If reasonable construction is possible, the laws must be reconciled in that manner.

Repeal of laws by implication moreover are not favored, and the mere repugnancy between two statutes should be very clear to warrant the court in holding that the later in time repeals the other.

PETITION DISMISSED.

A special law must be intended to constitute an exception to the general law in the absence of special circumstances forcing a contrary conclusion.

NATIONAL POWER CORPORATION *vs.* HON. PRESIDING JUDGE, RTC, 10TH JUDICIAL REGION BRANCH XXV, CAGAYAN DE ORO CITY
G.R. No. 72477, October 16, 1990
190 SCRA 477

FACTS: On October 10, 1984, the Province of Misamis Oriental filed a complaint with the Regional Trial Court of Cagayan de Oro City, Branch XXV against NAPOCOR for the collection of real property tax and special education fund tax in the amounts of P11,105,008.10 and P11,104,658.10, respectively, covering the period 1978 to 1984. Petitioner NAPOCOR then defendant therein, filed a motion to dismiss dated January 12, 1985 on the grounds that the court has no jurisdiction over the action or suit and that it is not the proper forum for the adjudication of the case. In support of this motion NAPOCOR cited Presidential Decree No. 242 dated July 9, 1973 which provides that disputes between agencies of the government including government-owned or -controlled corporations shall be administratively settled or adjudicated by the Secretary of Justice. The Regional Trial Court denied the motion to dismiss and the second motion to dismiss by NAPOCOR in its order dated January 28, 1985 and June 27, 1985 respectively.

On October 30, 1985, petitioner NAPOCOR filed before the Supreme Court the present special civil action for *certiorari* setting forth the following issues to wit:

> "1) Respondent Court acted without or in excess of jurisdiction and with grave abuse of discretion when it issued the orders dated January 28, 1985, June 27, 1985 and August 20, 1985, denying petitioner's motion to have Civil Case No. 9901 dismissed on the grounds of lack of jurisdiction and/or improper venue.
>
> "2) Petitioner is exempt from payment of real property taxes."

Relied upon by NAPOCOR in assailing the jurisdiction of the lower court and/or the venue of the action are Sections 2 and 3 of Presidential Decree No. 242 which provides:

> "Section 2. In all cases involving only questions of law, the same shall be submitted to and settled or adjudicated by the Secretary of Justice, as Attorney General and *ex officio* legal adviser of all government-owned or -controlled corporations and entities, in consonance with Section 83 of the Revised Administrative Code. His ruling or determination of the question in each case shall be conclusive and binding upon all the parties concerned.
>
> Section 3. Cases involving mixed questions of law and of fact or only factual issues shall be submitted and settled or adjudicated by:
>
> (a) The Solicitor General, with respect to disputes or claims or controversies between or among the departments, bureaus, offices and other agencies of the National Government;
>
> (b) The Government Corporate Counsel, with respect to disputes or claims or controversies between or among the government-owned or -controlled corporations or entities being served by the office of the Government Corporate Counsel; and
>
> (c) The Secretary of Justice, with respect to all other disputes or claims or controversies which do not fall under the categories mentioned in paragraphs (a) and (b).

In upholding the lower court's jurisdiction, respondent municipal corporation, on the other hand, rely on Presidential Decree No. 464, entitled "THE REAL PROPERTY TAX CODE" enacted on July 1, 1974, specifically Section 82 thereof which provides:

> "Section 82. *Collection of real property tax through the courts.*—The delinquent real property tax shall constitute a lawful indebtedness of the taxpayer to the province or city and collection of the tax may be enforced by civil action in any court of competent jurisdiction. The civil action shall be filed by the Provincial or City Fiscal within fifteen days after receipt of the statement of delinquency certified to by the provincial or city treasurer. This remedy shall be in addition to all other remedies provided by law."

HELD: In reconciling these two conflicting provisions of P.D. 242 and P.D. 464 on the matter of jurisdiction, we are guided by the basic rules on statutory construction.

As examination of these two decrees shows that P.D. 242 is a general law which deals with administrative settlement or

adjudication of disputes, claims and controversies between or among government offices, agencies and instrumentalities, including government-owned or -controlled corporations. The coverage is broad and sweeping, encompassing all disputes, claims and controversies.

P.D. 464 on the other hand, governs the appraisal and assessment of real property for purposes of taxation by provinces, cities and municipalities, as well as the levy, collection and administration of real property tax. It is a special law which deals specifically with real property taxes.

It is a basic tenet in statutory construction that between a general law and a special law, the special law prevails. *GENERALIA SPECIALIBUS NON DEROGANT.*

Where a later special law on a particular subject is repugnant to, or inconsistent with, a prior general law on the same subject, a partial repeal of the latter will be implied to the extent of the repugnancy or an exception grafted upon the general law.

A special law must be intended to constitute an exception to the general law in the absence of special circumstances forcing a contrary conclusion.

The conflict in the provisions on jurisdiction between P.D. 242 and P.D. 464 should be resolved in favor of the latter law, since it is a special law and of later enactment. P.D. 242 must yield to P.D. 464 on the matter of who or which tribunal or agency has jurisdiction over the enforcement and collection of real property taxes. Therefore, respondent court has jurisdiction to hear and decide Civil Case No. 9901.

PETITION DISMISSED.

When Courts are confronted with apparently conflicting statutes, they should not declare outright the invalidity of one against the other, but should endeavor to reconcile them.

Read !!!

HON. RICHARD J. GORDON *vs.* JUDGE REGINO T. VERIDIANO II AND SPOUSES EDUARDO AND ROSALINDA YAMBAO

G.R. No. L-55230, November 8, 1988
167 SCRA 51

FACTS: There are two drug stores involved in this dispute, to wit, the San Sebastian Drug Store and the Olongapo City Drug Store, both owned by private respondent Rosalinda Yambao. They are located a few meters from each other in the same building on Hospital Road, Olongapo City. They were covered by Mayor's Permits Nos. 1954 and 1955, respectively, issued for the year 1980, and license to operate issued by the FDA for the same year.

This case arose when on March 21, 1980 at about 5:00 o'clock in the afternoon, a joint team composed of agents from the FDA and narcotics agents from the Philippine Constabulary conducted a "test buy" at San Sebastian Drug Store and was sold 200 tablets of Valium, 10 mg. worth P410.00 without a doctor's prescription.

A report on the operation was submitted to the petitioner, as mayor of Olongapo City, on April 9, 1980. On April 17, 1980, he issued a letter summarily revoking Mayor's Permit No. 1954, effective April 18, 1980, "for rampant violation of R.A. 5921, otherwise known as the Pharmacy Law and R.A. 6425 or the Dangerous Drugs Act of 1972."

Acting on the same investigation report of the "test buy," and after hearing, FDA Administrator Arsenio Regala, on April 25, 1980, directed the closure of the drug store for three days and its payment of a P100.00 fine for violation of R.A. No. 3720. He also issued a stern warning to Yambao against a repetition of the infraction. On April 29, 1980, the FDA lifted its closure order after noting that the penalties imposed had already been discharged and allowed the drug store to resume operations.

On April 30, 1980, Yambao, through her counsel, wrote a letter to the petitioner seeking reconsideration of the revocation of Mayor's Permit No. 1954. On May 7, 1980,

having received no reply, she and her husband filed with the Regional Trial Court of Olongapo City a complaint for *mandamus* and damages, with prayer for a writ of preliminary injunction, against the petitioner and Vice-Mayor de Perio.

On the same date, Yambao requested permission from the FDA to exchange the locations of the San Sebastian Drug Store and the Olongapo City Drug Store for reasons of "business preference."

The request was granted. But when informed of this action, the petitioner, in a letter to the private respondent dated May 13, 1980, disapproved the transfers and suspended Mayor's Permit No. 1955 for the Olongapo City Drug Store.

The Yambaos then filed on May 15, 1980, a supplemental complaint questioning the said suspension and praying for the issuance of a preliminary writ of prohibitory injunction. On the same day, the respondent judge issued an order directing the maintenance of the *status quo* with respect to the Olongapo City Drug Store pending resolution of the issues.

On May 21, 1980, the petitioner wrote the FDA requesting reconsideration of its order of April 29, 1980, allowing resumption of the operation of the San Sebastian Drug Store. The request was denied by the FDA in its reply dated May 27, 1980.

A motion for reconsideration of the *status quo* order had earlier been filed on May 1, 1980 by the petitioner. After a joint hearing and an exchange of memoranda thereon, the respondent judge issued an order on July 16, 1980, the dispositive portion of which read as follows:

> "WHEREFORE, the defendants' motion for reconsideration of the *status quo* order dated May 15, 1980, is hereby DENIED and the letter of the defendant city mayor dated April 17, 1980, for the revocation of Mayor's Permit No. 1954 for the San Sebastian Drug Store is declared null and void.
>
> "Accordingly, a writ of preliminary prohibitory injunction is heretofore issued enjoining defendants from doing acts directed towards the closure of the San Sebastian Drug Store and the suspension of the Olongapo City Drug Store both situated at Hospital Road, Olongapo City. Further, the signboard posted at San Sebastian Drug Store by the defendants is ordered removed in order that the said drug store will resume its normal business operation.
>
> "The hearing of the main petition for damages is set on August 14, 1980 at 1:30 o'clock in the afternoon."

ISSUE: The issue before the Court is the conflict between the Food and Drug Administration and the mayor of Olongapo City over the power to grant and revoke licenses for the operation of drug stores in the said city. While conceding that the FDA possesses such power, the mayor claims he may nevertheless, in the exercise of his own power, prevent the operation of drug stores previously permitted by the former.

HELD: Courts of justice, when confronted with apparently conflicting statutes should endeavor to reconcile the same instead of declaring outright the invalidity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government. It is this policy the Court will apply in arriving at the interpretation of the laws above-cited and the conclusions that should follow therefrom.

In the present case, the closure of the San Sebastian Drug Store was ordered by the FDA for violation of its own conditions, which it certainly had the primary power to enforce. By revoking the mayor's permit on the same ground for which the San Sebastian Drug Store had already been penalized by the FDA, the mayor was in effect reversing the decision of the latter on a matter that came under its jurisdiction. As the infraction involved the pharmacy and drug laws which the FDA had the direct responsibility to execute, the mayor had no authority to interpose his own findings on

the matter and substitute them for the decision already made by the FDA.

Settled is the rule that the factual findings of administrative authorities are accorded great respect because of their acknowledged expertise in the fields of specialization to which they are assigned. Even the courts of justice, including this Court, are concluded by such findings in the absence of a clear showing of a grave abuse of discretion, which is not present in the case at bar. For all his experience in the enforcement of city ordinances, the petitioner cannot claim the superior aptitudes of the FDA in the enforcement of the pharmacy and drug addiction laws. He should therefore also be prepared, like the courts of justice themselves, to accept its decisions on this matter.

The petitioner magnifies the infraction committed by the San Sebastian Drug Store but the FDA minimizes it. According to the FDA administrator, valium is not even a prohibited drug, which is why the penalty imposed was only a 3-day closure of the drug store and a fine of P100.00. Notably, the criminal charges filed against the private respondent for the questioned transaction were dismissed by the fiscal's office.

It is also worth noting that the San Sebastian Drug Store was penalized by the FDA only after a hearing held on April 25, 1980, at which private respondent Yambao, assisted by her lawyer-husband, appeared and testified. By contrast, the revocation of the mayor's permit was summary and communicated to her in a letter.

If only for the violation of due process which is manifest from this letter, the mayor's arbitrary action can be annulled.

The indefinite suspension of the mayor's permit for Olongapo City Drug Store was based on the transfer thereof to the site of the San Sebastian Drug Store as approved by the FDA but without permission from the petitioner. On this matter, the Court believes that the final decision rested with the mayor. The condition violated related more to the location in Olongapo City of business establishments in general than

to the regulation of drug stores in particular. It therefore came under the petitioner's jurisdiction.

The FDA would have the right to disapprove the site of the drug store only if it would impair the health or other interests of the customers in contravention of the national laws or policies, as where the drug store is located in an unsanitary site. But the local executive would have reason to object to the location, even if approved by the FDA, where it does not conform to, say, a zoning ordinance intended to promote the comfort and convenience of the city residents.

The reason given by the petitioner in disapproving the transfer was violation of Mayor's Permit No. 1955, which by its terms was valid only at the place stated therein. In the letter of May 13, 1980, the private respondent was clearly informed that for violation of the condition of Mayor's Permit No. 1955 granting her the privilege of operating the Olongapo City Drug Store at No. 1-B, Fil-Am Bldg., Hospital Road, the said permit was "hereby suspended." We find that reason was valid.

Our holding is that the petitioner acted invalidly in revoking Mayor's Permit No. 1954 after the FDA had authorized the resumption of operations of the San Sebastian Drug Store following the enforcement of the penalties imposed upon it. However, it was competent for the petitioner to suspend Mayor's Permit No. 1955 for the transfer of the Olongapo City Drug Store in violation of the said permit. Such suspension should nevertheless be effective only pending the return of the drug store to its authorized original site or the eventual approval by the mayor of the requested transfer if found to be warranted enough. The permit clearly allowed the drug store to operate in the address given and not elsewhere. No hearing was necessary because the transfer without the mayor's permission is not disputed and was in fact impliedly admitted by the private respondent.

The rule is that a special and local statute applicable to a particular case is not repealed by a later statute which is general in its terms, provisions and

application even if the terms of the general act are broad enough to include the cases in the special law unless there is manifest intent to repeal or alter the special law.

THE PROVINCE OF MISAMIS ORIENTAL *vs.* CAGAYAN ELECTRIC POWER AND LIGHT COMPANY, INC. (CEPALCO)
G.R. No. 45355, January 12, 1990
181 SCRA 38

FACTS: Cagayan Electric Power and Light Company, Inc. (CEPALCO for short) was granted a franchise on June 17, 1961 under Republic Act No. 3247 to install, operate and maintain an electric light, heat and power system in the City of Cagayan de Oro and its suburbs. Said franchise was amended on June 21, 1963 by R.A. No. 3570 which added the municipalities of Tagoloan and Opol to CEPALCO's sphere of operation, and was further amended on August 4, 1969 which extended its field of operation to the municipalities of Villanueva and Jasaan.

R.A. Nos. 3247, 3570 and 6020 uniformly provide that:

> "Sec. 3. In consideration of the franchise and rights hereby granted, the grantee shall pay a franchise tax equal to three *per centum* of the gross earnings for electric current sold under this franchise, of which *two per centum* goes into the National Treasury and one *per centum* goes into the treasury of the Municipalities of Tagoloan, Opol, Villanueva and Jasaan and Cagayan de Oro City, as the case may be; *Provided,* That the said franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted."

On June 28, 1973, the Local Tax Code (P.D. No. 231) was promulgated, Section 9 of which provides:

> "Sec. 9. *Franchise Tax.*—Any provision of special laws to the contrary notwithstanding, the province may impose a tax on businesses enjoying franchise, based on the gross receipts realized within its territorial jurisdiction, at the rate of not exceeding one-half of one percent of the gross annual receipts for the preceding calendar year.
>
> "In the case of newly started business, the rate shall not exceed three thousand pesos per year. Sixty percent of the proceeds of the tax shall accrue to the general fund of the province and forty percent to the general fund of the municipalities serviced by the business on the basis of the gross annual receipts derived therefrom by the franchise holder. In the case of a newly started business, forty percent of the proceeds of the tax shall be divided equally among the municipalities serviced by the business."

Pursuant thereto, the Province of Misamis Oriental (herein petitioner) enacted Provincial Revenue Ordinance No. 19 and for this reason, the Provincial Treasurer of Misamis Oriental demanded payment of the provincial franchise tax from CEPALCO. The company refused to pay, alleging that it is exempt from all taxes except the franchise tax required by R.A. No. 6020. Nevertheless, in view of the opinion rendered by the Provincial Fiscal, upon CEPALCO's request, upholding the legality of the Revenue Ordinance, CEPALCO paid under protest on May 27, 1974 the sum of P4,276.28 and appealed the fiscal's ruling to the Secretary of Justice who reversed it and ruled in favor of CEPALCO.

On June 26, 1976, the Secretary of Finance issued Local Tax Regulation No. 3-75 adopting entirely the opinion of the Secretary of Justice.

On February 16, 1976, the Province filed in the Court of First Instance of Misamis Oriental a complaint for declaratory relief praying, among others, that the Court exercise its power to construe P.D. No. 231 in relation to the franchise of CEPALCO (R.A. No. 6020), and to declare the franchise as having been amended by P.D. No. 231. The Court dismissed the complaint and ordered the Province to

return to CEPALCO the sum of P4,276.28 paid under protest. Hence, this petition for review.

ISSUE: Whether or not a corporation whose franchise expressly provided that the payment of the "franchise tax of three *per centum* of the gross earnings shall be in lieu of all taxes and assessments of whatever authority upon privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee," is exempt from paying a provincial franchise tax.

HELD: We find no merit in the petition for review.

There is no provision in P.D. No. 231 expressly or impliedly amending or repealing Section 3 of R.A. No. 6020. The perceived repugnancy between the two statutes should be very clear before the court may hold that the prior one has been repealed by the later one, since there is no express provision to that effect. (*Manila Railroad Co. vs. Rafferty*, 40 Phil. 224 [1919]). The rule is that a special and local statute applicable to a particular case is not repealed by a later statute which is general in its terms, provisions and application even if the terms of the general act are broad enough to include the cases in the special law unless there is manifest intent to repeal or alter the special law.

Republic Act Nos. 3247, 3570 and 6020 are special laws applicable only to CEPALCO, while P.D. No. 231 is a general tax law. The presumption is that the special statutes are exceptions to the general law (P.D. No. 231) because they pertain to a special charter granted to meet a particular set of conditions and circumstances.

The franchise of respondent CEPALCO expressly exempts it from payment of "all taxes of whatever authority" except the three *per centum* (3%) tax on its gross earnings.

PETITION DENIED.

It is a well-settled rule that a substantive law cannot be amended by a procedural law.

PHILIPPINE NATIONAL BANK *vs.* HON. ELIAS B. ASUNCION, FABAR, INC., ET AL.
G.R. No. L-46095, November 23, 1977
80 SCRA 321

FACTS: On January 16, 1963, petitioner Philippine National Bank granted in favor of respondent Fabar Incorporated various credit accommodations and advances in the form of a discounting line, overdraft line, temporary overdraft line and letters of credit covering the importation of machinery and equipment. Said credit accommodations had an outstanding balance of P8,449,169.98 as of May 13, 1977.

All of the above credit accommodations are secured by the joint and several signatures of Jose Ma. Barredo, Carmen B. Borromeo and Tomas L. Borromeo (private respondents herein) and Manuel H. Barredo. For failure of private respondents to pay their obligations notwithstanding repeated demands, petitioner instituted a case for collection against all private respondents and Manuel H. Barredo in a complaint dated October 31, 1972, and which was filed before the sala of the Honorable Elias B. Asuncion, Judge of the Court of First Instance of Manila, Branch XII (hereafter referred to as the respondent Court).

On May 19, 1975, before the case could be decided, Manuel H. Barredo died. In a Manifestation dated June 6, 1975, counsel for private respondents informed the respondent Court of said death.

Subsequently, respondent Court issued an order of dismissal dated November 29, 1976, which is hereinbelow quoted as follows:

> "In view of the death of the defendant Manuel Barredo, the Court hereby dismisses this case since the present suit is for a money claim which does not survive the death of said defendant.
>
> "Pursuant to the provisions of Section 6, Rule 86 of the Revised Rules of Court, which provides:

> 'Where the obligation of the decedent is solidary with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution from the other debtor x x x.'

the claim of plaintiff may be filed with the estate proceedings of the decedent."

Petitioner thereupon filed a Motion dated December 14, 1976 praying for the reconsideration of respondent Court's Order dismissing the case as against all the defendants, contending that the dismissal should only be as against the deceased defendant Manuel H. Barredo.

In an order dated January 26, 1977, respondent Court denied petitioner's motion for reconsideration for lack of meritorious grounds.

Hence, this instant petition for review on *certiorari*.

ISSUE: Whether or not the entire case against all the solidary debtors can be dismissed in view of the death of one of the solidary debtor.

HELD: Petitioner's contention is well taken. Respondent Court's reliance on Section 6, Rule 86 of the Revised Rules of Court was erroneous.

A cursory perusal of Section 6, Rule 86 of the Revised Rules of Court reveals that nothing therein prevents a creditor from proceeding against the surviving solidary debtors. Said provision merely sets up the procedure in enforcing collection in case a creditor chooses to pursue his claim against the estate of the deceased solidary debtor. The rule has been set forth that a creditor (in a solidary obligation) has the option whether to file or not to file a claim against the estate of the solidary debtor.

It is crystal clear that Article 1216 of the New Civil Code is the applicable provision in this matter. Said provision gives the creditor the right to "proceed against anyone of the solidary debtors or some or all of them simultaneously." The choice is undoubtedly left to the solidary creditor to determine against whom he will enforce collection. In case of

the death of one of the solidary debtors, he (the creditor) may, if he so chooses, proceed against the surviving solidary debtors without necessity of filing a claim in the estate of the deceased debtors. It is not mandatory for him to have the case dismissed as against the surviving debtors and file its claim against the estate of the deceased solidary debtor, as was made apparent in the aforequoted decision. For to require the creditor to proceed against the estate, making it a condition precedent for any collection action against the surviving debtors to prosper, would deprive him of his substantive rights provided by Article 1216 of the New Civil Code.

As correctly argued by petitioner, if Section 6, Rule 86 of the Revised Rules of Court were applied literally, Article 1216 of the New Civil Code would, in effect, be repealed since under the Rules of Court, petitioner has no choice but to proceed against the estate of Manuel H. Barredo only. Obviously, this provision diminishes the Bank's right under the New Civil Code to proceed against any one, some or all of the solidary debtors. Such a construction is not sanctioned by the principle which is too well-settled to require citation, that a substantive law cannot be amended by a procedural rule. Otherwise stated, Section 6, Rule 86 of the Revised Rules of Court cannot be made to prevail over Article 1216 of the New Civil Code, the former being merely procedural while the latter is substantive.

Moreover, no less than the New Constitution of the Philippines, in Section 5, Article X, provides that rules promulgated by the Supreme Court should not diminish, increase or modify substantive rights.

JUDGMENT MODIFIED. CASE AGAINST DECEASED MANUEL H. BARREDO IS DISMISSED. CASE AGAINST ALL OTHER SOLIDARY DEBTORS IS REMANDED TO RESPONDENT COURT FOR FURTHER PROCEEDINGS.

A general law cannot repeal a special law.

PEOPLE OF THE PHILIPPINES *vs.* HON. JUDGE MERICIA B. PALMA AND ROMULO INTIA Y MORADA
G.R. No. L-44113, March 31, 1977
76 SCRA 243

FACTS: Respondent accused Romulo Intia *y* Morada, 17 years of age, was charged on February 10, 1976 by the Naga City fiscal's office with vagrancy (Article 202, paragraph 2 of the Revised Penal Code) in respondent judge's court. In an Order dated March 6, 1976, respondent judge dismissed the case on the ground that her court "has no jurisdiction to continue to take further cognizance of this case" without prejudice to the refiling thereof in the Juvenile Court.

The prosecution shares the view of the Camarines Sur Juvenile and Domestic Relations Court presided by Judge Ma. Rosario Quetulio-Losa that jurisdiction over 16-year olds up to under 21 years remains with the regular courts and has not been by implication transferred to the Juvenile Court. Hence, the petition at bar.

ISSUE: Whether or not the issuance of PD 603 (Child and Youth Welfare Code) which defines youthful offenders as those over 9 years but under 21 at the time of the commission of the offense transfer the case of the accused from the regular courts to the Juvenile Court.

HELD: The Court sustains the petition on the following grounds:

1. Republic Act 6591 which took effect on September 30, 1972 created the Camarines Sur Juvenile and Domestic Relations Court and expressly conferred upon it special and limited jurisdiction over "criminal cases wherein the accused is under sixteen years of age at the time of the filing of the case."

The subsequent issuance of P.D. No. 603 known as the Child and Youth Welfare Code which took effect on June 1, 1975 and defines in Article 189 a youthful offender as "one who is over nine years but under twenty-one years of age at the time of the commission of the offense" did not by such definition transfer jurisdiction over criminal cases involving

accused who are 16 years and below 21 years of age from the regular courts to the Juvenile Court, as opined by respondent judge.

2. The Child and Youth Welfare Code (P.D. 603) concerning the welfare of the child and youth throughout the country is a general law while R.A. 6591 which defines and confers jurisdiction on the Juvenile and Domestic Relations Court for Camarines Sur is a special law, classifying expressly that it can try in criminal cases involving offenders below the age of majority only those who are under 16 years of age at the time of the filing of the case.

Jurisdiction is conferred by law and there is nothing in either R.A. 6591 or P.D. 603 that would sustain respondent judge's ruling on reconsideration that "together, these two laws, the latter amending the former, confer jurisdiction on youthful offenders who are above 16 years but under 21 years of age at the time of the commission of the crime upon the JDRC of Camarines Sur and remove the same from the City Court."

A general law cannot repeal a special law by mere implication. The repeal must be express and specific. Furthermore, the Juvenile and Domestic Relations Court of Camarines Sur is a court of special and limited jurisdiction and the enlargement or conferment of additional jurisdiction on said court to include accused persons who are 16 years and under 21 years of age must positively appear in express terms.

It is quite patent that the mere definition in a single article of the Child and Youth Welfare Code (P.D. 603, Article 189) of youthful offenders (over 9 and under 21 years of age) did not withdraw from the regular courts their jurisdiction to try accused persons who are 16 but below 21 years of age and transfer the same to the Juvenile Courts whose criminal jurisdiction is expressly limited to those where the accused is under 16 years of age.

3. If it were the intent and purpose of P.D. 603 to remove from the City Court the jurisdiction over youthful accused who are 16 but below 21 years of age and transfer

the same to the Juvenile Court, it would have expressly so provided for repeal of the corresponding provision as when it repealed the Civil Code provisions on adoption in Article 26 thereof.

DISMISSAL ORDERS SET ASIDE.

In case of conflict between a general provision of a special law and a particular provision of a general law, the latter should prevail.

CITY OF MANILA *vs.* GENARO N. TEOTICO AND COURT OF APPEALS
G.R. No. L-23052, January 29, 1968
22 SCRA 267

FACTS: On January 27, 1958, at about 8:00 p.m., Genaro N. Teotico was at the corner of the Old Luneta and P. Burgos Avenue, Manila, within a "loading and unloading" zone, waiting for a jeepney to take him down town. After waiting for about five minutes, he managed to hail a jeepney that came along to a stop. As he stepped down from the curb to board the jeepney, and took a few steps, he fell inside an uncovered and unlighted catchbasin or manhole on P. Burgos Avenue. Due to the fall, his head hit the rim of the manhole breaking his eyeglasses and causing broken pieces thereof to pierce his left eyelid. As blood flowed therefrom, impairing his vision, several persons came to his assistance and pulled him out of the manhole. One of them brought Teotico to the Philippine General Hospital, where his injuries were treated, after which he was taken home.

As a consequence of the foregoing occurrence, Teotico filed, with the Court of First Instance of Manila, a complaint — which was, subsequently, amended — for damages against the City of Manila, its mayor, city engineer, city health officer, city treasurer and chief of police.

After appropriate proceedings the Court of First Instance of Manila rendered the aforementioned decision

sustaining the theory of the defendants and dismissing the amended complaint without costs.

On appeal taken by plaintiff, this decision was affirmed by the Court of Appeals, except insofar as the City of Manila is concerned, which was sentenced to pay damages in the aggregate sum of P6,750.00. Hence, this appeal by the City of Manila.

ISSUE: Whether or not the present case is governed by Section 4 of Republic Act No. 409 (Charter of the City of Manila) reading:

> "The city shall not be liable or held for damages or injuries to persons or property arising from the failure of the Mayor, the Municipal Board, or any other city officer, to enforce the provisions of this chapter or any other law or ordinance, or from negligence of said Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions."

or by Article 2189 of the Civil Code of the Philippines, which provides:

> "Provinces, cities and municipalities shall be liable for damages for the death to, or injuries suffered by, any person by reason of defective conditions of roads, streets, bridges, public buildings and other public works under their control or supervision."

Manila maintains that the former provision should prevail over the latter, because Republic Act 409 is a special law, intended exclusively for the City of Manila, whereas the Civil Code is a general law, applicable to the entire Philippines.

HELD: The Court of Appeals, applied the Civil Code, and, we think, correctly. It is true that, insofar as its territorial application is concerned. Republic Act No. 409 is a special law and the Civil Code a general legislation; but, as regards the subject matter of the provisions above-quoted, Section 4 of Republic Act 409 establishes a general rule regulating the liability of the City of Manila for "damages or injury to persons or property arising from the failure of" city officers "to enforce the provisions of" said Act "or any other law or ordinance, or

the same to the Juvenile Court, it would have expressly so provided for repeal of the corresponding provision as when it repealed the Civil Code provisions on adoption in Article 26 thereof.

DISMISSAL ORDERS SET ASIDE.

In case of conflict between a general provision of a special law and a particular provision of a general law, the latter should prevail.

CITY OF MANILA *vs.* GENARO N. TEOTICO AND COURT OF APPEALS
G.R. No. L-23052, January 29, 1968
22 SCRA 267

FACTS: On January 27, 1958, at about 8:00 p.m., Genaro N. Teotico was at the corner of the Old Luneta and P. Burgos Avenue, Manila, within a "loading and unloading" zone, waiting for a jeepney to take him down town. After waiting for about five minutes, he managed to hail a jeepney that came along to a stop. As he stepped down from the curb to board the jeepney, and took a few steps, he fell inside an uncovered and unlighted catchbasin or manhole on P. Burgos Avenue. Due to the fall, his head hit the rim of the manhole breaking his eyeglasses and causing broken pieces thereof to pierce his left eyelid. As blood flowed therefrom, impairing his vision, several persons came to his assistance and pulled him out of the manhole. One of them brought Teotico to the Philippine General Hospital, where his injuries were treated, after which he was taken home.

As a consequence of the foregoing occurrence, Teotico filed, with the Court of First Instance of Manila, a complaint — which was, subsequently, amended — for damages against the City of Manila, its mayor, city engineer, city health officer, city treasurer and chief of police.

After appropriate proceedings the Court of First Instance of Manila rendered the aforementioned decision

sustaining the theory of the defendants and dismissing the amended complaint without costs.

On appeal taken by plaintiff, this decision was affirmed by the Court of Appeals, except insofar as the City of Manila is concerned, which was sentenced to pay damages in the aggregate sum of P6,750.00. Hence, this appeal by the City of Manila.

ISSUE: Whether or not the present case is governed by Section 4 of Republic Act No. 409 (Charter of the City of Manila) reading:

> "The city shall not be liable or held for damages or injuries to persons or property arising from the failure of the Mayor, the Municipal Board, or any other city officer, to enforce the provisions of this chapter or any other law or ordinance, or from negligence of said Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions."

or by Article 2189 of the Civil Code of the Philippines, which provides:

> "Provinces, cities and municipalities shall be liable for damages for the death to, or injuries suffered by, any person by reason of defective conditions of roads, streets, bridges, public buildings and other public works under their control or supervision."

Manila maintains that the former provision should prevail over the latter, because Republic Act 409 is a special law, intended exclusively for the City of Manila, whereas the Civil Code is a general law, applicable to the entire Philippines.

HELD: The Court of Appeals, applied the Civil Code, and, we think, correctly. It is true that, insofar as its territorial application is concerned. Republic Act No. 409 is a special law and the Civil Code a general legislation; but, as regards the subject matter of the provisions above-quoted, Section 4 of Republic Act 409 establishes a general rule regulating the liability of the City of Manila for "damages or injury to persons or property arising from the failure of" city officers "to enforce the provisions of" said Act "or any other law or ordinance, or

from negligence" of the city "Mayor, Municipal Board, or other officers while enforcing or attempting to enforce said provisions." Upon the other hand, Article 2189 of the Civil Code constitutes a particular prescription making "provinces, cities and municipalities liable for damages for the death of, or injury suffered by, any person by reason" — specifically — "of the defective condition of roads, streets, bridges, public buildings, and other public works under their control or supervision." In other words, said Section 4 refers to liability arising from negligence, in general, regardless of the object thereof, whereas, Article 2189 governs liability due to "defective streets," in particular. Since the present action is based upon the alleged defective condition of a road, said Article 2189 is decisive thereon.

DECISION OF THE COURT OF APPEALS AFFIRMED.

When there is irreconcilable repugnancy between a proviso and the body of the statute, the former prevails as latest expression of legislative intent.

ISIDRO ARENAS *vs.* CITY OF SAN CARLOS (PANGASINAN), ET AL.
G.R. No. L-34024, April 5, 1978
82 SCRA 318

FACTS: In January 1971, Isidro G. Arenas, a City Judge of San Carlos (Pangasinan), instituted against the City of San Carlos (Pangasinan). City Council of San Carlos City and the Mayor, Vice-Mayor, City Councilors and City Treasurer of San Carlos City, a petition for *mandamus* in the Court of First Instance of Pangasinan to compel respondents to pay his salary differential amounting to P9,500.00 for which he is entitled in view of the enactment of Republic Act 5967 which provides that the basic salary of City Judges of second and third class cities shall be P18,000.00 *per annum*. This became effective on June 21, 1969.

The Court of First Instance of San Carlos City (Pangasinan), Branch X, rendered its decision dated May 31,

1971 dismissing the petition, without pronouncement as to costs. Hence, this petition for review.

HELD: The pertinent portion of Section 7, Republic Act No. 5967 reads:

> "Sec. 7. Unless the City Charter or any special law provides higher salary, the city judge in chartered cities shall receive a basic salary which shall not be lower than the sums as provided thereinbelow:
>
> x x x
>
> "(c) For second and third class cities, eighteen thousand pesos *per annum*;
>
> x x x
>
> "For the cities of Baguio, Quezon, Pasay and other first class cities, the city judge shall receive one thousand pesos less than that fixed for the district judge, and for second and third class cities, the city judge shall receive one thousand five hundred pesos less than that fixed for the district judge, and for other cities, the city judge shall receive two thousand pesos less than that fixed for the district judge, *Provided, however,* That the salary of a city judge shall be at least one hundred pesos per month less than that of city mayor."

The petitioner contends that "x x x if the last proviso of said Section 7 of Republic Act No. 5967 would be interpreted as the controlling measure for fixing the salary of the city judges, then the principal provision of Section 7 fixing the salaries of City Judges at a rate very much higher than that of a City Mayor (particularly in the case of second and third class cities) would be rendered totally useless." The petitioner submitted "that since the principal intention of the legislature in enacting Section 7 of Republic Act 5967 is to increase the salary of the city judges, then the last proviso of said Section 7 should give way to the provisions of said section preceding said proviso."

The record shows that when Republic Act No. 5967 took effect on June 21, 1969, San Carlos City (Pangasinan) was a third class city; that the petitioner as city judge received an annual salary of P12,000.00; and that the city

mayor of San Carlos City received an annual salary of P13,200.00 which was exactly P100.00 a month more than the salary of the city judge.

During the deliberation in the Senate on House Bill No. 17046, which became Republic Act No. 5957, the following discussion took place:

> "SENATOR GANZON: Because with the Bill as drafted, I recall that there will be some cities where the city judges will receive salaries higher than those of the mayors. And in all charters, Your Honor, the city judge is considered a department head — theoretically, at least, under the mayor. It would not be fair for the purposes of public administration that a city department head should receive a salary higher than that of the chief executive of the city.
>
> "SENATOR LAUREL: That point is very well taken, and I would like to congratulate Your Honor.
>
> "SENATOR LAUREL: No. Mr. President. I understand the concern of the distinguished gentleman from Davao. But in this particular amendment prepared by the distinguished lady from La Union, this will not require the council to pay it at P100.00 exactly less than the salary of the mayor. It is just the limit — the maximum — but they may fix it at much less than that. That is why the words 'at least' were suggested by the Committee. It need not be exactly just P100.00 less. It may be P500.00 less.
>
> "SENATOR ALMENDRAS: Your Honor, take for example the cities of Iloilo, Cebu, Bacolod or Manila for that matter. The Mayors are receiving at least P1,500.00 a month. Now, under the amendment of the lady from La Union, Nueva Ecija and Davao — which has already been accepted by the sponsor — does it mean that if the salary of the city mayor is P1,500.00, the city judges will receive P1,400?
>
> x x x
>
> "SENATOR ANTONINO: I would like to call his attention to lines 13 to 20. We presented this amendment because it says here: For the cities of Baguio, Quezon, Pasay and other first class cities, the city judge shall receive one thousand pesos less than that fixed for the district judge. So it will happen, and my attention was called by the gentlemen from Iloilo — that the city judge will be receiving more salary than the city mayor. Hence, the amendment, Mr. President.
>
> x x x
>
> 'I conferred with the gentlemen from Iloilo and Batangas, and this was their objection. We have proposed this amendment to at least solve this problem, so that no city judge will be receiving more than the city mayor. So they will be receiving less than what is proposed in this Bill.'" (Vol. IV, No. 61, Senate Congressional Records, pages 2773-2787).

It is clear from the deliberation of the Senate that the intention of Congress in enacting Republic Act No. 5967 was that the salary of a city judge should not be higher than the salary of the city mayor. The saving clause "*Provided, however,* That the salary of a city judge shall be at least P100.00 per month less than that of the city mayor" qualifies the earlier provision which fixes the salary of city judges for second and third class cities at P18,000.00 *per annum*.

The primary purpose of a proviso is to limit the general language of a statute. When there is irreconcilable repugnancy between the proviso and the body of the statute the former is given precedence over the latter on the ground that it is the latest expression of the intent of the legislature.

Inasmuch as the city mayor of San Carlos City (Pangasinan) was receiving an annual salary of P13,200.00, the respondents cannot be compelled to provide for an annual salary of P18,000.00 for the petitioner as city judge of the said city.

PETITION DISMISSED.

Whenever there is a conflict between an ordinance and a statute, the ordinance must give way.

JUAN AUGUSTO B. PRIMICIAS *vs.* THE MUNICIPALITY OF URDANETA, PANGASINAN, ET AL.
G.R. No. L-26702, October 18, 1979
93 SCRA 462

FACTS: On February 8, 1965, Juan Augusto B. Primicias, plaintiff-appellee, was driving his car within the jurisdiction of Urdaneta when a member of Urdaneta's Municipal Police asked him to stop. He was told, upon stopping, that he had violated Municipal Ordinance No. 3, Series of 1964, "and more particularly, for overtaking a truck." The policeman then asked for plaintiff's license which he surrendered, and a temporary operator's permit was issued to him.

Thereafter, a criminal complaint was filed in the Municipal Court of Urdaneta against Primicias for violation of Ordinance No. 3, Series of 1964. Due to the institution of the criminal case, plaintiff Primicias initiated an action for the annulment of said ordinance with prayer for the issuance of preliminary injunction for the purpose of restraining defendants Municipality of Urdaneta, Mayor Perez, Police Chief Suyat, Judge Soriano and Patrolman Andrada from enforcing the ordinance. The writ was issued and Judge Soriano was enjoined from further proceeding in the criminal case.

After the trial, the Court of First Instance rendered the questioned decision holding that the ordinance was null and void and had been repealed by Republic Act No. 4136, otherwise known as the Land Transportation and Traffic Code. Now, defendants-appellants herein, alleged that the lower court erred in declaring the Municipal Ordinance No. 3 (Series of 1964) of Urdaneta as null and void.

ISSUE: Whether or not Ordinance No. 3, Series of 1964, enacted on March 13, 1964 by the Municipal Council of Urdaneta, Pangasinan is valid.

HELD: Appellants contend that the Ordinance is valid, being "patterned after and based on Section 53, par. 4 of Act No. 3992, as amended (Revised Motor Vehicle Law)." In so arguing, appellants failed to note that Act No. 3992 has been superseded by Republic Act No. 4136, the Land

Transportation and Traffic Code, which became effective on June 20, 1964, about three months after the questioned ordinance was approved by Urdaneta's Municipal Council. The explicit repeal of the aforesaid Act is embodied in Section 63, Republic Act No. 4136, to wit:

> "Act Numbered thirty-nine hundred ninety-two (3992) as amended, and all laws, executive orders, ordinances, resolutions, regulations, or parts thereof in conflict with the provisions of this Act are repealed."

By this express repeal, and the general rule that a later law prevails over an earlier law, appellants are in error in contending that "a later enactment of the law relating to the same subject matter as that of an earlier statute is not sufficient to cause an implied repeal of the original law." Pursuant to Section 63, Republic Act No. 4136, the ordinance at bar is thus placed within the ambit of Republic Act No. 4136, and not Act No. 3992. The validity of Ordinance No. 3, Series of 1964, must therefore be determined *vis-à-vis* Republic Act No. 4136, the "mother statute" so to speak, which was in force at the time the criminal case was brought against Primicias for the violation of the said ordinance.

An essential requisite for a valid ordinance is, among others, that it "must not contravene ... the statute," for it is a "fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state." Following this general rule, whenever there is a conflict between an ordinance and a statute, the ordinance "must give way." A look at the aforecited section and Section 1, par. (a) of the ordinance shows that the latter is more or less a restatement only of number (4), par. (b), Section 35. As observed by the trial court, the Ordinance "refers to only one of the four classifications mentioned in paragraph (b), Section 35," limiting the rates of speed for vehicular traffic along the national highway and the provincial roads within the territorial limits of Urdaneta to 20 kilometers per hour without regard to whether the road is an open country road, or through streets or boulevards, or city or municipal streets with light traffic."

Regarding the contention that the lower court erred by holding that said Ordinance is not clear and definite in its terms, we agree with the Court *a quo* that when the Municipal Council of Urdaneta used the phrase "vehicular traffic" (Section 1, Ordinance) it "did not distinguish between passenger cars and motor vehicles and motor trucks and buses." This conclusion is bolstered by the fact that nowhere in the Ordinance is "vehicular traffic" defined. Considering that this is a regulatory ordinance, its clearness, definiteness and certainty are all the more important so that "an average man should be able with due care, after reading it, to understand and ascertain whether he will incur a penalty for particular acts or courses of conduct." In comparison, Section 35(b), Republic Act No. 4136 on which Section 1 of the Ordinance must be based, stated that the rates of speed enumerated therein refer to motor vehicle, specifying the speed for each kind of vehicle. At the same time, to avoid vagueness, Art. II, Section 3 defines what a motor vehicle is and passenger automobiles are.

DECISION AFFIRMED.

Where a special statute refers to a subject in general, which the general statute treats in particular, the provision of the latter, in case of conflict, will prevail.

HON. RAMON D. BAGATSING, AS MAYOR OF THE CITY OF MANILA, ET AL. *vs.* HON. PEDRO A. RAMIREZ, PRESIDING JUDGE, CFI, MANILA, BRANCH 30, AND THE FEDERATION OF MANILA MARKET VENDORS, INC.
G.R. No. L-41631, December 12, 1976
74 SCRA 306

FACTS: On June 12, 1974, the Municipal Board of Manila enacted Ordinance No. 7522, "AN ORDINANCE REGULATING THE OPERATION OF PUBLIC MARKETS AND PRESCRIBING FEES FOR THE RENTALS OF STALLS AND PROVIDING PENALTIES FOR VIOLATION THEREOF AND FOR OTHER PURPOSES." The petitioner City Mayor, Ramon D. Bagatsing, approved the ordinance on June 15, 1974.

On February 17, 1975, respondent Federation of Manila Market Vendors, Inc. commenced Civil Case No. 96787 before the Court of First Instance of Manila, presided over by respondent Judge, seeking the declaration of nullity of Ordinance No. 7522 for the reason that: (a) the publication requirement under the Revised Charter of the City of Manila has not been complied with; (b) the Market Committee was not given any participation in the enactment of the ordinance, as envisioned by Republic Act 6039; (c) Section 3(e) of the Anti-Graft and Corrupt Practices Act has been violated; and (d) the ordinance would violate Presidential Decree No. 7 of September 30, 1972 prescribing the collection of fees and charges on livestock and animal products.

Resolving the accompanying prayer for the issuance of a writ of preliminary injunction, respondent Judge issued an order on March 11, 1975, denying the plea for failure of the respondent Federation of Manila Market Vendors, Inc. to exhaust the administrative remedies outlined in the Local Tax Code.

After due hearing on the merits, respondent Judge rendered its decision on August 29, 1975, declaring the nullity of Ordinance No. 7522 of the City of Manila on the primary ground of non-compliance with the requirement of publication under the Revised City Charter.

Petitioners moved for the reconsideration of the adverse decision, stressing that: (a) only a post-publication is required by the Local Tax Code; and (b) private respondent failed to exhaust all administrative remedies before instituting an action in court.

On September 26, 1975, respondent Judge denied the motion.

Forthwith, petitioners brought the matter to us through the present petition for review on *certiorari*.

ISSUE: The question to be decided in this case is what law shall govern the publication of a tax ordinance enacted by

the Municipal Board of Manila, the Revised City Charter (R.A. No. 409, as amended), which requires publication of the ordinance before its enactment and after its approval, or the Local Tax Code (P.D. No. 231), which only demands publication after approval.

HELD: We find the petition impressed with merits.

The nexus of the present controversy is the apparent conflict between the Revised Charter of the City of Manila and the Local Tax Code on the manner of publishing a tax ordinance enacted by the Municipal Board of Manila. For, while Section 17 of the Revised Charter provides:

> "Each proposed ordinance shall be published in two daily newspapers of general circulation in the city, and shall not be discussed or enacted by the Board until after the third day following such publication. x x x Each approved ordinance x x x shall be published in two daily newspapers of general circulation in the city, within ten days after its approval; and shall take effect and be in force on and after the twentieth day following its publication, if no date is fixed in the ordinance."

Section 43 of the Local Tax Code directs:

> "Within ten days after their approval, certified true copies of all provincial, city, municipal and barrio ordinances levying or imposing taxes, fees or other charges shall be published for three consecutive days in a newspaper or publication widely circulated within the jurisdiction of the local government, or posted in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government. In either case, copies of all provincial, city, municipal and barrio ordinances shall be furnished the treasurers of the respective component and mother units of a local government for dissemination."

In other words, while the Revised Charter of the City of Manila requires publication before the enactment of the ordinance and after the approval thereof in two daily newspapers of general circulation in the city, the Local Tax

Code only prescribes for publication after the approval of "ordinances levying or imposing taxes, fees or other charges" either in a newspaper or publication widely circulated within the jurisdiction of the local government or by posting the ordinance in the local legislative hall or premises and in two other conspicuous places within the territorial jurisdiction of the local government. Petitioners' compliance with the Local Tax Code rather than with the Revised Charter of the City spawned this litigation.

There is no question that the Revised Charter of the City of Manila is a special act since it relates only to the City of Manila, whereas the Local Tax Code is a general law because it applies universally to all local governments. Blackstone defines general law as a universal rule affecting the entire community and special law as one relating to particular persons or things of a class. And the rule commonly said is that a prior special law is not ordinarily repealed by a subsequent general law. The fact that one is special and the other general creates a presumption that the special is to be considered as remaining an exception of the general, one as a general law of the land, the other as the law of a particular case. However, the rule readily yields to a situation where the special statute refers to a subject in general, which the general statute treats in particular. This exactly is the circumstance obtaining in the case at bar. Section 17 of the Revised Charter of the City of Manila speaks of "ordinance" in general, *i.e.*, irrespective of the nature and scope thereof, whereas, Section 43 of the Local Tax Code relates to "ordinances levying or imposing taxes, fees or other charges" in particular. In regard, therefore, to ordinances in general, the Revised Charter of the City of Manila is doubtless dominant, but that dominant force loses its continuity when it approaches the realm of "ordinances levying or imposing taxes, fees or other charges" in particular. There, the Local Tax Code controls. Here, as always, a general provision must give way to a particular provision. Special provision governs. In other words, the Revised Charter of the City prescribes a rule for the publication of "ordinance" in general, while the Local Tax Code establishes a rule for the publication of

ordinance levying or imposing taxes, fees or other charges in particular.

DECISION REVERSED. ORDINANCE NO. 7522 HELD TO HAVE BEEN VALIDLY ENACTED.

Ordinance should not contravene a statute. In case of conflict between an ordinance and a statute, the latter will prevail.

MAYOR PABLO P. MAGTAJAS AND THE CITY OF CAGAYAN DE ORO *vs.* PRYCE PROPERTIES CORP., INC. AND PAGCOR
G.R. No. 111097, July 20, 1994
234 SCRA 255

FACTS: In opposition to the announced opening of a casino in Cagayan de Oro by PAGCOR, the Sangguniang Panlungsod of Cagayan de Oro on December 7, 1992 and January 4, 1993 enacted the following ordinances:

Ordinance No. 335, An Act Prohibiting the Issuance of Business Permit and Cancelling Existing Business Permit to Any Establishment for the Using and Allowing to be Used Its Premises a Portion Thereof for the Operation of Casino. Ordinance No. 3375-93, An Act Prohibiting the Operation of Casino and Providing Penalty for Violation Therefor.

Pryce assailed the ordinances before the Court of Appeals, where it was joined by PAGCOR as intervenor and supplemental petitioner. Their challenge succeeded. On March 31, 1993, the Court of Appeals declared the ordinances invalid and issued the writ prayed for to prohibit their enforcement. Reconsideration of this decision was denied on July 13, 1993.

Petitioners argued that under the General Welfare Clause embodied under Section 16 of the Local Government Code and Section 458 of the same code, the Sangguniang Panlungsod may prohibit the operations of Casino, because they involved games of chance, which are detrimental to the people.

Sections 16 and 458 of the Local Government Code declares:

> "SEC. 16. *General Welfare.*—Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.
>
> "Sec. 458. *Powers, Duties, Functions and Compensation.*—(a) The Sangguniang Panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:
>
> "(1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:
>
> x x x
>
> "(v) Enact ordinances intended to prevent, suppress and impose appropriate penalties for habitual drunkenness in public places, vagrancy, mendicancy, prostitution, establishment and maintenance of houses of ill-repute, gambling and other prohibited games of chance, fraudulent devices and ways to obtain money or property, drug addiction, maintenance of drug dens, drug pushing, juvenile delinquency, the printing, distribution or exhibition of obscene or pornographic materials or publications, and such other activities inimical to the welfare and morals of the inhabitants of the city."

On the other hand, PAGCOR is a corporation created directly by P.D. No. 1869 to help centralize and regulate all games of chance, including casinos on land and sea within the territorial jurisdiction of the Philippines. In *Basco vs. Philippine Amusements and Gaming Corporation*, 197 SCRA 52 (1991), this Court sustained the constitutionality of the decree and even cited the benefits of the entity to the national economy as the third highest revenue-earner in the government, next only to the BIR and the Bureau of Customs.

ISSUE: Whether or not Ordinance No. 335 and Ordinance No. 3375-93 as enacted by the Sangguniang Panlungsod of Cagayan de Oro City are valid.

HELD: It is a canon of legal hermeneutics that instead of pitting one statute against another in an inevitably destructive confrontation, courts must exert every effort to reconcile them, remembering that both laws deserve a becoming respect as the handiwork of a coordinate branch of the government. On the assumption of a conflict between P.D. 1869 and the Code, the proper action is not to uphold one and annul the other but to give effect to both by harmonizing them if possible. This is possible in the case before us. The proper resolution of the problem at hand is to hold that under the Local Government Code, local government units may (and indeed must) prevent and suppress all kinds of gambling within their territories except only those allowed by statutes like P.D. 1869. The exception reserved in such laws must be read into the Code, to make both the Code and such laws equally effective and mutually complementary.

This approach would also affirm that there are indeed two kinds of gambling, to wit, the illegal and those authorized by law. Legalized gambling is not a modern concept; it is probably as old as illegal gambling, if not indeed more so. The petitioners' suggestion that the Code authorizes them to prohibit all kinds of gambling would erase the distinction between these two forms of gambling without a clear indication that this is the will of the legislature. Plausibly, following this theory, the City of Manila could, by mere ordinance, prohibit the Philippine

Charity Sweepstakes Office from conducting a lottery as authorized by R.A. 1169 and B.P. 42 or stop the races at the San Lazaro Hippodrome as authorized by R.A. 309 and R.A. 983.

In light of all the above considerations, we see no way of arriving at the conclusion urged on us by the petitioners that the ordinances violate P.D. 1869, which has the character and force of a statute, as well as the public policy expressed in the decree allowing the playing of certain games of chance despite the prohibition of gambling in general.

PETITION DENIED.

It is a basic rule in statutory construction that the enactment of a later legislation which is a general law cannot be construed to have repealed a special law.

LAGUNA LAKE DEVELOPMENT AUTHORITY *vs.* COURT OF APPEALS
G.R. Nos. 120865-71, December 7, 1995
251 SCRA 42

FACTS: The Laguna Lake Development Authority created under Republic Act 4850 as amended by Presidential Decree 813 and Executive Order 927 have the exclusive jurisdiction to issue permit for the use of all surface water for any projects or activities in or affecting the lake regions, etc.

Pertinent to the issues in this case are the following provisions of Section 4(k) of R.A. 4850, as amended by PD 813 and Section 2 of Executive Order No. 927:

> "Sec. 4(k). For the purpose of effectively regulating and monitoring activities in Laguna de Bay, the Authority shall have exclusive jurisdiction to issue new permit for the use of the lake waters for any projects or activities in or affecting the said lake including navigation, construction, and operation of fishpens, fish enclosures, fish corrals and the like, and to impose necessary safeguards for lake quality control and management and to collect necessary fees for said

activities and projects; *Provided,* That the fees collected for fisheries may be shared between the Authority and other government agencies and political subdivisions in such proportion as may be determined by the President of the Philippines upon recommendation of the Authority's Board; *Provided, further,* That the Authority's Board may determine new areas of fishery development or activities which it may place under the supervision of the Bureau of Fisheries and Aquatic Resources taking into account the overall development plans and programs for Laguna de Bay and related bodies of water; *Provided, finally,* That the Authority shall, subject to the approval of the President of the Philippines, promulgate such rules and regulations which shall govern fisheries development activities in Laguna de Bay which shall take into consideration among others the following socio-economic amelioration of *bona fide* resident fisherman whether individually or collectively in the form of cooperatives, lakeshore town development, a master plan for fishpen construction and operation, communal fishing ground for lake shore town residents, and preference to lakeshore town residents in hiring laborers for fishery projects.

"SEC. 2. Water Rights Over Laguna de Bay and other Bodies of Water within the Lake Region: To effectively regulate and monitor activities in the Laguna de Bay Region, the Authority shall have exclusive jurisdiction to issue permit for the use of all surface water for any projects or activities in or affecting the said region including navigation, construction, and operation of fishpens, fish enclosures, fish corrals and the like.

"For the purpose of this Executive Order, the term Laguna de Bay Region shall refer to the Provinces of Rizal and Laguna, the Cities of San Pablo, Pasay, Caloocan, Quezon, Manila and Tagaytay; the towns of Tanauan and Sto. Tomas and Malvar in Batangas Province; the towns of Silang and Carmona in Cavite Province; the town of Lucban in Quezon Province, and the towns of Marikina, Pasig, Taguig, Muntin-lupa and Pateros in Metro-Manila."

Then came Republic Act No. 7160, the Local Government Code of 1991. The municipalities in the Laguna

Lake Region interpreted the provisions of this law to mean that the newly passed law gave municipal governments the exclusive jurisdiction to issue fishing privileges within their municipal water because R.A. 7160 provides:

"Sec. 149. *Fishery Rentals, Fees and Charges.*— (a) Municipalities shall have the exclusive authority to grant fishery privileges in the municipal waters and impose rental fees or charges therefor in accordance with the provisions of this Section.

"(b) Sangguniang Bayan may:

(1) Grant fishing privileges to erect fish corrals, oyster, mussel or other aquatic beds or bangus fry areas, within a definite zone of the municipal waters, as determined by it; x x x

(2) Grant privilege to gather, take or catch bangus fry, prawn fry or *kawag-kawag* or fry of other species and fish from the municipal waters by nets, traps or other fishing gears to marginal fishermen free from any rental fee, charges or any other imposition whatsoever.

x x x x x x x x x

Sec. 447. *Power, Duties, Functions and Compensation.*—

(1) x x x x x x x x x

(2) x x x x x x x x x

(XI) Subject to the provisions of Book II of this Code, grant exclusive privileges of constructing fish corrals or fish-pens, or the taking or catching of bangus fry, prawn fry or *kawag-kawag* or fry of any species or fish within the municipal waters."

x x x x x x x x x

Municipal governments thereupon assumed the authority to issue fishing privileges and fishpen permits. Big fishpen operators took advantage of the occasion to establish fishpens and fish cages to the consternation of the Authority. Unregulated fishpens and fish cages, as of July 1995, occupied almost one third of the entire lake water surface area, increasing the occupation drastically from 7,000

hectares in 1990 to almost 21,000 hectares in 1995. The Mayor's permit to construct fishpens and fish cages were all undertaken in violation of the policies adopted by the Authority on fishpen zoning and the Laguna Lake carrying capacity.

In view of the foregoing circumstances, the Authority served notice to the general public and the concerned fishpen owners of the illegally constructed fishpens, fishcages and other agricultural structures advising them to dismantle their respective structures within 10 days from receipt thereof, otherwise demolition shall be effected.

Reacting thereto, the affected fishpen owners filed injunction cases against the authority before various Regional Trial Courts. The Authority filed motions to dismiss the cases against it on jurisdictional grounds but were invariably denied.

In a decision dated June 29, 1995, the Court of Appeals dismissed the authority's consolidated petitions. Hence, this petition for *certiorari* and prohibition with injunction in the Supreme Court.

ISSUE: Which agency of the Government the Laguna Lake Development Authority or the towns and Municipalities comprising the region should exercise jurisdiction over the Laguna Lake and its environs insofar as the issuance of permits for fishery privileges is concerned?

HELD: Section 4 of the Charter of the Laguna Lake Development Authority, Republic Act No. 4850, the provisions of Presidential Decree No. 813, and Section 2 of Executive Order No. 927, cited above, specifically provide that the Laguna Lake Development Authority shall have exclusive jurisdiction to issue permits for the use of all surface water for any projects or activities in affecting the said region, including navigation, construction, and operation of fishpens, fish enclosures, fish corrals and the like. On the other hand, Republic Act No. 7160, the Local Government Code of 1991, has granted to the municipalities the exclusive authority to grant fishery privileges in municipal waters. The Sangguniang Bayan may grant fishery

privileges to erect fish corrals, oysters, mussels or other aquatic beds or bangus fry area within a definite zone of the municipal waters.

We hold that the provisions of Republic Act No. 7160 do not necessarily repeal the aforementioned laws creating the Laguna Lake Development Authority and granting the latter water rights authority over Laguna de Bay and the lake region.

The Local Government Code of 1991 does not contain any express provision which categorically expressly repeal the charter of the Authority. It has to be conceded that there was no intent on the part of the legislature to repeal Republic Act No. 4850 and its amendments. The repeal of laws should be made clear and expressed.

It has to be conceded that the charter of the Laguna Lake Development Authority constitutes a special law. Republic Act No. 7160, the Local Government Code of 1991, is a general law. It is basic in statutory construction that the enactment of a later legislation which is a general law cannot be construed to have repealed a special law. It is a well-settled rule in this jurisdiction that "a special statute, provided for a particular case or class of cases, is not repealed by a subsequent statute, general in its terms, provisions and application, unless the intent to repeal or alter is manifest, although the terms of the general law are broad enough to include the cases embraced in the special law."

Where there is a conflict between a general law and a special statute, the special statute should prevail since it evinces the legislative intent more clearly than the general statute. The special law is to be taken as an exception to the general law in the absence of special circumstances forcing a contrary conclusion. This is because implied repeals are not favored and as much as possible, effect must be given to all enactments of the legislature. A special law cannot be repealed, amended or altered by a subsequent general law by mere implication.

Thus, it has to be concluded that the charter of the Authority should prevail over the Local Government Code of 1991.

The power of the local government units to issue fishing privileges was clearly granted for revenue purposes. This is evident from the fact that Section 149 of the New Local Government Code empowering local governments to issue fishing permits is embodied in Chapter 2, Book II of Republic Act No. 7160 under the heading, "Specific Provisions On The Taxing And Other Revenue-Raising Power of Local Government Units."

On the other hand, the power of the authority to grant permits for fishpens, fishcages and other aquaculture structures is for the purpose of "effectively regulating and monitoring activities in the Laguna de Bay Region (Section 2, Executive Order No. 927) and for lake quality control and management." It does partake of the nature of police power which is the most pervasive, the least limitable and the most demanding of all State powers including the power of taxation. Accordingly, the charter of the Authority which embodies a valid exercise of police power should prevail over the Local Government Code of 1991 on matters affecting Laguna de Bay.

PETITION GRANTED.

It is elementary in statutory construction that an administrative circular cannot supersede, abrogate, modify or nullify a statute. A statute is superior to an administrative circular, thus the latter cannot repeal or amend it.

JUDGE TOMAS C. LEYNES, PETITIONER, *vs.* THE COMMISSION ON AUDIT (COA), HON. GREGORIA S. ONG, DIRECTOR, COMMISSION ON AUDIT AND HON. SALVACION DALISAY, PROVINCIAL AUDITOR, RESPONDENTS.
G.R. No. 143596, December 11, 2003
418 SCRA 180

FACTS: Petitioner Judge Tomas C. Leynes who, at present, is the presiding judge of Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40, was formerly assigned to the Municipality of Naujan, Oriental Mindoro as the sole presiding judge of the Municipal Trial Court thereof. As such, his salary and representation and transportation allowance (RATA) were drawn from the budget of the Supreme Court. In addition, petitioner received a monthly allowance of P944 *from the local funds* of the Municipality of Naujan starting 1984.

On March 15, 1993, the *Sangguniang Bayan* of Naujan, through Resolution No. 057, sought the opinion of the Provincial Auditor and the Provincial Budget Officer regarding any budgetary limitation on the grant of a monthly allowance by the municipality to petitioner judge. On May 7, 1993, the *Sangguniang Bayan* unanimously approved Resolution No. 101 increasing petitioner judge's monthly allowance from P944 to P1,600 (an increase of P656) starting May 1993. By virtue of said resolution, the municipal government (the Municipal Mayor and the *Sangguniang Bayan*) approved a supplemental budget which was likewise approved by the *Sangguniang Panlalawigan* and the Office of Provincial Budget and Management of Oriental Mindoro. In 1994, the Municipal Government of Naujan again provided for petitioner judge's P1,600 monthly allowance in its annual budget which was again approved by the *Sangguniang Panlalawigan* and the Office of Provincial Budget and Management of Oriental Mindoro.

On February 17, 1994, Provincial Auditor Salvacion M. Dalisay sent a letter to the Municipal Mayor and the *Sangguniang Bayan* of Naujan directing them to stop the payment of the P1,600 monthly allowance or RATA to petitioner judge and to require the immediate refund of the amounts previously paid to the latter. She opined that the Municipality of Naujan could not grant RATA to petitioner judge in addition to the RATA the latter was already receiving from the Supreme Court.

Petitioner judge appealed to COA Regional Director Gregoria S. Ong who, however, upheld the opinion of

Provincial Auditor Dalisay and who added that Resolution No. 101, Series of 1993 of the *Sangguniang Bayan* of Naujan failed to comply with Section 3 of Local Budget Circular No. 53 dated September 1, 1993 outlining the conditions for the grant of allowances to judges and other national officials or employees by the local government units (LGUs).

Petitioner judge appealed the unfavorable resolution of the Regional Director to the Commission on Audit. In the meantime, a disallowance of the payment of the P1,600 monthly allowance to petitioner was issued. Thus, he received his P1,600 monthly allowance from the Municipality of Naujan only for the period of May 1993 to January 1994.

On September 14, 1999, the COA issued its decision affirming the resolution of Regional Director Gregoria S. Ong.

ISSUE: Whether or not the Municipality of Naujan, Oriental Mindoro can validly provide RATA to its Municipal Judge, in addition to that provided by the Supreme Court.

HELD: Respondent Commission on Audit opposes the grant by the Municipality of Naujan of the Pl,600 monthly allowance to petitioner Judge Leynes for the reason that the municipality could not grant RATA to judges *in addition* to the RATA already received from the Supreme Court. Respondent bases its contention on the following:

> National Compensation Circular No. 67 (hereafter NCC No. 67) dated January 1, 1992 of the Department of Budget and Management (DBM) which provides that (a) the RATA of national officials and employees shall be payable from the programmed appropriations or personal services savings of the agency where such officials or employees draw their salary, and (b) no one shall be allowed to collect RATA from more than one source;
>
> The General Appropriations Act of 1993 (RA 7645) which provided that the RATA of national officials shall be payable from the programmed appropriations of their respective offices; and
>
> Local Budget Circular No. 53 (hereafter LBC No. 53) dated September 1, 1993 of the DBM which prohibits local government units from granting allowances to national government officials or employees stationed in their localities when such allowances are also granted by the national government to such officials or employees.

Petitioner judge, on the other hand, asserts that the municipality is expressly and unequivocally empowered by RA 7160 (the Local Government Code of 1991) to enact appropriation ordinances granting allowances and other benefits to judges stationed in its territory. Section 447(a)(1)(xi) of the Local Government Code of 1991 imposes only one condition, that is, when the finances of the municipal government allow. The Code does not impose any other restrictions in the exercise of such power by the municipality. Petitioner also asserts that the DBM cannot amend or modify a substantive law like the Local Government Code of 1991 through mere budget circulars. Petitioner emphasizes that budget circulars must conform to, not modify or amend, the provisions of the law it seeks to implement.

It is elementary in statutory construction that an administrative circular cannot supersede, abrogate, modify or nullify a statute. A statute is superior to an administrative circular, thus the latter cannot repeal or amend it. In the present case, NCC No. 67, being a mere administrative circular, cannot repeal a substantive law like RA 7160.

It is also an elementary principle in statutory construction that repeal of statutes by implication is not favored, unless it is manifest that the legislature so intended. The legislature is assumed to know the existing laws on the subject and cannot be presumed to have enacted inconsistent or conflicting statutes. Respondent COA alleges that Section 36 of RA 7645 (the GAA of 1993) repealed Section 447(a)(1)(xi) of RA 7160 (the LGC of 1991). A review of the two laws, however, shows that this was not so. Section 36 of RA 7645 merely provided for the different rates of RATA payable to national government officials or employees, depending on their position, and stated that these amounts were payable from the programmed appropriations of the parent agencies to which the concerned national officials or employees

belonged. Furthermore, there was no other provision in RA 7645 from which a repeal of Section 447(a)(1)(xi) of RA 7160 could be implied. In the absence, therefore, of any clear repeal of Section 447(a)(1)(xi) of RA 7160, we cannot presume such intention on the part of the legislature.

Moreover, the presumption against implied repeal becomes stronger when, as in this case, one law is special and the other is general. The principle is expressed in the maxim *generalia specialibus non derogant*; a general law does not nullify a specific or special law. The reason for this is that the legislature, in passing a law of special character, considers and makes special provisions for the particular circumstances dealt with by the special law. This being so, the legislature, by adopting a general law containing provisions repugnant to those of the special law and without making any mention of its intention to amend or modify such special law, cannot be deemed to have intended an amendment, repeal or modification of the latter.

In this case, RA 7160 (the LGC of 1991) is a special law which exclusively deals with local government units (LGUs), outlining their powers and functions in consonance with the constitutionally mandated policy of local autonomy. RA 7645 (the GAA of 1993), on the other hand, was a general law, which outlined the share in the national fund of all branches of the national government. RA 7645 therefore, being a general law, could not have, by mere implication, repealed RA 7160. Rather, RA 7160 should be taken as the exception to RA 7645 in the absence of circumstances warranting a contrary conclusion.

In construing NCC No. 67, we apply the principle in statutory construction that force and effect should not be narrowly given to isolated and disjoined clauses of the law but to its spirit, broadly taking all its provisions together in one rational view. Because a statute is enacted as a whole and not in parts or sections, that is, one part is as important as the others; the statute should be construed and given effect as a whole. A provision or section, which is unclear by itself, may be clarified by reading and construing it in relation to the whole statute.

Taking NCC No. 67 as a whole then, what it seeks to prevent is the dual collection of RATA by a national official from the budgets of more than one national agency. We emphasize that the *other source* referred to in the prohibition is *another national agency*. This can be gleaned from the fact that the sentence no one shall be allowed to collect RATA from more than one source (the controversial prohibition) immediately follows the sentence that RATA shall be paid from the budget of the national agency where the concerned national officials and employees draw their salaries.

By no stretch of the imagination can NCC No. 67 be construed as nullifying the power of LGUs to grant allowances to judges under the Local Government Code of 1991. It was issued primarily to make the grant of RATA to national officials under the national budget uniform. In other words, it applies only to the national funds administered by the DBM, not the local funds of LGUs.

To rule against the power of LGUs to grant allowances to judges as what respondent COA would like us to do will subvert the principle of local autonomy zealously guaranteed by the Constitution. The Local Government Code of 1991 was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution. By upholding, in the present case, the power of LGUs to grant allowances to judges and leaving to their discretion the amount of allowances they may want to grant, depending on the availability of local funds, we ensure the genuine and meaningful local autonomy of LGUs. (See also *China Banking Corp. vs. CA*, G.R. No. 121158, December 5, 1996, 265 SCRA 327).

PETITION GRANTED, ASSAILED DECISION SET ASIDE.

Where the instrument is susceptible of two interpretations, one which will make it invalid and illegal and another which will make it valid and legal, the latter interpretation should be adopted.

FRANCISCO LAO LIM *vs.* COURT OF APPEALS AND BENITO VILLAVICENCIO DY
G.R. No. 87047, October 31, 1990
191 SCRA 150

FACTS: The records show that private complainant entered into a contract of lease with petitioner for a period of three (3) years, that is, from 1976 to 1979. After the stipulated term expired, private respondent refused to vacate the premises, hence, petitioner filed an ejectment suit against the former in the City Court of Manila, docketed therein as Civil Case No. 051063-CV. The case was terminated by a judicially approved compromise agreement of the parties providing in part:

> "3. That the term of the lease shall be renewed every three years retroacting from October 1979 to October 1982; after which the above-named rental shall be raised automatically by 20% every three years for as long as defendant needed the premises and can meet and pay the said increases, the defendant to give notice of his intent to renew sixty (60) days before the expiration of the term."

By reason of said compromise agreement the lease continued from 1979 to 1982, then from 1982 to 1985. On April 17, 1985, petitioner advised private respondent that he would no longer renew the contract effective October 1985. However, on August 5, 1985, private respondent informed the petitioner in writing of his intention to renew the contract of lease for another term commencing November 1985 to October 1988. In reply to said letter, petitioner advised private respondent that he did not agree to a renewal of the lease contract upon its expiration in October, 1985.

On January 15, 1986 because of private respondent's refusal to vacate the premises, petitioner filed another ejectment suit, this time with the Metropolitan Trial Court of Manila in Civil Case No. 114659-CV. In its decision of September 27, 1987, said court dismissed the complaint on the grounds that: (1) the lease contract has not expired, being a continuous one, the period whereof depended upon the lessee's need for the premises and his ability to pay the

rents; and (2) the compromise agreement entered into in the aforesaid Civil Case No. 051063-CV constitutes *res judicata* to the case before it.

Petitioner appealed to the Regional Trial Court of Manila which, in its decision of January 28, 1988 in Civil Case No. 87-42719, affirmed the decision of the lower court.

Respondent Court of Appeals affirmed in full the decision of the Regional Trial Court and held that: (1) the stipulation in the compromise agreement which, in its formulation, allows the lessee to stay on the premises as long as he needs it and can pay rents is valid, being a resolutory condition and, therefore, beyond the ambit of Article 1308 of the Civil Code; and (2) that a compromise has the effect of *res judicata*.

Petitioner's motion for reconsideration having been denied by respondent Court of Appeals, this present petition is now before us.

ISSUE: Whether or not in the present contract of lease, the lessee has sole power to determine its continuance or not.

HELD: NO. Contrary to the ruling of respondent court, the disputed stipulation "for as long as the defendant needed the premises and can meet and pay said increases is a purely potestative condition because it leaves the effectivity and enjoyment of leasehold rights to the sole and exclusive will of the lessee. It is likewise a suspensive condition because the renewal of the lease, which gives rise to a new lease, depends upon said condition. It should be noted that a renewal constitutes a new contract of lease although with the same terms and conditions as those in the expired lease. It should also not be overlooked that said condition is not resolutory in nature because it is not a condition that terminates the lease contract. The lease contract is for a definite period of three (3) years upon the expiration of which the lease automatically terminates.

The invalidity of a condition in a lease contract similar to the one at bar has been resolved in *Encarnacion vs. Baldomar, et al.*, 77 Phil. 470 [1946], where we ruled that in

an action for ejectment, the defense interposed by the lessees that the contract of lease authorized them to continue occupying the premises as long as they paid the rents is untenable, because it would leave to the lessees the sole power to determine whether the lease should continue or not. As stated therein, "(i)f this defense were to be allowed, so long as defendants elected to continue the lease by continuing the payment of the rentals, the owner would never be able to discontinue it; conversely, although the owner should desire the lease to continue, the lessees could effectively thwart his purpose if they should prefer to terminate the contract by the simple expedient of stopping payment of the rentals. This, of course, is prohibited by the aforesaid article of the Civil Code." (8 Manresa, 3rd ed., pp. 626-627; *Cuyugan vs. Santos*, 34 Phil. 100 [1916]).

The interpretation made by the respondent court cannot, therefore, be upheld. Paragraph 3 of the compromise agreement, read and interpreted in its entirety, is actually to the effect that the last portion thereof, which gives the private respondent sixty (60) days before the expiration of the term the right to give notice of his intent to renew, is subject to the first portion of said paragraph that "the term of the lease shall be renewed every three (3) years," thereby requiring the mutual agreement of the parties. The use of the word "renew" and the designation of the period of three (3) years clearly confirm that the contract of lease is limited to a specific period and that it is not a continuing lease. The stipulation provides for a renewal of the lease every three (3) years; there could not be a renewal if said lease did not expire, otherwise there is nothing to renew.

Resultantly, the contract of lease should be and is hereby construed as providing for a definite period of three (3) years and that the automatic increase of the rentals by twenty percent (20%) will take effect only if the parties decide to renew the lease. A contrary interpretation will result in a situation where the continuation and effectivity of the contract will depend only upon the will of the lessee, in violation of Article 1308 of the Civil Code and the aforesaid doctrine in *Encarnacion*. The compromise agreement should

be understood as bearing that import which is most adequate to render it effectual. Where the instrument is susceptible of two interpretations, one which will make it invalid and illegal and another which will make it valid and legal, the latter interpretation should be adopted.

PETITION GRANTED.

In case of conflict between an administrative order and the provisions of the Constitution, the latter prevails.

DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY SECRETARY JOSE MARI B. PONCE (OIC), PETITIONER, *vs.* DELIA T. SUTTON, ELLA T. SUTTON-SOLIMAN AND HARRY T. SUTTON, RESPONDENTS.
G.R. No. 162070, October 19, 2005
473 SCRA 392

FACTS: The case at bar involves a land in Aroroy, Masbate, inherited by respondents which has been devoted exclusively to cow and calf breeding. On October 26, 1987, pursuant to the then existing agrarian reform program of the government, respondents made a voluntary offer to sell (VOS) their landholdings to petitioner DAR to avail of certain incentives under the law.

On June 10, 1988, a new agrarian law, Republic Act (R.A.) No. 6657, also known as the Comprehensive Agrarian Reform Law (CARL) of 1988, took effect. It included in its coverage farms used for raising livestock, poultry, and swine.

On December 4, 1990, in an *en banc* decision in the case of *Luz Farms vs. Secretary of DAR*, 192 SCRA 51 (1990), this Court ruled that lands devoted to livestock and poultry raising are not included in the definition of agricultural land. Hence, we declared as unconstitutional certain provisions of the CARL, insofar as they included livestock farms in the coverage of agrarian reform.

In view of the *Luz Farms ruling*, respondents filed with petitioner DAR a formal request to withdraw their VOS as

their landholding was devoted exclusively to cattle-raising and thus, exempted from the coverage of the CARL.

On December 21, 1992, the Municipal Agrarian Reform Officer of Aroroy, Masbate, inspected respondents' land and found out that it was devoted solely to cattle-raising and breeding. He recommended to the DAR Secretary that it be exempted from the coverage of the CARL.

On April 27, 1993, respondents reiterated to petitioner DAR the withdrawal of their VOS and requested the return of the supporting papers they submitted in connection therewith. Petitioner ignored their request.

On December 27, 1993, DAR issued *A.O. No. 9, series of 1993*, which provided that only portions of private agricultural lands used for the raising of livestock, poultry and swine as of June 15, 1988 shall be excluded from the coverage of the A.O., fixed the following retention limits, *viz.*, animal-land ratio (*i.e.*, 1 hectare of land per 1 head of animal shall be retained by the landowner), and a ratio of 1.7815 hectares for livestock infrastructure for every 21 heads of cattle shall likewise be excluded from the operations of the CARL.

On February 4, 1994, respondents wrote to DAR Secretary and advised him to consider as final and irrevocable the withdrawal of their VOS as, under the *Luz Farms doctrine*, their entire landholding is exempted from the CARL.

On September 14, 1995, then DAR Secretary Ernesto D. Garilao issued an Order partially granting the application of respondents for exemption from the coverage of CARL. Applying the retention limits outlined in the DAR A.O. No. 9, petitioner exempted 1,209 hectares of respondents' land for grazing purposes, and a maximum of 102.5635 hectares for infrastructure. Petitioner ordered the rest of respondents' landholding to be segregated and placed under Compulsory Acquisition.

Respondents moved for reconsideration. They contend that their entire landholding should be exempted as it is devoted exclusively to cattle-raising. Their motion was

denied. They filed a notice of appeal with the Office of the President assailing: (1) the reasonableness and validity of DAR A.O. No. 9, s. 1993, which provided for a ratio between land and livestock in determining the land area qualified for exclusion from the CARL, and (2) the constitutionality of DAR A.O. No. 9, s. 1993, in view of the *Luz Farms case* which declared cattle raising lands excluded from the coverage of agrarian reform.

On October 9, 2001, the Office of the President affirmed the impugned Order of petitioner DAR. It ruled that DAR A.O. No. 9, s. 1993, does not run counter to the *Luz Farms case* as the A.O. provided the guidelines to determine whether a certain parcel of land is being used for cattle-raising. However, *the issue on the constitutionality of the assailed A.O. was left for the determination of the courts as the sole arbiters of such issue.*

On appeal, the Court of Appeals ruled in favor of the respondents. It declared DAR A.O. No. 9, s. 1993, void for being contrary to the intent of the 1987 Constitutional Commission to exclude livestock from the land reform program of the government.

ISSUE: Whether or not DAR A.O. No. 9, series of 1993, which prescribes a maximum retention limit for owners of lands devoted to livestock raising, is unconstitutional.

HELD: Administrative agencies are endowed with powers legislative in nature, *i.e.*, the power to make rules and regulations. They have been granted by Congress with the authority to issue rules to regulate the implementation of a law entrusted to them. Delegated rule-making has become a practical necessity in modern governance due to the increasing complexity and variety of public functions. However, while administrative rules and regulations have the force and effect of law, they are not immune from judicial review. They may be properly challenged before the courts to ensure that they do not violate the Constitution and no grave abuse of administrative discretion is committed by the administrative body concerned.

The fundamental rule in administrative law is that, to be valid, *administrative rules and regulations* must be issued by authority of a law and *must not contravene the provisions of the Constitution.* The rulemaking power of an administrative agency may not be used to abridge the authority given to it by Congress or by the Constitution. *Nor can it he used to enlarge the power of the administrative agency beyond the scope intended. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by administrative agencies and the scope of their regulations.*

In the case at bar, we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, *the deliberation of the 1987 Constitutional Commission show a clear intent to exclude, inter alia, all lands exclusively devoted to livestock, swine and poultry-raising.* The Court clarified in the *Luz Farms case* that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not agricultural activity. A great portion of the investment in this enterprise is in the form of industrial fixed assets, such as: animal housing structures and facilities, drainage, waterers and blowers, feedmill with grinders, mixers, conveyors, exhausts and generators, extensive warehousing facilities for feeds and other supplies; anti-pollution equipment like bio-gas and digester plants augmented by lagoons and concrete ponds, deepwells, elevated water tanks, pump-house, sprayers, and other technological appurtenances.

Clearly, petitioner *DAR has no power to regulate livestock farms, which have been exempted by the Constitution from the coverage of agrarian reform.* It has exceeded its power in issuing the assailed A.O.

The subsequent case of *Natalia Realty, Inc. vs. DAR,* 225 SCRA 278 (1993), reiterated our ruling in the *Luz Farms*

case. In *Natalia Realty,* the Court held that industrial, commercial and residential lands are not covered by the CARL. We stressed anew that *while Section 4 of R.A. No. 6657 provides that the CARL shall cover all public and private agricultural lands, the term "agricultural land" does not include lands classified as mineral, forest, residential, commercial or industrial.* Thus, in *Natalia Realty,* even portions of the Antipolo Hills Subdivision, which are *arable yet still undeveloped,* could not be considered as agricultural lands subject to agrarian reform as these lots were already classified as residential lands.

Moreover, it is a fundamental rule of statutory construction that the reenactment of a statute by Congress without substantial change is an implied legislative approval and adoption of the previous law. On the other hand, by making a new law, Congress seeks to supersede an earlier one. In the case at bar, after the passage of the 1988 CARL, Congress enacted R.A. No. 7881, which amended certain provisions of the CARL. Specifically, *the new law changed the definition of the terms "agricultural activity" and "commercial farming" by dropping from its coverage lands that are devoted to commercial livestock, poultry and swine-raising. With this significant modification, Congress clearly sought to align the provisions of our agrarian laws with the intent of the 1987 Constitutional Commission to exclude livestock farms from the coverage of agrarian reform.*

In sum, it is doctrinal that rules of administrative bodies must be in harmony with the provisions of the Constitution. They cannot amend or extend the Constitution. To be valid, they must conform to and be consistent with the Constitution. In case of conflict between an administrative order and the provisions of the Constitution, the latter prevails. The assailed A.O. of petitioner DAR was properly stricken down as unconstitutional as it enlarges the coverage of agrarian reform beyond the scope intended by the 1987 Constitution.

PETITION DISMISSED. ASSAILED DECISION AND RESOLUTION AFFIRMED.

RESTATEMENT OF THE RULE

It is always presumed that the legislature, in drafting and enacting any particular statute, had full knowledge and took full cognizance of all existing laws on the same subject or relating thereto. (Black, *Construction and Interpretation of Laws*, p. 345, 2nd ed.). It is for this reason, that courts of justice, when confronted with apparently conflicting statutes, should endeavor to reconcile the same instead of declaring outright the invalidity of one against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize them if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so to give effect to both while at the same time also according due respect to a coordinate department of the government. (*Gordon vs. Veridiano, supra*).

CHAPTER XI

CONSTRUCTION AND INTERPRETATION OF THE CONSTITUTION

The commentaries and jurisprudence discussed herein below is more in accord with the construction and interpretation of the 1987 Philippine Constitution. This is to enlighten and guide present-day law students and even lawyers for purposes of academic discussion.

> "A constitution is a system of fundamental law for the governance and administration of a nation. It is supreme, imperious, absolute and unalterable except by the authority from which it emanates. It has been defined as the fundamental and paramount law of the nation. It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which government is founded. The fundamental conception in other words is that it is a supreme law to which all other laws must conform and in accordance with which all private rights must be determined and all public authority administered. Under the doctrine of constitutional supremacy, if a law or contract violates any norm of the constitution, that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute and contract."

Thus says the Supreme Court through Justice Josue N. Bellosillo in the case of *Manila Prince Hotel vs. Government Service Insurance System* (G.R. No. 122156, February 3, 1997, 267 SCRA 408) when it directed the respondents G.S.I.S., et al., to cease and desist from selling the 51% shares of the Manila Hotel Corporation to a foreign entity and accept the matching bid of Manila Prince Hotel Corporation under the Filipino First policy enshrined in the 1987 Constitution.

Like a statute, the primordial rule in the construction and interpretation of the constitution is the intention of the framers of the written constitution. But this intention is readily available in the instrument itself. Thus, the natural meaning of the words used in every provision should be taken as it is. Technical words should be given their technical meaning, unless it appears that terms were used in a more popular sense.

Our statutes and jurisprudence gives us more of the guiding principles in the construction and interpretation of the constitution.

ALL PROVISIONS OF THE CONSTITUTION ARE SELF-EXECUTING; EXCEPTIONS

In *Manila Prince Hotel vs. G.S.I.S., supra,* the Supreme Court declared that:

Admittedly, some constitutions are merely declarations of policies. Their provisions command the legislature to enact laws and carry out the purposes of the framers who merely establish an outline of government providing for the different departments of the governmental machinery and securing certain fundamental and inalienable rights of citizens. A provision which lays down a general principle, such as those found in Art. II of the 1987 Constitution, is usually not self-executing. But a provision which is complete in itself and becomes operative without the aid of supplementary or enabling legislation, or that which supplies sufficient rule by means of which the right it grants may be enjoyed or protected, is self-executing. Thus a constitutional provision

is self-executing if the nature and extent of the right conferred and the liability imposed are fixed by the constitution itself, so that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action.

As against constitutions of the past, modern constitutions have been generally drafted upon a different principle and have often become in effect extensive codes of laws intended to operate directly upon the people in a manner similar to that of statutory enactments, and the function of constitutional conventions has evolved into one more like that of a legislative body. Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —

> x x x in case of doubt, the Constitution should be considered self-executing rather than non-self-executing x x x Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule, would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the law-making body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. (Cruz, Isagani A., *Constitutional Law,* 1993 ed., pp. 8-10).

NOTE: Section 10, second paragraph of Article XII provides:

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

PROHIBITORY PROVISIONS GIVEN LITERAL AND STRICT INTERPRETATION

In *Civil Liberties Union vs. The Executive Secretary* (G.R. No. 83896, February 2, 1991, 194 SCRA 317), Executive Order No. 284 issued on July 25, 1987 which in effect, allows members of the Cabinet, their under-secretaries and assistant secretaries to hold other government offices or positions, although subject to the limitation therein imposed, was declared null and void as it runs counter to the provisions of Section 13, Article VII of the 1987 Constitution, which provides as follows:

> "Sec. 13. The President, Vice President, the Members of the Cabinet and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office."

In declaring Executive Order 284 null and void, the Supreme Court said:

> "Since the evident purpose of the framers of the 1987 Constitution is to impose a stricter prohibition on the President, Vice President, Members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase 'unless otherwise provided in this Constitution' must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself to wit: the Vice President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being *ex-officio* member of the Judicial and Bar Council by virtue of Section 8(1), Article VIII."

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary function of said official offices. (*Varney vs. Justice*, 86 Ky 596; 6 S.W. 457; *Hunt vs. State*, 22 Tex. App. 396, 3 S.W. 233).

In the above *en banc* decision, the following guidelines in construction and interpretation of the constitution are stressed:

I. A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose. (*Maxwell vs. Dow*, 176 U.S. 581, 20 Sup. Ct. 448, 44 L. Ed. 597).

II. It is a well-established rule in constitutional construction that not one provision of the Constitution is to be separated from all the others, to be considered alone, but

that all the provisions bearing upon a particular subject are to be brought into view and to be interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory. (*People vs. Wright*, 6 Col. 92; Thomas M. Colley, *A Treatise on the Constitutional Limitations*, Vol. 1, p. 128, citing *Attorney General vs. Detroit and Erin Plank Road Co.*, 2 Mich. 114; *People vs. Burns*, 5 Mich. 114; *District Township vs. Dubuque*, 7 Iowa 262; *Grants vs. Grauman [Ky]*, 320 SW 2d 364; *Runyon vs. Smith*).

III. While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. Debates in the constitutional convention are of value as showing the view of the individual members, and as indicating the reasons for then-votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face. The proper interpretation therefore depends more on how it was understood by the people adopting it than the framer's understanding thereof. (16 *Corpus Juris Secundum*, 2.31, p. 105; *Commonwealth vs. Ralph*, III Pa. 365, 3 Atl. 220; *Household Finance Corporation vs. Shaffner*, 203, S.W 2d 734, 356 Mo. 808).

N.B. *Anti-Graft League of the Philippines, Inc. vs. Philip Ella C. Juico, et al.*, G.R. No. 83815, February 22, 1991, 194 SCRA 317, is consolidated in this case.

The above doctrine was reiterated in the case of *Dennis A. B. Funa vs. Executive Secretary Eduardo R. Ermita, et al.* (G.R. No. 184740, February 11, 2010, 612 SCRA 308).

Briefly, on October 4, 2006, respondent Maria Elena H. Bautista was appointed as Undersecretary of the Department of Transportation and Communication (DOTC), vice Augustin R. Benzon. Respondent Bautista was designated as Undersecretary for Maritime Transport of the department under Special Order No. 2006-171, dated October 23, 2006.

On September 1, 2008, following the resignation of then MARINA Administrator Vicente T. Suazo, Jr., respondent Bautista was designated as Officer-in-Charge (OIC), Office of the Administrator, MARINA, in concurrent capacity as DOTC Undersecretary. Hence, the petition for certiorari, prohibition and mandamus under Rule 65 with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to declare as unconstitutional the designation of respondent Undersecretary Maria Elena H. Bautista as Officer-in-Charge (OIC) of the Maritime Industry Authority (MARINA).

On January 5, 2009, during the pendency of this petition, Bautista was appointed Administrator of the MARINA vice Vicente T. Suazo, Jr., and she assumed her duties and responsibilities as such on February 2, 2009.

It was held that the designation of respondent Ma. Elena H. Bautista as Officer-in-Charge, Office of the Administrator, Maritime Industry Authority, in a concurrent capacity with her position as DOTC Undersecretary for Maritime Transport, is unconstitutional for being violative of Section 13, Article VII of the 1987 Constitution and therefore, null and void.

THE CONSTITUTIONAL PROVISION ON NATURAL-BORN CITIZENS OF THE PHILIPPINES GIVEN RETROACTIVE EFFECT

In upholding the House of Representatives Electoral Tribunal declaring the winning candidate as a natural born-

citizen and resident of Laoang, Northern Samar for voting purposes, the Supreme Court interprets the pertinent portion of the Constitution found in Article IV which reads:

> SECTION 1. The following are citizens of the Philippines:
>
> 1. Those who are citizens of the Philippines at the time of the adoption of the Constitution;
> 2. Those whose fathers or mothers are citizens of the Philippines;
> 3. Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; and
> 4. Those who are naturalized in accordance with law.
>
> SECTION 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their citizenship. Those who elect Philippine citizenship in accordance with paragraph 3 hereof shall be deemed natural-born citizens."

The Court interprets Section 1, Paragraph 3 above as applying not only to those who elect Philippine citizenship after February 2, 1987 but also to those who, having been born of Filipino mothers, elected citizenship before that date.

The provision in Paragraph 3 was intended to correct an unfair position which discriminates against Filipino women.

As extrinsic aid, the records of the deliberation of the Constitutional Commission were look into *viz.*:

> "MR. RODRIGO: But these provisions become very important because his election of Philippine citizenship makes him not only a Filipino citizen but a natural-born Filipino citizen entitling him to run for Congress.
>
> FR. BERNAS: Correct. We are quite aware of that and for that reason we will leave it to the body to approve that provisions of Section 4.
>
> MR. RODRIGO: I think there is a good basis for the provision because it strikes me as unfair that the Filipino citizen who was born a day before January 17, 1973 cannot be a Filipino citizen or a natural born-citizen." (Records of the Constitutional Commissioner, Vol. I, p. 231).
>
> x x x x x x x x x
>
> "MR. RODRIGO: The purpose of that provision is to remedy an inequitable situation. Between 1935 and 1973 when we were under the 1935 Constitution, those born of Filipino fathers but alien mothers were natural-born Filipinos. However, those born of Filipino mothers but alien fathers would have to elect Philippine citizenship upon reaching the age of majority; and if they do elect, they become Filipino citizens but not natural-born Filipino citizens." (Records of the Constitutional Commission, Vol. I, p. 356).

The foregoing significantly reveals the intent of the framers. To make the provision prospective from February 3, 1987 is to give a narrow interpretation resulting in an inequitable situation. It must also be retroactive.

It should be noted that in construing the law, the Courts are not always to be hedged in by the literal meaning of its language. The spirit and intendment thereof, must prevail over the letter, especially where adherence to the latter would result in absurdity and injustice. (*Casela vs. Court of Appeals*, 35 SCRA 279 [1970]).

A constitutional provision should be construed so as to give it effective operation and suppress the mischief at which it is aimed, hence, it is the spirit of the provision which should prevail over the letter thereof. (*Jarrolt vs. Mabberly*, 103 U.S. 580).

In the words of the Court in the case of *J.M. Tuason vs. LTA* (31 SCRA 413 [1970]):

> "To that primordial intent, all else is subordinated. Our constitution or any constitution is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their

form but are organic living institutions, the significance of which is vital, not formal. . ." (p. 427).

The provision in question was enacted to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not under earlier laws, conferred the status of a natural-born.

Under the 1973 Constitution, those born of Filipino fathers and those born of Filipino mothers with an alien father were placed on equal footing. They were both considered as natural-born citizens.

N.B. The constitutional provision is curative in nature. (*Co vs. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92191-92, July 30, 1991 and *Balanguit, Jr. vs. Electoral Tribunal of the House of Representatives*, G.R. Nos. 92202-03, July 30, 1991, 199 SCRA 692).

THE CONSTITUTION MUST BE CONSTRUED IN ITS ENTIRETY AS ONE, SINGLE DOCUMENT

In the Matter of Appointment dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido Vallarta as Judges of the Regional Trial Court of Branch 62, Bago City and of Branch 24, Cabanatuan City (Adm. Mat. No. 98-5-01-SC), the Supreme Court *en banc* resolved to declare VOID, the appointments of said judges signed by His Excellency, The President under date March 30, 1998.

The issue posed by this Administrative Matter is whether, during the period of the ban on appointments imposed by Section 15, Article VII of the Constitution, the President is nonetheless required to fill vacancies in the Judiciary in view of Sections 4(1) and 9 of Article VIII. A corollary question is whether he can make appointments to the judiciary during the period of the ban in the interest of public service.

The provisions of the constitution material to the inquiry at bar read as follows:

> Section 15, Article VII:
>
> "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."
>
> Section 4(1), Article VIII:
>
> "The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or, in its discretion, in divisions of three, five, or seven Members. Any vacancy shall be filled within ninety days from the occurrence thereof."
>
> Section 9, Article VIII:
>
> "The members of the Supreme Court and judges in lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.
>
> "For the lower courts, the President shall issue the appointments within ninety days from the submission of the list."

The Court's view is that during the period stated in Section 15, Article VII of the Constitution — "two months immediately before the next presidential elections and up to the end of his term" — the President is neither required to make appointments to the courts nor allowed to do so; and that Sections 4(1) and 9 of Article VIII simply mean that the President is required to fill vacancies in the courts within the time frames provided therein unless prohibited by Section 15 of Article VII. It is noteworthy that the prohibition on appointments comes into effect only once every six years.

Now, it appears that Section 15, Article VII is directed against two types of appointments: (1) those made for buying

votes; and (2) those made for partisan considerations. The first refers to those appointments made within the two months preceding a Presidential election and are similar to those which are declared election offenses in the Omnibus Election Code. (Sec. 261, pars. [a] and [g], Omnibus Election Code).

The second type of appointment prohibited by Section 15, Article VII consists of the so-called "midnight" appointments. In *Aytona vs. Castillo*, 4 SCRA 1 (1962), it was held that after the proclamation of Diosdado Macapagal as duly elected President, President Carlos P. Garcia, who was defeated in his bid for re-election, became no more than a "caretaker" administrator whose duty was to "prepare for the orderly transfer of authority to the incoming President."

Section 15, Article VII has a broader scope than the Aytona ruling. It may not unreasonably be deemed to contemplate not only "midnight" appointments — those made obviously for partisan reasons as shown by their number and the time of their making — but also appointments presumed made for the purpose of influencing the outcome of the Presidential election.

On the other hand, the exception in the same Section 15 of Article VII — allowing appointments to be made during the period of the ban therein provided — is much narrower than that recognized in Aytona. The exception allows only the making of temporary appointments to executive positions when continued vacancies will prejudice public service or endanger public safety. Obviously, the article greatly restricts the appointing power of the President during the period of the ban.

Considering the respective reasons for the time frames for filling vacancies in the courts and the restriction on the President's power of appointment, it is this Court's view that, as a general proposition, in case of conflict, the former should yield to the latter. Surely, the prevention of vote-buying and similar evils outweighs the need for avoiding delays in filling up of court vacancies or the disposition of some cases. Temporary vacancies can abide the period of the ban which, incidentally and as earlier pointed out, comes to exist only

once in every six years. Moreover, those occurring in the lower courts can be filled temporarily by designation. But prohibited appointments are long lasting and permanent in their effects. They may, as earlier pointed out in fact influence the results of elections and, for that reason, their making is considered an election offense.

To the contention that may perhaps be asserted, that Sections 4(1) and 9 of Article VIII should prevail over Section 15 of Article VII, because they may be considered later expressions of the people when they adopted the Constitution, it suffices to point out that the Constitution must be construed in its entirety as one, single instrument.

In *Arturo M. de Castro vs. JBC and President Gloria M. Arroyo* (G.R. No. 191002, March 17, 2010, 615 SCRA 666) case, the Supreme Court dealing on the same issue of midnight appointment by the outgoing President reversed the above ruling on Valenzuela and Vallarta. The Supreme Court En Banc held that the prohibition under Art. VIII, Section 15 of the Constitution that two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety does not apply to appointments to fill a vacancy in the Supreme Court on the following grounds:

1. The 90-day limitation fixed in Section 4(1), Article VIII for the President to fill the vacancy in the Supreme Court was undoubtedly a Special Provision to establish a definite mandate for the President as the appointing power, and cannot be defeated by mere judicial interpretation in Valenzuela to the effect that Section 15, Article VII prevailed because it was ***"couched in stronger negative language"*** (*Special provision prevails over general provision*);
2. The non-applicability of Section 15, Article VII to appointments in the Judiciary was confirmed by

then Senior Associate Justice Florenz D. Regalado to the Judicial and Bar Counsel itself (*Opinions of officials charged in interpreting the statute*);

3. The fact that in Article VII, Sections. 14 and 16 refer only to appointments within the Executive Department renders conclusive that Section 15 also applies only to the Executive Department consistent with the rule that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part must be considered together with the other parts, and kept subservient to the general intent of the whole enactment (*Statutes as a whole*);
4. The wisdom of having the new President, instead of the current incumbent President, appoint the next Chief Justice is itself suspect, and cannot ensure judicial independence because the appointee can also become beholden to the appointing authority (*Liberal Interpretation of Statutes*); and,
5. In their deliberations on the mandatory period for the appointment of Supreme Court Justices under Section 4(1), Article VIII, the framers neither discussed, nor mentioned, nor referred to the ban against midnight appointments under Section 15, Article VII, or its effects on the 90-day period, or *vice versa*, because they never intended Section 15, Article VII to apply to a vacancy in the Supreme Court (*Extrinsic Aids*).

LIBERAL CONSTRUCTION OF ONE TITLE ONE SUBJECT RULE

A liberal construction was applied by the Supreme Court in interpreting Article VI, Sec. 26(1) of the Constitution on the "one title one subject" rule. (*Robert Tobias, et al. vs. Hon. City Mayor Benjamin S. Abalos, et al.*, G.R. No. 114783, December 8, 1994, 239 SCRA 106).

Invoking their rights as taxpayers and as residents of Mandaluyong, herein petitioners assail the constitutionality of Republic Act No. 7675, otherwise known as "An Act Converting the Municipality of Mandaluyong into a Highly Urbanized City to be Known as the City of Mandaluyong."

Petitioners now come before this Court, contending that R.A. No. 7675, specifically Article VIII, Section 49 thereof, is unconstitutional for being violative of three specific provisions of the Constitution.

Article VIII, Section 49 of R.A. No. 7675 provides:

> "As a highly urbanized city, the City of Mandaluyong shall have its own legislative district with the first representative to be elected in the next national election after the passage of this Act. The remainder of the former legislative district of San Juan/Mandaluyong shall become the new legislative district of San Juan with its first representative to be elected at the same election."

Petitioners' first objection to the aforequoted provision of R.A. No. 7675 is that it contravenes the "one subject-one bill" rule, as enunciated in Article VI, Section 26(1) of the Constitution, to wit:

> "Section 26(1). Every bill passed by the Congress shall embrace only one subject which shall be expressed in the title thereof.

Petitioner allege that the inclusion of the assailed Section 49 in the subject law resulted in the latter embracing two principal subjects, namely: (1) the conversion of Mandaluyong into a highly urbanized city; and (2) the division of the congressional district of San Juan/Mandaluyong into two separate districts.

Petitioners contend that the second aforestated subject is not germane to the subject matter of R.A. No. 7675 since the said law treats of the conversion of Mandaluyong into a highly urbanized city, as expressed in the title of the law. Therefore, since Section 9 treats of a subject distinct from

that stated in the title of the law, the "one subject-one bill" rule has not been complied with.

In dismissing the petition, the Supreme Court declared that contrary to petitioners' assertion, the creation of a separate congressional district for Mandaluyong is not a subject separate and distinct from the subject of its conversion into a highly urbanized city but is a natural and logical consequence of its conversion into a highly urbanized city. Verily, the title of R.A. No. 7675, "An Act Converting the Municipality of Mandaluyong Into a Highly Urbanized City of Mandaluyong" necessarily includes and contemplates the subject treated under Section 49 regarding the creation of a separate congressional district for Mandaluyong.

Moreover, a liberal construction of the "one title-one subject" rule has been invariably adopted by the court so as not to cripple or impede legislation. Thus, in *Sumulong vs. COMELEC* (83 Phil. 288 [1941]), we ruled that the constitutional requirement as now expressed in Article VI, Section 26(1) "should be given a practical rather than a technical construction. It should be sufficient compliance with such requirement if the title expresses the general subject and all the provisions are germane to the general subject."

RESIGNATION OF THE PRESIDENT UNDER THE 1987 CONSTITUTION IS NOT GOVERNED BY ANY FORMAL REQUIREMENT AS TO FORM. IT CAN BE ORAL. IT CAN BE WRITTEN. IT CAN BE EXPRESS. IT CAN BE IMPLIED.

After monstrous demonstration calling for his resignation, President Joseph E. Estrada, in the afternoon of January 20, 2001 departed Malacañang Palace, the seat of presidency of the Philippine Republic with the following press statement:

> At twelve o'clock noon today, Vice President Gloria Macapagal-Arroyo took her oath as President of the Republic of the Philippines. While along with many other legal minds of our country, I have strong and serious doubts about the legality and constitutionality of her proclamation as President, I do not wish to be a factor that will prevent the restoration of unity and order in our civil society.
>
> It is for this reason that I now leave Malacañang Palace, the seat of the presidency of this country, for the sake of peace and in order to begin the healing process of our nation. I leave the Palace of our people with gratitude for the opportunities given to me for service to our people. I will not shirk from any future challenges that may come ahead in the same service of our country.
>
> I call on all my supporters and followers to join me in the promotion of a constructive national spirit of reconciliation and solidarity.
>
> May the Almighty bless our country and beloved people.
>
> MABUHAY!

In his petition for *quo warranto*, petitioner Joseph Ejercito Estrada attacks the legitimacy of the presidency of respondent Gloria Macapagal-Arroyo and seeks a declaration that petitioner is the lawful President of the Philippines.

The issue is whether or not petitioner Joseph E. Estrada resigned as president.

The Supreme Court *en banc* through Hon. Justice Reynato S. Puno declared:

> The issue brings under the microscope the meaning of section 8, Article VII of the Constitution which provides:
>
> "Sec. 8. In case of death, permanent disability, removal from office or resignation of the President, the Vice President shall become the President to serve the unexpired term. In case of death, permanent disability, removal from office, or resignation of both the President and Vice President, the President of the Senate or, in case of his inability, the Speaker of the House of Representatives, shall then act as President until the President or Vice President shall have been elected and qualified.

x x x x x x x x x

The issue then is whether the petitioner resigned as President or should be considered resigned as of January 20, 2001 when respondent took her oath as the 14th President of the Republic. Resignation is not a high level legal abstraction. It is a factual question and its elements are beyond quibble: there must be an intent to resign and the intent must be coupled by acts of relinquishment. The validity of a resignation is not governed by any formal requirement as to form. It can be oral. It can be written. It can be express. It can be implied. As long as the resignation is clear, it must be given legal effect.

In the cases at bar, the facts show that petitioner did not write any formal letter of resignation before he evacuated Malacañang Palace in the afternoon of January 20, 2001 after the oath-taking of respondent Arroyo. Consequently, whether or not petitioner resigned has to be determined from his acts and omissions before, during and after January 20, 2001 or by the totality of prior, contemporaneous and posterior facts and circumstantial evidence bearing a material relevance on the issue.

Using the totality test, which culminated in the president's departure from Malacañang and the press statement above-quoted, it held that petitioner Estrada resigned as President.

Continuing, the Supreme Court added:

> In sum, we hold that the resignation of the petitioner cannot be doubted. It was confirmed by his leaving Malacañang. In the press release containing his final statement: (1) he acknowledged the oath-taking of the respondent as President of the Republic albeit with reservation about its legality; (2) he emphasized he was leaving the Palace, the seat of the presidency, for the sake of peace and in order to begin the healing process of our nation. He did not say he was leaving the Palace due to any kind of inability and that he was going to re-assume the presidency as soon as the disability disappears; (3) he expressed his gratitude to the people for the opportunity to serve them. Without doubt, he was referring to the past opportunity given him to serve the people as President; (4) he assured that he will not shirk from any future challenge that may come ahead in the same service of our country. Petitioner's reference is to a future challenge after occupying the office of the president which he has given up; and (5) he called on his supporters to join him in the promotion of a constructive national spirit of reconciliation and solidarity. Certainly, the national spirit of reconciliation and solidarity could not be attained if he did not give up the presidency. The press release was petitioner's valedictory, his final act of farewell. His presidency is now in the past tense.

In his *concurring opinion*, Hon. Justice Jose C. Vitug articulated the departure of petitioner, Estrada, from Malacañang and his "valedictory" message as resignation in this wise: "Abandonment of office" is a specie of resignation, and it connotes the giving up of the office although not attended by the formalities normally observed in resignation. Abandonment may be effected by a positive act or can be the result of an omission, whether deliberate or not. (*Joseph E. Estrada vs. Gloria Macapagal-Arroyo*, G.R. No. 146738, March 02, 2004, 353 SCRA 452).

The One-year Residency Requirement for Congressional Candidate under Section 6, Article VI of the Constitution Liberally and Equitably Construed to Give Fullest Effect to the Manifest Will of the People

In *Fernandez vs. House of Representatives Electoral Tribunal* (G.R. No. 187478, December 21, 2009, 608 SCRA 733), petitioner Fernandez was proclaimed as the duly elected Representative of the First District of Laguna on June 27, 2007, having garnered a total vote of 95,927, winning by a margin of 35,000 votes over the nearest candidate. Through a petition for *quo warranto* before the HRET against the petitioner, the tribunal declares petitioner Fernandez ineligible for the Office of the House of Representative of the First District of Laguna for lack of residence, and orders him to vacate his office. It likewise denied petitioner's motion for reconsideration.

The Court en banc, found the interpretation of the House of Representatives Electoral Tribunal (HRET) of the one-year residency requirement for congressional candidates under Art. VI, Sec. 1 of the Constitution to be "overly restrictive and unwarranted under the factual circumstances of the case." The Court stressed that the law does not require persons to be in their home 24 hours a day, seven days a week to fulfill the residency requirement and exercising their rights of ownership thereto in other places aside from the address they had indicated in their place of residence in their COC. It also held that the HRET has put undue emphasis on petitioner Fernandez owning houses in Pagsanjan and Cabuyao while only leasing a townhouse in Laguna as that in effect imposed a property requirement to the right to hold public office which is unconstitutional.

SPECIAL PROVISION PREVAILS OVER A GENERAL ONE

In the exercise by the Senate of its constitutional power to concur with the Visiting Forces Agreement between the Republic of the Philippines and the United States of America, Section 25 of Article XVIII was considered as special and controlling provision over Section 21, Article VII of the Constitution. Said the Supreme Court:

> The 1987 Philippine Constitution contains two provisions requiring the concurrence of the Senate on treaties or international agreements. Section 21, Article VII, which herein respondents invoke, reads:
>
> "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."
>
> Section 25, Article XVIII, provides:
>
> "After the expiration in 1991 of the Agreement between the Republic of the Philippines and the United States of America concerning Military Bases, foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate and when the Congress so require, ratified by a majority of the votes cast by the people in a national referendum held for that purpose, and recognized as a treaty by the other contracting State."

Section 21, Article VII deals with treaties or international agreements in general, in which case, the concurrence of at least two-thirds (2/3) of all the Members of the Senate is required to make the subject treaty, or international agreement, valid and binding on the part of the Philippines. This provision lays down the general rule on treaties or international agreements and applies to any form of treaty with a wide variety of subject matter, such as, but not limited to, extradition or tax treaties or those economic in nature. All treaties or international agreements entered into by the Philippines, regardless of subject matter, coverage, or particular designation or appellation, requires the concurrence of the Senate to be valid and effective.

In contrast, Section 25, Article XVIII is a special provision that applies to treaties which involve the presence of foreign military bases, troops or facilities in the Philippines. Under this provision, the concurrence of the Senate is only one of the requisites to render compliance with the constitutional requirements and to consider the agreement binding on the Philippines. Section 25, Article XVIII further requires that "foreign military bases, troops, or facilities" may be allowed in the Philippines only by virtue of a treaty duly concurred in by the Senate, ratified by a majority of the votes cast in a national referendum held for that purpose if so required by Congress, and recognized as such by the other contracting state.

It is our considered view that both constitutional provisions, far from contradicting each other, actually share some common ground. These constitutional provisions both embody phrases in the negative and thus, are deemed prohibitory in mandate and character. In particular, Section 21 opens with the clause "No treaty x x x," and Section 25 contains the phrase "shall not be allowed." Additionally, in both instances, the concurrence of the Senate is

indispensable to render the treaty or international agreement valid and effective.

To our mind, the fact that the President referred the VFA to the Senate under Section 21, Article VII, and that the Senate extended its concurrence under the same provision, is immaterial. For in either case, whether under Section 21, Article VII or Section 25, Article XVIII, the fundamental law is crystalline that the concurrence of the Senate is mandatory to comply with the strict constitutional requirements.

On the whole, the VFA is an agreement which defines the treatment of United States troops and personnel visiting the Philippines. It provides for the guidelines to govern such visits of military personnel, and further defines the rights of the United States and the Philippine government in the matter of criminal jurisdiction, movement of vessel and aircraft, importation and exportation of equipment, materials and supplies.

Undoubtedly, Section 25, Article XVIII, which specifically deals with treaties involving foreign military bases, troops, or facilities, should apply in the instant case. To a certain extent and in a limited sense, however, the provisions of Section 21, Article VII will find applicability with regard to the issue and for the sole purpose of determining the number of votes required to obtain the valid concurrence of the Senate, as will be further discussed hereunder.

It is a finely-imbedded principle in statutory construction that a special provision or law prevails over a general one. *Lex specialis derogant generali.* Thus, where there is in the same statute a particular enactment and also a general one which, in its most comprehensive sense, would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language which are not within the provision of the particular enactment. *(BAYAN [Bagong Alyansang Makabayan] vs. Zamora,* G.R. No. 138570, October 10, 2000, 342 SCRA 449).

The power to promulgate rules of pleading, practice, and procedure is now the Court's exclusive domain and is no longer shared by this Court with Congress, much less Executive.

In its petition, the GSIS seeks exemption from the payment of legal fees imposed on government-owned or -controlled corporations under Section 22, Rule 141 (Legal Fees) of the Rules of Court. The said provision states:

> "Sec. 22. *Government exempt.*—The Republic of the Philippines, its agencies and instrumentalities are exempt from paying the legal fees provided in this Rule. Local government corporations and **government-owned or -controlled corporations with or without independent charter are not exempt from paying such fees.**"

However, all court actions, criminal or civil, instituted at the instance of the provincial, city or municipal treasurer or assessor under Sec. 280 of the Local Government Code of 1991 shall be exempt from the payment of court and sheriff's fees.

The GSIS anchors its petition on Section 39 of its charter, RA 8291 (The GSIS Act of 1997):

> "Sec. 39. *Exemption from Tax, Legal Process and Lien.*—It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low and possible in order not to burden members of the GSIS and their employers. **Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act**. Accordingly, notwithstanding any laws to the contrary, **the GSIS, its assets, revenues including accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds**. These exemptions shall continue unless expressly and specifically revoked and **any assessment**

against GSIS as of the approval of this Act are hereby considered paid. Consequently, **all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect."**

Now, may Congress exempt the GSIS from the payment of legal fees? This was answered in the negative.

The GSIS urges the Court to show deference to Congress by recognizing the exemption of the GSIS under Section 39 of RA 8291 from legal fees imposed under Rule 141. Effectively, the GSIS wants this Court to recognize a power of Congress to repeal, amend or modify a rule of procedure promulgated by the Court. However, the Constitution and jurisprudence do not sanction such view.

Rule 141 (on Legal Fees) of the Rules of Court was promulgated by this Court in the exercise of its rule-making powers under Section 5(5), Article VIII of the Constitution:

> "Sec. 5. The Supreme Court shall have the following powers:
>
> x x x x x x x x x
>
> Promulgate rules concerning the protection and enforcement of constitutional rights, pleadings, and procedure in all court, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

The Rules of Court was promulgated in the exercise of the Court's rule-making power. It is essentially procedural in nature as it does not create, diminish, increase or modify substantive rights. Corollarily, Rule 141 is basically procedural. It does not create or take away a right but simply operates as a means to implement an existing right.

In particular, it functions to regulate the procedure of exercising a right of action and enforcing a cause of action. In particular, it pertains to the procedural requirement of paying the prescribed legal fees in the filing of a pleading or any application that initiates an action or proceeding.

Clearly, therefore, the payment of legal fees under Rule 141 of the Rules of Court is an integral part of the rules promulgated by this Court pursuant to its rule-making power under Section 5(5), Article VIII of the Constitution. In particular, it is part of the rules concerning pleading, practice, and procedure in court. Indeed, payment of legal (docket) fees is a jurisdictional requirement.

Since the payment of legal fees is a vital component of the rules promulgated by this Court concerning pleading, practice and procedure, it cannot be validly annulled, changed or modified by Congress. As one of the safeguards of this Court's institutional independence, the power to promulgate rules of pleading, practice and procedure is now the Court's exclusive domain. That power is no longer shared by this Court with Congress, much less with the Executive. (*In Re: Petition for Recognition of the Exemption of the GSIS from Payment of Legal Fees*, A.M. No. 08-2-01-0, February 11, 2010, 612 SCRA 193; *In Re: Exemption of National Power Corporation from Payment of Filing/Docket Fees*, A.M. No. 05-10-20 SC, March 10, 2010, 615 SCRA 1).

SUPREMA LEX

It is time-honored that the Constitution is the Supreme Law of the land. It is the law of all laws. Hence, if there is conflict between a statute and the Constitution, the statute shall yield to the Constitution.

Our civil code is explicit on this matter. Thus, when the Courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. It further adds that administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution. (Art. 7, NCC).

In fact, it is a basic precept in statutory construction that a statute should be interpreted in harmony with the Constitution. Thus, in a petition for recall, a punong barangay invoked Sec. 74(b) of the Local Government Code which states that no recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular local election was interpreted to be in harmony with Section 3 of Article X of the Constitution to "enact a local government code which should provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanism of recall, initiative and referendum x x x." (*Paras vs. COMELEC*, 264 SCRA 49 [1996], emphasis ours).

STARE DECISIS

Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines. (Art. 8, NCC). These are the decisions pronounced by the Supreme Court and has no reference to the decisions of the lower courts. (*Miranda vs. Imperial*, 77 Phil. 1066 [1947]).

In our jurisdiction, the doctrine of *stare decisis* or the rule of precedents is followed in that once a case has been decided in one way, then another case, involving the same issue should be decided in the same manner.

> "The principle of *stare decisis* applies with special force to the construction of constitutions, and an interpretation once deliberately put upon the provisions of such an instrument should not be departed from without grave reasons. The stability of many of the most important institutions of society depends upon the permanence, as well as the certainty, of the construction placed by the judiciary upon the fundamental law." (Black, *Construction and Interpretation of Laws*, p. 44, 2nd ed.).

While the principle of *stare decisis* is a sound doctrine for purposes of stability, this should not be followed when

there is patent error in judgment. Such precedent should be abandoned and discarded.

CONCLUSION

The framers of the Constitution could not have anticipated all conditions that might arise in the aftermath of events. A constitution does not deal in details, but enunciates the general tenets that are intended to apply to all facts that may come about but which can be brought within its directions. Behind its conciseness is its inclusiveness and its apertures overridingly lie, not fragmented but integrated and encompassing, its spirit and its intent. The constitution cannot be permitted to deteriorate into just a petrified code of legal maxims and hand-tied to its restrictive letters and wordings, rather than be the pulsating law that it is. Designed to be an enduring instrument, its interpretation is not to be confined to the conditions and outlook which prevails at the time of its adoption; instead, it must be given flexibility to bring it in accord with the vicissitudes of changing and advancing affairs of men. Technicalities and play of words cannot frustrate the inevitable because there is an immense difference between *legalism* and *justice*. If only to secure our democracy and keep the social order — technicalities must give way. It has been said that the real essence of justice does not emanate from quibblings over patchwork legal technicalities but proceeds from the spirit's gut consciousness of the dynamic role as a brick in the ultimate development of social edifice. Anything else defeats the spirit and intent of the Constitution for which it is formulated and reduces its mandate to irrelevance and obscurity. (Separate concurring opinion of Justice Jose C. Vitug, in *Joseph E. Estrada vs. Gloria Macapagal-Arroyo*, G.R. No. 146738, March 2, 2001, 353 SCRA 452).

In fine, there is no hard and fast rule in the construction and interpretation of the Constitution. Jurisprudence will show that the strict, literal and liberal construction will depend after a careful and thorough study on each and every provision in question. Prospective and retrospective

application will likewise depend on each provision placed in a controversy.

> "The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves. The Court will thus construe the applicable constitutional provisions, not in accordance with how the executive or the legislative department may want them construed, but in accordance with what they say and provide." (*Sarmiento III vs. Mison*, No. L-79974, December 17, 1987, 156 SCRA 549).

CHAPTER XII

RECENT CASES ON STATUTORY CONSTRUCTION

NOTE: The recent jurisprudential rules on statutory construction placed in this chapter were selected to make the notes and discussions in the previous chapter of this book more emphatic.

It is basic in statutory construction that where the law does not distinguish, we should not distinguish.

MARY ELIZABETH TY-DELGADO, *vs.*
HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL AND PHILIP ARREZA PICHAY
G.R. No. 219603, January 26, 2016

FACTS: On 16 September 2008, the Court promulgated its Decision in G.R. Nos. 161032 and 161176, entitled "*Tulfo v. People of the Philippines,*" convicting Pichay by final judgment of four counts of libel. In lieu of imprisonment, he was sentenced to pay a fine in the amount of Six Thousand Pesos (P6,000.00) for each count of libel and One Million Pesos (P1,000,000.00) as moral damages. This Decision became final and executory on 1 June 2009. On 17 February 2011, Pichay paid One Million Pesos (P1,000,000.00) as moral damages and Six Thousand Pesos (P6,000.00) as fine for each count of libel. On 9 October 2012, Pichay filed his certificate of candidacy for the

position of Member of the House of Representatives for the First Legislative District of Surigao del Sur for the 13 May 2013 elections. On 18 February 2013, petitioner Mary Elizabeth Ty-Delgado (Ty-Delgado) filed a petition for disqualification under Section 12 of the Omnibus Election Code against Pichay before the Commission on Elections (Comelec), on the ground that Pichay was convicted of libel, a crime involving moral turpitude. Ty-Delgado argued that when Pichay paid the fine on 17 February 2011, the five-year period barring him to be a candidate had yet to lapse. In his Answer dated 4 March 2013, Pichay claimed that libel does not necessarily involve moral turpitude. He argued that he did not personally perform the acts prohibited and his conviction for libel was only because of his presumed responsibility as president of the publishing company. On 16 May 2013, the Provincial Board of Canvassers of Surigao del Sur proclaimed Pichay as the duly elected Member of the House of Representatives for the First Legislative District of Surigao del Sur. On 31 May 2013, Ty-Delgado filed an *ad cautelam* petition for *quo warranto* before the HRET reiterating that Pichay is ineligible to serve as Member of the House of Representatives. In a Decision dated 18 March 2015, the HRET held that it had jurisdiction over the present *quo warranto* petition since it involved the eligibility of a Member of the House of Representatives due to a disqualification under Section 12 of the Omnibus Election Code. However, the HRET held that there is nothing in *Tulfo v People of the Philippines*, which found that Pichay directly participated in any way in writing the libelous articles, aside from being the president of the publishing company. Thus, the HRET concluded that the circumstances surrounding Pichay's conviction for libel showed that the crime did not involve moral turpitude. HRET denied Ty-Delgado's motion for reconsideration for lack of merit considering that no new matter was raised which justified the reversal or modification of the Decision.

ISSUE: Whether or not the House of Representatives Electoral Tribunal gravely abused its discretion amounting to lack of or excess of jurisdiction in failing to declare

respondent Pichay ineligible or disqualified from holding the position of member of the House of Representatives by reason of his conviction of libel, a crime involving moral turpitude

HELD: The petition is meritorious.

A sentence by final judgment for a crime involving moral turpitude is a ground for disqualification under Section 12 of the Omnibus Election Code:

> Sec. 12. *Disqualifications.*—Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he was sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Moral turpitude is defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.

The dissenting opinion before the HRET even considered it "significant that Pichay has raised no issue against libel being a crime involving moral turpitude, and has taken issue only against ascribing moral turpitude to him despite his being only the President of the publishing company." The Revised Penal Code provides that: "Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same. The author or

editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof."

The provision did not distinguish or graduate the penalty according to the nature or degree of the participation of the persons involved in the crime of libel. It is basic in statutory construction that where the law does not distinguish, we should not distinguish. Accordingly, we cannot distinguish Pichay's criminal liability from the others' criminal liability only because he was the president of the company that published the libelous articles instead of being their author. Pichay's criminal liability was the same as that of the others, such that he was even meted the same penalty as that imposed on the author of the libelous articles. Having been convicted of the crime of libel, Pichay is disqualified under Section 12 of the Omnibus Election Code for his conviction for a crime involving moral turpitude.

PETITION GRANTED.

Noscitur a Sociis

ROSALINDA G. PAREDES, *vs.* FEED THE CHILDREN PHILIPPINES, INC. AND/OR DR. VIRGINIA LAO, HERCULES PARADIANG AND BENJAMIN ESCOBIA
G.R. No. 184397, September 09, 2015

FACTS: Respondent Feed the Children Philippines, Inc. (*FTCP*) is a nonstock, non-profit, and non-government organization duly incorporated under the Philippine laws in 1989. Its objective is to provide food, clothing, educational supplies and other necessities of indigent children worldwide Respondents Dr. Virginia Lao, Hercules Paradiang and Benjamin Escobia were members of the FTCP Board of Trustees (*Board*) and Executive Committee (*Execom*) of FTCP. Petitioner Rosalinda Paredes was FTCP's National Director. Her functions and duties include project management, fund accessing, income generation, financial

management, and administration of the organization. She also signed all the FTCP checks and approved all requisitions and disbursements of FTCP funds. As per FTCP's By-laws, it was also her duty to execute all resolutions and/or decisions of the Board. On August 12, 2005, forty-two (42) FTCP employees signed a petition letter addressed to the Board expressing their complaints against alleged detestable practices of petitioner, to wit: seeking exemption from policies which she herself had approved; withholding organization funds despite approval of its release; procuring health insurance for herself without paying her share of the premium; and receiving additional fees contrary to the terms of her contract. When the Board convened for a meeting on August 28, 2005, petitioner was not allowed to participate. She was only allowed to join the meeting after three hours. During the meeting, the Board discussed the animosity between the petitioner and the staff of FTCP and how they would address the issue since they have inadequate grievance mechanism for issues involving top management. It was decided in the same meeting that petitioner submit herself for audit, to which the latter adamantly refused. The Board resolved to suspend petitioner because of her indifferent attitude and unjustified refusal to submit to an audit. Before it could be implemented, respondent FTCP received her resignation letter. In her resignation letter, she wrote that she can only serve the organization up to December 31, 2005. She found it no longer tenable to work with the Board since she had differences with majority of the members regarding resolutions, policies, and procedures.

On October 29, 2005, the Board accepted her resignation with the condition that its effectivity be moved to November 30, 2005. She was not obliged to report for work and FTCP was willing to pay her salary for the month of November to aid her while she looked for other employment.

On November 2, 2005, petitioner filed a Complaint for illegal dismissal, claiming that she was forced to resign, thus, was constructively dismissed, and impleaded Lao, Paradiang and Escobia in their personal capacities.

The Labor Arbiter ruled in favor of the respondents but the NLRC reversed the decision of the Labor Arbiter, and adjudged that Paredes was constructively dismissed.

Thus, respondents filed before the Court of Appeals a petition for *certiorari*. The CA ruled for the respondents.

1. Declaring petitioner to have voluntarily resigned from her employment/consultancy with FTCP;
2. Directing the petitioner to pay FTCP:
   a.) Thirty-four thousand four hundred thirty-eight pesos and 37/100 (P34,438.37) for her unpaid loans;
   b.) One hundred nine thousand two hundred eight pesos and 36/100 (P109.208.36) respecting her disbursement and withdrawals from the FTCP Provident Fund.

ISSUE: Whether or not the Court of Appeals erred in directing the petitioner to pay FTCP amounts for her unpaid loans and disbursement and withdrawals from the provident fund.

HELD: This Court held that the "money claims of workers" referred to in Article 217 of the Labor Code embraces money claims, which arise out of or in connection with the employer-employee relationship, or some aspect or incident of such relationship.

Applying the rule of *noscitur a sociis* in clarifying the scope of Article 217, it is evident that paragraphs 1 to 5 refer to cases or disputes arising out of or in connection with an employer-employee relationship. In other words, the money claims within the original and exclusive jurisdiction of labor arbiters are those, which have some reasonable causal connection with the employer-employee relationship.

This claim is distinguished from cases of actions for damages where the employer-employee relationship is merely incidental and the cause of action proceeds from a different source of obligation. Thus, the regular courts have jurisdiction where the damages claimed for were based on:

tort, malicious prosecution, or breach of contract, as when the claimant seeks to recover a debt from a former employee or seeks liquidation damages in the enforcement of a prior employment contract."

By the designating clause "arising from the employer-employee relations," Article 217 applies with equal force to the claim of an employer for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counterclaim in the illegal dismissal case.

In this case, the CA erred in awarding P34,438.37 for petitioner's unpaid debt to respondents. The claim for recovery of a debt has no reasonable causal connection with any of the claims provided for in Article 217. The fact that the transaction happened at the time they were employer and employee did not negate the civil jurisdiction of trial court. Hence, it is erroneous for the LA and the CA to rule on such claim arising from a different source of obligation and where the employer-employee relationship was merely incidental.

Likewise, the CA erred in awarding P109,208.36 for the reimbursement of the FTCP provident Fund allegedly withdrawn by petitioner. Although it was entered by the respondents in its counterclaim, this claim does not arise from or is necessarily connected with the fact of termination. It also had no reasonable causal connection with employer-employee relationship.

Petition for review on certiorari PARTLY GRANTED. The awards of P34,438.37 and P109,208.36 SET ASIDE.

The Court cannot go against the legislative intent for it is the duty of this institution to read what the law intends. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker.

SECURITIES AND EXCHANGE COMMISSION, *vs.* HON. REYNALDO M. LAIGO, et. al. G.R. No. 188639, September 02, 2015

FACTS: Republic Act *(R.A.)* No. 8799, otherwise known as the Securities Regulation Code *(SRC)*, specifically Section 16 thereof, mandated the Securities and Exchange Commission (SEC) to prescribe rules and regulations governing the pre-need industry. Pursuant thereto, the SEC issued the corresponding **New Rules on the Registration and Sale of Pre-Need Plans** *(New Rules)*[4] to govern the pre-need industry prior to the enactment of R.A. No. 9829, otherwise known as the **Pre-need Code of the Philippines** *(Pre-Need Code)*. It required from the pre-need providers the creation of trust funds as a requirement for registration.

As defined in Rule 1.9 of the New Rules, "Trust Fund" means a fund set up from planholders' payments, separate and distinct from the paid-up capital of a registered pre-need company, established with a trustee under a trust agreement approved by the SEC, to pay for the benefits as provided in the pre-need plan." Legacy, being a pre-need provider, complied with the trust fund requirement and entered into a trust agreement with the Land Bank of the Philippines *(IBP)*. In mid-2000, the industry collapsed for a range of reasons. Legacy, like the others, was unable to pay its obligations to the planholders. This resulted in Legacy being the subject of a petition for involuntary insolvency filed on February 18, 2009 by private respondents in their capacity as planholders. Through its manifestation filed in the RTC, it was declared insolvent by the RTC in its Order, dated April 27, 2009. The trial court also ordered Legacy to submit an inventory of its assets and liabilities pursuant to Sections 15 and 16 of Act No. 1956, otherwise known as the Insolvency Law, the applicable bankruptcy law at that time.

In its Manifestation with Evaluation, dated June 10, 2009, the SEC opposed the inclusion of the trust fund in the inventory of corporate assets on the ground that to do so would contravene the New Rules which treated trust funds as principally established for the exclusive purpose of guaranteeing the delivery of benefits due to the planholders. It was of the position that the inclusion of the trust fund in the insolvent's estate and its being opened to claims by non-planholders would contravene the purpose for its establishment. This view was dismissed by the RTC and ordered the trust fund in the inventory of the assets and liabilities of legacy.

ISSUE: Whether or not the Court gravely abused its discretion in treating the trust fund as part of the insolvency estate of Legacy.

HELD: The overarching consideration in the legislative mandate to establish trust funds is the protection of the interest of the planholders in the investment plans. The SRC provides in no uncertain terms the intent to make such interests paramount above all else. Thus, it directed the SEC to come up with rules and regulations to govern not only trust funds but the industry as a whole. Pursuant to its mandate and delegated authority, the SEC came out with the New Rules, which the Congress later on toughened through the enactment of the Pre-Need Code, carrying similar protection but far more detailed in scope.

It is in this context that this Court rules to grant the petition filed by the SEC. The Court finds that Judge Laigo gravely abused his discretion in treating the trust fund as assets that form part of Legacy's insolvency estate and in enjoining the SEC's validation of the planholders' claims against the trust properties.

The legislative intent is laid down in Chapter IV of R.A. No. 8799, or the SRC, which provides for the **establishment of trust funds for the payment of benefits under such plans.** Section 16 of the SRC provides:

> **SEC. 16.** ***Pre-Need Plans.***—No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations, which **the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans** by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans,

requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans. *[Emphasis supplied]*

It is clear from Section 16 that the underlying congressional intent is to make the planholders the exclusive beneficiaries. It has been said that what is within the spirit is within the law even if it is not within the letter of the law because the spirit prevails over the letter.

This will by the legislature was fortified with the enactment of R.A. No. 9829 or the Pre-Need Code in 2009.lThe Congress, because of the chaos confounding the industry at the time, considered it necessary to provide a stronger legal framework so that no entity could claim that the mandate and delegated authority of the SEC under the SRC was nebulous. The Pre-Need Code cemented the regulatory framework governing the pre-need industry with precise specifics to ensure that the rights of the pre-need planholders would be categorically defined and protected.

Section 30 of the Pre-Need Code clearly provides that the proceeds of trust funds shall redound solely to the planholders.

The Court cannot go against that legislative intent for it is the duty of this institution to read what the law intends. It is a cardinal rule that, in seeking the meaning of the law, the first concern of the judge should be to discover in its provisions the intent of the lawmaker. Unquestionably, the law should never be interpreted in such a way as to cause injustice as this is never within the legislative intent. An indispensable part of that intent, in fact, for we presume the good motives of the legislature, is to render justice.

PETITION GRANTED.

The first and fundamental duty of the Court is to apply the law. If the law is clear and free from any

doubt or ambiguity as the quoted provision, there is no room for construction or interpretation. The letter must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed

DAVAO CITY WATER DISTRICT REPRESENTED BY ITS GENERAL MANAGER, RODORA N. GAMBOA *v.* Rodrigo L. Aranjuez et al. G.R. No. 194192, June 16, 2015

FACTS: The records show that as early as 16 May 2007, the members and officers of NAMADACWAD (respondents) have been staging pickets in front of the DCWD Office during their lunch breaks to air their grievances about the non-payment of their Collective Negotiation Agreement (CNA) incentives and their opposition to DCWD's privatization and proposed One Hundred Million Peso Loan.

On 31 October 2007, GM Gamboa, (petitioner) issued an Office Memorandum addressed to all department managers concerning the different activities that would take place during DCWD's then upcoming anniversary celebration. The Memorandum reads: "Please be informed that the opening activities of our 34th anniversary this coming 09 November 2007 are the motorcade and the fun run. The assembly area will be at the Victoria Plaza Mall parking, in front of Cynthia's Lechon Hauz, 6:00 o'clock in the morning."

In view of this, everybody is expected to be there except only those who are assigned as a skeletal force. All carpool vehicles are also enjoined to proceed at the said area. The participants are free to wear any sports attire. Further, you are advised to sign in the attendance sheet provided by the HRD. Came the anniversary, officers and members sported t-shirts with inscriptions "CNA Incentive *Ihatag Na, Dir. Braganza Pahawa Na*!" at the beginning of the Fun Run at Victoria Plaza at around 6:30 in the morning and continued to wear the same inside the premises of the DCWD office during the office hours. Also, one of the members of the Board of Directors of NAMADACWAD Gregorio S. Cagula

(Cagula), with the help of some of its members, attached similar inscriptions and posters of employees' grievances to a post in the motor pool area, an area not among the officially designated places for posting of grievances as prescribed by DCWD's Office Memorandum dated 8 February 1996 and pursuant to CSC Memorandum Circular No. 33, Series of 1994 (MC No. 33).

Due to this, petitioner filed formal charges against the respondents and on 14 March 2008 were found guilty with penalties ranging from suspension to dismissal from service under the CSC Law and Rules. Moreover, the act of Cagula in posting papers with grievances outside the designated areas was a clear violation of MC No. 33 in relation to 8 February 1996 Office Memorandum. It was submitted that due to Cagula's membership in the Board of Directors of NAMADACWAD, the other officers were solidarity responsible for his actions. Aggrieved, petitioners filed an Urgent Motion for Reconsideration with Prayer to Suspend the Immediate Execution of the Orders dated 19 March 2008. On 17 April 2008, the Motion was denied by DCWD. Thereafter, they filed an appeal before the CSC bringing up, among other issues, the violation of their constitutional rights to assemble and petition for redress of grievances.

On 14 January 2009, CSC issued a Resolution partly granting the consolidated appeal and held that the collective act of respondents in wearing t-shirts with grievance inscriptions during office hours was not within the ambit of the definition of prohibited mass action punishable under CSC Resolution 021316 since there was no intent to cause work stoppage. However, though not prohibited under the Resolution, the act was considered as an offense punishable under "Violation of Reasonable Office Rules and Regulations." CSC further ruled that Cagula's act of posting of grievances outside the designated areas was a clear violation of MC No. 33. By reason of Cagula's position, the other officers of NAMADACWAD were considered as having agreed and conspired to commit the said act and as such are as liable as Cagula. On the other hand, and contrary to the assertions of DCWD, the violations committed by the

private respondents are not serious in nature due to the lack of any abusive, vulgar, defamatory or libelous language.

DCWD filed a Petition for Review under Rules 43 before the Court of Appeals alleging procedural and substantive infirmities of the CSC Resolution.CA denied their appeal and affirmed in toto the CSC decision.

ISSUE: Whether or not the decisions of a government agency acting as a disciplinary authority is immediately executory

HELD: The Court finds no merit in the petition. On the submissions that the decisions of a government agency, acting as Disciplining Authority, are immediately executory upon receipt thereof, we need merely cite Section 37 of the Resolution No. 991936 which clearly provides that:

> **Section 37. *Finality of Decisions.***—A decision rendered by heads of agencies whereby a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final and executory. However, if the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

As distinguished by the law, if the imposed suspension exceeds thirty days or the fine imposed is in an amount over thirty-day salary, the decision will only attain finality after the lapse of the reglementary period in the absence of any motion for reconsideration or appeal. Penalties within the 30-day threshold are immediately executor penalties.

In this case, the members and officials, except the casual employees who were not meted with penalty as the renewal of their employment was held in abeyance, were sanctioned with penalties ranging from suspension of work from one (1) month and one (1) day to dismissal from service. Evidently, the finality and execution of the judgment

did not take place after the lapse of the reglementary period because as previously discussed; the members and officials were able to file their consolidated appeal in lieu of notice of appeal.

As clear as the provision on the finality of decisions is Section 42 of Resolution No. 991936 on the effect of motions for reconsideration. Thus:

> **Section 42.** ***Effect of Filing.***—The filing of a motion for reconsideration within the reglementary period of fifteen (15) days shall stay the execution of the decision sought to be reconsidered.

The first and fundamental duty of the Court is to apply the law. If the law is clear and free from any doubt or ambiguity as the quoted provision, there is no room for construction or interpretation. The letter must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed.

The petition for review on certiorari is DENIED. The decision of the CSC, which was affirmed in toto by the CA, is MODIFIED. The finding of administrative liability of and the penalty of reprimand against the NAMADACWAD members are REVERSED and SET ASIDE.

As to the officers, the penalty of reprimand and strong warning that a repetition of the same shall be dealt with severely is AFFIRMED.

It is the duty of the court to give a statute a sensible construction, one that will effectuate legislative intent and avoid injustice or absurdity.

JOCELYN ASISTIO Y CONSINO, *v.* PEOPLE OF THE PHILIPPINES AND MONICA NEALIGA
G.R. No. 200465, April 20, 2015

FACTS: Petitioner Jocelyn Asistio y Consino was charged with violation of Section 46 of the Cooperative Code of the

Philippines (Republic Act No. [RA] 6938).[4] The accusatory portion of the Information filed against her reads:

> That on or about July 27, 1998, in the City of Manila, Philippines, the said accused, being then the Chairperson and Managing Director of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, and as such, have a complete control and exclusively manage the entire business of A. Mabini Elementary School Teachers Multi-Purpose Cooperative, did then and there willfully, unlawfully and feloniously acquires, in violation of her duty as such and the confidence reposed on her, personal interest or equity adverse to A. Mabini Elementary School Teachers Multi-Purpose Cooperative by then and there entering into a contract with Coca Cola Products at A. Mabini Elementary School Teachers Multi-Purpose Cooperative in her own personal capacity when in truth and in fact as the said accused fully well knew, the sale of Coca-Cola products at A. Mabini Elementary School Teachers Multi-Purpose Cooperative should have accrued to A. Mabini Elementary School Teachers Multi-Purpose Cooperative to the damage and prejudice of A. Mabini Elementary School Teachers Multi-Purpose Cooperative.

Petitioner moved to dismiss the case by way of Demurrer to Evidence with prior leave of court. She argued, among other matters, that the Regional Trial Court (*RTC*) of Manila, Branch 40, does not have jurisdiction over the case, as the crime charged (*Violation of Section 46 of RA 6938*) does not carry with it a sanction for which she can be held criminally liable.

On October 14, 2008, the RTC dismissed the case for lack of jurisdiction. Dissatisfied, the People of the Philippines, represented by the Office of the Solicitor General (OSG), appealed the order of dismissal to the CA.

On August 31, 2011, the CA rendered a Decision reversing and setting aside the RTC Orders dated October 14, 2008 and February 12, 2009 and remanded the case records to the RTC for further proceedings. On January 31,

2012, the CA denied petitioner's motion for reconsideration of its decision.[9]

Petitioner insists that Section 46 (Liability of Directors, Officers and Committee Members) of RA 6938 provides only for a civil liability but not a criminal sanction, hence, the MeTC has jurisdiction over her criminal case, which is punishable under paragraph 4 of Section 124:

> **Section 124.** ***Penal Provisions.***—The following acts or omissions affecting cooperatives are hereby prohibited:
>
> (4) Any violation of any provision of this Code for which no penalty is imposed shall be punished by imprisonment of not less than six (6) months nor more than one (1) year and a fine of not less than One thousand pesos (P1,000.00), or both at the discretion of the court. (Emphasis added)

Petitioner argues that the provisions of Section 46 (Liability of Directors, Officers and Committee Members), Section 47 (Compensation) and Section 124 (Penal Provisions) of RA 6938, are plain, unambiguous, and categorical. She submits that statutory construction of such clear provisions, especially if prejudicial to her rights as an accused and would subject her to higher penalty, should not be allowed.

On the other hand, the OSG maintains that the RTC has jurisdiction over petitioner's case pursuant to paragraph 3 of Section 124 of RA 6938:

> (3) **A director, officer or committee member who violated the provisions of Section 47 (liability of directors, officers and committee members)**, Section 50 (disloyalty of a director) and Section 51 (illegal use of confidential information) shall upon conviction suffer a fine of not less than Five thousand pesos (P5,000.00), or imprisonment of not less than five (5) years but not more than ten (10) years or both at the court's discretion; (Emphasis supplied)

The OSG points out that Section "47" in the above-quoted provision is a clerical error because the "liability of directors, officers and committee members" is undisputedly governed by Section 46 of RA 6938, while Section 47 thereof deals with the compensation of directors, officers and employees, to wit:chanroblesvirtuallawlibrary

> **Section 46.** ***Liability of Directors, Officers and Committee Members.***—Directors, officers and committee members, who willfully and knowingly vote for or assent to patently unlawful acts or who are guilty of gross negligence or bad faith in directing the affairs of the cooperative or acquire any personal or pecuniary interest in conflict with their duty as such directors, officers or committee member shall be liable jointly and severally for all damages or profits resulting therefrom to the cooperative, members and other persons.

When a director, officer or committee member attempts to acquire or acquires, in violation of his duty, any interest or equity adverse to the cooperative in respect to any matter which has been reposed in him in confidence, he shall, as a trustee for the cooperative, be liable for damages and for double the profits which otherwise would have accrued to the cooperative.

> **Section 47.** ***Compensation.***—(1) In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation except for reasonable per diem: *Provided*, That any compensation other than per diems may be granted to directors by a majority vote of the members with voting rights at a regular or special general assembly meeting specifically called for the purpose: *Provided further*, that no additional compensation other than per diems shall be paid during the first year of existence of any cooperative.

ISSUE: Whether or not the RTC or the MTC has jurisdiction over the case

HELD: The Court sustains the OSG's contention. Petitioner failed to present any compelling reason to warrant

a departure from the exhaustive CA ruling on why the RTC, not the MeTC, has jurisdiction over her criminal case for violation of Section 46 of RA 6938, thus:

> The Court, in order to carry out the obvious intent of the legislature, may correct clerical errors, mistakes or misprints which, if uncorrected, would render the statute meaningless, empty or nonsensical or would defeat or impair its intended operation, so long as the meaning intended is apparent on the face of the whole enactment and no specific provision is abrogated. To correct the error or mistake is to prevent the nullification of the statute and give it a meaning and purpose. For it is the duty of the court to give a statute a sensible construction, one that will effectuate legislative intent and avoid injustice or absurdity. It is its duty to arrive at the legislative intent and in doing so, it should not adopt an arbitrary rule under which it must be held without variance or shadow of turning the legislature intended to make a typographical error, the result of which would be to make nonsense of the act, and not to carry out the legislative scheme, but to destroy it. x x x x

Clearly, the accused-appellee cannot insist that reference to [Sec] 124, paragraph 4, as the trial court did, is necessary and therefore, warranted the dismissal of the criminal case for lack of jurisdiction. To reiterate, [Sec] 46 of the Code, entitled "Liability of Directors, Officers, and Committee Members," provides for violations under which the said officers could be held liable for, and the corresponding liability for damages and profits from the said violations. Since the said [section] does not provide for penal sanction, an application of [Sec] 124, paragraph 3 should follow as the said provision evidently refers to the penal sanction on erring directors, officers and committee members. It would make no sense if we were to follow what clearly appears to be a clerical error, that is, applying [Sec] 124, paragraph 4 instead, just because paragraph 3 of the same [section] refers to [Sec] 47, which upon examination of the Code provides for the "Compensation" of the directors, officers and other employees of the cooperative.

PETITION DENIED. CA DECISION AFFIRMED.

LEX SPECIALIS DEROGAT GENERALI. General legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable.

THE DEPARTMENT OF HEALTH AND THE FOOD AND DRUG ADMINISTRATION, *vs.* PHILIP MORRIS PHILIPPINES MANUFACTURING, INC.
G.R. No. 202943, March 25, 2015

FACTS: On November 19, 2008, PMPMI, through the advertising agency PCN Promopro, Inc. (PCN), by virtue of Article 116 of Republic Act No. (RA) 7394 or the "Consumer Act of the Philippines," applied for a sales promotion permit before the BFAD, now the FDA, for its *Gear Up Promotional Activity* (*Gear Up Promo*). The application included the mechanics for the promotional activity, as well as relevant materials and fees. With more than fifteen (15) days lapsing without the BFAD formally acting upon the application, PMPMI then inquired about its status. However, PMPMI was only verbally informed of the existence of a Memorandum issued by the DOH purportedly prohibiting tobacco companies from conducting any tobacco promotional activities in the country. Meanwhile, on November 28, 2008, PMPMI, through another advertising agency, Arc Worldwide Philippines Co. (AWPC), filed another application for a sales promotional permit, this time for its Golden Stick Promotional Activity (*Golden Stick Promo*) which the BFAD, however, refused outright, pursuant to a directive of the BFAD Director that all permit applications for promotional activities of tobacco companies will no longer be accepted. Eventually, in a letter dated January 5, 2009, the BFAD, through Director IV Leticia Barbara B. Gutierrez, M.S. (Dir. Gutierrez), denied PMPMI's *Gear Up Promo* application in accordance with the instructions of the Undersecretary of Health for Standards and Regulations, directing that as of

July 1, 2008, "all promotions, advertisements and/or sponsorships of tobacco products are already prohibited," based on the provisions of RA 9211 or the "Tobacco Regulation Act of 2003. On January 19, 2009, PMPMI filed an administrative appeal before the DOH Secretary, assailing the BFAD's denial of its *Gear Up Promo* application, as well as its refusal to accept the *Golden Stick Promo application*. In its appeal, PMPMI maintained that under RA 9211, *promotion* is not prohibited but merely *restricted*, and that while there are specific provisions therein totally banning tobacco advertising and sponsorships, no similar provision could be found banning *promotion*. In a Consolidated Decision dated April 30, 2009, then DOH Secretary Francisco T. Duque III (Sec. Duque) denied PMPMI's appeal, as well as all other similar actions filed by other tobacco companies and thereby affirmed the action of the BFAD denying their sales promotional permit applications, pursuant to the provisions of RA 9211. Aggrieved, PMPMI elevated the matter to the CA *via* petition for *certiorari* and *mandamus*, docketed as CA G.R. SP No. 109493, ascribing grave abuse of discretion upon the DOH in refusing to grant its sales promotional permit applications, maintaining, *inter alia*, that RA 9211 still allows promotion activities notwithstanding the phase-out of advertising and sponsorship activities after July 1, 2008.

In a Decision dated August 26, 2011, the CA granted the petition and nullified the Consolidated Decision of the DOH. It ruled that the DOH is bereft of any authority to enforce the provisions of RA 9211, in view of the creation of the Inter-Agency Committee–Tobacco (IAC-Tobacco) under Section 29 of the said law, which shall have the "exclusive power and function to administer and implement the provisions of [RA 9211] x x x." Thus, even though PMPMI originally applied for sales promotional permits under Article 116 in relation to Article 109 of RA 7394, from which the DOH derives its authority to regulate tobacco sales promotions, the said provision has already been repealed by Section 39 of RA 9211, which states:

> **Section 39. *Repealing Clause.***—DOH Administrative Orders No. 10[,] s. 1993 and No. 24[,] s. 2003 are hereby repealed. Article 94 of Republic Act No. 7394, as amended, otherwise known as the Consumer Act of the Philippines, is hereby amended.

ISSUE: Whether or not RA 9211 superseded certain provisions of RA 7394.

HELD: The petition is bereft of merit.

It must be stressed that RA 9211 is a special legislation, which exclusively deals with the subject of tobacco products and related activities. On the other hand, RA 7394 is broader and more general in scope, and treats of the general welfare and interests of consumer's vis-à-vis proper conduct for business and industry. As such, *lex specialis derogat generali*. General legislation must give way to special legislation on the same subject, and generally is so interpreted as to embrace only cases in which the special provisions are not applicable. In other words, where two statutes are of equal theoretical application to a particular case, the one specially designed therefore should prevail.

In fine, the Court agrees with the CA that it is the IAC-Tobacco and not the DOH, which has the primary jurisdiction to regulate sales promotion activities as explained in the foregoing discussion. As such, the DOH's ruling, including its construction of RA 9211 (*i.e.*, that it *completely* banned tobacco advertisements, *promotions*, and sponsorships, as *promotion* is inherent in both advertising and sponsorship), are declared null and void, which, as a necessary consequence, precludes the Court from further delving on the same. As it stands, the present applications filed by PMPMI are thus remanded to the IAC-Tobacco for its appropriate action. Notably, in the proper exercise of its rule-making authority, nothing precludes the IAC-Tobacco from designating any of its pilot agencies (which, for instance, may even be the DOH[45]) to perform its multifarious functions under RA 9211.

PETITION DENIED. CA RESOLUTION AFFIRMED WITH MODIFICATION.

Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.

DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), *vs.* UNITED PLANNERS CONSULTANTS, INC. (UPCI)
G.R. No. 212081, February 23, 2015

FACTS: For failure to pay its obligation under the Consultancy Agreement despite repeated demands, respondent instituted a Complaint against petitioner before the Regional Trial Court of Quezon City, docketed as Case No. Q-07-60321.craUpon motion of respondent, the case was subsequently referred to arbitration pursuant to the arbitration clause of the Consultancy Agreement, which petitioner did not oppose. During the preliminary conference, the parties agreed to adopt the CIAC Revised Rules Governing Construction Arbitration (CIAC Rules) to govern the arbitration proceedings. The Arbitral Tribunal rendered its Award dated May 7, 2010 (Arbitral Award) in favor of respondent, directing petitioner to pay the latter the amount of (a) P2,285,089.89 representing the unpaid progress billings, with interest at the rate of 12% per annum from the date of finality of the Arbitral Award upon confirmation by the RTC until fully paid. Unconvinced, petitioner filed a motion for reconsideration, which the Arbitral Tribunal merely noted without any action, claiming that it had already lost jurisdiction over the case after it had submitted to the RTC its Report together with a copy of the Arbitral Award. Consequently, petitioner filed before the RTC a Motion for Reconsideration dated May 19, 2010 and a Manifestation and Motion dated June 1, 2010. On the other hand, the RTC confirmed the Arbitral Award pursuant to Rule 11.2 (A) of the Special ADR Rules. RTC merely noted petitioner's aforesaid motions. Thus, on June 15, 2011, respondent moved for the issuance of a writ of execution, to which no comment/opposition was filed by petitioner despite the RTC's directive therefor. In an Order dated September 12, 2011, the RTC granted respondent's motion. Petitioner moved to quash the writ of execution, positing that respondent was not entitled to its monetary claims. It also claimed that the issuance of said writ was premature since the RTC should have first resolved its May 19, 2010 Motion for Reconsideration and June 1, 2010 Manifestation and Motion, and not merely noted them, thereby violating its right to due process. In an Order dated July 9, 2012, the RTC denied petitioner's motion to quash, it found no merit in petitioner's contention that it was denied due process, ruling that its May 19, 2010 Motion for Reconsideration was a prohibited pleading under Section 17.2, Rule 17 of the CIAC Rules. Dissatisfied, petitioner filed on September 10, 2012 a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 126458, averring in the main that the RTC acted with grave abuse of discretion in confirming and ordering the execution of the Arbitral Award. In a Decision dated March 26, 2014, the CA dismissed the *certiorari* petition on two (2) grounds, namely: (*a*) the petition essentially assailed the merits of the Arbitral Award which is prohibited under Rule 19.7 of the Special ADR Rules; and (*b*) the petition was filed out of time, having been filed way beyond 15 days from notice of the RTC's July 9, 2012 Order, in violation of Rule 19.28, in relation to Rule 19.8 of said Rules which provide that a special civil action for *certiorari* must be filed before the CA within 15 days from notice of the judgment, order, or resolution sought to be annulled or set aside (or until July 27, 2012). Aggrieved, petitioner filed the instant petition.

ISSUE: Whether or not the CA erred in applying the provisions of the Special ADR Rules, resulting in the dismissal of petitioner's special civil action for certiorari.

HELD: The position is untenable. Execution is fittingly called the *fruit and end of suit and the life of the law.* A judgment, if left unexecuted, would be nothing but an empty victory for the prevailing party.

While it appears that the Special ADR Rules remain silent on the procedure for the execution of a confirmed arbitral award, it is the Court's considered view that the Rules' procedural mechanisms cover not only aspects of confirmation but necessarily extend to a confirmed award's execution in light of the doctrine of necessary implication which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. In *Atienza v. Villarosa*, the doctrine was explained, thus:

No statute can be enacted that can provide all the details involved in its application. There is always an omission that may not meet a particular situation. What is thought, at the time of enactment, to be an all-embracing legislation may be inadequate to provide for the unfolding of events of the future. So-called gaps in the law develop as the law is enforced. One of the rules of statutory construction used to fill in the gap is the doctrine of necessary implication. The doctrine states that what is implied in a statute is as much a part thereof as that which is expressed. Every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. Ex necessitate legis. And every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. This is so because the greater includes the lesser, expressed in the maxim, *in eo plus sit, simper inest et minus.*

As the Court sees it, execution is but a necessary incident to the Court's confirmation of an arbitral award. To construe it otherwise would result in an absurd situation whereby the confirming court previously applying the Special ADR Rules in its confirmation of the arbitral award would later shift to the regular Rules of Procedure come execution. Irrefragably, a court's power to confirm a judgment award under the Special ADR Rules should be deemed to include the power to order its execution for such

is but a collateral and subsidiary consequence that may be fairly and logically inferred from the statutory grant to regional trial courts of the power to confirm domestic arbitral awards.

PETITION DENIED. THE CA DECISION AFFIRMED.

The principle of expressio unius est exclusio alterius does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.

THE HONORABLE MONETARY BOARD AND GAIL U. FULE, DIRECTOR, SUPERVISION AND EXAMINATION DEPARTMENT II, AND BANGKO SENTRAL NG PILIPINAS *vs.* PHILIPPINE VETERANS BANK
G.R. No. 189571, January 21, 2015

FACTS: Respondent established a pension loan product for *bona fide* veterans or their surviving spouses, as well as salary loan product for teachers and low-salaried employees pursuant to its mandate under Republic Act (RA) Nos. 3518 and 7169 to provide financial assistance to veterans and teachers. As its clientele usually do not have real estate or security to cover their pension or salary loan, other than their continuing good health and/or employment, respondent devised a program by charging a premium in the form of a higher fee known as *Credit Redemption Fund (CRF)* from said borrowers. Resultantly, Special Trust Funds were established by respondent for the pension loans of the veteran-borrowers, salary loans of teachers and low-salaried employees. These trust funds were, in turn, managed by respondent's Trust and Investment Department, with respondent as beneficiary. The fees charged against the borrowers were credited to the respective trust funds, which would be used to fully pay the outstanding obligation of the borrowers in case of death. On April 30, 2002, an examination was conducted by the Supervision and Examination Department (*SED*) II of the Bangko Sentral ng

Pilipinas (BSP). It found, among other things, that respondent's collection of premiums from the proceeds of various salary and pension loans of borrowers to guarantee payment of outstanding loans violated Section 54 of RA No. 8791 which states that banks shall not directly engage in insurance business as insurer. On September 16, 2005, petitioners issued Monetary Board (MB) Resolution No. 1139 directing respondent's Trust and Investment Department to return to the borrowers all the balances of the CRF in the amount of P144,713,224.54 as of August 31, 2004, and to preserve the records of borrowers who were deducted CRFs. Thus, respondent requested reconsideration of said MB Resolution. However, the same was denied in a Letter dated December 5, 2006.

Accordingly, respondent filed a Petition for Declaratory Relief with the RTC of Makati City but the same was dismissed. Almost after a year later, respondent filed a Motion to Admit its Motion for Reconsideration against said order alleging that it did not receive a copy thereof until September 3, 2008.

In a Decision dated June 15, 2009, the RTC of Makati City granted respondent's petition for declaratory relief, declaring that the respondent did not engage in insurance business as an insurer and the monetary board resolution was declared null and void. Hence, the present petition.

ISSUE: Whether or not petitioner's findings that the respondent engaged in insurance business as insurer and violated Section 54 of RA No. 8791 can be the proper subject of a declaratory relief.

HELD: The decision of the BSP Monetary Board cannot be a proper subject matter for a petition for declaratory relief since it was issued by the BSP Monetary Board in the exercise of its quasi-judicial powers or functions

The authority of the petitioners to issue the questioned MB Resolution emanated from its powers under Section 37[1] of RA No. 7653 and Section 66 of RA No. 8791 to impose, at its discretion, administrative sanctions, upon any bank for violation of any banking law.

A perusal of Section 9(3) of *Batas Pambansa Blg.* 129, as amended, and Section 1, Rule 43 of the 1997 Rules of Civil Procedure reveals that the BSP Monetary Board is not included among the quasi-judicial agencies explicitly named therein, whose final judgments, orders, resolutions or awards are appealable to the Court of Appeals. Such omission, however, does not necessarily mean that the Court of Appeals has no appellate jurisdiction over the judgments, orders, resolutions, or awards of the BSP Monetary Board.

It bears stressing that Section 9(3) of *Batas Pambansa Blg.* 129, as amended, on the appellate jurisdiction of the Court of Appeals, generally refers to quasi-judicial agencies, instrumentalities, boards or commissions. The use of the word "***including***" in the said provision, prior to the naming of several quasi-judicial agencies, necessarily conveys the very idea of non-exclusivity of the enumeration. The principle of *expressio unius est exclusio alterius* does not apply where other circumstances indicate that the enumeration was not intended to be exclusive, or where the enumeration is by way of example only.

Similarly, Section 1, Rule 43 of the 1997 Revised Rules of Civil Procedure merely mentions several quasi-judicial agencies without exclusivity in the phraseology. The enumeration of the agencies therein mentioned is not exclusive. The introductory phrase "among these agencies are" preceding the enumeration of specific quasi-judicial agencies only highlights the fact that the list is not meant to be exclusive or conclusive. Further, the overture stresses and acknowledges the existence of other quasi-judicial agencies not included in the enumeration but should be deemed included.

Undoubtedly, the BSP monetary board is a quasi-judicial agency exercising quasi-judicial powers and functions.

Section 37 of Republic Act No. 7653, in particular, explicitly provides that the BSP Monetary Board shall exercise its discretion in determining whether administrative

sanctions should be imposed on banks and quasi-banks, which necessarily implies that the BSP Monetary Board must conduct some form of investigation or hearing regarding the same.

A priori, having established that the BSP Monetary Board is indeed a quasi-judicial body exercising quasi-judicial functions, then its decision in MB Resolution No. 1139 cannot be the proper subject of declaratory relief.

Lastly, also worth noting is the fact that the court *a quo's* Order dated September 24, 2007, which dismissed respondent's petition for declaratory relief, had long become final and executory.

Petition is GRANTED. The Decision dated June 15, 2009 and Order dated August 25, 2009 of the Regional Trial Court of Makati City in Civil Case No. 07-271 are REVERSED and SET ASIDE. The Order dated September 24, 2007 of the Regional Trial Court of Makati City is REINSTATED.

Penal laws shall be given retroactive insofar as they are favorable to the accused.

EDMUND SYDECO Y SIONZON, *vs.*
PEOPLE OF THE PHILIPPINES
G.R. No. 202692, November 12, 2014

FACTS: On July 20, 2006, separate Informations, one for Violation of Section 56(f) of Republic Act No. (RA) 4136 (drunk driving) and another, for Violation of Article 151 of the Revised Penal Code (resisting arrest) were filed against petitioner Sydeco with the MeTC in Manila and eventually raffled to Branch 14 of that court.

When arraigned, petitioner, as accused, pleaded "Not Guilty" to both charges.

On June 26, 2009, the MeTC rendered judgment, finding petitioner guilty as charged.

Therefrom, petitioner appealed to the RTC on the main submissions that the MeTC erred in: 1) according credit to the medical certificate issued by Dr. Balucating, although the records custodian of Ospital ng Maynila was presented to testify thereon instead of the issuing physician, and 2) upholding the veracity of the joint affidavit of arrest of P/INSP Manuel Aguilar, SPO4 Efren Bodino, and PO3 Benedict Cruz III, considering that only SPO4 Bodino appeared in court to testify.

RTC affirmed the petitioner's conviction. Following the denial by the RTC of his motion for reconsideration, petitioner went to the CA on a petition for review. CA denied the petition and AFFIRMED the RTC decision.

ISSUES: Whether or not the CA erred in giving weight to the Medical Certificate issued by Dr. Harvey Balucating, in the absence of his testimony before the Court

HELD: The MeTC, as echoed by RTC and CA later, did not rely on the medical certificate Dr. Balucating issued on June 12, 2006 as to petitioner's intoxicated state, as the former was not able to testify as to its contents, but on the testimony of SPO4 Bodino, on the assumption that he and his fellow police officers were acting in the regular performance of their duties. It cannot be emphasized enough that smelling of liquor/alcohol and be under the influence of liquor are differing concepts. Corollarily, it is difficult to determine with legally acceptable certainty whether a person is drunk in contemplation of Sec. 56(f) of RA 4136 penalizing the act of driving under the influence of alcohol. The legal situation has of course changed with the approval in May 2013 of the *Anti-Drunk and Drugged Driving Act of 2013* (RA 10586) which also penalizes driving under the influence of alcohol (DUIA), a term defined under its Sec. 3(e) as the "act of operating a motor vehicle while the driver's blood alcohol concentration level has, after being subjected to a breath analyzer test reached the level of intoxication as established jointly by the [DOH], the NAPOLCOM] and the [DOTC]. And under Sec. 3(g) of the IRR of RA 10586, a driver of a private motor vehicle with gross

vehicle weight not exceeding 4,500 kilograms who has BAC [blood alcohol concentration] of 0.05% or higher shall be conclusive proof that said driver is driving under the influence of alcohol. Viewed from the prism of RA 10586, petitioner cannot plausibly be convicted of driving under the influence of alcohol for this obvious reason: he had not been tested beyond reasonable doubt, let alone conclusively, for reaching during the period material the threshold level of intoxication set under the law for DUIA, i.e., a BAC of 0.05% or over. Under Art. 22 of the RPC, penal laws shall be given retroactive insofar as they are favorable to the accused. Section 19 of RA 10586 expressly modified Sec. 56(f) of RA 4136. Verily, even by force of Art. 22 of the RPC in relation to Sec. 3(e) of RA 10586 alone, petitioner could very well be acquitted for the charge of driving under the influence of alcohol, even if the supposed inculpatory act occurred in 2006.

The presumption of regularity is merely just that, a presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. And to be sure, this presumption alone cannot preponderate over the presumption of innocence that prevails if not overcome by proof that obliterates all doubts as to the offender's culpability. In the present case, the absence of conclusive proof being under the influence of liquor while driving coupled with the forceful manner the police yanked petitioner out of his vehicle argues against or at least cast doubt on the finding of guilt for drunken driving and resisting arrest.

CA DECISION AND RESOLUTION REVERSED AND SET ASIDE.

The word "may" is permissive and operates to confer discretion.

GRACE M. GRANDE, *vs.* PATRICIO T. ANTONIO
G.R. No. 206248, February 18, 2014

FACTS: Petitioner Grace Grande (Grande) and respondent Patricio Antonio (Antonio) for a period of time lived together as husband and wife. Out of this illicit relationship, two sons were born: Andre Lewis (on February 8, 1998) and Jerard Patrick (on October 13, 1999). The children were not expressly recognized by respondent as his own in the Record of Births of the children in the Civil Registry. The parties' relationship, however, eventually turned sour, and Grande left for the United States with her two children in May 2007. This prompted respondent Antonio to file a Petition for Judicial Approval of Recognition with Prayer to take Parental Authority, Parental Physical Custody, Correction/Change of Surname of Minors and for the Issuance of Writ of Preliminary Injunction before the Regional Trial Court, Branch 8 of Aparri, Cagayan (RTC), appending a notarized Deed of Voluntary Recognition of Paternity of the children. On September 28, 2010, the RTC rendered a Decision in favor of herein respondent Antonio, ruling that the evidence at hand is overwhelming that the best interest of the children can be promoted if they are under the sole parental authority and physical custody of respondent Antonio. The RTC granted the prayer for recognition, ordering the Office of the City Registrar of the City of Makati to cause the entry of the name of [Antonio] as the father of the aforementioned minors in their respective Certificate of Live Birth and causing the correction/change and/or annotation of the surnames of said minors in their Certificate of Live Birth from Grande to Antonio. The Court likewise granted Antonio the right to jointly exercise Parental Authority with Grande and immediate custody over the children. Aggrieved, petitioner Grande moved for reconsideration. However, her motion was denied by the trial court. Petitioner Grande then filed an appeal with the CA attributing grave error on the part of the RTC for allegedly ruling contrary to the law and jurisprudence respecting the grant of sole custody to the mother over her illegitimate children. In resolving the appeal, the appellate

court modified in part the Decision of the RTC. The CA directed the Offices of the Civil Registrar General and the City Civil Registrar of Makati City to enter the surname Antonio as the surname of Jerard Patrick and Andre Lewis, in their respective certificates of live birth, and record the same in the Register of Births. The CA also ordered Antonio to deliver the minor children to the custody of the mother, who is awarded the full custody of their minor children. Not satisfied with the CA's Decision, petitioner Grande interposed a partial motion for reconsideration, particularly assailing the order of the CA insofar as it decreed the change of the minors' surname to "Antonio." When her motion was denied, petitioner came to this Court via the present petition. In it, she posits that Article 176 of the Family Code—as amended by Republic Act No. (RA) 9255, couched as it is in permissive language—may not be invoked by a father to compel the use by his illegitimate children of his surname without the consent of their mother.

ISSUE: Whether or not a father has a right to compel the use of his surname by his illegitimate children upon his recognition of their filiation.

HELD: The Court finds the petition impressed with merit. Central to the core issue is the application of Art. 176 of the Family Code, originally phrased as follows:

> "Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. Except for this modification, all other provisions in the Civil Code governing successional rights shall remain in force. This provision was later amended on March 19, 2004 by RA 9255, which now reads:
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> Art. 176. – Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by their father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. *Provided,* the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.

From the foregoing provisions, it is clear that the general rule is that an illegitimate child shall use the surname of his or her mother. The exception provided by RA 9255 is, in case his or her filiation is expressly recognized by the father through the record of birth appearing in the civil register or when an admission in a public document or private handwritten instrument is made by the father. In such a situation, the illegitimate child may use the surname of the father.

Art. 176 gives illegitimate children the right to decide if they want to use the surname of their father or not. It is not the father (herein respondent) or the mother (herein petitioner) who is granted by law the right to dictate the surname of their illegitimate children. Nothing is more settled than that when the law is clear and free from ambiguity, it must be taken to mean what it says and it must be given its literal meaning free from any interpretation. Respondent's position that the court can order the minors to use his surname, therefore, has no legal basis.

On its face, Art. 176, as amended, is free from ambiguity. And where there is no ambiguity, one must abide by its words. The use of the word "may" in the provision readily shows that an acknowledged illegitimate child is under no compulsion to use the surname of his illegitimate father. The word "may" is permissive and operates to confer discretion upon the illegitimate children.

To conclude, the use of the word "shall" in the IRR of RA 9255 is of no moment. The clear, unambiguous, and unequivocal use of "may" in Art. 176 rendering the use of an illegitimate father's surname discretionary controls, and

illegitimate children are given the choice on the surnames by which they will be known.

Petition PARTIALLY GRANTED. Case REMANDED to the Regional Trial Court, Branch 8 of Aparri, Cagayan for the sole purpose of determining the surname to be chosen by the children Jerard Patrick and Andre Lewis.