

## CHAPTER 4

### LEGAL PROCEDURE/ADMINISTRATION OF JUSTICE

#### INTRODUCTION

There is no trial by jury in the Philippines. The judge determines all questions of law and fact in a case brought before him. While the Rules of Court provide for the employment of assessors and commissioners<sup>1</sup> to assist the judge in the determination of the facts, this procedure has rarely been utilized.

The Rules of Court govern the pleadings, practice and procedure before all courts in the Philippines. These rules consist of four major parts dealing with civil actions, special proceedings, criminal procedure and evidence.

#### CRIMINAL PROCEDURE

All criminal actions are commenced either by a complaint or by an information.<sup>2</sup> A complaint is a sworn written statement charging a person with an offence, subscribed to by the offended party, any peace officer or other public officer charged with the enforcement of the law violated.<sup>3</sup> An information is an accusation in writing charging a person with an offence subscribed to by the fiscal and filed with the court.<sup>4</sup> No complaint or information for an offence recognizable by the Regional Trial Court can be filed without a preliminary investigation having been first conducted by a judge, provincial city prosecutor or a state prosecutor in order to determine if a *prima facie* case is established by the evidence presented by both parties.<sup>5</sup> The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances which shall be stated in ordinary and concise language.<sup>6</sup> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor and such resolution is appealable to the Secretary of Justice.<sup>7</sup>

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<sup>1</sup> RULES OF COURT, Rule 32.

<sup>2</sup> REV RULES OF CRIM PROCEDURE, Rule 110, s 5.

<sup>3</sup> *Id.*, Rule 110, s 3.

<sup>4</sup> *Id.*, Rule 110, s 4.

<sup>5</sup> *Id.*, Rule 110, s 5, 1<sup>st</sup> par.

<sup>6</sup> *Id.*, Rule 110, ss 8 & 9.

<sup>7</sup> *Id.*, Rule 112, s 4.

A preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least 4 years, 2 months and one day without regard to the fine.<sup>8</sup>

In all criminal prosecutions, the accused is entitled to the following:

- (1) to be presumed innocent until the contrary is proved;
- (2) to be present and be defended either in person or by an attorney at every stage of the proceedings, that is, from the arraignment to the promulgation of the judgment;
- (3) to be informed of the nature and cause of the accusation;
- (4) to testify as witness on his own behalf;
- (5) to be exempt from being a witness against himself;
- (6) to confront and cross-examine the witness against him at the trial;
- (7) to have compulsory process issued to secure the attendance of witnesses in his behalf;
- (8) to have an expeditious and public trial; and
- (9) to have the right of appeal in all cases authorized by law.<sup>9</sup>

The 1987 Constitution requires that any person under investigation for the commission of an offence shall have the right to be informed of his right to remain silent and to have competent and independent counsel, preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived, except in writing and in the presence of counsel.<sup>10</sup> It also provides that an confession obtained through torture, force, violence, threat, intimidation or any other means which vitiates the free will shall be inadmissible in evidence.<sup>11</sup>

### Arrest and Detention

A person can only be arrested when there is a warrant or order for his arrest, except in certain instances.<sup>12</sup> No violence or unnecessary force shall be used in making an arrest. The person arrested shall not be subject to a greater restraint than is necessary for his detention.<sup>13</sup> Secret detention places, solitary, confinement, being held incommunicado, or other similar forms of detention are

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<sup>8</sup> REV RULES OF CRIM PROCEDURE, Rule 112, s 1.

<sup>9</sup> Constitution (1987), art III, s 14(2); *Id*, Rule 115.

<sup>10</sup> Article III, s 12(1).

<sup>11</sup> Article III, ss 12(1) & (2), as implemented by Rep Act No 7438 (1992). See *Magtoto v Manguera* GR Nos 37201-02, 03 March 1975, 56 SCRA 248 (1975) where the Supreme Court stated that the rights of the accused under the 1973 Constitution should be given a prospective effect.

<sup>12</sup> REV RULES OF CRIM PROCEDURE, Rule 113, s 2; Rule 113, Art III, s 2 of the Constitution provides 'The right of the people to be secured in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the places to be searched and the persons or things to be seized'.

<sup>13</sup> *Id*, Rule 113, s 2, 2<sup>nd</sup> par.

prohibited.<sup>14</sup> The employment of physical, psychological, or degrading punishment against any prisoner or detainee, or the use of substandard or inadequate penal facilities shall be dealt with by law.<sup>15</sup> No person may be detained solely by reason of his political beliefs and aspirations.<sup>16</sup> Likewise, the 1987 Constitution specifies that the law shall provide for penal and civil sanctions for violations of sections 12 and 17 of Article III as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

## Pre-Trial

To abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, the Supreme Court laid down in Administrative Circular No 3-99 dated 15 January 1999 the following guidelines for the observance of trial judges and clerks of court:

- (1) Before arraignment, the Court issues order directing the public prosecutor to submit the record of the preliminary investigation to the Branch Clerk of Court. When the accused is under preventive detention, his case shall be raffled within 3 days from the filing of the complaint. The accused is arraigned within 10 days of the raffle and the pre-trial of his case within 10 days from arraignment unless a shorter period is provided by law.<sup>17</sup>
- (2) After arraignment, the Court sets the pre-trial conference within 30 days of arraignment and issues an order: (a) requiring private offended party to appear thereat for purposes of plea bargaining except for violations of the Comprehensive Dangerous Drugs Act of 2002 and other matters requiring his presence;<sup>18</sup> (b) referring the case to the Branch Clerk of Court, if warranted, for a preliminary conference to be set at least 3 days prior to pre-trial to mark documents or exhibits presented by parties and consider other matters that may aid in its prompt disposition; and (c) informing the parties that no evidence shall be allowed to be presented and offered during the trial other than those identified and marked during pre-trial except when allowed by the court for good cause. In mediation cases, the judge shall refer parties and their counsel to the Philippine Mediation Center unit for purpose of mediation, if available.
- (3) During the preliminary conference, the Branch clerk of Court assists the parties in reaching a settlement of the civil aspect of the case; marks the documents to be presented as exhibits after comparison, ascertains from the parties the undisputed facts and admissions on the genuineness and due execution of the documents marked as exhibits. The proceedings here shall be recorded in the minutes to be signed by both parties and counsel.

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<sup>14</sup> Article III, s 12(2).

<sup>15</sup> CONST, Art. III, s 19(2).

<sup>16</sup> CONST, Art III, s 8(1).

<sup>17</sup> REV RULES OF CRIM PROCEDURE, Rule 116, s 1, as amended.

<sup>18</sup> REV RULES OF CRIM PROCEDURE, Rule 118, s 1.

- (4) During the pre-trial, except for violations of the Comprehensive Dangerous Drugs Act of 2002, the trial judge must consider plea-bargaining agreements.<sup>19</sup> Where the prosecution and the offended party agree to the plea offered by the accused, the court shall: (a) Issue an order which contains the plea bargaining arrived at; (b) proceed to receive the evidence on the civil aspect of the case; and (c) render and promulgate judgment of conviction, including the civil liability or damages duly established by the evidence.<sup>20</sup>

When plea bargaining fails, the Court scrutinizes every allegation in the information and documents identified and defines the factual and legal issues. The specific trial dates are set. All proceedings during the pre-trial are recorded and reduced in writing and signed by the accused and counsel, otherwise, they cannot be used against the accused. The minutes and the transcripts of the proceedings shall be signed by the parties and/or their counsels. A pre-trial order is also issued by court within 10 days after the termination of the pre-trial setting forth the facts stipulated, admissions made, evidence marked, the number of witnesses to be presented and the schedule of trial.<sup>21</sup>

#### Arraignment and Trial

The defendant must be arraigned before the court where the complaint or information has been filed or assigned for trial.<sup>22</sup> The defendant must be present at the arraignment and must personally enter his plea. Both the arraignment and plea must be recorded, but a failure to enter a record of them does not affect the validity of proceedings.<sup>23</sup> If the defendant refuses to plead, or makes a conditional plea of guilty, a plea of not guilty shall be entered for him.<sup>24</sup>

All persons are, before conviction, bailable by sufficient sureties, except those charged with capital offences if evidence of their guilt is strong. The right to bail is not impaired even when the privilege of the writ of *habeas corpus* is suspended.<sup>25</sup> After arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is justified.<sup>26</sup> If the defendant appears without an attorney, the court must appoint a counsel *de officio* to defend him.<sup>27</sup>

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<sup>19</sup> Rule on Guidelines to be Observed by Trial Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Means; AM No 03-1-09-SC effective 16 August 2004 hereinafter referred to as Pre-Trial Guidelines citing J BELLOSILLO, EFFECTIVE PRE-TRIAL TECHNIQUE, pp 4-42.

<sup>20</sup> *Id.*, pp 4-43.

<sup>21</sup> 1997 RULES OF CIVIL PROCEDURE, Rule 13, s 7; REV RULES OF CRIM PROCEDURE, Rule 118, s 4.

<sup>22</sup> REV RULES OF CRIM PROCEDURE, Rule 116, s 1(a).

<sup>23</sup> *Id.*, Rule 116, s 1(b).

<sup>24</sup> *Id.*, Rule 116, s 1(c).

<sup>25</sup> CONST, Art III, s 13; REV RULES OF CRIM PROCEDURE, Rule 114.

<sup>26</sup> CONST, Art. III, s 14(2).

<sup>27</sup> REV RULES OF CRIM PROCEDURE, Rule 116, ss 6-8.

The trial then proceeds if the defendant has entered a plea of not guilty. Once commenced, the trial continues from day to day, as far as practicable, until it is concluded. It may also be postponed for a reasonable period of time for good cause. The Court shall, after consultation with the prosecutors and defense counsel, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time but in no case shall the entire trial period exceed 180 days from the first day of trial.<sup>28</sup> The trial is then followed by a written judgment which is promulgated by reading it in the presence of the defendant and the judge who rendered it.<sup>29</sup> At any time before judgment of conviction becomes final, the court may grant a new trial or reconsider its own instance, with the consent of the accused or on motion of the prosecution. Either party may appeal from a final judgment or ruling or from an order made after judgment affecting the substantial rights of the defendant, but the prosecution cannot appeal if the defendant would thereby be placed in double jeopardy.<sup>30</sup> If the death penalty is imposed, the case is automatically elevated to the Supreme Court, whether the defendant has appealed or not.<sup>31</sup>

## CIVIL PROCEDURE

Civil procedure includes ordinary civil actions, special civil actions, and provisional remedies.

A civil action is a suit by which one party sues another for the enforcement or protection of a right, or redress of a wrong. A civil action may either be ordinary or special. Both are governed by the rules for ordinary civil actions subject to specific rules prescribed for a special civil action.<sup>32</sup> A special proceeding is a remedy by which a party seeks to establish a status, a right or a particular fact.<sup>33</sup>

An ordinary civil action is commenced by filing of the original complaint in court.<sup>34</sup> An action affecting title to, or possession of real property, or interest therein, or forcible entry and detainer action is a real action while one founded upon the privity of contract or for the enforcement or resolution of a contract or for the recovery of personal property<sup>35</sup> is a personal action. Where the object of an action is a judgment against a particular person to exclude him of all his rights

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<sup>28</sup> REV RULES OF PROCEDURE, Rule 119, s 2.

<sup>29</sup> *Id.*, Rules 119 & 120.

<sup>30</sup> *Id.*, Rule 121, s 2. See also CONST, Art III, s 21.

<sup>31</sup> *Id.*, Rule 122. See also Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases, AM No 005-03-SC, effective 15 October 2004.

<sup>32</sup> 1997 RULES OF CIVIL PROCEDURE, Rule 1, s 3(a).

<sup>33</sup> *Id.*, Rule 1, s 3(c).

<sup>34</sup> *Id.*, Rule 1, s 5.

<sup>35</sup> *Id.*, Rule 4, s 1; *De la Cruz v Seminary of Manila*, 18 Phil 330 (1911) as cited in I J FERIA & M C NOCHE, CIVIL PROCEDURE ANNOTATED 204 (2001).

in respect of a particular property or relief prayed for, the action is one *in personam*.

Where the object is to determine the rights of a party over a specific property against the whole world, equally binding to everyone, the action is one *in rem*. And where the action is directed against a particular person for the purpose of using his interest over a particular property to satisfy a lien or encumbrance, such as in the case of a foreclosure on a mortgage, then the action is *quasi-in-rem*.<sup>36</sup> If the technical object of the suit is to establish a claim against some particular person, with a judgment which generally in theory at least, binds his body, or to bar some individual claim or objection, so that only certain persons are entitled to be heard in defense, the action is *in personam*, although it may concern the right of possession of a tangible thing.<sup>37</sup>

Once the case is filed, a summons is issued by court wherein the defendant is notified of the action brought against him. There are three methods of serving summons:

- (1) personal service where the summons is handed to the defendant in person;
- (2) substituted service where the summons is handed together with a copy of the complaint to some competent person in charge of the defendant's office or regular place of business; and
- (3) service by publication wherein the defendant is designated as an unknown owner or whenever his address is unknown or cannot be ascertained by diligent inquiry, may by leave of court be effect upon him by publication in a newspaper of general circulation in such places and in such time as the court may order.<sup>38</sup>

Service upon private domestic corporations may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel while service upon a private foreign corporation doing business in the Philippines may be made on its resident agent designated in accordance with law for that purpose or, if there is no such agent, on the government official designated by law to that effect or on any of its officers or agents within the Philippines.<sup>39</sup> By serving such a summons, the court acquires jurisdiction over the person of the defendant. Trial and judgment without such service are null and void.<sup>40</sup> The respective claims of the parties are then alternately presented through pleadings.<sup>41</sup> If the defendant has a cross-claim or compulsory

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<sup>36</sup> 1 F REGALADO REMEDIAL LAW COMPENDIUM 16 (5<sup>th</sup> rev edn, 1988).

<sup>37</sup> I J FERIA & M C NOCHE, *op cit*, p 205.

<sup>38</sup> 1997 RULES OF CIVIL PROCEDURE, rule 14, ss 6, 7 & 14.

<sup>39</sup> *Id*, Rule 14, ss 11 & 12.

<sup>40</sup> *Id*, Rule 14; *Salmon v Tan Cueco* 36 Phil 556 (1917); *Trimica v Polaris Marketing Corp* GR 60 SCRA 321 (1974).

<sup>41</sup> *Id*, Rule 6.

counterclaim, it must be asserted in the answer, or be considered barred. All pleadings must be verified.

Within one day from the receipt of the complaint, a summons is prepared containing a remainder to defendant to observe restraint in filing a motion to dismiss and instead allege the grounds as defenses in the answer. Likewise, the court issues an order requiring the parties to avail of the modes of discovery under Rules 23-28 within 5 days from filing the answer together with the summons.<sup>42</sup>

Within 5 days from the date of filing of the reply, plaintiff must promptly move *ex parte* that the case be set for pre-trial. Three days before pre-trial, the parties shall submit their briefs containing the following:

- (1) willingness to enter into an amicable settlement indicating the desired terms or to submit the case to alternative modes of dispute resolution;
- (2) a summary of admitted facts and proposed stipulation of facts;
- (3) issues to be tried and resolved;
- (4) documents or exhibits to be presented, stating the purpose thereof. (No evidence shall be allowed to be presented or offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown.)
- (5) a manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
- (6) the number and names of the witnesses, the substance of their testimonies, and the approximate number of hours that will be required by the parties for the presentation of their respective witnesses.<sup>43</sup>

The trial judge refers the parties and their counsel to the Philippine Mediation Center (PMC) for mediation and if it fails, refer the case to the Branch Clerk of Court to assist the parties in reaching a settlement and to mark the documents or exhibits to be presented.<sup>44</sup> The trial judge should exert all efforts to arrive at a settlement of the dispute or if it fails, adopt measures to facilitate the disposition of the case.<sup>45</sup>

A party who fails to appear at the pre-trial conference may be non-suited or considered as in default.<sup>46</sup> If the court finds that facts exist upon which a

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<sup>42</sup> Supreme Court, Pre-Trial Guidelines, s A(i).

<sup>43</sup> See also 1997 REVISED RULES ON CIVIL PROCEDURE, Rule 18.

<sup>44</sup> PRE-TRIAL GUIDELINES, s A(3). See also Supreme Court issuances in AM 01-10-5-SC-PHILJA dated 06 October 2001 and M 04-3-15-SC-PHILJA dated 03 March 2004 on the use of ADR in Pre-Trial, particularly court-annexed mediation before pilot courts in Metro Manila, Cebu and Davao.

<sup>45</sup> *Id.*, s A(4-9).

<sup>46</sup> 1997 REVISED RULES OF CIVIL PROCEDURE, Rule 18, s 5.

judgment on the pleadings or summary judgment may be made, it may render such judgment as justice may require.<sup>47</sup>

The Court then prepares a trial calendar for the case and notices of the relevant dates are served on the parties.<sup>48</sup> During the trial, each party endeavours to maintain by testimonies and evidence the claim embodied in the pleadings.<sup>49</sup>

The Rules of Court provide certain rules of evidence which regulate the production of evidence in court, decide what can be admitted and what should be excluded and determines its value and effect.<sup>50</sup>

After the determination of the rights of the parties pertinent to the claim made by the court, as the law and evidence may warrant, the judgment is rendered. This judgment must be prepared personally and signed by the judge. It must clearly and distinctly state the facts and the law on which it is based and be filed with the clerk of court.<sup>51</sup> No petition for review or motion for reconsideration of a decision of the court shall be refused or denied without stating the legal basis for that decision.<sup>52</sup>

If the judgment is final, not interlocutory, and the period of appeal has been perfected, the judgment rendered may be said to have become executory, and the prevailing party is entitled, as a matter of right, to its execution.<sup>53</sup> Where the judgment or order has become executory, the court cannot refuse to issue a writ of execution except:

- (1) when subsequent facts and circumstances arise, which render such execution unjust or impossible;<sup>54</sup>
- (2) on equitable grounds, as when there has been a change in the situation of the parties which makes execution inequitable;<sup>55</sup>
- (3) where the judgment has been novated by the parties;<sup>56</sup>
- (4) when a petition for relief or an action to enjoin the judgment is filed and a preliminary injunction is prayed for and granted;<sup>57</sup>

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<sup>47</sup> 1991 REV RULES ON SUMMARY PROCEDURE, Rule 3, s 6.

<sup>48</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 30, s 1.

<sup>49</sup> *Id.*, Rule 30, s 5.

<sup>50</sup> REV RULES ON EVIDENCE, Rule 128, ss 1-4.

<sup>51</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 51, s 5.

<sup>52</sup> CONST, Art VIII, s 14, 2<sup>nd</sup> par.

<sup>53</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 39, s 1.

<sup>54</sup> *Butuan City v Ortiz* GR No 18054, 22 December 1961; *Lipana v Dev't Bank of Rizal* GR No 73884, 24 September 1987.

<sup>55</sup> *Albar v Carandang* GR No 18003, 29 September 1962; *Luna v International Appellate Court* GR No 68374, 18 June 1985.

<sup>56</sup> *Fua Cam Lu v Yap Fauco* 74 Phil 287 (1943).

<sup>57</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 39, s 6.



- (5) where the judgment has become dormant, the five-year period under section 6 of rule 39 of the Rules of Court having expired without the judgment having been revived; or
- (6) where the judgment turns out to be incomplete or conditional.<sup>58</sup>

For a writ of execution to be valid it must conform strictly to the judgment and it cannot vary the terms of the judgment it seeks to enforce. The effective period or lifetime of a writ of execution is 5 years, counted from the date of its receipt by the office, generally from the sheriff. However, the sheriff makes a report to the court within 30 days after its receipt and every 30 days thereafter until the judgment is satisfied in full.<sup>59</sup>

If the judgment directs a party to execute a conveyance of land, or deliver deeds or other instruments or to perform some other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other persons appointed by the court.<sup>60</sup> If the real or personal property is within the Philippines, the court may, in lieu of enforcing the judgment, direct a subsequent judgment divesting the title of any party and vesting it in others and such judgment will have the force and effect of a conveyance executed in due form of law.<sup>61</sup>

When the execution requires the delivery or restitution of property, the officer must oust the person against whom the judgment is rendered and place the judgment creditor in possession of such property and then levy as much of the property of the judgment debtor as will satisfy the judgment and costs included in the writ of execution.<sup>62</sup> When the property subject of the execution contains improvements, the officer shall not destroy or remove the improvements, except upon special order of the court, after due hearing.<sup>63</sup>

A monetary judgment is enforced by the officer levying on all the properties, real and personal of every name and nature whatsoever, which may be disposed of for value, except those properties which are exempt from execution. Any excess in the proceeds must be delivered to the judgment debtor unless otherwise directed by the court.<sup>64</sup>

## EVIDENCE

Evidence is admissible when it is relevant to the issue and is not excluded by the rules or evidence. However, not all relevant matters are admissible in evidence

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<sup>58</sup> *Del Rosario v Villegas* 49 Phil 634 (1926); *Ignacio v Hilario* 76 Phil 605; *Cu Unjieng v Mabalacat Sugar Co* 70 Phil 380 (1940).

<sup>59</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 39.

<sup>60</sup> *Id.*, Rule 30, s 10.

<sup>61</sup> *Id.*, Rule 39, s 10. See also Rule 39, s 11.

<sup>62</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 30, s 10(c).

<sup>63</sup> *Id.*, Rule 30, s 10(d).

<sup>64</sup> *Id.*, Rule 30, s 9(a), 3<sup>rd</sup> par.

and as a rule, collateral matters, even if relevant, are not admissible. As to form, evidence is either real, documentary or testimonial. Real evidence is that which is addressed to the senses of the court, as where objects are exhibited for the personal observation of the judge. Documentary evidence consists of the documents, depositions and other papers presented before the court. Testimonial evidence is that which is given orally by witnesses. Except as provided by the Rules, all persons who can perceive and perceiving can make known their perception to others, may be witnesses. Evidence can also be direct when it tends to prove a fact without reference to any fact; circumstantial when it tends to prove a fact by inference only; incompetent when the witness giving it lacks fitness to give evidence; irrelevant when it has no connection with the point at issue; immaterial when it would not affect the point at issue even if admitted; primary when it is the best proof that can be produced; secondary when it is proof admissible in the absence of primary evidence; *prima facie* when it appears to be sufficient for the time being until something arises to controvert it; and conclusive when it establishes the fact sought to be proved without any further question.<sup>65</sup>

There are certain matters on which evidence need not be presented. These are:

- (1) matters of judicial notice;<sup>66</sup>
- (2) admissions made by the parties in the pleadings, or in the course of the trial or other proceedings in the case otherwise known as judicial admissions;<sup>67</sup> and
- (3) matters covered by legal presumptions.<sup>68</sup>

Matters which are deemed to be of judicial notice without introduction of proof are:

- (1) facts which are of public knowledge;
- (2) facts which are capable of unquestionable demonstration; and
- (3) facts which ought to be known to judges because of their functions, such as the existence and territorial extent of states, measure of time, etc.<sup>69</sup>

In civil cases, the party bearing the burden of proof must establish his case by a preponderance of evidence.<sup>70</sup> In a criminal case, the accused is entitled to an acquittal unless his guilt is established beyond reasonable doubt.<sup>71</sup>

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<sup>65</sup> M J GAMBOA, AN INTRODUCTION TO LAW 454-5 (1965).

<sup>66</sup> REVISED RULES ON EVIDENCE, Rule 129, s 1.

<sup>67</sup> *Id.*, Rule 129, s 4.

<sup>68</sup> *Id.*, Rule 131.

<sup>69</sup> *Id.*, Rule 129, s 1.

<sup>70</sup> *Id.*, Rule 133, s 1.

<sup>71</sup> *Id.*, Rule 133, s 2.

Effective 01 August 2001, the Supreme Court promulgated the Rules on Electronic Evidence covering electronic documents and electronic data messages which are applicable to civil and criminal actions as well as quasi-judicial and administrative cases pursuant to the E-Commerce Law.<sup>72</sup>

## SPECIAL CIVIL ACTIONS, PROVISIONAL REMEDIES AND SPECIAL PROCEEDINGS

Special civil actions by their nature, require a different procedure from that of ordinary civil actions. Actions for interpleader, declaratory relief, *certiorari*, *mandamus*, *quo warranto*, expropriation, foreclosure of real estate mortgage, partition, forcible entry and unlawful detainer and contempt are special civil actions.<sup>73</sup> Provisional remedies which are available for the preservation or protection of the rights or interests of parties during the pendency of the principal action are preliminary attachment; preliminary injunction; receivership; replevin and support *pendente lite*.<sup>74</sup> All other remedies, including one to establish the status or right of a party or a particular fact, are called special proceedings.<sup>75</sup> Rules of special proceedings are provided for in the following cases: settlement of the estates of deceased persons; allowance or disallowance of wills; letters testamentary; escheat; guardianship and custody of children; appointment of trustees; adoption; rescission and revocation of adoption; hospitalization of insane persons; *habeas corpus*; change of name; voluntary dissolution of corporations; judicial approval of voluntary recognition of minor natural children; constitution of family homes; declaration of absence; and cancellation or correction of entries in the civil registry.<sup>76</sup>

On 28 October 1997, Republic Act No. 8369 otherwise known as the Family Courts Act was signed into law. Under Section 5, the Family Courts have exclusive jurisdiction to hear and decide the following cases:

- (a) Criminal cases where one or more of the accused is below eighteen (18) years of age but not less than nine (9) years of age, or where one or more of the victims is a minor at the time of the commission of the offense: Provided, that if the minor is found guilty, the court shall promulgate sentence and ascertain any civil liability which the accused may have incurred. The sentence, however, shall be suspended without need of application pursuant to Presidential Decree No 603, otherwise known as the 'Child and Youth Welfare Code';
- (b) Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
- (c) Petitions for adoption of children and the revocation thereof;

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<sup>72</sup> AM No 01-7-01-SC, dated 17 July 2001; Rep Act No 8792 ( ).

<sup>73</sup> RULES OF COURT, Rules 62-71.

<sup>74</sup> RULES OF COURT, Rules 57-61.

<sup>75</sup> RULES OF COURT, Rules 72-109.

<sup>76</sup> RULES OF COURT, Rules 106-108.

- (d) Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
- (e) Petitions for support and/or acknowledgment;
- (f) Summary judicial proceedings brought under the provisions of Executive Order No 209, otherwise known as the 'Family Code of the Philippines';
- (g) Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination , or restoration of parental authority and other cases cognizable under Presidential Decree No 603, Executive Order No 56 (Series of 1986), and other related laws;
- (h) Petitions for the constitution of the family home;
- (i) Cases against minors cognizable under the Dangerous Drugs Act, as amended;
- (j) Violations of Republic Act No 7610, otherwise known as the 'Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act', as amended by Republic Act No 7658; and
- (k) Cases of domestic violence against women and children.

Pursuant to Section 13 of the Family Court Act, the Supreme Court constituted a Committee on Revision of the Rules of Court (Family Courts) chaired by Senior Associate Justice Reynato S. Puno. To date, the Supreme Court has promulgated the following rules: (1) Rule on Examination of a Child Witness; (2) Rule on Juveniles in Conflict with the Law; (3) Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages; (4) Rule on Legal Separation; (5) Rule on Provisional Orders; (6) Rule on Custody of Minors and Writ of *Habeas Corpus* in Relation to Custody of Minors; (7) Rule on Guardianship of Minors; (8) Rule on Adoption; (9) Rule on Violence Against Women and Children; and (10) Rule on Commitment of Children.

One of the innovative strategies of the Supreme Court in decongesting the caseloads of family courts is the Justice on Wheels Project. It aims to improve the access of poor and marginalized sectors to affordable judicial services. The mobile court is in the form of a large bus staffed by a judge, a prosecutor, and a stenographer, among others. The Ad-Hoc Committee on the Justice on Wheels Project is headed by Justice Adolfo S. Azcuna as Chairperson and Senior Deputy Court Administrator Zenaida N. Elepaño as Vice-Chairperson.

The cases heard were for such crimes as light threats, illegal possession of firearms and deadly weapons, theft, robbery, and violations of PD 1619 – a decree penalizing the use or possession or the unauthorized sale to minors of volatile substances for the purpose of inducing intoxication.

## ENFORCEMENT OF JUDGMENTS AND ARBITRAL AWARDS

The court may enter a satisfaction of judgment upon:

- (1) return of execution satisfied;<sup>77</sup>
- (2) the filing of an admission of satisfaction of judgment executed and acknowledged in the manner as a conveyance of real property by the judgment-creditor or his attorney;
- (3) an indorsement of such admission by the judgment-creditor or his attorney on the face of the record of the judgment;<sup>78</sup> or
- (4) when the judgment is satisfied other than upon an execution, the court may order satisfaction of judgment without the judgment debtor complying with certain specified requirements.<sup>79</sup>

The effect of a judgment varies. If it is *in rem*, the judgment or order is conclusive upon the title to the thing, the will or administration or the condition, status, or relationship of the person; if it is *in personam*, the judgment is conclusive amongst the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceedings, litigating for the same thing and under the same title and in the same capacity and the conclusiveness of judgment, wherein the parties to both actions may be the same but the causes of action are the same, is binding only with respect to the matters actually raised and adjudged therein.<sup>80</sup>

Provided that a foreign tribunal has jurisdiction to promulgate the judgment, the effects will be as follows. In actions *in rem*, the judgment is conclusive upon verification of title to the thing; in actions *in personam*, the judgment is presumptive evidence of a right as between the parties and their successors-in-interest by a subsequent title, but the judgment may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact.<sup>81</sup>

Except for labour arbitration, which is provided for by the Labour Code,<sup>82</sup> the legal basis of arbitration is the contract or agreement between the parties to arbitrate future disputes or to submit to arbitration, disputes that have already arisen. Article 1306 of the Civil Code likewise guarantees such right when it provides that:

Contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy.

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<sup>77</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 39, s 44.

<sup>78</sup> 1997 REV RULES ON CIVIL PROCEDURE, Rule 39, s 44.

<sup>79</sup> *Id.*, Rule 30, s 45.

<sup>80</sup> *Id.*, Rule 39, s 47.

<sup>81</sup> *Id.*, Rule 30, s 48.

<sup>82</sup> Presidential Decree No 442 (1974), ss 260-262.

Section 2 of the Arbitration Law recognizes both the arbitration agreement and the arbitration clause.<sup>83</sup> By the broad language of section 1, it implies that any claim or dispute arising out of a contract or determinate legal relationship may be submitted to arbitration. When the court is satisfied that the making of the agreement or the failure to comply with it is not in issue, the court shall order the parties to proceed to arbitration in accordance with the terms of the agreement.<sup>84</sup> All acts of the parties, subsequent to the making of the contract which raise issues of fact or law, lie exclusively within the jurisdiction of the arbitrators.

Usually, a contract provides for a method of naming or appointing an arbitrator or arbitrators but if there is no such method, the Regional Trial Court shall designate the arbitrator and they must be sworn by any officer authorized by law to administer an oath.<sup>85</sup>

Arbitrators, may, at the commencement of the hearing, ask both parties for brief statements of the issues in controversy and/or an agreed statement of facts. The arbitrators are the sole judges of the relevancy and materiality of evidence offered and are not bound to conform to the Rules of Court pertaining to evidence.<sup>86</sup> Briefs may be filed by the parties within 15 days after the close of the oral hearings.<sup>87</sup> Unless the parties have stipulated by written agreement the time within which the arbitrators must render their award, the written award shall be rendered within 30 days after the closing of the hearings, which period may be extended by mutual consent.<sup>88</sup> At any time within one month after the award is made, any party to the arbitration may apply to a court having jurisdiction for an order confirming the award, unless the award is vacated, modified or corrected as prescribed by law.<sup>89</sup> An appeal may be taken from an order upon an award through *certiorari* proceedings, but such appeals are limited to questions of law.<sup>90</sup>

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<sup>83</sup> Rep Act No 876 (1973).

<sup>84</sup> *Id.*, s 6.

<sup>85</sup> *Id.*, ss 8 & 13.

<sup>86</sup> *Id.*, s 15.

<sup>87</sup> *Id.*, s 16.

<sup>88</sup> *Id.*, s 19.

<sup>89</sup> *Id.*, s 23.

<sup>90</sup> *Id.*, s 29.