MOST FREQUENTLY ASKED QUESTIONS

Source: U.P. Law Center

EFFECT OF AMENDMENT TO A PLEADING

Defendant through his lawyer, filed an answer therein admitting the averment in the complaint that the land was acquired by the plaintiff through inheritance from his parents, the former owners thereof.

Subsequently, the defendant changed his lawyer and, with leave of court, amended the answer. In the amended answer, the abovementioned admission no longer appears; instead, the alleged ownership of the land by the plaintiff was denied coupled with the allegation that the defendant is the owner of the land for the reason that he bought the same from the plaintiff's parents during their lifetime.

After trial, the Regional Trial Court rendered a decision upholding the defendant's ownership of the land.

On appeal, the plaintiff contended that the defendant is bound by the admission contained in his original answer.

Is the contention of plaintiff correct? Why?

SUGGESTED ANSWER:

NO, because pleadings that have been amended disappear from the record, lose their status as pleadings and cease to be judicial admissions. While they may nonetheless be utilized as against the pleader as extrajudicial admissions, they must, in order to have such effect, be formally offered in evidence. (***Director of Lands vs. Court of Appeals, 196 SCRA 94)***

ALTERNATIVE ANSWER:

YES, because an admission in the original pleading does not cease to be a judicial admission simply because it was deleted in an amended pleading. The original answer, although replaced by an amended answer does not cease to be part of a judicial record, not having been expunged therefrom. (***Dissenting opinion in Torres vs. Court of Appeals, 131 SCRA 24)***

REMEDIES OF A PARTY DECLARED IN DEFAULT

What are the available remedies of party declared in default:

1.) Before the rendition of judgment; 1%
2.) After judgment but before its finality; and 2%
3.) After finality of judgment? 2%

SUGGESTED ANSWER:

The available remedies of a party declared in default are as follows:

1.) Before the rendition of judgment

(a) he may file a motion to dismiss under oath to set aside the order of default on the grounds of fraud, accident, mistake or excusable negligence and that he has a meritorious defense (Sec. 3[b] of Rule 9); and if reconsideration is denied, he may file the special civil action of certiorari for grave abuse of discretion tantamount to lack or excess of jurisdiction (Sec. 1 of Rule 65); or

(b) he may file a petition for certiorari if he has been illegally declared in derfault e.g. during the pendency of his motion to dismiss or before the expiration of the time to answer. (Matute v. CA, 26 SCRA 768; Acosta-Ofalia v. Sundial, 85 SCRA 412).

2.) After judgment but before its finality, he may file a motion for new trial on the grounds of fraud, accident, mistake, excusable negligence or a motion for

reconsideration on gh ground of excessive damages, insufficient evidence or the decision or final order being contrary to law (Sec. 2 of Rule 37); and thereafter, if the motion is denied, appeal is available under Rules 40 or 41, whichever is applicable.

3.) After finality of the judgment, there are three ways to assail the judgment, which are:
(a) a petition for relied under Rule 38 on the grounds of fraud, accident, mistake or excusable negligence;
(b) annulment of judgment under Rule 47 for extrinsic fraud or lack of jurisdiction;
(c) certiorari if the judgment is void on its face or by the judicial record. (Balangcad vs. Justices of the Court of Appeals, G.R. No. 83888, February 12,1992, 206 SCRA 171)

DEATH OF A PARTY

What is the effect of the death of a party upon a pending action?

SUGGESTED ANSWER:

When the claim in a pending action is purely personal, the death of either of the parties extinguishes the claim and the action is dismissed. When the claim is not purely personal and is not thereby extinguished, the party should be substituted by his heirs or his executor or administrator. (
Sec. 16 of Rule 3). If the action for recovery of money arising from contract, express or implied, and the defendant dies before the entry of final judgment in the court in which the action was pending at the time of such death, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff shall be enforced in the manner provided in the rules for prosecuting claims against the estate of a deceased person. (Sec. 20 of Rule 3)

THIRD PARTY CLAIM; WRIT OF INJUNCTION

Enforcing a writ of execution issued by the Pasig Regional Trial Court in a civil action, the sheriff attached several pieces of machinery and equipment found in defendant's place of business. Antonio Sadalay filed with the sheriff an affidavit of third-party claim stating that the attached properties belong to him, not to the defendant.

(a) Can Sadalay intervene in the case and ask the Pasig RTC to resolve his third-party claim?
(b) If Sadalay decides to file a separate action in the Regional Trial Court in Makati to vindicate his claim, may he validly obtain a writ of injunction from the Makati RTC to enjoin the sale in execution of the levied properties?

SUGGESTED ANSWER:

a.) **NO**, Sadalay may not intervene in the case because intervention is allowed only before or during the trial of the case. In this case there is already a final and executory judgment. (Sec. 2, Rule 19; Bayer Phils. Vs. Agana, 63 SCRA 355) However, he may ask the Pasig RTC to resolve preliminarily whether the sheriff acted rightly or wrongly in levying execution on the properties in question. (Ong vs. Tating, 149 SCRA 265)

b.) **YES**, because a judgment rendered in his favor by the Makati court declaring him to be the owner of the properties levied on would not constitute interference with the powers or processes of the Pasig Court which rendered the judgment to enforce the execution. If that is so, an interlocutory order such as the writ of preliminary injunction against the

sheriff, upon a interference.

claim and prima facie showing of ownership, cannot be considered as such (***Abiera vs. CA, 45 SCRA 314; Sy vs. Discaya, 181 SCRA 378)***

WRIT OF EXECUTION

Plaintiff sued to recover an unpaid loan and was awarded P333,000.00 by the RTC of Manila. Defendant did not appeal within the period allowed by law. He died six days after the lapse of the period to appeal. Forthwith, a petition for the settlement of his estate was properly filed with the RTC of Pampanga where an inventory of all his assets was filed and correspondingly approved. Thereafter, plaintiff filed a motion for execution with the Manila court, contending therein that the motion was legally justified because the defendant died after the judgment in the Manila court had become final. Resolve the motion and state your reasons.

b.)Under the same set of facts as (a), a writ of execution was issued by the Manila court upon proper motion three days after the lapse of the period to appeal. The corresponding levy on execution was duly effected on defendant's parcel of land worth P666,000.00 a day before the defendant died. Would it be proper, on motion, to lift the levy on defendant's property? State the reasons for your answer.

SUGGESTED ANSWER:

(a) Motion for execution denied.

Although the defendant died after the judgment had become final and executory, it cannot be enforced by a writ of execution against the estate of the deceased which is in custodia legis. The judgment should be filed as a proven money claim with the RTC of Pampanga. (***Paredes vs. Moya, 61 SCRA 527)***

(b) No, since the levy on execution was duly effected on defendant's parcel of land a day before the defendant died, it was valid. The land may be sold for the satisfaction of the judgment and the surplus shall be accounted for by the sheriff to the corresponding executor or administrator. (***Sec. 7(c) of Rule 39)***

COUNTERCLAIM

X filed an action for damages against T arising from the latter's tortuous act. Y filed his Answer with a counterclaim for damages suffered and expenses incurred on account of X's suit. Thereafter, X moves to dismiss the case since he lost interest in the case. Y did not object. The court dismissed the action without prejudice. Y moved the to set the reception of his evidence to prove his counterclaim. If you were the judge, how would you resolve the motion? Explain.

SUGGESTED ANSWER:

I would deny the motion. Inasmuch as Y's counterclaim for damages incurred on account of X's suit cannot remain pending for independent adjudication, Y should have objected to the dismissal of the complaint. His failure to object deprived him of the right to present evidence to prove his counterclaim. (***Sec. 2 of Rule 17; Ynotorio v. Lira, 12 SCRA 369)***.

ADJUDICATION OF CASES WITHOUT TRIAL

Can civil and criminal cases be adjudicated without trial? Explain

SUGGESTED ANSWER

Civil Cases may be adjudicated without trial, such as in the following rules:

a.) Summary Judgment
b.) Judgment on the Pleadings
c.) Summary Procedure
d.) Sec. 3 of Rule 17

Criminal cases as a rule may not be adjudicated without trial. Some exceptions are the following:

a.) Plea of guilty
b.) Motion to quash on the ground of double jeopardy or extinction of criminal action or liability
c.) Motion to dismiss on the ground of violation of the right to a speedy trial.

PETITION FOR CERTIORARI; WHEN MOTION FOR RECONSIDERATION NOT NECESSARY

Is the failure to file a motion for reconsideration in the lower court as a condition precedent for the granting of the writ of certiorari or prohibition always fatal? Explain.

SUGGESTED ANSWER:

NO, because there are exceptions, such as the following:

a.) The question of jurisdiction was squarely raised before and decided by the respondent court
b.) Public interest is involved
c.) Case of urgency
d.) Order is patent nullity
e.) Issue is purely of law
f.) Deprivation of right to due process

EXTRA-TERRITORIAL SERVICE OF SUMMONS

When is extra-territorial service of summons proper?

SUGGESTED ANSWER:

Extraterritorial service of summons is proper when the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines. (Sec. 17 of Rule 14) It is also proper when the defendant ordinarily resides within the Philippines, but is temporarily out of it. (***Sec. 18 of Rule***

RES JUDICATA

Evelyn filed a complaint for a sum of money against Joan but the complaint was later dismissed for failure to prosecute "within a reasonable length of time." Thereafter, Evelyn filed another case based on the same facts against Joan. Joan moved to dismiss the same on the ground that the cause of action therein is barred by a prior judgment (res judicata). Evelyn opposed the motion claiming that re judicata has not set in since Joan was not served with summons and the complaint in the first case was earlier dismissed, so that the trial court never acquired jurisdiction over her person and, consequently, over the case. How would you decide the motion of Joan? Explain.

SUGGESTD ANSWER:

The motion to dismiss is denied. One of the essential requisites of res judicata is jurisdiction over the parties. Inasmuch as Joan was not served with the summons in the first case which was earlier dismissed, the court did not acquire jurisdiction over her person and, hence, the

dismissal was without prejudice to the filing of another action against her. (Republic Planters Bank vs. Molina, September 28, 1988)

LIFE SPAN OF A TEMPORARY RESTRAINING ORDER

What is the life span of a temporary restraining order issued by a trial court? May this life span be extended? Explain fully

SUGGESTED ANSWER:

The life span of a restraining order is twenty days. This life span may not be extended.

A preliminary injunction may no longer be granted without notice to the adverse party. However, if it appears that great or irreparable injury would result to the applicant before his application for preliminary injunction could be heard on notice, the judge may issue a temporary restraining order with a limited life span of twenty days from date of issue. If no preliminary injunction is granted within said period, the temporary restraining order would automatically expire on the 20th day. If before the expiration of the 20-day period, the application for preliminary injunction is denied, the temporary restraining order would also be deem automatically vacated. (Sec. 5 of Rule 58; Dionisio vs. CFI of South Cotabato, 124 SCRA 222)

ERROR OF JUDGMENT VS. ERROR OF JURISDICTION

Distinguish between error of judgment and error of jurisdiction.

SUGGESTED ANSWER:

An error of judgment is one which the court may commit in the exercise of its jurisdiction. Such an error does not deprive the court of jurisdiction and is correctible only by appeal; whereas an error of jurisdiction is one which thcourt acts without or in excess of its jurisdiction. Such an error renders an orde judgment void or voidable and is correctible by the special civil action of certiorari.(De la Cruz vs. Moir, 36 Phil. 213; Cochingyan vs. Cloribel, 76 SCRA

SETTING ASIDE A FINAL AND EXECUTORY JUDGMENT

May a judgment which has become final and executory still be questioned, attacked or set aside? If so, how? If not, why? Discuss fully.

SUGGESTED ANSWER:

There are three ways by which a final and executory judgment may be attacked or set aside, namely:

a.) By petition for relief from judgment under Rule 38 on the grounds of fraud, accident, mistake or excusable negligence within sixty days from learning of the judgment and not more than six months from its entry'

b.) By direct to annul or enjoin the enforcement of the judgment when the defect is not apparent on its face or from the recitals contained in the judgment;

c.) By direct action, such as certiorari, or by a collateral attack against the judgment which is void on its face or when the nullity of the judgment is apparent by virtue of its own recitals. (**Makabingkil v. People's Homesite and Housing Corp., 72 SCRA 326)**

SETTLEMENT OF ESTATE; SELF-ADJUDICATION; SUMMARY SETTLEMENT

Rene died intestate, leaving several heirs and substantial property here in the Philippines.

1.) Assuming Rene left no debts, as counsel for his heirs, what steps would you suggest to settle Rene's estate I the least expensive manner?
2.) Assuming Rene left only one heir and no debts, as counsel for his lone heir, what steps would you suggest?

3.) Assuming that the value of Rene's estate does not exceed P 10,000.00, what remedy is available to obtain a speedy settlement of his estate?

SUGGESTED ANSWER:

1) To settle Rene's estate in the least expensive manner, an extrajudicial settlement of the estate by agreement of the parties should be made through a public instrument to be filed with the Register of Deeds, together with a bond in an amount equivalent to the value of the personal property involved as certified under oath by the parties concerned and conditioned upon payment of any just claim that may be filed within two (2) years by an heir or other person unduly deprived of participation in the estate. The fact of extrajudicial settlement or administration shall be published in a newspaper of general circulation once a week for three (3) consecutive weeks. ***(Sec.1, Rule 74.)***

2.) If Rene left only one heir, then the heir ma adjudicate to himself the entire estate by means of an affidavit of self-adjudication to be filed also with the register of deeds, together with the other requirements abovementioned. (id.)

3.) Since the value of Rene's estate exceed P10,000.00, the remedy is to proceed to undertake a summary settlement of estates of mall value by filing a petition in court and upon hearing, which shall beheld not less than one (1) month nor more that three (3) months from the date of the last publication of a notice which shall be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province and after such other notice to interested persons as the court may direct. The court may proceed summarily without the appointment of an executor or administrator, and without delay, grant, if proper, allowance of the will, if any, to estate, and to apportion and divide among them after payment of such debts of the estate as the court shall then find to be due. The order of partition if it involves real estate, shall be recorded by the proper register's office. (***Sec.2, rule 74)***.

AMENDMENT VS. SUBSTITUTION OF INFORMATION

Within the context of the rule on Criminal Procedure, distinguish an amendment from a substitution of an information.

SUGGESTED ANSWER:

An amendment may be made in substance and form, without leave of court, at any time before an accused pleads, and thereafter and during the trial as to all matters of form, by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the accused. Substitution may be made if it appears at any time before judgment that a mistake has been made in charging the proper offense, in which case, the court shall dismiss the complaint or information upon filing of a new one charging the proper offense in accordance with Rule 119, Sec. 11, provided that the accused would not be placed thereby in double jeopardy and may also require the witnesses to give bail for their appearance at the trial. (***Sec. 14, Rule 110; Teehankee, Jr. vs. Madayag, 207 SCRA 134***).

STOP AND FRISK SEARCH

What is a Terry search (or so called "stop and frisk")? Is it justified under existing law and jurisprudence? Explain.

SUGGESTED ANSWER:

A Terry search is a stop-and-search without a warrant. It is justified when conducted by police officers on the bases of prior confidential information which were reasonably corroborated by other attendant matters. (Aniag, Jr. vs. Comelec, 237 SCRA 424).

DOUBLE JEOPARDY

George was charged with falsification. On the date of initial trial, the fiscal moved for the postponement on the ground that the case had been assigned to a special prosecutor of the DOJ who was out of town to attend to an urgent case, and who had wires him to request for postponement. The fiscal manifested that he was not ready for trial because he was unfamiliar with the case. The judge then asked the accused as well as his counsel whether they were amenable to a postponement. Both George and his counsel insisted on a trial. The judge ordered the case dismissed.

Upon learning thereof, the special prosecutor filed a petition for certiorari under Rule 65 of the Rules of Court alleging that the dismissal was capricious and deprived the government of due process. George opposed the petition invoking double jeopardy.

a.) Is double jeopardy a bar to the petition? Explain.
b.) Suppose that trial on the merits had in fact proceeded and the trial judge, finding the evidence to be insufficient, dismissed the case, would your answer be the same? Explain.

SUGGESTED ANSWER:

a.) **NO**, because this is not an appeal by the prosecution asserting a dismissal to be erroneous. It is a petition for certiorari which assails the order of dismissal as invalid and a nullity because it was capricious and deprived the Government of due process. Considering that this was the first motion for postponement of the trial filed by the fiscal and the ground was meritorious, the judge gravely abused his discretion in ordering the case dismissed. **If there is no valid dismissal or termination of the case, there is no basis for invoking double jeopardy.** (***People vs. Gomez, 20 SCRA 293)***

b.) **NO**, because in such case, the order of dismissal would be valid, even if erroneous, and would be tantamount to an acquittal.

DISMISSAL ON NOLLE PROSEQUI

When a criminal case is dismissed on nolle prosequi can it later be refilled?

SUGGESTED ANSWER:

As a general rule, when a criminal case is dismissed on nolle prosequi before the accused is placed on trial and before he is called on to plead, this is not equivalent to an acquittal and does not bar a subsequent prosecution for the same offense. ***(Galvez vs. CA, 237 SCRA 685 [1994])***.

FORMAL OFFER OF EVIDENCE

During the pre-trial of a civil case, the partied presented their respective documentary evidence. Among the documents marked by the plaintiff was the Deed of Absolute Sale of the property in litigation (marked as Exh. "C").

In the course of the trial on the merita, Exh. C was identified by the plaintiff, who was cross-examined thereon by the defendant's counsel; furthermore, the contents of Exh.C were read into the records by the plaintiff.

However, Exh. C was not among those formally offered in evidence by the plaintiff.

May the trial court consider Exh. C in the determination of the action? Why?

SUGGESTED ANSWER:

YES, because not only was the Deed of Absolute Sale marked by the plaintiff as Exh. C during the pre-trial, it was identified by the plaintiff in the course of the trial and the plaintiff was cross-examined thereon by the defendant's counsel. Furthermore, the contents of Exh.C were

read into the records by the plaintiff. Hence, the trial court could properly consider Exh.C in the determination of the action even though it was not formally offered in evidence. This is an exception to the rule that the court shall consider no evidence which has not been formally offered. ***(Sec. 35 of Rule 132)***

PAST RECOLLECTION REVIVED

X states on direct examination that he once know the facts being asked but he cannot recall them now. When handed a written record of the facts, he testifies that the facts are correctly stated, but that he has never seen the writing before.

Is the writing admissible as past recollection recorded? Explain.

SUGGESTED ANSWER:

NO, because for the written record to be admissible as past recollection recorded, it must have been written or recorded by X or under his direction at the time when the fact occurred, or immediately thereafter, or at any other time when the fact was fresh in his memory and he knew that the same was correctly written or recorded. (Sec. 16 of Rule 132) But in this case X has never seen the writing before.

JUDICIAL NOTICE

a.) Give three instances when a Philippine court can take judicial notice of a foreign law.
b.) How do you prove a written foreign law?
c.) Suppose a foreign law was pleaded as part of the defense of defendant but no evidence was presented to prove the existence of said law, what is the presumption to be taken by the court as to the wordings of said law?

SUGGESTED ANSWER:

a.) The three instances when a Philippine court can take judicial notice of a foreign law are:
   1.) When the Philippine courts are evidently familiar with the foreign law
   2.) When the foreign law refers to the law of nations (Sec. 1 of Rule 129)
   3.) When it refers to a published treatise, periodical or pamphlet on the subject of law if the court takes judicial notice of the fact that the writer thereof is recognized in his profession or calling on the subject. (Sec. 46, Rule 130)

b.) A written law may be evidenced by an official publication thereof of by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record ids kept is in a foreign country, the certificate may be made by the secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign country in which the record is kept, and authenticated by the seal of his office. (Sec. 24 of Rule 132)
c.) The presumption is that the wordings of the foreign law are the same as the local law. This is referred to as the doctrine of processual presumption.

HEARSAY RULE

Gerry is being tried for rape. The prosecution's evidence sought to establish that at about 9:00pm of January 20, 1994, Gerry went to complainant June's house to invite her to watch the festivities going on at the town plaza. June accepted the invitation. Upon reaching the public

market, which was just a stone's throw away from June's house, Gerry forcily dragged June towards the banana grove behind the market where he was able to have carnal knowledge with June for about an hour. June did not immediately do home thereafter, and it was only in the early morning of the following day that she narrated her ordeal to her daughter Liza. Liza testified in court as to what June revealed to her.

a.) Is the testimony of Liza hearsay?
b.) Is it admissible in evidence against the objection of the defense?

SUGGESTED ANSWER:

a.) YES, Liza's testimony is hearsay. A witness can testify to those facts which he knows of his personal knowledge, that is, which are derived from his own perception except as otherwise provided in the rules (Sec. 36 of Rule 130).

b.) NO, it is not admissible in evidence against the objection of the defense, because it is not one of the exceptions to the hearsay rule. It cannot be considered part of the res gestae because only statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the res gestae. (Sec. 42 of Rule 130) She narrated her ordeal to her daughter only in the morning of the following day, as she did not immediately go home after the incident which occurred at 9:00 pm. She could have made up the story. She should be placed on the witness stand, not Liza whose knowledge of the event is hearsay.

Alternative answer:

Liza's testimony is admissible in evidence as to the tenor but not as to the truth of what June revealed to her.

DEAD MAN'S STATUTE

Maximo filed an action against Pedro, the administrator of the estate of deceased Juan, for the recovery if a car which is part of the latter's estate. During trialm, Maximo presented witness Mariano who testified that he was present when Maximo and Juan agreed that the latter would pay a rental of P20,000 for the use of Maximo's car for one month after which Juan should immediately return the car to Maximo. Pedro objected to the admission of Mariano's testimony.

If you were the judge, would you sustain Pedro's objection? Why?

SUGGESTED ANSWER:

NO, the testimony is admissible in evidence because witness Mariano who testified as to what Maximo and Juan, the deceased person, agreed upon, is not disqualified to testify on the agreement. Those disqualified are parties to a case, or persons in whose behalf a case is prosecuted against the administrator of Juan's estate, upon a claim or demand against his estate as to any matter of fact occurring before Juan's death. ***(Sec. 23 of Rule 130)***.

SUMMARY OF DOCTRINES OF SELECTED CASES

CIVIL PROCEDURE

VLASON ENTERPRISES CORPORATION vs. COURT OF APPEALS
[G.R. Nos. 121662-64. July 6, 1999.]

It is well-settled that an amended pleading supersedes the original one, which is thus deemed withdrawn and no longer considered part of the record, it does not follow ipso facto that the service of a new summons for amended petitions or complaints is required. ***Where the defendants have already appeared before the trial court by virtue of a summons on the original complaint, the amended complaint may be served upon them without need of another summons, even if new causes of action are alleged. After it is acquired, a court's jurisdiction continues until the case is finally terminated. Conversely, when defendants have not yet appeared in court and no summons has been validly served, new summons for the amended complaint must be served on them.*** It is not the change of cause of action that gives rise to the need to serve another summons for the amended complaint, but rather the acquisition of jurisdiction over the persons of the defendants. If the trial court has not yet acquired jurisdiction over them, a new service of summons for the amended complaint is required.

UNITED HOUSING CORPORATION vs. DAYRIT, ET AL.
[G.R. No. 76422. January 22, 1990.]

A judgment upon compromise which is a judgment embodying a compromise agreement entered into by the parties in which they make reciprocal concessions in order to terminate a litigation already instituted is not appealable, is immediately executory and has the effect of res judicata. A judgment rendered upon a compromise agreement, not contrary to law or public policy or public order has all the force and effect of any other judgment, it being a judgment on the merits, hence, conclusive upon the parties and their privies. As such, it can be enforced by writ of execution.

BA FINANCE CORPORATION vs. RUFINO CO, ET AL.
[G.R. No. 105751. June 30, 1993.]

The rule is that a compulsory counterclaim cannot "remain pending for independent adjudication by the court." This is because a compulsory counterclaim is auxiliary to the proceeding in the original suit and merely derives its jurisdictional support therefrom. ***Thus, it necessarily follows that if the trial court no longer possesses jurisdiction to entertain the main action of the case, as when it dismisses the same, then the compulsory counterclaim being ancillary to the principal controversy, must likewise be similarly dismissed since no jurisdiction remains for the grant of any relief under the counterclaim.***

For the guidance of Bench and Bar, if any of the grounds to dismiss under Sec. 3, Rule 17, of the Rules of Court arises, the proper recourse for a defendant who desires to pursue his compulsory counterclaim in the same proceeding is not to move for the dismissal of the complaint; instead, he should only move to have plaintiff declared non-suited on the complaint so that the latter can no longer present his evidence thereon, and simultaneously move that he be declared as in default on the compulsory counterclaim, and reserve the right to present evidence ex parte on his counterclaim. This will enable defendant who was unjustly haled to court to prove his compulsory counterclaim, which is intertwined with the complaint, because the trial court retains

jurisdiction over the complaint and of the whole case. The non-dismissal of the complaint, the non-suit notwithstanding, provides the basis for the compulsory counterclaim to remain active and subsisting.

HEIRS OF FLORENTINA NUGUID VDA. DE HABERER vs. CA
[G.R. Nos. L-42699 to L-42709. May 26, 1981.]

Where a party dies in an action that survives, and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no such substitution has ever been effected, the trial held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding.

TAN vs. DUMARPA
[G.R. No. 138777. September 22, 2004.]

The remedies available to a defendant declared in default are as follows: (a) a motion to set aside the order of default under Section 3(b), Rule 9 of the Rules of Court, if the default was discovered before judgment could be rendered; (2) a motion for new trial under Section 1(a) of Rule 37, if the default was discovered after judgment but while appeal is still available; (3) a petition for relief under Rule 38, if judgment has become final and executory; and (4) an appeal from the judgment under Section 1, Rule 41, even if no petition to set aside the order of default has been resorted to."

GOLDEN FLAME SAWMILL vs. COURT OF APPEALS
[G.R. No. 115644. April 5, 1995.]

Prior to pre-trial therefore, in particular, before a party is considered non-suited or declared as in default, it must be shown that such party and his counsel were each duly served with a separate notice of pre-trial. ***The absence, therefore, of the mandatory notices of pre-trial nullifies the order of default which suffers from a serious procedural vice. Under such circumstances, the grant of relief to the party declared in default becomes a matter of right; and the proceedings beginning from the order of default down to the default judgment itself should be considered null and void and of no effect***. Thus, upon a showing that a separate notice of pre-trial was not served either upon a party or his counsel of record or upon both, the Court has consistently nullified and set aside the order of default. In addition, the Court remands the case for pre-trial and trial before the trial court, ordering the latter thereafter to render judgment accordingly.

QUEBRAL vs. CA and UNION REFINERY CORP.
[G.R. No. 101941. January 25, 1996.]

A demurrer to evidence abbreviates proceedings, it being an aid or instrument for the expeditious termination of all action, similar to a motion to dismiss, which the court or tribunal may either grant or deny. However, whoever avails of it gambles his right to adduce evidence. Pursuant to the aforequoted provisions of Rule 35, if the defendant's motion for judgment on demurrer to evidence is granted and the order of dismissal is reversed on appeal, judgment is rendered in favor of the adverse party because the movant loses his right to present evidence.

MAYUGA, ET AL. vs. CA, ET AL.
[G.R. No. 123899. August 30, 1996.]

Execution proceedings are not automatically stayed by the filing of a petition for relief from judgment. The filing of their petition for relief and the subsequent appeal from the order denying relief stayed the execution proceedings before the trial court. Neither are execution proceedings stayed by the perfection of the appeal from the order denying relief from judgment. In ordinary appeals, perfection of an appeal under section 9 of Rule 41 divests the trial court of jurisdiction over its judgment and execution proceedings because the judgment has not yet attained finality. An appeal from an order denying relief from judgment under Rule 38 is different. Here, the Judgment is already final and executory and as aforestated, the only way by which execution could be suspended is by the issuance of a writ of preliminary injunction. No injunction was secured by petitioners.

RODRIGUEZ vs. PROJECT 6 MARKET SERVICE COOPERATIVE, INC.
[G.R. No. 79968. August 23, 1995.]

In this jurisdiction, the general rule is when a court judgment or order becomes final and executory, it is the minsterial duty of the trial court to issue a writ of execution to enforce this judgment. A writ of execution may however be refused on equitable grounds as when there is a change in the situation of the parties that would make execution inequitable or when certain circumstances which transpired after judgment became final render execution of judgment unjust.

PHILIPPINE NAILS AND WIRES CORPORATIO vs. MALAYAN INSURANCE COMPANY, INC.
[G.R. No. 143933. February 14, 2003.]

Under the old Rules, specifically Section 2 of Rule 39 of the pre-1997 Rules of Court, the trial court is granted, upon good reasons, the discretion to order an execution even before the expiration of the time to appeal. ***The present Rules also grant the trial court the discretion to order the execution of a judgment or a final order even before the expiration of the period to appeal, also upon good reasons stated in a special order after due hearing.*** Such discretion, however, is allowed only while the trial court still has "jurisdiction over the case and is in possession of either the original record, or the record on appeal, as the case may be, at the time of the filing of such motion." The mere filing of a bond by the successful party is not a good reason for ordering execution pending appeal, as 'a combination of circumstances is the dominant consideration which impels the grant of immediate execution[;] the requirement of a bond is imposed merely as an additional factor, no doubt for the protection of the defendant's creditor.'"

REXLON REALTY GROUP, INC. vs. CA
[G.R. No. 128412. March 15, 2002.]

Firstly, it must be remembered that, in the amended petition of Rexlon for annulment of judgment, respondent Paramount was impleaded for the reason that the prayer therein sought the nullification of the new titles issued in the name of respondent Paramount. ***Inasmuch as a petition for annulment of judgment is classified as an original action that can be filed before the Court of Appeals, the said court can admit, by way of an amendment to the petition, new causes of action intimately related to the resolution of the original petition.*** Hence, respondent Paramount became a necessary party in the petitioner's original cause of action seeking a declaration of the existence and validity of the owner's duplicate copy of the subject certificate of title in the possession of the latter, and an indispensable party in the action for the declaration of nullity of the titles in the name of respondent Paramount. Indeed, there can be no complete relief that can be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action, if we do not touch upon the necessary consequence of the nullity of the new duplicate copy of the subject certificate of title. The Rules of Court compels the inclusion of necessary parties when jurisdiction over the person of the said necessary party can be obtained. Non-inclusion of a necessary party when there is an opportunity to include him would mean waiver of the claim against such party.

ANDAYA vs., ABADIA, ET AL.

[G.R. No. 104033. December 27, 1993.]

Jurisdiction over subject matter is essential in the sense that erroneous assumption thereof may put at naught whatever proceedings the court might have had. Hence, even on appeal, and even if the parties do not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. It is elementary that jurisdiction is vested by law and cannot be conferred or waived by the parties or even by the judge. It is also irrefutable that a court may at any stage of the proceedings dismiss the case for want of jurisdiction. For this matter, the ground of lack of jurisdiction in dismissing a case is not waivable. Hence, the last sentence of Sec. 2, Rule 9, Rules of Court, expressly states: "Whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action."

OFELIA HERRERA-FELIX vs. CA
[G.R. No. 143736. August 11, 2004.]

A voluntary appearance is a waiver of the necessity of a formal notice. An appearance in whatever form, without explicitly objecting to the jurisdiction of the court over the person, is a submission to the jurisdiction of the court over the person. While the formal method of entering an appearance in a cause pending in the courts is to deliver to the clerk a written direction ordering him to enter the appearance of the person who subscribes it, an appearance may be made by simply filing a formal motion, or plea or answer. This formal method of appearance is not necessary. He may appear without such formal appearance and thus submit himself to the jurisdiction of the court. He may appear by presenting a motion, for example, and unless by such appearance he specifically objects to the jurisdiction of the court, he thereby gives his assent to the jurisdiction of the court over his person. ***When the appearance is by motion objecting to the jurisdiction of the court over his person, it must be for the sole and separate purpose of objecting to the jurisdiction of the court. If his motion is for any other purpose than to object to the jurisdiction of the court over his person, he thereby submits himself to the jurisdiction of the court.***

REYNALDO HALIMAO vs. ATTYS. DANIEL VILLANUEVA and INOCENCIO PEFIANCO FERRER, JR.
[Adm. Case No. 3825. February 1, 1996.]

On the other hand, when a motion to dismiss is based on payment, waiver, abandonment, release, compromise, or other form of extinguishment, the motion to dismiss does not hypothetically, but actually, admits the facts alleged in existence of the obligation or debt, only that plaintiff claims that the obligation has been satisfied. So that when a motion to dismiss on these grounds is denied, what is left to be proven in the trial is no longer the existence of the debt but the fact vel non of payment by the defendant.

GARCIA vs. CA and SPOUSES UY
[G.R. No. 83929. June 11, 1992.]

As for private respondents' (defendants') loss of standing in court, by reason of having been declared in default, again we rule that a party in default loses the right to present his defense and examine or cross-examine witnesses. It does not mean that being declared in default, and thereby losing one's standing, constitutes a waiver of all rights; what is waived only is the right to be heard and to present evidence during the trial while default prevails. A party in default is still entitled to notice of final judgments and orders and proceedings taken subsequent thereto.

PACIFIC BANKING CORPORATION EMPLOYEES ORGANIZATION vs. CA
[G.R. No. 109373. March 20, 1995.]

Elucidating the crucial distinction between an ordinary action and a special proceeding, Chief Justice Moran states: Action is the act by which one sues another in a court of justice for the enforcement or protection of a right, or the prevention or redress of a wrong while special proceeding is the act by which one seeks to establish the status or right of a party, or a particular fact. Hence, action is distinguished from special proceeding in that the former is a formal demand

of a right by one against another, while the latter is but a petition for a declaration of a status, right or fact. Where a party litigant seeks to recover property from another, his remedy is to file an action. Where his purpose is to seek the appointment of a guardian for an insane, his remedy is a special proceeding to establish the fact or status of insanity calling for an appointment of guardianship.

GARCIA vs. LLAMAS
[G.R. No. 154127. December 8, 2003.]

A summary judgment is a procedural device designed for the prompt disposition of actions in which the pleadings raise only a legal, not a genuine, issue regarding any material fact. Consequently, facts are asserted in the complaint regarding which there is yet no admission, disavowal or qualification; or specific denials or affirmative defenses are set forth in the answer, but the issues are fictitious as shown by the pleadings, depositions or admissions. A summary judgment may be applied for by either a claimant or a defending party.

On the other hand, under Section 1 of Rule 34 of the Rules of Court, a judgment on the pleadings is proper when an answer fails to render an issue or otherwise admits the material allegations of the adverse party's pleading. The essential question is whether there are issues generated by the pleadings. 38 A judgment on the pleadings may be sought only by a claimant, who is the party seeking to recover upon a claim, counterclaim or cross-claim; or to obtain a declaratory relief.

HEIRS OF RICARDO OLIVAS vs. HON. FLORENTINO A. FLOR and JOSE A. MATAWARAN
[G.R. No. L-78343. May 21, 1988.]

In the guise of a position paper, private respondent filed a Motion to Dismiss. While this is, indeed, a prohibited pleading (Sec. 15[a], Rule on Summary Procedure) it should be noted that the Motion was filed after an Answer had already been submitted within the reglementary period. In essence, therefore, it is not the pleading prohibited by the Rule on Summary Procedure. What the Rule proscribes is a Motion to Dismiss, which would stop the running of the period to file an Answer and cause undue delay.

DACOYCOY vs. IAC
[G.R. No. 74854. April 2, 1991.]

Dismissing the complaint on the ground of improper venue is certainly not the appropriate course of action at this stage of the proceeding, particularly as venue, in inferior courts as well as in the courts of first instance (now RTC), may be waived expressly or impliedly. Where defendant fails to challenge timely the venue in a motion to dismiss as provided by Section 4 of Rule 4 of the Rules of Court, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is deemed waived.

NORTHERN CEMENT CORPORATION vs. IAC and SHIPSIDE INC.
[G.R. No. L-68636. February 29, 1988.]

There have been instances where the Court has held that even without the necessary amendment, the amount proved at the trial may be validly awarded, as in Tuazon v. Bolanos, where we said that if the facts shown entitled plaintiff to relief other than that asked for, no amendment to the complaint was necessary, especially where defendant had himself raised the point on which recovery was based. The appellate court could treat the pleading as amended to conform to the evidence although the pleadings were not actually amended. Amendment is also unnecessary when only clerical errors or non-substantial matters are involved, as we held in Bank of

the Philippine Islands v. Laguna. In Co Tiamco v. Diaz, we stressed that the rule on amendment need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party. And in the recent case of National Power Corporation v. Court of Appeals, we held that where there is a variance in the defendant's pleadings and the evidence adduced by it at the trial, the Court may treat the pleading as amended to conform with the evidence.

Spouses GO vs. TONG
[G.R. No. 151942. November 27, 2003.]

Rule 45 of the Rules of Court specifically states that in all cases, the CA's decisions, final orders or resolutions — regardless of the nature of the action or proceedings involved — may be appealed to this Court through a petition for review, which is just a continuation of the appellate process involving the original case. 15 On the other hand, a special civil action under Rule 65 is an independent suit based on the specific grounds provided therein. As a general rule, certiorari cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45.

DELGADO vs. CA
[G.R. No. 137881. December 21, 2004.]

The principle of res judicata does not apply when the dismissal of the earlier complaint, involving the same plaintiffs, same subject matter, same theory and the same defendants, was made without prejudice to its refiling at a future date, or in a different venue, as in this case. The dismissal of the case without prejudice indicates the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissal action had not been commenced. ***In other words, the discontinuance of a case not on the merits does not bar another action on the same subject matter***.

YAO KA SIN TRADING vs. CA, ET AL.
[G.R. No. 53820. June 15, 1992.]

Under Section 1, Rule 3 of the Rules of Court, only natural or juridical persons or entities authorized by law may be parties in a civil action. In Juasing Hardware vs. Mendoza, this Court held that a single proprietorship is neither a natural person nor a juridical person under Article 44 of the Civil Code; it is not an entity authorized by law to bring suit in court.

SPOUSES ELANIO C. ONG *vs*. COURT OF APPEALS
[G.R. No. 144581. July 5, 2002]

It bears stressing that the MTCC cannot admit the belated certification on the ground that plaintiffs (respondents) were not anyway guilty of actual forum shopping. The distinction between the prohibition against forum shopping and the certification requirement should by now be too elementary to be misunderstood. ***To reiterate, compliance with the certification against forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. There is a difference in the treatment between failure to comply with the certification requirement and violation of the prohibition against forum shopping not only in terms of imposable sanctions but also in the manner of enforcing them. The former constitutes sufficient cause for the dismissal without prejudice of the complaint or initiatory pleading upon motion and after hearing, while the latter is a ground for summary dismissal thereof and for direct contempt***. The rule expressly requires that a certification against forum shopping should be attached to or filed simultaneously with the complaint or other initiatory pleading regardless of whether forum shopping had in fact been committed. Accordingly, in the instant case, the dismissal of the complaint for unlawful detainer must follow as a matter of course.

EJECTMENT CASE: Failure of the defendants to allege lack of cetification of non-forum shopping is not a waiver of their right to assert the defect

While not raised in the parties' pleadings, it is necessary to mention that the failure of petitioners' answer filed in the ejectment case to allege the lack of certification of non-forum

shopping did not result in the waiver of their right to assert the defect. Our decision in Kho v. Court of Appeals where this Court ruled that by virtue of Sec. 1, Rule 9, *1997 Rules of Civil Procedure,* objections of this kind are forfeited when not raised in the answer/comment earlier tended to a petition for special civil action of certiorari, is not controlling. ***The instant case is governed by the 1991 Revised Rules on Summary Procedure where a motion to dismiss is generally proscribed except for lack of jurisdiction over the subject matter or failure to comply with conciliation proceedings and where the only matters deemed waived for failure to assert in the answer are negative and affirmative defenses.***

Clearly, petitioners were excused from filing a motion to question the absence of the certification and, concomitantly, their failure to include the objection in their answer did not result in the waiver thereof since the objection is neither a negative nor an affirmative defense. To clarify, non-compliance with the requirement of certification does not give rise to an affirmative defense, i.e., the allegation of new matter by way of confession and avoidance, much less a negative defense since the undertaking has nothing to do with the operative facts required to be alleged in an initiatory pleading, such as allegations on the cause of action, but with a special pre-requisite for admission of the complaint for filing in court.

GUMABON VS. LARIN
(GR No. 142523 NOV. 27,2001)

Thus, the 1997 Rules of Civil Procedure now provide that the court may *motu proprio* dismiss the claim when it appears from the pleadings or evidence on the record that:

1. the court has no jurisdiction over the subject matter;
2. there is another cause of action pending between the same parties for the same cause; or
3. where the action is barred by a prior judgment or by statute of limitations.

From the foregoing, it is clear that a court may not *motu proprio* dismiss a case for improper venue, this ground not being among those mentioned where the court is authorized to do so.

In fact, the applicable rule would be Section 1, Rule 9 of the 1997 Rules of Civil Procedure providing that "defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived." Furthermore, Section 6, Rule 16 of the 1997 Rules now provides that if no motion to dismiss has been filed, any of the grounds for dismissal provided in this Rule – which includes the ground that venue is improperly laid (Section 1[c]) – may be pleaded as an affirmative defense in the answer, and in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss has been filed. Respondent not having raised improper venue in a motion to dismiss or in his answer, he is deemed to have waived the same. Well-known is the basic legal principle that venue is waivable. Failure of any party to object to the impropriety of venue is deemed a waiver of his right to do so.

BENITO C. SALAZAR *vs*. HON. TOMAS R. ROMAQUIN
[G.R. No. 151068. May 21, 2004]

The pleadings of the accused and copies of the orders or resolutions of the trial court are served on the People of the Philippines through the Provincial Prosecutor. However, in appeals before the Court of Appeals and the Supreme Court either (a) by writ of error; (b) via petition for review; (c) on automatic appeal; or, (d) in special civil actions where the People of the Philippines is a party, the general rule is that the Office of the Solicitor General is the sole representative of the People of the Philippines.

A copy of the petition in such action must be served on the People of the Philippines as mandated by Section 3, Rule 46 of the Rules of Court, through the Office of the Solicitor General. The service of a copy of the petition on the People of the Philippines, through the Provincial Prosecutor would be inefficacious. The petitioner's failure to have a copy of his petition served on the respondent, through the Office of the Solicitor General, shall be sufficient ground for the dismissal of the petition as provided in the last paragraph of Section 3, Rule 46 of the Rules of Court. Unless and until copies of the petition are duly served on the respondent, the appellate court has no other recourse but to dismiss the petition.

EMERITO REMULLA *vs*. JOSELITO DP. MANLONGAT
[G.R. No. 148189. November 11, 2004]

In a number of cases, the Supreme Court has in fact relaxed the period for perfecting an appeal, especially on grounds of substantial justice, or when there are other special and meritorious circumstances and issues. Verily, this Court has the power to relax or suspend the rules or to exempt a case from their rigid operation when warranted by compelling reasons and the requirements of justice.

In the present case, the late filing -- by only one day -- of the prosecution's Notice of Appeal was excusable, considering respondent's diligent efforts.

ASIAN CONSTRUCTION AND DEVELOPMENT CORP. VS. CA
(GR No. 160242, May 17,2005)

The purpose of Section 11, Rule 6 of the Rules of Court is to permit a defendant to assert an independent claim against a third-party which he, otherwise, would assert in another action, thus preventing multiplicity of suits. All the rights of the parties concerned would then be adjudicated in one proceeding. This is a rule of procedure and does not create a substantial right. Neither does it abridge, enlarge, or nullify the substantial rights of any litigant.[15] This right to file a third-party complaint against a third-party rests in the discretion of the trial court. The third-party complaint is actually independent of, separate and distinct from the plaintiff's complaint, such that were it not for the rule, it would have to be filed separately from the original complaint.

The third-party complaint does not have to show with certainty that there will be recovery against the third-party defendant, and it is sufficient that pleadings show possibility of recovery. In determining the sufficiency of the third-party complaint, the allegations in the original complaint and the third-party complaint must be examined.[22] A third-party complaint must allege facts which prima facie show that the defendant is entitled to contribution, indemnity, subrogation or other relief from the third-party defendant.

CRIMINAL PROCEDURE

SECRETARY OF JUSTICE *vs*. HON. RALPH C. LANTION
[G.R. No. 139465. January 18, 2000]

In a preliminary investigation which is an administrative investigatory proceeding, Section 3, Rule 112 of the Rules of Court guarantees the respondent's basic due process rights, granting him the right to be furnished a copy of the complaint, the affidavits, and other supporting documents, and the right to submit counter-affidavits and other supporting documents within ten days from receipt thereof. Moreover, the respondent shall have the right to examine all other evidence submitted by the complainant.

These twin rights may, however, be considered dispensable in certain instances, such as:

1.) In proceedings where there is an urgent need for immediate action, like the summary abatement of a nuisance *per se* (Article 704, Civil Code), the preventive suspension of a public servant facing administrative charges (Section 63, Local Government Code, B. P. Blg. 337), the padlocking of filthy restaurants or theaters showing obscene movies or like establishments which are immediate threats to public health and decency, and the cancellation of a passport of a person sought for criminal prosecution;
2.) Where there is tentativeness of administrative action, that is, where the respondent is not precluded from enjoying the right to notice and hearing at a later time without prejudice to the person affected, such as the summary distraint and levy of the property of a delinquent taxpayer, and the replacement of a temporary appointee; and
3.) Where the twin rights have previously been offered but the right to exercise them had not been claimed.

PEOPLE OF THE PHILIPPINES vs. MODESTO TEE a.k.a. ESTOY TEE

[G.R. Nos. 140546-47. January 20, 2003.]

Thus, it has been held that term "narcotics paraphernalia" is not so wanting in particularity as to create a general warrant. Nor is the description "any and all narcotics" and "all implements, paraphernalia, articles, papers and records pertaining to" the use, possession, or sale of narcotics or dangerous drugs so broad as to be unconstitutional. A search warrant commanding peace officers to seize "a quantity of loose heroin" has been held sufficiently particular.

Tested against the foregoing precedents, the description "an undetermined amount of marijuana" must be held to satisfy the requirement for particularity in a search warrant. Noteworthy, what is to be seized in the instant case is property of a specified character, i.e., marijuana, an illicit drug. By reason of its character and the circumstances under which it would be found, said article is illegal. A further description would be unnecessary and ordinarily impossible, except as to such character, the place, and the circumstances. Thus, this Court has held that the description "illegally in possession of undetermined quantity/amount of dried marijuana leaves and Methamphetamine Hydrochloride (Shabu) and sets of paraphernalia" particularizes the things to be seized.

The search warrant in the present case, given its nearly similar wording, "undetermined amount of marijuana or Indian hemp," in our view, has satisfied the Constitution's requirements on particularity of description. The description therein is: (1) as specific as the circumstances will ordinarily allow; (2) expresses a conclusion of fact — not of law — by which the peace officers may be guided in making the search and seizure; and (3) limits the things to be seized to those which bear direct relation to the offense for which the warrant is being issued. Said warrant imposes a meaningful restriction upon the objects to be seized by the officers serving the warrant. Thus, it prevents exploratory searches, which might be violative of the Bill of Rights.

PEOPLE VS. CABILES
[284 SCRA 199]

Constitutional procedures on custodial investigation do not apply to a spontaneous statement, not elicited through questioning by the authorities, but given in an ordianry manner whereby the accused orally admitted having committed the crime.

ESQUIVEL vs. THE SANDIGANBAYAN
[G.R. No. 137237, September 17, 2002]

In *Rodrigo, Jr. vs. Sandiganbayan*, *Binay vs. Sandiganbayan*, and *Layus vs. Sandiganbayan*, we already held that municipal mayors fall under the original and exclusive jurisdiction of the Sandiganbayan. Nor can *Barangay* Captain Mark Anthony Esquivel claim that since he is not a municipal mayor, he is outside the Sandiganbayan's jurisdiction. ***R.A. 7975, as amended by R.A. No. 8249, provides that it is only in cases where "<u>none</u> of the accused are occupying positions corresponding to salary grade '27' or higher" that "exclusive original jurisdiction shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended."*** Note that under the 1991 Local Government Code, Mayor Esquivel has a salary grade of 27. Since *Barangay* Captain Esquivel is the co-accused in Criminal Case No. 24777 of Mayor Esquivel, whose position falls under salary grade 27, the Sandiganbayan committed no grave abuse of discretion in assuming jurisdiction over said criminal case, as well as over Criminal Case No. 24778, involving both of them.

OFFICE OF THE OMBUDSMAN vs. RUBEN ENOC,et.al
[G.R. Nos. 145957-68, January 25, 2002]

Section 15 of RA 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. The law defines such primary jurisdiction as authorizing the Ombudsman "to take over, at any stage, from any investigatory agency of the government, the investigation of such cases." ***The grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers and employees cognizable by other courts.*** The

exercise by the Ombudsman of his primary jurisdiction over cases cognizable by the Sandiganbayan is not incompatible with the discharge of his duty to investigate and prosecute other offenses committed by public officers and employees. Indeed, it must be stressed that the powers granted by the legislature to the Ombudsman are very broad and encompass all kinds of malfeasance, misfeasance and non-feasance committed by public officers and employees during their tenure of office.

SALAZAR VS. PEOPLE
[GR No. 151931, September 23, 2003]

If demurrer is granted and the accused is acquitted by the court, the accused has the right to adduce evidence on the civil aspect of the case , unless the court also declares that the act or omission from which the civil liability may arise did not exist. ***If the trial court issues an order or renders judgment not only granting the demurrer to evidence of the accused and acquitting him but also on the civil liability of the accused to the private offended party, said judgment on the civil aspect of the case would be a nullity for the reason that the constitutional right of the accused to due process is thereby violated***. This is so because when the accused files a demurrer to evidence, the accused has not yet adduced evidence both on the criminal and civil aspects of the case. The only evidence on record is the evidence for the prosecution. What the trial court should do is to issue an order or partial judgment granting the demurrer to evidence and acquitting the accused; and set the case for continuation of trial for the petitioner to adduce evidence on the civil aspect of the case, and for the private complainant to adduce evidence by way of rebuttal after which the parties may adduce their sur-rebuttal evidence as provided for in Section 11, Rule 119 of the Revised Rules of Criminal Procedure.

CASUPANAN VS.LAROYA
[GR No. 145391, August 26, 2002]

Under Section 1 of the present Rule 111, the independent civil action in Articles 32, 33, 34 and 2176 of the Civil Code is not deemed instituted with the criminal action but may be filed separately by the offended party even without reservation. The commencement of the criminal action does not suspend the prosecution of the independent civil action under these articles of the Civil Code. ***The suspension in Section 2 of the present Rule 111 refers only to the civil action arising from the crime, if such civil action is reserved or filed before the commencement of the criminal action***.

GABIONZA VS. CA
[GR No. 140311, March 30, 2001]

An amendment which merely states with additional precision something which is already contained in the original information, and which, therefore, adds nothing essential for conviction for the crime charged is an amendment to form that can be made at any time. Jurisprudence allows amendments to information so long as: (a) it does not deprive the accused of the right to invoke prescription; (b) it does not affect or alter the nature of the offense originally charged; (c) it does not involve a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense; (d) it does not expose the accused to a charge which would call for a higher penalty; and, (5) it does not cause surprise nor deprive the accused of an opportunity to meet the new averment.

In the case at bar, it is clear that the questioned amendment is one of form and not of substance. ***The allegation of time when an offense is committed is a matter of form, unless time is a material ingredient of the offense. It is not even necessary to state in the Information the precise time the offense was committed unless time is a material factor***. It is sufficient that the act is alleged to have been committed at any time as near to the actual date at which the offense was committed as the Complaint or Information will permit.

LALICAN VS. VERGARA
[GR No. 108619, July 31, 1997]

This Court has consistently defined the proper procedure in case of denial of a motion to quash. The accused has to enter a plea, go to trial without prejudice on his part to present the special defenses he had invoked in his motion and, if after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law. ***Certiorari is not the proper remedy where a motion to quash an information is denied. That the appropriate recourse is to proceed to trial and in case of conviction, to appeal such conviction, as well as the denial of the motion to quash, is impelled by the fact that a denial of a motion to quash is an interlocutory procedural aspect which cannot be appealed nor can it be the subject of a petition for certiorari. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.***

BAYAS VS. SANDIGANBAYAN
[GR Nos. 143689-91, November 12,2002]

There is nothing irregular or unlawful in stipulating facts in criminal cases. The policy encouraging it is consistent with the doctrine of waiver, which recognizes that ". . . everyone has a right to waive and agree to waive the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right and without detriment to the community at large."

In the present case, the Joint Stipulation made by the prosecution and petitioners was a waiver of the right to present evidence on the facts and the documents freely admitted by them. There could have been no impairment of petitioners' right to be presumed innocent, right to due process or right against self-incrimination because the waiver was voluntary, made with the assistance of counsel and is sanctioned by the Rules on Criminal Procedure. Once the stipulations are reduced into writing and signed by the parties and their counsels, they become binding on the parties who made them. They become judicial admissions of the fact or facts stipulated. Even if placed at a disadvantageous position, a party may not be allowed to rescind them unilaterally; it must assume the consequences of the disadvantage. If the accused are allowed to plead guilty under appropriate circumstances, by parity of reasoning, they should likewise be allowed to enter into a fair and true pretrial agreement under appropriate circumstances.

YAP VS. CA
[GR No. 141529, June 6, 2001]

It militates emphasis that petitioner is seeking bail on appeal. ***Section 5, Rule 114 of the Revised Rules of Criminal Procedure is clear that although the grant of bail on appeal in non-capital offenses is discretionary, when the penalty imposed on the convicted accused exceeds six years and circumstances exist that point to the probability of flight if released on bail, then the accused must be denied bail, or his bail previously granted should be cancelled.*** In the same vein, the Court has held that the discretion to extend bail during the course of the appeal should be exercised with grave caution and for strong reasons, considering that the accused had been in fact convicted by the trial court .

SALES VS. SANDIGANBAYAN
[GR No. 143802, November 16, 2001]

The determination of probable cause is a function of the judge; it is not for the provincial fiscal or prosecutor to ascertain. Only the judge and the judge alone makes this determination; 2.] The preliminary inquiry made by a prosecutor does not bind the judge. It merely assists him in making the determination of probable cause. It is the report, the affidavits, the transcripts of stenographic notes, if any, and all other supporting documents behind the prosecutor's certification which are material in assisting the judge in his determination of probable cause; and 3.] Judges and prosecutors alike should distinguish the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest from the preliminary investigation proper which ascertains whether the offender should be held for trial or be released. Even if the two inquiries be made in

one and the same proceeding, there should be no confusion about their objectives. ***The determination of probable cause for purposes of issuing the warrant of arrest is made by the judge. The preliminary investigation proper — whether or not there is reasonable ground to believe that the accused is guilty of the offense charged and, therefore, whether or not he should be subjected to the expense, rigors and embarrassment of trial — is the function of the prosecutor.***

ROXAS VS, VASQUEZ
[358 SCRA 636]

In criminal prosecutions, a reinvestigation, like an appeal, renders the entire case open for review.

US VS. PURGANAN
[GR No. 148571, September 24,2002]

The filing of a petition for extradition does not per se justify the issuance of a warrant of arrest against an extraditee. The petition, in some instances, may not contain sufficient allegations and proof on the issue of whether the possible extraditee will escape from the jurisdiction of the extraditing court.

When the petition for extradition does not provide sufficient basis for the arrest of the possible extraditee or the grant of bail as in the case at bar, it is discretionary for the extradition court to call for a hearing to determine the issue.

An extraditee has the right to apply for bail. The right is rooted in the due process clause of the Constitution. It cannot be denied simply because of the silence of our extradition treaty and law on the matter. The availability of the right to bail is buttressed by our other treaties recognizing civil and political rights and by international norms, customs and practices.

The extraditee may apply for bail but its grant depends on the discretion of the extraditing court. The court must satisfy itself that the bail will not frustrate the ends of justice.

In deciding whether to grant bail or not to a possible extraditee, the extraditing court must follow a higher and stricter standard. The extraditee must prove by clear and convincing evidence that he will not flee from the jurisdiction of the extraditing court and will respect all its processes. In fine, that he will not frustrate the ends of justice.

TULIAO VS. RAMOS
[284 SCRA 378]

A judge should demand the presentation of the originals of the required documents before approving a bail bond.

PEOPLE VS.NARCA
[GR No. 108488, July 21, 1997]

There is nothing in the Rules which renders invalid a preliminary investigation held without defendant's counsel. Not being a part of the due process clause but a right merely created by law, preliminary investigation if held within the statutory limitations cannot be voided. Appellant's argument, if sustained, would make a mockery of criminal procedure, since all that a party has to do to thwart the validity of the preliminary investigation is for their counsel not to attend the investigation. It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. ***This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the records of the case in court. Parties may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating officer. In fact, a preliminary investigation may even be conducted ex-parte in certain cases.***

YUSOP VS. SANDIGANBAYAN
[GR No. 138859-60, February 22, 2001]

The defense's failure to cross-examine Elizabeth Reglos was occasioned by her supervening death. Lack of cross-examination due to the death of the witness does not necessarily render the deceased's previous testimony expungible. Besides, mere opportunity and not actual cross-examination is the essence of the right to cross-examine.

SOLID TRIANGLE SALES CORP. VS. THE SHERIFF OF RTC, QC. Et.al
[GR No. 144309, November 23, 2001]

The effect of the quashal of the warrant on the ground that no offense has been committed is to render the evidence obtained by virtue of the warrant "inadmissible for any purpose in any proceeding," including the preliminary investigation.

DE LOS SANTOS-REYES VS. MONTESA
[AM-RTJ 93-983, August 7, 1995]

In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge, following the established doctrine and procedure, shall either (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest, or (b) if on the face of the information he finds no probable cause, he may disregard the prosecutor's certification and require the submission of the supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. (Supreme Court Circular No. 12, dated 30 June 1987; Soliven vs. Makasiar, 167 SCRA 393 [1988]; Cruz vs. People, 233 SCRA 439 [1994].) This procedure is dictated by sound public policy; otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts. ***At this stage of a criminal proceeding, the judge is not tasked to review in detail the evidence submitted during the preliminary investigation; it is sufficient that he personally evaluates the report and supporting documents submitted by the prosecution in determining probable cause. This judicial function does not carry with it a motu proprio review of the recommendation of the prosecutor in a capital offense that no bail shall be granted. Such a recommendation is the exclusive prerogative of the prosecutor in the exercise of his quasi-judicial function during the preliminary investigation, which is executive in nature.*** In such cases, once the court determines that probable cause exists for the issuance of a warrant of arrest, the warrant of arrest shall forthwith be issued and it is only after the accused is taken into the custody of the law and deprived of his liberty that, upon proper application for bail, the court on the basis of the evidence adduced by the prosecution at the hearing called for the purpose may, upon determination that such evidence is not strong, admit the accused to bail.

PEOPLE VS. NADERA
[GR Nos. 131384-87, February 2, 2000]

Convictions based on an improvident plea of guilt are set aside only if such plea is the sole basis of the judgment. If the trial court relied on sufficient and credible evidence to convict the accused, the conviction must be sustained, because then it is predicated not merely on the guilty plea of the accused but on evidence proving his commission of the offense charged.

PHIL. RABBIT BUS LINES VS. PEOPLE
[GR No. 147703, April 4, 2004]

An appeal from the sentence of the trial court implies a waiver of the constitutional safeguard against double jeopardy and throws the whole case open to a review by the appellate court. The latter is then called upon to render judgment as law and justice dictate, whether favorable or unfavorable to the appellant. This is the risk involved when the accused decides to

appeal a sentence of conviction. Indeed, appellate courts have the power to reverse, affirm or modify the judgment of the lower court and to increase or reduce the penalty it imposed.

ALONTE VS. SAVELLANO
287 SCRA 245

After the case has been filed in court, any pardon made by the private complainant, whether by sworn statement or on the witness stand, cannot extinguish criminal liablilty.

PEOPLE VS. ESCANO
349 SCRA 674

The acquittal on appel of certain accused based on reasonable doubt benefits a co-accused who did not appel or who withdrew his appeal.

PEOPLE VS. MADERAS
350 SCRA 504

Where the accused escapes from actual custody or flees from constructive custody, the Court may motu proprio or on appellee's motion dismiss the appeal for abandonment.

EVIDENCE

PEOPLE OF THE PHILIPPINES *vs*. EVANGELINE GANENAS *y* URBANO
[G.R. No. 141400. September 6, 2001]

The alleged inconsistencies in the testimonies of the prosecution witnesses refer to minor or trivial incidents that do not detract from the fact that appellant was caught *in flagrante delicto* as a result of the buy-bust operation. The identities of the leader and the members of the police team are nonessential matters that have no direct bearing upon the actual commission of the offense. ***Witnesses testifying on the same event do not have to be consistent in every detail, as differences in recollections, viewpoints or impressions are inevitable. So long as they concur on the material points of their respective testimonies, slight differences in these matters do not destroy the veracity of their statements***

Presumption of Regularity in the Performance of Official Duty

The testimonies of the police officers with respect to appellant's participation in the drug-related transaction, which was the subject of the operation, carried with it the presumption of regularity in the performance of official functionsCourts accord credence and full faith to the testimonies of police authorities, as they are presumed to be performing their duties regularly, absent any convincing proof to the contraryIn this case, no sufficient reason or valid explanation was presented to deviate from this presumption of regularity on their part.

In almost every case involving a buy-bust operation, the accused put up the defense of frame-up. The Supreme Court views such claim with disfavor, because "it can easily be feigned and fabricated.

EVANGELINE CABRERA vs. PEOPLE OF THE PHILIPPINES and LUIS GO,
[G.R. No. 150618. July 24, 2003.]

In this case, the prosecution failed to adduce in evidence any notice of dishonor of the three postdated checks or any letter of demand sent to and received by the petitioner. The bare testimony of Luis Go that he sent letters of demand to the petitioner notifying her of the dishonor of her checks is utterly insufficient.

For failure of the prosecution to show that notices of dishonor of the three postdated checks were served on the petitioner, or at the very least, that she was sent a demand letter notifying her of the said dishonor, the prima facie presumption under Section 2 of B.P. Blg. 22 that she knew of the insufficiency of funds cannot arise. Thus, there can be no basis for establishing the presence of "actual knowledge of insufficiency of funds."

In light of such failure, we find and so declare that the prosecution failed to prove beyond reasonable doubt all the elements of violation of B.P. Blg. 22. Hence, the need to reverse and set aside the decisions of both the Court of Appeals and the trial court convicting the petitioner of the crime of violation of B.P. Blg. 22.

However, we uphold the decision of the CA affirming the trial court's decision ordering the petitioner to pay to the private respondent the total face value of the checks in the amount of P209,175.45. We stress that a check is an evidence of debt against the drawer, and although may not be intended to be presented, has the same effect as an ordinary check, and if passed upon to a third person, will be valid in his hands like any other check. Hence, the petitioner is obliged to pay to the private respondent Luis Go the said amount of P209,175.45 with 12% legal interest per annum, from the filing of the information until the finality of this decision, the sum of which, inclusive of interest, shall be subject thereafter to 12% per annum interest until the amount due is fully paid, conformably to our ruling that when an obligation is breached, and it consists in the payment of a sum of money, i.e. a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. In the absence of such stipulation, the rate shall be 12% per annum computed from default, i.e. judicial or extrajudicial demand. 25 In this case, the rate of interest was not stipulated in writing by the petitioner, the private respondent and Boni Co. Thus, the applicable interest rate is 12% per annum.

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) vs.
[G.R. No. 132120. February 10, 2003.]

In the face of the Affidavit and the Supplemental Affidavit, it is indeed strange how the ombudsman could have ruled that there was no testimonial evidence on the said matters. That he ruled thus clearly shows that he whimsically opted to disregard those pieces of evidence and thereby demonstrated his capricious and arbitrary exercise of judgment.

The complainant is required to file affidavits "as well as other supporting documents to establish probable cause," as stated in the Rules of Court:

"(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause."

This requirement was fulfilled by the PCGG. The Supplemental Complaint was accompanied by the Affidavits of witnesses as well as by a host of other supporting documents, all of which — taken together — established probable cause.

It should be noted that the Rules on Evidence recognizes different forms of evidence — object, documentary or testimonial — without preference for any of them in particular. What should really matter are the weight and the sufficiency of the evidence presented.

PEOPLE OF THE PHILIPPINES vs. CARLITO MARAHAY y MORACA
[G.R. Nos. 120625-29. January 28, 2003]

While the father-daughter relationship of accused-appellant and the victims, Mylene and Belinda, remains undisputed, the minority of the victims, though alleged, was not satisfactorily established. It is the burden of the prosecution to prove with certainty the fact that the victim was below 18 years of age when the rape was committed in order to justify the imposition of the death penalty.

In the recent case of People vs. Manuel Pruna y Ramirez or Erman Pruna y Ramirez, this Court laid down the following ***guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:***

"1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

"2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
"3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

"4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
"5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.
"6. The trial court should always make a categorical finding as to the age of the victim."

Thus, although the defense does not contest the age of the victim, it is still essential that the prosecution present independent proof thereof, pursuant to No. 5 of said guidelines. As a matter of fact, the minority of the victim must be proved with equal certainty and clearness as the crime itself. Under Section 44, Rule 130 of the Rules on Evidence, a birth certificate is the best evidence of a person's date of birth. In the instant case, the prosecution did not present the certificates of live birth of both Mylene and Belinda or other similar authentic documents to prove their ages. Not even the victims' mother or the victims themselves, or any other relative qualified to testify on matters respecting pedigree, were presented by the prosecution to establish the victims' ages at the time the crimes were committed. Such failure of the prosecution to discharge its burden constrains this Court to hold that the qualifying circumstance of minority cannot be appreciated in these cases.

PEOPLE OF THE PHILIPPINES vs. MARLON MORALDE
[G.R. No. 131860. January 16, 2003.]

Having been positively and unmistakably identified by the complainant as her rapist, the appellant's defense of alibi cannot prosper. ***Categorical and consistent positive identification, absent any showing of ill-motive on the part of the eyewitness testifying thereon, prevails over the defenses of denial and alibi which, if not substantiated by clear and convincing proof, constitute self-serving evidence undeserving of weight in law***. Alibi, like denial, is inherently weak and easily fabricated. For this defense to justify an acquittal, the following must be established: the presence of the appellant in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime. These requisites have not been met.

HEIRS OF LOURDES SAEZ SABANPAN vs. ALBERTO C. COMORPOSA
[G.R. No. 152807. August 12, 2003.]

Pleadings filed via fax machines are not considered originals and are at best exact copies. As such, they are not admissible in evidence, as there is no way of determining whether they are genuine or authentic.

The Certification, on the other hand, is being contested for bearing a facsimile of the signature of CENR Officer Jose F. Tagorda. The facsimile referred to is not the same as that which is alluded to in Garvida. The one mentioned here refers to a facsimile signature, which is defined as a signature produced by mechanical means but recognized as valid in banking, financial, and business transactions.

Note that the CENR officer has not disclaimed the Certification. In fact, the DENR regional director has acknowledged and used it as reference in his Order dated April 2, 1998:

". . . . CENR Officer Jose F. Tagorda, in a 'CERTIFICATION' dated 22 July 1997, certified among others, that: . . . per records available in his Office, . . . the controverted lot . . . was not allocated to any person . . . ."

If the Certification were a sham as petitioner claims, then the regional director would not have used it as reference in his Order. Instead, he would have either verified it or directed the CENR officer to take the appropriate action, as the latter was under the former's direct control and supervision.

Petitioners' claim that the Certification was raised for the first time on appeal is incorrect. As early as the pretrial conference at the Municipal Trial Court (MTC), the CENR Certification had already been marked as evidence for respondents as stated in the Pre-trial Order. The Certification was not formally offered, however, because respondents had not been able to file their position paper.

Neither the rules of procedure nor jurisprudence would sanction the admission of evidence that has not been formally offered during the trial. But this evidentiary rule is applicable only to ordinary trials, not to cases covered by the rule on summary procedure — cases in which no full-blown trial is held

Probative value of the Affidavit of Petitioner's witnesses

Petitioners assert that the CA erred in disregarding the Affidavits of their witnesses, insisting that the Rule on Summary Procedure authorizes the use of affidavits. They also claim that the failure of respondents to file their position paper and counter-affidavits before the MTC amounts to an admission by silence.

The admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

While in summary proceedings affidavits are admissible as the witnesses' respective testimonies, the failure of the adverse party to reply does not ipso facto render the facts, set forth therein, duly proven. Petitioners still bear the burden of proving their cause of action, because they are the ones asserting an affirmative relief.

PEOPLE OF THE PHILIPPINES vs. SATURNINO TUPPAL
[G.R. Nos. 137982-85. January 13, 2003.]

The Office of the Solicitor General counters that findings of the trial court during the bail hearing were but a preliminary appraisal of the strength of the prosecution's evidence for the limited purpose of determining whether appellant is entitled to be released on bail during the pendency of the trial. Hence, we agree with the OSG that said findings should not be construed as an immutable evaluation of the prosecution's evidence. It is settled that the assessment of the prosecution evidence presented during bail hearings in capital offenses is preliminary and intended only for the purpose of granting or denying applications for the provisional release of the accused.

TEODORO K. KATIGBAK vs. THE SANDIGANBAYAN
[G.R. No. 140183. July 10, 2003.]

A careful scrutiny of the documentary evidence adduced by the prosecution does not support the charge of violation of Section 3, paragraph (e) of RA 3019, as amended, in the instant information against the petitioners. Significantly, the said pieces of documentary evidence were offered only for the purpose of establishing the participation and liability of their co-accused, Robert Balao, as noted in the written Formal Offer of Exhibits 35 of the prosecution dated September 22, 1997. The same was prepared and signed by Atty. Nicanor V. Villarosa, counsel of the private complainant, with the written approval of Prosecutor Manuel M. Corpuz of the Office of

the Special Prosecutor. In this connection, the rule is explicit that courts should consider the evidence only for the purpose for which it is offered.

The prosecution relies heavily on NHA Board Resolution No. 2453 dated March 12, 1992 to establish the alleged conspiracy between the petitioners and their co-accused. However, the Court is bothered by the unexplained failure of the prosecution to include in its formal offer of exhibits such a very vital piece of evidence in proving the existence of the alleged conspiracy among the petitioners.

We emphasize that any evidence a party desires to submit for the consideration of the court must formally be offered by him. Such a formal offer is necessary because it is the duty of the judge to rest his findings of fact and his judgment strictly on the evidence offered by the parties at the trial; and no finding of fact can be sustained if not supported by such evidence. Documents not regularly received in evidence during the trial will not be considered in disposing of the issues in an action.

REPUBLIC OF THE PHILIPPINES vs. HONORABLE SANDIGANBAYAN and FERDINAND E. MARCOS
[G.R. No. 152154. July 15, 2003.]

Ferdinand Jr.'s pronouncements, taken in context and in their entirety, were a confirmation of respondents' recognition of their ownership of the Swiss bank deposits. Admissions of a party in his testimony are receivable against him. If a party, as a witness, deliberately concedes a fact, such concession has the force of a judicial admission. It is apparent from Ferdinand Jr.'s testimony that the Marcos family agreed to negotiate with the Philippine government in the hope of finally putting an end to the problems besetting the Marcos family regarding the Swiss accounts. This was doubtlessly an acknowledgment of ownership on their part. The rule is that the testimony on the witness stand partakes of the nature of a formal judicial admission when a party testifies clearly and unequivocally to a fact which is peculiarly within his own knowledge.

We have always adhered to the familiar doctrine that an admission made in the pleadings cannot be controverted by the party making such admission and becomes conclusive on him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. This doctrine is embodied in Section 4, Rule 129 of the Rules of Court.

In the absence of a compelling reason to the contrary, respondents' judicial admission of ownership of the Swiss deposits is definitely binding on them. The individual and separate admissions of each respondent bind all of them pursuant to Sections 29 and 31, Rule 130 of the Rules of Court.

The declarations of a person are admissible against a party whenever a "privity of estate" exists between the declarant and the party, the term "privity of estate" generally denoting a succession in rights. Consequently, an admission of one in privity with a party to the record is competent. Without doubt, privity exists among the respondents in this case. And where several co-parties to the record are jointly interested in the subject matter of the controversy, the admission of one is competent against all.

PEOPLE OF THE PHILIPPINES vs. RAQUIM PINUELA
[G.R. Nos. 140727-28. February 3, 2003.]

Accused-appellant further argues that the prosecution did not present Henry Hualde because his testimony would be adverse to the case. We are not persuaded. It is the prosecution that determines who among its witnesses are to testify in court, and it is neither for the accused nor the court to override that prerogative. Corollarily, the failure of the prosecution to present a particular witness does not give rise to the presumption that evidence willfully suppressed would be adverse if produced, where that evidence is at the disposal of both parties or where the only object of presenting the witness would be to provide corroborative or cumulative evidence.

Finally, accused-appellant contends that the trial judge's intervention during cross-examination of the prosecution witnesses was prejudicial to him. However, a scrutiny of the questions propounded by the trial judge, fails to disclose any bias on his part which would prejudice accused-appellant. The questions were merely clarificatory. The trial court judge is not an idle arbiter during a trial. He can propound clarificatory questions to witnesses in order to ferret

out the truth. The impartiality of a judge cannot be assailed on the ground that he asked clarificatory questions during the trial.

GRACE J. GARCIA *vs*. REDERICK A. RECIO
[G.R. No. 138322. October 2, 2001]

A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence.

QUESTIONS AND ANSWERS
BASED ON REMEDIAL LAW JURISPRUDENCE

CIVIL PROCEDURE

Q. How is jurisdiction over the person of the defendant acquired by the trial court?

Either by his voluntary appearance in court and his submission to its authority or by service of summons. The service of summons and the complaint on the defendant is to inform him that a case has been filed against him and, thus, enable him to defend himself. He is, thus, put on guard as to the demands of the plaintiff or the petitioner. Without such service in the absence of a valid waiver renders the judgment of the court null and void. Jurisdiction cannot be acquired by the court on the person of the defendant even if he knows of the case against him unless he is validly served with summons. Summons and complaint may be served on the defendant either by handing a copy thereof to him in person, or, if he refuses to receive and sign for it, by tendering it to her. However, if there is impossibility of prompt service of the summons personally on the defendant despite diligent efforts to find him, service of the summons may be effected by substituted service as provided in Section 7, Rule 14 of the said Rules:

SEC. 7. Substituted service. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies of defendant's office or regular place of business with some competent person in charge thereof. ***(Ancheta vs. Ancheta, GRN 145370, March 4, 2004)***

Q. When can the court resort to substituted service?

In Miranda v. Court of Appeals, we held that the modes of service should be strictly followed in order that the court may acquire jurisdiction over the person of the defendant. Thus, it is only when a defendant cannot be served personally within a reasonable time that substituted service may be made by stating the efforts made to find him and personally serve on him the summons and complaint and the fact that such effort failed. This statement should be made in the proof of service to be accomplished and filed in court by the sheriff. This is necessary because substituted service is a derogation of the usual method of service. It has been held that substituted service of summons is a method extraordinary in character; hence, may be used only as prescribed and in the circumstances categorized by statutes. ***(Ancheta vs. Ancheta, GRN 145370, March 4, 2004)***

Q. Are indispensable parties required to be joined?

YES. Section 7, Rule 3 of the Rules of Court, as amended, requires indispensable parties to be joined as plaintiffs or defendants. T***he joinder of indispensable parties is mandatory. Without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality***. Strangers to a case are not bound by the judgment rendered by the court. The absence of an indispensable party renders all subsequent actions of the court null and void. Lack of authority to act not only of the absent party but also as to those present. The responsibility of impleading all the indispensable parties rests on the petitioner/plaintiff. (***Domingo vs. Scheer****)*

Q. Will the non-joinder of an indispensable party be a ground for the dismissal of the petition?

NO. The non-joinder of indispensable parties is not a ground for the dismissal of an action. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner/plaintiffs failure to comply therefor. ***(Domingo vs. Scheer)***

Q. A case for collection of sum of money was filed by respondent against herein petitioner. The sheriff failed to serve the summons intended for the petitioner because the former could not locate the petitioner's address as indicated in the complaint. Thereafter, petitioner filed a Motion to Dismiss the complaint on the ground of lack of jurisdiction over his person. The court denied said motion and ordered the issuance of alias summons on the petitioner. Is the denial and issuance of alias summon proper ?

YES. The trial court was merely exercising its discretion under Rule 16, Section 3 of the 1997 Rules of Civil Procedure when it denied the petitioner's motion to dismiss. Under said rule, after hearing the motion, a judge may dismiss the action, deny the motion to dismiss or order the amendment of the pleading. The trial court denied the motion to dismiss based on its finding that the issues alleged by the respondent in its complaint could not be resolved fully in the absence of the petitioner. In its desire to resolve completely the issues brought before it, the trial court deemed it fitting to properly acquire jurisdiction over the person of the petitioner by ordering the issuance of alias summons on the petitioner. Evidently, the trial court acted well within its discretion. ***(Teh vs. CA, GRN 147038, April 24, 2003)***

Q. When will the rule on forum shopping apply?

The rule on forum shopping applies where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in the other. Res judicata applies only where judgment on the merits is finally rendered on the first. ***(David vs. Spouses Navarro)***

Q. Will subsequent compliance with the requirement to file a certificate of non-forum shopping cure the defect to file the same in the first instance?

NO. This Court held in Melo vs. Court of Appeals, et al., that the requirement under Administrative Circular No. 04-94 for a certificate of non-forum shopping is mandatory. The subsequent compliance with said requirement does not excuse a party's failure to comply therewith in the first instance. In those cases where this Court excused the non-compliance with the requirement of the submission of a certificate of non-forum shopping, it found special circumstances or compelling reasons which made the strict application of said Circular clearly unjustified or inequitable. In this case, however, the petitioner offered no valid justification for her failure to comply with the Circular. ***(Batoy vs. RTC, GRN 126833, February 17, 2003)***

Q. Is there a valid motion for reconsideration when there is a failure to incorporate any notice of hearing?

NO. Section 2, Rule 37 of the Rules of Court provides that a motion for reconsideration or a motion for a new trial shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party. Such written notice is that prescribed in Sections 4 and 5, Rule 15 of the Rules of Court. Under Section 4, paragraph 2 of said rule, a notice of hearing on a motion shall be served by the movant to all the parties concerned at least three days before the date of hearing. Section 5 of the same rule requires that the notice of hearing shall be directed to the parties concerned and shall state the time and place of the hearing of the motion. The requirements, far from being merely technical and procedural as claimed by the petitioners, are vital elements of procedural due process.The requirements entombed in Sections 4 and 5 of Rule 15 of the Rules of Court are mandatory and non-compliance therewith is fatal and renders the motion pro forma. ***(Republic vs. Peralta GR#150327, June 18,2003)***

Q. Can the appellate court resolve issues that are not raised on appeal?

YES. The Court has ruled in a number of cases that the appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

(1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;
(2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
(3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice;

(4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
(5) Matters not assigned as errors on appeal but closely related to an error assigned; and
(6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent. *(**Viron Transpo. Vs. CA, GR#117020,April 4, 2003)***

Q. Is it a ministerial duty for the sheriff to execute the judgment of the court?

Yes. This Court has consistently held that "the sheriff's duty to execute a judgment is ministerial." A purely ministerial act is one "which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of the legal authority, without regard to the exercise of his own judgment upon the propriety of the act done." *(Ebero vs. Makati City Sheriffs)*

Q. What are the grounds to annul the judgment or final order or resolution in civil actions of the RTC?

An original action in the Court of Appeals under Rule 47 of the Rules of Court, as amended, to annul a judgment or final order or resolution in civil actions of the RTC may be based on two grounds: (a) extrinsic fraud; or (b) lack of jurisdiction. If based on extrinsic fraud, the remedy is subject to a condition precedent, namely, the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. The petitioner must allege in the petition that the ordinary remedies of new trial, appeal, petition for relief from judgment, under Rule 38 of the Rules of Court are no longer available through no fault of hers; otherwise, the petition will be dismissed. If the petitioner fails to avail of the remedies of new trial, appeal or relief from judgment through her own fault or negligence before filing her petition with the Court of Appeals, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.
It is not enough to allege in the petition that the said remedies were no longer available through no fault of her own. The petitioner must also explain and justify her failure to avail of such remedies. The safeguard was incorporated in the rule precisely to avoid abuse of the remedy. Access to the courts is guaranteed. But there must be limits thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to sue anew. The prevailing party should not be vexed by subsequent suits.

Q? In a petition for annulment of judgment under Rule 47, is it always necessary to allege that the ordinary remedy of new trial or reconsideration is no longer available?

It depends on what ground the petition is based. An original action in the Court of Appeals under Rule 47 of the Rules of Court, as amended, to annul a judgment or final order or resolution in civil actions of the RTC may be based on two grounds: (**a) extrinsic fraud; or (b) lack of jurisdiction**. If based on extrinsic fraud, the remedy is subject to a condition precedent, namely, the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. The petitioner must allege in the petition that the ordinary remedies of new trial, appeal, petition for relief from judgment, under Rule 38 of the Rules of Court are no longer available through no fault of hers; otherwise, the petition will be dismissed. If the petitioner fails to avail of the remedies of new trial, appeal or relief from judgment through her own fault or negligence before filing her petition with the Court of Appeals, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.

In a case where a petition for the annulment of a judgment or final order of the RTC filed under Rule 47 of the Rules of Court is grounded on lack of jurisdiction over the person of the defendant/respondent or over the nature or subject of the action, the petitioner need not allege in the petition that the ordinary remedy of new trial or reconsideration of the final order or judgment or appeal therefrom are no longer available through no fault of her own. This is so because a judgment rendered or final order issued by the RTC without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless barred by laches. ***(Ancheta vs. Ancheta, GRN 145370, March 4, 2004)***

Q. What is the nature of a judgment on the question of ownership in ejectment cases?

Prefatorily, in ejectment cases, the issue is the physical or material possession (possession de facto) and any pronouncement made by the trial court on the question of ownership is provisional in nature. A judgment rendered in ejectment cases shall not bar an action between the same parties respecting title to the land and shall not be conclusive as to the facts found therein in a case between the same parties upon a different cause of action involving possession of the same property. ***(Florencio vs. de leon, GRN 149570, March 12, 2004)***

SPECIAL PROCEEDINGS

Q. May an interlocutory order be subject of a petition for certiorari under Rule 65 of the Rules of Court?

NO. Such order is merely an interlocutory one and therefore not appealable. Neither can it be the subject of a petition for certiorari. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. Although the special civil action for certiorari may be availed of in case there is grave abuse of discretion or lack of jurisdiction on the part of the lower court, or body, it would be a breach of orderly procedure to allow a party to come before the appellate court every time an order is issued with which a party does not agree. Hence, as a general rule, there must first be a judgment on the merits of the case before it may be questioned via a special civil action for certiorari.

The remedy of the aggrieved party is to file an answer to the complaint and to interpose as defenses the objections raised in his motion to dismiss, proceed to trial, and in case of an adverse decision, to elevate the entire case by appeal in due course. However, the rule is not ironclad. Under certain situations, recourse to certiorari or mandamus is considered appropriate, that is, (a) when the trial court issued the order without or in excess of jurisdiction; (b) where there is patent grave abuse of discretion by the trial court; or, (c) appeal would not prove to be a speedy and adequate remedy as when an appeal would not promptly relieve a defendant from the injurious effects of the patently mistaken order maintaining the plaintiffs' baseless action and compelling the defendant needlessly to go through protracted trial and clogging the court dockets by another futile case. *(Caballes vs. Perez-Sison)*

Q. What do you mean by lack of jurisdiction, excess of jurisdiction and grave abuse of discretion? When will the special civil action for certiorari lie?

The tribunal acts without jurisdiction if it does not have the legal purpose to determine the case; there is excess of jurisdiction where the tribunal, being clothed with the power to determine the case, oversteps its authority as determined by law, There is grave abuse of discretion where the tribunal acts in a capricious, whimsical,

arbitrary or despotic manner in the exercise of its judgment and is equivalent to lack of jurisdiction. It was incumbent upon the private respondent to adduce a sufficiently strong demonstration that the RTC acted whimsically in total disregard of evidence material to, and even decide of, the controversy before certiorari will lie. **A special civil action for certiorari is a remedy designed for the correction of errors of jurisdiction and not errors of judgment.** When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of its jurisdiction being exercised when the error is committed. ***(Ching vs. Court of Appeals)***

Q. What should the sheriff include in his enforcement of the writ of attachment? What are the remedies in case the sheriff fails to attach the right properties? What is the procedure followed by the court?

Sheriff may attach only those properties of the defendant against whom a writ of attachment has been issued by the court. When the sheriff erroneously levies on attachment and seizes the property of a third person in which the said defendant holds no right or interest, the superior authority of the court which has authorized the execution may be invoked by the aggrieved third person in the same case. Upon application of the third person, the court shall order a summary hearing for the purpose of determining whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the writ of attachment, more specifically if he has indeed levied on attachment and taken hold of property not belonging to the plaintiff. If so, the court may then order the sheriff to release the property from the erroneous levy and to return the same to the third person. In resolving the motion of the third party, the court does not and cannot pass upon the question of the title to the property with any character of finality. It can treat the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. If the claimant's proof does not persuade the court of the validity of the title, or right of possession thereto, the claim will be denied by the court. The aggrieved third party may also avail himself of the remedy of "terceria" by executing an affidavit of his title or right of possession over the property levied on attachment and serving the same to the office making the levy and the adverse party. Such party may also file an action to nullify the levy with damages resulting from the unlawful levy and seizure, which should be a totally separate and distinct action from the former case. The abovementioned remedies are cumulative and any one of them may be resorted to by one third-party claimant without availing of the other remedies. ***(Ong vs. Tating; Ching vs. CA)***

Q. What will be the effect if no supersedeas bond has been filed on appeal to stay the execution?

Court is mandated to issue a writ of execution, conformably to Section 19, Rule 70 of the Rules of Court, as amended. ***(David vs. Spouses Navarro)***

Q. Whether or not the petitioner in a petition for review on certiorari can raise questions of facts?

It bears stressing, however, that in a petition for review on certiorari, only questions of law may be raised in said petition. The jurisdiction of this Court in cases brought to it from the Court of Appeals is confined to reviewing and reversing the errors of law ascribed to it, findings of facts being conclusive on this Court. The Court is not tasked to calibrate and assess the probative weight of evidence adduced by the parties during trial all over again. 21 In those instances where the findings of facts of the trial court and its conclusions anchored on said findings are inconsistent with those of the Court of Appeals, this Court does not automatically delve into the record to determine which of the discordant findings and conclusions should prevail and to resolve the disputed facts for itself. This Court is tasked to merely determine which of the findings of the two tribunals are conformable to the facts at hand. 22 So long as the findings of facts of the Court of Appeals are consistent with or are not palpably contrary to the evidence on record, this Court shall decline to

embark on a review on the probative weight of the evidence of the parties.***(Superlines Transpo vs. ICC)***

CRIMINAL PROCEDURE

Q. Can unmarked sworn statements be used to convict an appellant?

NO. Private complainant's Sworn Statements, which formed part of the records of the preliminary investigation, cannot be used to convict appellant, because they do not form part of the records of the case in the RTC. They were not marked, much less formally offered before it. Evidence not formally offered cannot be taken into consideration in disposing of the issues of the case. (***People of the Phils. vs. Ramirez, GRN 150079-80, June 10,2004***)

Q. Should cases where an improvident plea of guilt is entered be remanded always to the trial court?

NO. Improvident plea of guilty on the part of the accused when capital crimes are involved should be avoided since he might be admitting his guilt before the court and thus forfeit his life and liberty without having fully comprehended the meaning and import and consequences of his plea. The trial court convicted the appellants of robbery with homicide on the basis of their plea of guilty during their rearraignment. **Ordinarily, the case should be remanded to the trial court for the prosecution and the appellants to adduce their respective evidences. However, the records show that despite the plea of guilty of the appellants, the prosecution adduced its evidence**. The appellants likewise adduced their evidence to prove their defenses. **The Court will resolve the case on its merits independent of the plea of guilty of the appellants rather than remand the case to the trial court. (** ***People vs. Daniela, G.R. No. 139230. April 24, 2003)***

Q. Is an accused deprived of his right to cross-examine a witness when the cross examination of such witness was not conducted due to his counsel's own doing?

NO. Right to cross-examine is a constitutional right anchored on due process. It is a statutory right found in Section 1(f), Rule 115 of the Revised Rules of Criminal Procedure which provides that the accused has the right to confront and cross-examine the witnesses against him at the trial. However, the right has always been understood as requiring not necessarily an actual cross-examination but merely an opportunity to exercise the right to cross-examine if desired. What is proscribed by statutory norm and jurisprudential precept is the absence of the opportunity to cross-examine. The right is a personal one and may be waived expressly or impliedly. There is an implied waiver when the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone. If by his actuations, the accused lost his opportunity to cross-examine wholly or in part the witnesses against him, his right to cross-examine is impliedly waived. ***(People vs. Escote, G.R. No. 140756. April 4, 2003)***

Q. A police inspector with a salary grade of 23 was charged with Murder. After preliminary hearing, the RTC ordered the transmittal of the case to the Sandiganbayan on the ground that the crime was committed by the accused "in relation to his office." Does the Sandiganbayan have jurisdiction over the case?

NO. Under the law, even if the offender committed the crime charged in relation to his office but occupies a position corresponding to a salary grade below "27," the proper

Regional Trial Court or Municipal Trial Court, as the case may be, shall have exclusive jurisdiction over the case conformably to Sections 20 and 32 of Batas Pambansa Blg. 129, as amended by Section 2 of R.A. No. 7691.
In cases where none of the principal accused are occupying positions corresponding to salary grade "27" or higher, as prescribed in the said Republic Act No. 6758, or PNP officers occupying the rank of superintendent or higher, or their equivalent, exclusive jurisdiction thereof shall be vested in the proper Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court, and Municipal Circuit Trial Court, as the case may be, pursuant to their respective jurisdiction as provided in Batas Pambansa Blg. 129.

Q. Is it necessary that accused be identified through knowledge of his name?

NO. The identification of a person is not solely through knowledge of his name. In fact, familiarity with physical features, particularly those of the face, is the best way to identify a person. One may be familiar with the face but not necessarily the name. Thus, it does not follow that to be able to identify a person, one must necessarily know his name. "Experience shows that precisely because of the unusual acts of bestiality committed before their eyes, eyewitnesses, especially the victims to a crime, can remember with a high degree of reliability the identity of criminals. We have ruled that the natural reaction of victims of criminal violence is to strive to see the appearance of their assailants and observe the manner the crime was committed. Most often, the face and body movements of the assailant create an impression which cannot easily be erased from their memory." Relatives of the victim have a natural knack for remembering the face of the assailant for they, more than anybody else, would be concerned with seeking justice for the victim and bringing the malefactor to face the law. (***People of the Phils. vs. De La Cruz, GRN 131035, February 28, 2003)***

Q. How is the crime charged in the information determined?

In determining what crime is charged in an information, the material inculpatory facts recited therein describing the crime charged in relation to the penal law violated are controlling. Where the specific intent of the malefactor is determinative of the crime charged such specific intent must be alleged in the information and proved by the prosecution.
If the primary and ultimate purpose of the accused is to kill the victim, the incidental deprivation of the victim's liberty does not constitute the felony of kidnapping but is merely a preparatory act to the killing, and hence, is merged into, or absorbed by, the killing of the victim. The crime committed would either be homicide or murder.
What is primordial then is the specific intent of the malefactors as disclosed in the information or criminal complaint that is determinative of what crime the accused is charged with — that of murder or kidnapping. Specific intent is used to describe a state of mind which exists where circumstances indicate that an offender actively desired certain criminal consequences or objectively desired a specific result to follow his act or failure to act. (***People of the Phils. vs. Delim et. al., GRN 142773, January 28, 2003***)

Q. Is failure of the witnesses of the prosecution to appear at the pre-trial a ground for dismissal of the case under RA 8493?

NO. Under R.A. 8493, the absence during pre-trial of any witness for the prosecution listed in the Information, whether or not said witness is the offended party or the complaining witness, is not a valid ground for the dismissal of a criminal case. Although under the law, pre-trial is mandatory in criminal cases, the presence of the private complainant or the complaining witness is however not required. Even the presence of the accused is not required unless directed by the trial court. It is enough that the accused is represented by his counsel. ***(People vs. Tac-An, GRN 148000, February 27,2003)***

Q. Will the reinstatement of a case which was dismissed by the lower court without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction constitute double jeopardy?

NO. The Court of Appeals also erred in ruling that the reinstatement of the case does not place the private respondent in double jeopardy. This Court ruled in Saldana vs. Court of Appeals, et al. 13 that:
When the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated
to raise the defense of double jeopardy, three requisites must be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as that in the first.
Legal jeopardy attaches only (a) upon a valid indictment, (b) before a competent court, (c) after arraignment, (d) a valid plea having been entered; and (e) the case was dismissed or otherwise terminated without the express consent of the accused (People vs. Ylagan, 58 Phil. 851). The lower court was not competent as it was ousted of its jurisdiction when it violated the right of the prosecution to due process.
In effect, the first jeopardy was never terminated, and the remand of the criminal case for further hearing and/or trial before the lower courts amounts merely to a continuation of the first jeopardy, and does not expose the accused to a second jeopardy.

Q. Whether or not an information for Plunder which contains bribery (Article 210 of the Revised Penal Code), malversation of public funds or property (Article 217, Revised Penal Code) and violations of Sec. 3(e) of Republic Act (RA No. 3019) and Section 7(d) of RA 6713, charges more than one offense, hence, in violation of the Rules of Court.

NO. The acts alleged in the information are not charged as separate offenses but as predicate acts of the crime of plunder. It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from 'malversation' of public funds, the law also uses the generic terms 'misappropriation', 'conversion' or 'misuse' of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees."(***Serapio vs. Sandiganbayan,)***

Q. What is the remedy of the party whose motion to quash has been denied?

Case law has it that a resolution of the Sandiganbayan denying a motion to quash the information is an interlocutory order and hence, not appealable. Nor can it be the subject of certiorari. The remedy available to petitioners after their motion to quash was denied by the Sandiganbayan was to proceed with the trial of the case, without prejudice to their right to raise the question on appeal if final judgment is rendered against them.
(***Torrres vs. Garchitorena, GRN 153666, December 27, 2002)***

Q. Accused are public officials who are charged with violation of the Anti Graft and Corruption Law for having allegedly caused the reclamation of a piece of land registered in the name of the respondent. Thereafter, the Solicitor General instituted a civil case for the reversion of the subject land to the State. The accused now prays that the criminal case against them be suspended on the ground of a prejudicial question. They contend that it behooved the Sandiganbayan to have suspended the criminal proceedings pending final judgment in the Civil Case because a judgment in that case that the property subject of the charge is foreshore land will belie the respondent's claim that its proprietary right over the subject property had been violated by the accused when they had the subject property reclaimed. Is the contention of the accused tenable?

NO. A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. The civil action must be instituted prior to the institution of the criminal action. In this case, the Information was filed with the Sandiganbayan ahead of the complaint in Civil Case No. 7160 filed by the State with the RTC in Civil Case No. 7160. Thus, no prejudicial question exists.

Besides, a final judgment of the RTC in Civil Case No. 7160 declaring the property as foreshore land and hence, inalienable, is not determinative of the guilt or innocence of the petitioners in the criminal case. It bears stressing that unless and until declared null and void by a court of competent jurisdiction in an appropriate action therefor, the titles of SRI over the subject property are valid. SRI is entitled to the possession of the properties covered by said titles. It cannot be illegally deprived of its possession of the property by petitioners in the guise of a reclamation until final judgment is rendered declaring the property covered by said titles as foreshore land. (***Ibid.)***

Q. What is the effect of SC Circular No. 19 with respect to the issuance of a search warrant?

We also held that Circular No. 19 was never intended to confer exclusive jurisdiction on the Executive Judge mentioned therein; it is not a mandate for the exclusion of all other courts and that a court whose territory does not embrace the place to be searched may issue a search warrant where the application is necessitated and justified by compelling consideration of urgency, subject, time and place, thus:

Evidently, that particular provision of Circular No. 19 was never intended to confer exclusive jurisdiction on said executive judges. In view of the fact, however, that they were themselves directed to personally act on the applications, instead of farming out the same among the other judges as was the previous practice, it was but necessary and practical to require them to so act only on applications involving search of places located within their respective territorial jurisdictions. The phrase above quoted was, therefore, in the nature of an allocation in the assignment of applications among them, in recognition of human capabilities and limitations, and not a mandate for the exclusion of all other courts . . .

"Urgent" means pressing; calling for immediate attention. The court must take into account and consider not only the "subject" but the time and place of the enforcement of the search warrant as well. The determination of the existence of compelling considerations of urgency, and the subject, time and place necessitating and justifying the filing of an application for a search warrant with a court other than the court having territorial jurisdiction over the place to be searched and things to be seized or where the materials are found is addressed to the sound discretion of the trial court where the application is filed, subject to review by the appellate court in case of grave abuse of discretion amounting to excess or lack of jurisdiction. **(*People vs. robber Chiu, et al. G.R. Nos. 142915-16. February 27, 2004.])***

Q. An Information was filed charging appellant Montanez of Murder. During trial, appellant presented Daniel Sumaylo as surrebuttal witness. Sumaylo testified that he did not kill the victim but also stated that he did not know the killer. However, the following day, Sumaylo executed an Affidavit admitting to have killed the victim. An Amended Infromation was then filed considering him as an additional accused. Sumaylo pleaded guilty to the lesser offense of Homicide. After trial,

the court rendered judgment convicting the appellant of murder as principal and convicting Sumaylo of homicide. The appellant filed a motion for the reconsideration of the decision. The court issued an order partially granting the motion and convicting the appellant of murder, but only as an accomplice. The appellant appealed the decision, asserting that there was no proof of conspiracy between him and Sumaylo. The Court of Appeals rendered judgment reinstating the trial court's decision convicting the appellant of murder as principal by direct participation.

Appellant argues that it was illogical for the trial court to convict him of murder as an accomplice, although Sumaylo, who was the principal by direct participation for the killing of the victim, was convicted of homicide. There is no evidence on record that he conspired with Sumaylo in killing the victim. His mere presence at the scene of the killing did not render him criminally liable as an accomplice. Rule on the contention of the appellant.

The appellant's submission has no merit. Sumaylo's testimony is given scant attention by this Court — "The Court has held in a number of cases that a recantation of a testimony is exceedingly unreliable, for there is always the probability that such recantation may later on be itself repudiated. Courts look with disfavor upon retractions, because they can easily be obtained from witnesses through intimidation or for monetary consideration.

The barefaced fact that Daniel Sumaylo pleaded guilty to the felony of homicide is not a bar to the appellant being found guilty of murder as a principal. It bears stressing that Sumaylo plea-bargained on his re-arraignment. Even if the public prosecutor and the father of the victim agreed to Sumaylo's plea, the State is not barred from prosecuting the appellant for murder on the basis of its evidence, independently of Sumaylo's plea of guilt.

Neither is the appellant entitled to acquittal merely because Sumaylo confessed, after the appellant had rested his case, to being the sole assailant. The trial court disbelieved Sumaylo's testimony that he alone killed the victim and that the appellant was not at all involved in the killing. The Court of Appeals affirmed the judgment of the trial court. It bears stressing that when Sumaylo testified for the appellant on surrebuttal, he declared that he did not know who killed the victim. He even declared that the appellant did not kill the victim. However, he made a complete volte-face when he executed an affidavit and testified that he alone killed the victim and that the appellant was not at all involved in the killing. We are convinced that Sumaylo's somersault was an afterthought, a last-ditch attempt to extricate the appellant from an inevitable conviction.

(People vs. Cesar Montanez and Daniel Sumaylo, GRN 148257, March 14,2004)

Q. May the trial court give retroactive application to the provisions of the Revised Rules of Criminal Procedure?

YES. ***Although the crime was committed before the Revised Rules of Criminal Procedure took effect, the same should be applied retroactively because it is favorable to the appellant***. Hence, the aggravating circumstance of nighttime should not be appreciated against him.

The Information failed to allege the aggravating circumstance of nighttime as required by Section 8, Rule 110 of the Revised Rules of Criminal Procedure, which reads:

SEC. 8. Designation of the offense. — 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. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. ***(People vs. Torres, GRN 134766, January 16,2004)***

Q. Upon the sworn complaint of the victim Lucelle Serrano, two Informations for Rape and two Informations for acts of lascivousness were filed against her uncle, herein appellant. (Criminal cases, 97-385, 77-386,77-387 and 97-388) The appellant, assisted by counsel, pleaded not guilty during the arraignment. Joint trial of all the cases ensued.

After the prosecution had rested its case, the trial court reset the hearing for the appellant to adduce his evidence. When the case was called for trial as scheduled, his counsel

manifested to the court that the appellant was changing his plea in Criminal Cases Nos. 97-385 and 97-387 from "not guilty" to "guilty." He also manifested that he would no longer adduce any evidence in his defense in Criminal Cases Nos. 97-386 and 97-388 because the prosecution failed to prove his guilt beyond reasonable doubt for the crimes charged therein. When told by the court that he could be sentenced to death for the rape charges, the appellant stood pat on his decision to plead guilty in Criminal Cases Nos. 97-385 and 97-387, and to no longer present any evidence in his defense in the other two cases. The appellant was re-arraigned in Criminal Cases Nos. 97-385 and 97-387 with the assistance of the same counsel and entered his plea of guilty to the charges.

The trial court rendered judgment convicting the appellant of all the crimes charged.

On appeal, the appellant does not contest his conviction for rape in Criminal Cases Nos. 97-385 and 97-386, and the validity of the proceedings in the said cases in the trial court. He pleads, however, that he be spared the death penalty.

1.) In reviewing criminal cases, is the appellate court limited to the assigned errors?

NO. Appeal in a criminal case is a review de novo and the court is not limited to the assigned errors. 21 An appeal thus opens the whole case for review, and the appellate tribunal may consider and correct errors though unassigned and even reverse the decision of the trial court on the grounds other than those the parties raised as errors. 22

2.) Did the trial court err in appreciating the appellant's plea of guilt?

YES. Appellant's Plea of Guilty in Criminal Case No. 97-385 was Imprudently Made. In Criminal Case No. 97-385, the appellant was charged with qualified rape, i.e., the rape of his niece, who was a minor, punishable by death under Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659. **Undoubtedly, the appellant was charged with a capital offense. When the appellant informed the trial court of his decision to change his plea of "not guilty" to "guilty," it behooved the trial court to conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea as mandated by Section 6, Rule 116 of the Revised Rules of Criminal Procedure.** ***In People vs. Camay, this Court enumerated the following duties of the trial court under the rule:***

1. ***The court must conduct a searching inquiry into the voluntariness and full comprehension [by the accused] of the consequences of his plea;***
2. ***The court must require the prosecution to present evidence to prove the guilt of the accused and precise degree of his culpability; and***
3. ***The court must require the prosecution to present evidence in his behalf and allow him to do so if he desires.***

The raison d'etre for the rule is that the courts must proceed with extreme care where the imposable penalty is death, considering that the execution of such sentence is irrevocable.

There is no hard and fast rule as to how the trial judge may conduct a searching inquiry. It has been held, however, that the focus of the inquiry must be on the voluntariness of the plea and the full or complete comprehension by the accused of his plea of guilty so that it can truly be said that it is based on a free and informed judgment.

3.) How should a searching inquiry be conducted?

In People vs. Aranzado, 26 we formulated the following guidelines as to how the trial court may conduct its searching inquiry:

(1) Ascertain from the accused himself (a) how he was brought into the custody of the law; (b) whether he had the assistance of a competent counsel during the custodial and preliminary investigations; and (c) under what conditions he was detained and interrogated during the investigations. These the court shall do in order to rule out the possibility that the accused has been coerced or placed under a state of duress either by actual threats of physical harm coming from malevolent or avenging quarters.

(2) Ask the defense counsel a series of questions as to whether he had conferred with, and completely explained to, the accused the meaning and consequences of a plea of guilty.
(3) Elicit information about the personality profile of the accused, such as his age, socio-economic status, and educational background, which may serve as a trustworthy index of his capacity to give a free and informed plea of guilty.
(4) Inform the accused the exact length of imprisonment or nature of the penalty under the law and the certainty that he will serve such sentence. Not infrequently indeed an accused pleads guilty in the hope of a lenient treatment or upon bad advice or because of promises of the authorities or parties of a lighter penalty should he admit guilt or express remorse. It is the duty of the judge to see to it that the accused does not labor under these mistaken impressions.
(5) Require the accused to fully narrate the incident that spawned the charges against him or make him reenact the manner in which he perpetrated the crime, or cause him to supply missing details or significance. In People vs. Ostia, we held that the trial court is also required to probe thoroughly into the reasons or motivations, as well as the facts and circumstances for a change of plea of the accused and his comprehension of his plea; explain to him the elements of the crime for which he is charged as well as the nature and effect of any modifying circumstances attendant to the commission of the offense, inclusive of mitigating and aggravating circumstances, as well as the qualifying and special qualifying circumstances, and inform him of the imposable penalty and his civil liabilities for the crime for which he would plead guilty to.

In this case, the trial court failed to make a searching inquiry into the appellant's voluntariness and full comprehension of his plea of guilty.

4.) Will an improvident plea of guilt automatically absolve the accused from criminal liability?

NO. As a rule, this Court has set aside convictions based on pleas of guilty in capital offenses because of the improvidence thereof, and when such plea is the sole basis of the condemnatory judgment. **However, where the trial court receives, independently of his plea of guilty, evidence to determine whether the accused committed the crimes charged and the precise degree of his criminal culpability therefor, he may still be convicted if there is ample proof on record, not contingent on the plea of guilty, on which to predicate conviction.**

In this case, the prosecution had already rested its case when the appellant decided to change his plea. In fact, the trial court granted the prosecution's motion that the evidence it had presented be considered proof of the degree of culpability of the appellant. It is, thus, incumbent upon this Court to determine whether the evidence adduced by the prosecution in Criminal Case No. 97-385 is sufficient to establish beyond reasonable doubt the appellant's guilt for qualified rape.

5.) Should the appellant be convicted of Rape in criminal case 97-385?

YES. The Prosecution Adduced Proof of the Appellant's Guilt Beyond Reasonable Doubt of the Crime of Rape in Criminal Case No. 97-385. We have reviewed the evidence on record and we are convinced that the prosecution adduced proof beyond reasonable doubt that the appellate raped the victim in November 1996. The victim declared in her sworn statement, on direct examination and her testimony on clarificatory questions made by the trial court, that indeed, the appellant raped her in November 1996.

We do not agree with the ruling of the trial court that the contents of the sworn statement of Lucelle are hearsay, simply because she did not testify thereon and merely identified her signatures therein. By hearsay evidence is meant that kind of evidence which does not derive its value solely from the credence to be attributed to the witness herself but rests solely in part on the veracity and competence of some persons from whom the witness has received the information. It signifies all evidence which is not

founded upon the personal knowledge of the witness from whom it is elicited, and which, consequently, is not subject to cross-examination. The basis for the exclusion appears to lie in the fact that such testimony is not subject to the test which can ordinarily be applied for the ascertainment of truth of testimony, since the declarant is not present and available for cross-examination. In criminal cases, the admission of hearsay evidence would be a violation of the constitutional provision while the accused shall enjoy the right to confront and cross-examine the witness testifying against him. **Generally, the affidavits of persons who are not presented to testify on the truth of the contents thereof are hearsay evidence. Such affidavit must be formally offered in evidence and accepted by the court; otherwise, it shall not be considered by the court for the simple reason that the court shall consider such evidence formally offered and accepted.**

In this case, Lucelle testified on and affirmed the truth of the contents of her sworn statement which she herself had given. As gleaned from the said statement, she narrated how and when the appellant raped and subjected her to lascivious acts. She was cross-examined by the appellant's counsel and answered the trial court's clarificatory questions. The prosecution offered her sworn statement as part of her testimony and the court admitted the same for the said purpose without objection on the part of the appellant.

6.) Should the appellant be convicted for qualified rape in criminal case 97-386?

YES. The Prosecution Proved Beyond Reasonable Doubt that the Appellant Raped the Victim in February 1997. The appellant admitted to the barangay chairman on March 5, 1997, that he raped Lucelle in February 1997. **Although the appellant was not assisted by counsel at the time he gave his statement to the barangay chairman and when he signed the same, it is still admissible in evidence against him because he was not under arrest nor under custodial investigation when he gave his statement**.
The exclusionary rule is premised on the presumption that the defendant is thrust into an unfamiliar atmosphere and runs through menacing police interrogation procedures where the potentiality for compulsion, physical and psychological, is forcefully apparent. As intended by the 1971 Constitutional Convention, this covers "investigation conducted by police authorities which will include investigations conducted by the municipal police, the PC and the NBI and such other police agencies in our government." The barangay chairman is not deemed a law enforcement officer for purposes of applying Section 12(1) and (3) of Article III of the Constitution. Under these circumstances, it cannot be successfully claimed that the appellant's statement before the barangay chairman is inadmissible.

7.) What circumstances, if any, should the court consider in imposing the proper penalty upon the accused in a crime for rape? Were they duly established in this case?

NO. Article 335 of the Revised Penal Code, as amended by Section 11 of Republic Act No. 7659, which was the law in effect at the time of the commission of the subject rapes, provides in part:
"ART. 335. When and how rape is committed. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances.
1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.
The crime of rape shall be punished by reclusion perpetua.
Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be reclusion perpetua to death.
xxx xxx xxx
The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:
1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.
xxx xxx xxx"

The qualifying circumstances of minority and relationship must concur. More importantly, they must be both alleged and proved, in order to qualify the crime of rape and warrant the imposition of the death penalty. In addition to the requirement that the qualifying and aggravating circumstance must be specifically alleged in the information, it must be established with certainty that the victim was below eighteen (18) years of age or that she was a minor at the time of the commission of the crime. It must be stressed that the severity of the death penalty, especially its irreversible and final nature once carried out, makes the decision-making process in capital offenses aptly subject to the most exacting rules of procedure and evidence.

The relationship between the appellant and the victim has been adequately established. The allegations in both Informations that the appellant is the victim's "uncle," "a relative by consanguinity within the third civil degree" is specific enough to satisfy the special qualifying circumstance of relationship.

The same cannot, however, be said with respect to the age of the victim. In *People v. Pruna,* the Court, after noting the divergent rulings on proof of age of the victim in rape cases, set out certain guidelines in appreciating age, either as an element of the crime or as qualifying circumstance

In the present case, no birth certificate or any similar authentic document was presented and offered in evidence to prove Lucelle's age. While the victim testified that she was born on February 19, 1986, therefore 11 years old when the appellant twice raped her, the same will not suffice as the appellant did not expressly and clearly admit the same as required by Pruna. The corroboration of Lucelle's mother as to her age is not sufficient either, as there is no evidence that the said certificate of birth was lost or destroyed or was unavailable without the fault of the prosecution. The fact that there was no objection from the defense regarding the victim's age cannot be taken against the appellant since it is the prosecution that has the burden of proving the same. Moreover, the trial court did not make a categorical finding of the victim's minority, another requirement mandated by Pruna.

8.) The appellant's conviction for two counts of rape having been duly proven by the prosecution, we now come to the question of the penalty to be meted upon him. Should the accused be sentenced to death penalty?

In the determination of whether the death penalty should be imposed on the appellant, the presence of an aggravating circumstance in the commission of the crime is crucial. In the cases at bar, although the relationship of uncle and niece between the appellant and the victim has been duly proven, the alternative circumstance of relationship under Article 15 of the Revised Penal Code cannot be appreciated as an aggravating circumstance against the appellant. While it is true that the alternative circumstance of relationship is always aggravating in crimes against chastity, regardless of whether the offender is a relative of a higher or lower degree of the offended party, it is only taken into consideration under Article 15 of the Revised Penal Code "when the offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree of the offender." The relationship of uncle and niece is not covered by any of the relationships mentioned.

Hence, for the prosecution's failure to prove the age of the victim by any means set forth in Pruna, and considering that the relationship of uncle and niece is not covered by any of the relationships mentioned in Article 15 of the Revised Penal Code, as amended, the appellant can only be convicted of rape in its aggravated form, the imposable penalty for which is reclusion perpetua to death.

There being no modifying circumstances attendant to the commission of the crimes, the appellant should be sentenced to suffer reclusion perpetua for each count of rape, conformably to Article 69 of the Revised Penal Code. ***(People vs. Ulit, GRN 131799-801, February 23, 2004)***

Q. Can a trial judge examine a witness?

YES. This Court emphasized that a presiding judge enjoys a great deal of latitude in examining witnesses within the course of evidentiary rules. The presiding judge should see to it that a testimony should not be incomplete or obscure. After all, the judge is the arbiter and he must be in a position to satisfy himself as to the respective claims of the parties in the criminal proceedings. The trial judge must be accorded a reasonable leeway in putting such questions to witnesses as may be essential to elicit relevant facts to make the record speak the truth. Trial judges in this jurisdiction are judges of both LAW and the FACTS, and they would be negligent in the performance of their duties if they permitted a miscarriage of justice as a result of a failure to propound a proper question to a witness which might develop some material bearing upon the outcome. In the exercise of sound discretion he may put such question to the witness as will enable him to formulate a sound opinion as to the ability or the willingness of the witness to tell the truth. A judge may examine or cross-examine a witness. He may propound clarificatory questions to test the credibility of the witness and to extract the truth. It cannot be taken against him if the clarificatory questions he propounds happen to reveal certain truths which tend to destroy the theory of one party.
Parenthetically, under Sections 19 to 21 of the Rule on Examination of a Child Witness which took effect on December 15, 2000, child witnesses may testify in a narrative form and leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice. Obligations to question should be couched in a manner so as not to mislead, confuse, frighten and intimidate the child: Sec. 19. MODE of Questioning- The court shall exercise control over the questioning of children so as to 1) facilitate the ascertainment of the truth, 2) ensure that questions are stated in a form appropriate to the developmental level of the child, 3) protect children from harassment or undue harassment, and 4) avoid waste of time. (***People vs. Kakingcio Canete, G.R. No.142930,March 28, 2003)***

Q. Does the failure to state the precise date the offense was committed ipso factor render an Information for Rape defective on its face?

NO. Failure to specify the exact dates or time when the rapes occurred does not ipso facto make the information defective on its face. The reason is obvious. The precise date or time when the victim was raped is not an element of the offense. The gravamen of the crime is the fact of carnal knowledge under any of the circumstances enumerated under Article 335 of the Revised Penal Code. As long as it is alleged that the offense was committed at any time as near to the actual date when the offense was committed an information is sufficient. It is not necessary to state in the complaint or information the precise date the offense was committed except when it is material ingredient of the offense. The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (***People vs. Mauro, March 14,2003***.)

Q. In a criminal case, what should be the contents of a valid judgment?

Rule 120, Section 2 of the 1985 Rules on Criminal Procedure, as amended, provides: "SEC. 2. Form and contents of judgment. — The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts proved or admitted by the accused and the law upon which the judgment is based.

If it is of conviction, the judgment shall state (a) the legal qualification of the offense constituted by the acts committed by the accused, and the aggravating or mitigating circumstances attending the commission thereof, if there are any; (b) the participation of the accused in the commission of the offense, whether as principal,

accomplice, or accessory after the fact; (c) the penalty imposed upon the accused; and (d) the civil liability or damages caused by the wrongful act to be recovered from the accused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved or waived." (***People of the Phils. vs. Lizada, GRN 143468-71, January 24, 2003***)

Q. How is a criminal case revived? Is there a need for a new preliminary investigation?

The case may be revived by the State within the time-bar provided in Section of Rule 117either by the refiling of the Information or by the filing of a new Information for the same offense or an offense necessarily included therein. There would be no need of a new preliminary investigation. ***However, in a case wherein after the provisional dismissal of a criminal case, the original witnesses of the prosecution or some of them may have recanted their testimonies or may have died or may no longer be available and new witnesses for the State have emerged, a new preliminary investigation must be conducted before an Information is refiled or a new Information is filed.*** A new preliminary investigation is also required if aside from the original accused, other persons are charged under a new criminal complaint for the same offense or necessarily included therein; or if under a new criminal complaint, the original charge has been upgraded; or if under a new criminal complaint, the criminal liability of the accused is upgraded from that as an accessory to that as a principal. **(*People vs. Lacson, G.R. No. 149453. April 1, 2003.)***

Q. Should the time-bar rule under the Section 8 of Rule 117 be applied retroactively?

The time-bar of two years under the new rule should not be applied retroactively against the State. In fixing the time-bar, the Court balanced the societal interests and those of the accused for the orderly and speedy disposition of criminal cases with minimum prejudice to the State and the accused. It took into account the substantial rights of both the State and of the accused to due process. The Court believed that the time limit is a reasonable period for the State to revive provisionally dismissed cases with the consent of the accused and notice to the offended parties. The time-bar fixed by the Court must be respected unless it is shown that the period is manifestly short or insufficient that the rule becomes a denial of justice. ***(ibid.)***

Q. What do you mean by express consent to a provisional dismissal? Is the inaction or silence of the accused equivalent to express consent?

Express consent to a provisional dismissal is given either viva voce or in writing. It is a positive, direct, unequivocal consent requiring no inference or implication to supply its meaning. Where the accused writes on the motion of a prosecutor for a provisional dismissal of the case ″ No Objection″ or ″ With My Conformity″ , the writing amounts to express consent of the accused to a provisional dismissal of the case. The mere inaction or silence of the accused to a motion for a provisional dismissal of the case or his failure to object to a provisional dismissal does not amount to express consent. ***(Ibid.)***

Q. What is the effect of a plea for forgiveness made by the accused to the victim and/or her family?

A plea for forgiveness may be considered as analogous to an attempt to compromise. In criminal cases, except those involving quasi-offense (criminal negligence) or those allowed by law to be compromised, an offer of compromise by the accused may be received in

evidence as an implied admission of guilt. No one would ask for forgiveness unless he had committed some wrong, for to forgive means to absolve, to pardon, to cease to feel resentment against on account of wrong committed; give up claim to requital from or retribution upon (an offender). **(*People vs. Alex Manalo, GRN 143704, March 28, 2003)***

Q. In resolving a motion for bail, what does a trial court mandated to do?

The trial court is mandated, in resolving a motion or petition for bail, to do the following:

4.) In all cases, whether bail is a matter of right or discretion, notify the prosecutor of the hearing of the application for bail or require him to submit his recommendation (Section 18, Rule 114 of the Rules of Court, as amended);

5.) Where bail is a matter of discretion, conduct a hearing of the application for bail regardless of whether or not the prosecution refuses to present evidence to show that the guilt of the accused is strong for the purpose of enabling the court to exercise its sound discretion; (Sections 7 and 8, supra)

6.) Decide whether the guilt of the accused is strong based on the summary of evidence of the prosecution;

7.) If the guilt of the accused is not strong, discharge the accused upon the approval of the bail bond (Section 19, supra). Otherwise, the petition should be denied. ***(Ibid.)***

Q. What rights are involved in an application for bail?

A bail application does not only involve the right of the accused to temporary liberty, but likewise the right of the State to protect the people and the peace of the community from dangerous elements. These two rights must be balanced by a magistrate in the scale of justice, hence, the necessity for hearing to guide his exercise of jurisdiction. ***(Ibid.)***

Q. Distinguish a permanent dismissal from a provisional dismissal of the case.

A permanent dismissal of a criminal case may refer to the termination of the case on the merits, resulting in either the conviction or acquittal of the accused; to the dismissal of the case due to the prosecution's failure to prosecute; or to the dismissal thereof on the ground of unreasonable delay in the proceedings, in violation of the accused's right to speedy disposition or trial of the case against him. In contrast, a provisional dismissal of a criminal case is a dismissal without prejudice to the reinstatement thereof before the order of dismissal becomes final or to the subsequent filing of a new information for the offense within the periods allowed under the Revised Penal Code or the Revised Rules of Court. ***(Condrada vs. People, GRN 141646, February 28, 2003)***

Q. What are the exceptions to the rule that double jeopardy will not attach if the first case was dismissed with the consent of the accused?

There are two exceptions to the foregoing rule, and double jeopardy may attach even if the dismissal of the case was with the consent of the accused: first, when there is insufficiency of evidence to support the charge against him; and second, where there has been an unreasonable delay in the proceedings, in violation of the accused's right to speedy trial. ***(Ibid.)***

EVIDENCE

Q. Is the testimony of a single prosecution witness sufficient to prove the guilt of the accused?

YES. The testimony of an eyewitness, coupled with the fact of the victim's death are sufficient proof of the guilt of the appellants beyond cavil of doubt for murder. ***The Court has consistently ruled that the testimony of a single prosecution witness, as long as it is positive, clear and credible is sufficient on which to anchor a judgment of conviction. Corroborative or cumulative evidence is not a prerequisite to the conviction of the accused***. Truth is established not by the number of witnesses but by the quality of their testimonies. The bare denial by the appellants of the criminal charge is a self-serving negative evidence which cannot prevail over the clear, positive and categorical testimony of the eyewitness pinpointing the appellants as the culprits. (*People vs. Sibonga GR#95901, June 16, 2003)*

Q. Is an alibi sufficient to prove the innocence of the accused?

NO. Alibi is one of the weakest if not the weakest of defenses in criminal prosecution as it is easy to fabricate and hard to disprove. For alibi to be believed, the following requisites must concur: (a) the presence of accused at another place at the time of the perpetration of the offense; and (b) the physical impossibility for him to be at the scene of the crime. More importantly, alibi cannot be given credence in light of the unwavering and positive identification by the private complainant of accused-appellant as her defiler and the father of her child. In cases in where the offender is positively identified by the victim herself who harbored no ill motive against him, the defense of alibi is invariably rejected. (***People vs. Pagsanjan GR#139694, December 27,2002)***

Q. In the Law on Evidence, is self-defense considered as a strong argument?

NO. Like alibi, self-defense is a weak defense because it is easy to fabricate. When the accused interposes self-defense, he thereby admits having killed the victim. The burden of proof is shifted on him to prove with clear and convincing evidence the confluence of the essential requisites of a complete self-defense, namely: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself. **(*Rugas vs. People, GRN 147789, January 14,2004*)**

Q. Will the testimony of young rape victims be given full credence by our courts of justice?

YES. We have consistently ruled that where, the rape victims are young and of tender age, their testimonies deserve full credence and should not be so easily dismissed as a mere fabrication, especially where they have absolutely no ill-motive to testify against the accused. It is doctrinally settled that the factual findings of the trial court which are supported by evidence, especially on the credibility of the rape victim, are accorded great weight and respect and will not be disturbed on appeal. ***(People vs. Limos)***

Q. Do inconsistencies in the testimony impair the credibility of the witness?

NO. The victim died because of multiple wounds and the appellant is charged with murder for the killing of the victim, in conspiracy with the other accused. In this case,the identity of the person who hit the victim with a hollow block is of de minimis importance and the perceived inconsistency in the account of events is a minor and collateral detail that does not affect the substance of her testimony. The witness has been consistent in her testimony that the appellant was one of the men who stabbed the victim and such corroborated by the autopsy report.(***People vs. Pilola GR#121828, June 27, 2003)***

Q. Give the rationale why the trial courts are in the best position to weigh the testimony of a witness.

The weighing of the testimonies of witnesses is best left to the trial court since it is in the best position to discharge that function. The trial judge has the advantage of personally observing the conduct and demeanor of witnesses, an opportunity not available to an appellate court. Absent compelling reasons, we will not disturb on appeal the trial court's findings on the credibility of a witness. ***(People vs. Nuguid)***

Q. What is the quantum of proof in administrative proceedings?

In administrative proceedings, the quantum of proof necessary for a finding of guilt is **substantial evidence** or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Further, the complainants have the burden of proving, by substantial evidence, the allegations in their complaints. ***(Ebero vs. Makati City Sheriffs)***

Q. Is it proper for the appellate court to disturb the finding of the court as to the credibility of witnesses?

NO. When the issue is one of credibility of witnesses, an appellate court will normally not disturb the factual findings of the trial unless the lower court has reached conclusions that are clearly unsupported by evidence, or unless it has overlooked some facts or circumstances of weight and influence which, if considered, would affect the result of the case. The rationale for this rule is that trial courts have superior advantages in ascertaining the truth and in detecting falsehood as they have the opportunity to observe at close range the manner and demeanor of witnesses while testifying. (***People vs. Dalag, G.R. No. 129895. April 30, 2003***)

Q. Accused herein was convicted of Rape with Homicide and Attempted Murder. He now asserts that his conviction should not be sustained in the absence of direct evidence to prove his guilt beyond reasonable doubt. Is his contention tenable?

NO. We agree with the appellant that the prosecution failed to adduce direct evidence to prove that he raped and killed Marilyn on the occasion or by reason of the said crime. However, direct evidence is not indispensable to prove the guilt of the accused for the crime charged; it may be proved by circumstantial evidence. In People v. Delim, we held, thus:

. . . Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. What was once a rule of ancient practicability is now entombed in Section 4, Rule 133 of the Revised Rules of Evidence which states that circumstantial evidence, sometimes referred to as indirect or presumptive evidence, is sufficient as anchor for a judgment of conviction if the following requisites concur:

". . . if (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances is such as to warrant a finding of guilt beyond reasonable doubt."

The prosecution is burdened to prove the essential events which constitute a compact mass of circumstantial evidence, and the proof of each being confirmed by the proof of the other, and all without exception leading by mutual support to but one conclusion: the guilt of the accused for the offense charged.

We are convinced that, based on the evidence on record and as declared by the trial court in its decision, the prosecution adduced circumstantial evidence to prove beyond cavil that it was the appellant who raped and killed Marilyn on the occasion or by reason of the rape.

Hence, he is guilty beyond reasonable doubt of rape with homicide, a special complex crime. (***People vs. Darilay, GRN 139751-52, January 26, 2004***)

Q. Is medical evidence a condition sine qua non in all sexual crimes to prove that the victim is a mental retardate?

NO. Clinical evidence is necessary in borderline cases when it is difficult to ascertain whether the victim is of a normal mind or is suffering from a mild mental retardation. Medical evidence is not a condition sine qua non in all cases of rape or sexual crimes for that matter to prove that the victim is a mental retardate or is suffering from mental deficiency or some form of mental disorder. However, the conviction of an accused of rape based on the mental retardation of private complainant must be anchored on proof beyond reasonable doubt of her mental retardation. (***People of the Phils. vs.Dalandas, GRN 140209, December 27, 2002***)

Q. Is it necessary that a witness' sworn statement or affidavit be consistent with his testimony in open court?

NO. Case law has it that: A Sinumpaang Salaysay or a sworn statement is merely a short narrative subscribed to by the complainant in question and answer form. Thus, it is only to be expected that it is not as exhaustive as one's testimony in open court. The contradictions, if any, may be explained by the fact that an affidavit can not possibly disclose the details in their entirety, and may inaccurately describe, without deponent detecting it, some of the occurrences narrated. Being taken ex parte, an affidavit is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries. It has thus been held that affidavits are generally subordinated in importance to open court declarations because the former are often executed when an affiant's mental faculties are not in such a state as to afford a fair opportunity of narrating in full the incident which has transpired. Further, affidavits are not complete reproductions of what the declarant has in mind because they are generally prepared by the administering officer and the affiant simply signs them after the same have been read to her. **(*People of the Phils. vs.Garcia, GRN 145505, March 14, 2003*)**

Q. Can the accused rely on the weakness of the evidence of the prosecution?

The accused must rely on the strength of his own evidence and not on the weakness of the evidence of the prosecution; because even if the prosecution's evidence is weak, the same can no longer be disbelieved. **(*People vs. Cajurao, G.R. No. 122767. January 20, 2004*)**

Q. Who has the burden of proving the guilt of the accused beyond reasonable doubt?

In all criminal prosecutions, the accused shall be presumed to be innocent until the charge is proved. The prosecution is burdened to prove the guilt of the accused beyond reasonable doubt. The prosecution must rely on its strength and not on the absence or weakness of the evidence of the accused. **(*People vs. Malate, et al., G.R. No. 128321. March 11, 2004*)**

Q. What is meant by reasonable doubt?

By reasonable doubt is not meant that which of possibility may arise but it is that doubt engendered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. ***(ibid.)***

Q. In criminal cases, if an evidence is susceptible to two interpretations how should the court appreciate the same?

If the evidence is susceptible of two interpretations, one consistent with the innocence of the accused and the other consistent with his guilt, the accused must be acquitted. The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. ***(Ibid)***

Q. Can a testimomny prevail over physical evidence?

A testimony cannot prevail over physical evidence. After all, physical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses. ***(Ibid.)***

Q. What is the extent of the discretion of the public prosecutor in presenting the witnesses?

The public prosecutor has the discretion as to the witnesses he will present as well as the course of presenting the case for the prosecution. The prosecution is not burdened to present all eyewitnesses of the crime on the witness stand during the trial. The testimony of only one eyewitness may suffice so long as it is credible and trustworthy.
(*People vs. Badajos, G.R. No. 139692. January 15, 2004)*

Q. Accused Manny Domingcil was found GUILTY under Sec. 4 of Art. II, RA No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972 and was sentenced to reclusion perpetua. On appeal, he contends that contrary to the collective testimonies of the prosecution witnesses, he was instigated to buy marijuana and the trial court erred in not giving credence and probative weight to his testimony and in considering the testimonies of the witnesses of the prosecution. Is the appeal of the accused meritorious?

NO. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. In this case, the prosecution adduced proof beyond reasonable doubt that the appellant sold one (1) kilo of marijuana to poseur-buyer SPO1 Orlando Dalusong in the entrapment operation. The testimonies of the principal prosecution witnesses complement each other, giving a complete picture of how the appellant's illegal sale of the prohibited drug transpired, and how the sale led to his apprehension in flagrante delicto. Their testimonies establish beyond doubt that dangerous drugs were in the possession of the appellant who had no authority to possess or sell the same. More importantly, all the persons who obtained and received the confiscated stuff did so in the performance of their official duties. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit.

Did the trial court err in not appreciating the defense of denial of the accused and that he was merely instigated to commit the crime?

NO. The appellant's bare denial of the crime charged and his barefaced claim that he was merely instigated by Oliver into procuring the marijuana cannot prevail over the straightforward and positive testimonies of the prosecution witnesses.

It is axiomatic that for testimonial evidence to be believed, it must not only proceed from the mouth of a credible witness but must also be credible in itself such that common experience and observation of mankind lead to the inference of its probability under the circumstances. In criminal prosecution, the court is always guided by evidence that is tangible, verifiable and in harmony with the usual course of human experience and not by mere conjecture or speculation. Testimonies that do not adhere to this standard are necessarily accorded little weight or credence. Besides, instigation, or the appellant's claim of a frame-up, is a defense that has been invariably viewed by this Court with disfavor because the same can easily be concocted and is a common standard defense ploy in most prosecutions for violations of the Dangerous Drugs Act.

Is the presentation by the prosecution to present the police informant as witness indispensable?

NO.The failure of the prosecution to present Oliver, the police informant, does not enfeeble the case for the prosecution. Informants are almost always never presented in court because of the need to preserve their invaluable service to the police. Their testimony or identity may be dispensed with inasmuch as his or her narration would be merely corroborative, especially so in this case, when the poseur-buyer himself testified on the sale of the illegal drug. (***People vs. Domingcil, GRN 140679, January 14,2004***)

Q. How should the court treat inconsistencies in a witness' testimony?

It is hornbook doctrine that a witness' testimony must be considered in its entirety and not by truncated portions or isolated passages thereof. In People v. Ortega, we held that it is sound policy that self-contradictions in testimonies should be reconciled, if possible; contradictory statements should be considered in light of explanations and attending circumstances and whether inconsistencies result from misconceptions of an innocent witness or are a result of mere willful and corrupt misrepresentation. This Court has held that even the most candid of witnesses commit mistakes and may even make confused and inconsistent statements.(***People vs. Yong Fung Yuen GRN 145014-15, February 18,2004*** **)**

Q. Is the testimony of the victim's mother in a Rape case as to the age of her daughter sufficient to establish the aggravating circumstance of minority so as to impose the penalty of death upon the accused?

NO. In the present case, no birth certificate or any similar authentic document was presented and offered in evidence to prove Rachel's age. The only evidence of the victim's age is her testimony and that of her mother's (Sally de Guzman's) Sinumpaang Salaysay, which was adopted as part of the latter's direct testimony, attesting to the fact that her five-year-old daughter was raped. Sally's testimony regarding Rachel's age was insufficient, since Rachel was alleged to be already five years old at the time of the rape, and what is sought to be proved is that she was then less than seven years old. Her testimony will suffice only if it is expressly and clearly admitted by the accused. There is no such express and clear declaration and admission of the appellant that Rachel was less than seven years old when he raped her. Moreover, the trial court made no finding as to the victim's age.
However, Sally's testimony that her daughter was five years old at the time of the commission of the crime is sufficient for purposes of holding the appellant liable for statutory rape, or the rape of a girl below twelve years of age. Under the second paragraph of Article 266-B, in relation to Article 266-A(1)(d) of the RPC, carnal knowledge of a woman under twelve years of age is punishable by reclusion perpetua. Thus, the appellant should be sentenced to suffer reclusion perpetua, and not the death penalty. (***People vs. Antivola, GRN 139236, February 3, 2004***)

Q. In an ordinary civil case, to whom does the burden of proof belong?

Obviously, the burden of proof is, in the first instance, with the plaintiff who initiated the action. But in the final analysis, the party upon whom the ultimate burden lies is to be determined by the pleadings, not by who is the plaintiff or the defendant. The test for determining where the burden of proof lies is to ask which party to an action or suit will fail if he offers no evidence competent to show the facts averred as the basis for the relief he seeks to obtain, and based on the result of an inquiry, which party would be successful if he offers no evidence.

In ordinary civil cases, the plaintiff has the burden of proving the material allegations of the complaint which are denied by the defendant, and the defendant has the burden of proving the material allegations in his case where he sets up a new matter. All facts in issue and relevant facts must, as a general rule, be proven by evidence except the following:

1.) Allegations contained in the complaint or answer immaterial to the issues.
2.) Facts which are admitted or which are not denied in the answer, provided they have been sufficiently alleged.
3.) Those which are the subject of an agreed statement of facts between the parties; as well as those admitted by the party in the course of the proceedings in the same case.
4.) Facts which are the subject of judicial notice.
5.) Facts which are legally presumed.
6.) Facts peculiarly within the knowledge of the opposite party.

(*Republic vs. Neri, GRN 139588, March 4,2004*)

Q. What is the effect of a presumption upon the burden of proof?

The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the prima facie case created thereby which if no proof to the contrary is offered will prevail; it does not shift the burden of proof. ***(ibid)***

Q. Is direct evidence indispensable to prove the guilt of an accused?

NO. Direct evidence is not always indispensable to prove the guilt of an accused. The prosecution may prove the guilt of the accused for the crimes charged either by direct evidence or circumstantial evidence. For circumstantial evidence to warrant the conviction of an accused under Rule 133, Sec. 4 of the Revised Rules of Evidence, the prosecution is burdened to prove the confluence of the following: a) There is more than one circumstance; b) The facts from which the inferences are derived are proven; and c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. Facts and circumstances consistent with guilt and inconsistent with innocence, constitute evidence which in weight and probative force, may surpass even direct evidence in its effect upon the court. Unless required by law, the testimony of a single witness, if found credible and positive, is sufficient on which to anchor a judgment of conviction. After all, the truth is established not by the number of witnesses but by the quality of their testimonies. The witness may not have actually seen the very act of the commission of the crime charged, but he may nevertheless identify the accused as the assailant as the latter was the last person seen with the victims immediately before and right after the commission of the crime. (***People vs. Rafael Caloza Jr.,G.R. No. 138404, January 28,2003)***

Q. How can a witness be impeached by evidence of inconsistent statement?

It is done by "laying a predicate". Before a witness can be impeached by evidence that he has made at other times statements inconsistent with his present testimony, the statements must be related to him with the circumstances of the times and places and the persons present, and he must be asked whether he made such statements, and if so, allowed to explain them. If the statement is in writing they must be shown to the witness before any question is put to him concerning them. The cross-examiner must lay the predicate or the foundation for impeachment and thereby prevent an injustice to the witness being cross-examined. The witness must be given a chance to recollect and to explain the apparent inconsistency between his two statements and state the circumstances under which they were made.

This Court outlined the procedure in United States vs. Baluyot, for instance, if the attorney for the accused had information that a certain witness say Pedro Gonzales had made and signed a sworn statement before the fiscal materially different from that given in his testimony before the court, it was incumbent upon the attorney when cross-examining said witness to direct his attention to the discrepancy and to ask him if he did not make such and such statement before the fiscal or if he did not there make a statement different from that delivered in court. If the witness admits the making of such contradictory statement, the accused has the benefit of the admission, while the witness has the opportunity to explain the discrepancy if he can. On the other hand, if the witness denies the making any such contradictory statement, the accused has the right to prove that the witness did make such statement; and if the fiscal should refuse upon due notice to produce the document, secondary evidence of the contents thereof would be admissible. This process of cross-examining a witness upon the point of prior contradictory statements is called in the practice of the American courts "laying a predicate" for the introduction of contradictory statements. It is almost universally accepted that unless a ground is thus laid upon cross-examination, evidence of contradictory statements are not admissible to impeach a witness, though undoubtedly the matter is to a large extent in the discretion of the court. (***People vs. Castillano et. al, .G.R. No. 139412, April 2, 2003)***

Q. What is the nature of a sweetheart defense? When will it be given credence by the court?

Being an affirmative defense, the allegation of a love affair must be supported by convincing proof. A sweetheart defense cannot be given credence in the absence of corroborative proof like love notes, mementos, pictures or tokens that such romantic relationship really existed. (***People vs. Alex Manalo, GRN 143704, March 28, 2003)***

Q. Would a love affair between the rape victim and the accused preclude the prosecution of rape?

This fact would not preclude rape as it does not necessarily mean there was consent. A love affair would not have justified carnal desires against her will. Definitely, a man cannot demand sexual gratification from a fiancee and, worse, employ violence upon her on the pretext of love. Love is not a license for lust. ***(Ibid)***

Q. Is the moral character of a rape victim material in the prosecution of rape?

Even assuming arguendo that the offended party was a girl of loose morals, it is settled that moral character is immaterial in the prosecution and conviction for rape for even prostitutes can be rape victims. (***Ibid***)

Q. May a child witness testify in a narrative form?

Parenthetically, under Sections 19 to 21 of the Rule on Examination of a Child Witness which took effect on December 15, 2000, child witnesses may testify in a narrative

form and leading questions may be allowed by the trial court in all stages of the examination if the same will further the interest of justice. Objections to questions should be couched in a manner so as not to mislead, confuse, frighten and intimidate the child:
Sec. 19. Mode of questioning. — The court shall exercise control over the questioning of children so as to (1) facilitate the ascertainment of the truth, (2) ensure that questions are stated in a form appropriate to the developmental level of the child, (3) protect children from harassment or undue embarrassment, and (4) avoid waste of time.
(People vs. Canete, GRN 142930, March 28, 2003)

BAR TYPE QUESTIONS

QUESTION 1:

Shirley was charged of violation of BP 22. After Shirley pleaded " Not Guilty" to the charge, the Prosecutor filed a motion with the Court praying for leave to amend the Information to change the amount of the check from P 20,000 to P 200,000. Shirley opposed the motion on the ground that the amendment of the Information is substantial and will prejudice her. The Court granted the motion of the Prosecution and allowed the amendment.

1.) Is the order of the Court correct? Explain.

2.) Would your answer be the same if, instead of praying for leave to amend the Information, the Prosecutor prayed for leave to withdraw the Information and to substitute the same with another Information containing the amount of P200,000 and the court granted the motion of the Prosecution? Explain.

SUGGESTED ANSWERS:

1.) **YES.** Sec. 14 of Rule 110 pertinently provides that after the plea and during trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused. The change of the amount of the check in this case is only a matter of form and not of substance. A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matter are merely of form. An amendment which merely states with additional precision something which is already contained in the original information and which, therefore, adds nothing essential for conviction of the crime charged is a formal amendment as in the instant case.

2.) **NO**. Substitution is not proper in this case because the new information would refer to the same offense charged in the original information (i.e. Violation of B.P. 22) and that would result to double jeopardy.

QUESTION 2:

Juana issued and delivered on February 15, 1995 in Iba, Zambales, to Perla, her townmate, two (2) checks, one of which was for P60,000, postdated May 1, 1995, and the other for P100,000 postdated June 1, 1995 against her account with Metrobank in Limay, Bataan in payment of jewelries Juana purchased from Perla. Perla deposited the checks, on due date, in her account with the Asia Bank, in Manila. When the checks were dishonored for insufficiency of funds, Perla signed and filed, without prior conciliation proceedings before the Barangay officials, one (1) verified criminal complaint for violation of BP 22 with the Manila MTC against Juana. The court issued an order dismissing the case, motu propio, the criminal complaint.

1.) Is the order of dismissal correct? Explain.

2.) If the court issued an order quashing the criminal complaint would such order be correct? Explain.

SUGGESTED ANSWERS:

1.) **NO**. Violation of PB 22 is now covered by the Rules on Summary Procedure. As such, the court is mandated to issue an order declaring whether or not the case shall be governed by the Rules on Summary Procedure. He cannot outrightly dismiss the case without making such determination.

2.) It depends on what ground the motion to quash is based. A motion to quash is a prohibited pleading under the rule of summary procedure. However, under Sec. 19 (a) of the rule the said prohibition does not apply when the motion is based on lack of jurisdiction over the case or failure of the complainant to refer the case to barangay conciliation.

QUESTION 3:

Pedro and Juan were charged of Estafa under Article 315 of the Revised Penal Code, under an Information, based on the complaint of Jessica. After the prosecution rested its case, Juan, without prior leave of court, filed a " Demurrer to Evidence." Despite the opposition of the Prosecutor, the Court issued an order granting the demurrer on the ground that there was insufficient evidence of estafa committed by Pedro and Juan and dismissed the case against both of them but ordered Jessica to file a separate civil complaint for the civil liability of both accused.

1.) Is the order of the court dismissing the case against both Pedro and Juan correct? Explain.
2.) Is the order of the court ordering Jessica to file a separate civil complaint against them in their civil liability correct? Explain.
3.) Does the order of the court amount to an acquittal of both Pedro and Juan? Explain.

SUGGESTED ANSWER:

1.) **YES**. After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence upon demurrer to evidence filed by the accused with or without leave of court. However, when the demurrer to evidence is filed without leave of court, the accused waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (***Sec. 23, Rule 119)***
2.) **YES.** Well settled is the rule in criminal procedure that extinction of the penal action does not carry with it the extinction of the civil action, unless the extinction proceed from a declaration in a final judgment that the fact from which the civil liability might arise did not exist. Hence, the court may order for the filing of a separate civil complaint for the civil liability of both accused.
3.) **YES.** If the demurrer to evidence is sustained, such dismissal being on the merits is equivalent to an acquittal. (***People vs. City Court of Silay, et. al. L-43790, Dec. 9, 1976***)

QUESTION 4:

Juan, Pedro and Victor were charged of Rape with the RTC on complaint of Jessica. All of the Accused filed a petition for Bail. The Prosecutor did not oppose the petition. Nevertheless, the court set the hearing of said petition during which the Prosecutor presented three (3) witnesses, including Jessica and rested its case on said Petition. Juan, Pedro and Victor testified in support of their Petition. The court issued an order denying the Petition, in this language:

"Order
For lack of merit, the Petition for Bail is hereby denied."

The prosecutor then filed a motion with the court for the discharge of Pedro as a state witness. Juan and Victor opposed the motion on the grounds that (a) the prosecution has already rested its case; (b) the denial by the court of the Petition for Bail of the accused precluded the prosecution from praying for the discharge of one of the accused as a state witness.

1.) Was it proper for the Court to set the Petition for Bail for hearing and receive evidence even if the prosecutor did not oppose the petition? Explain.
2.) Is the order of the court denying bail to the accused proper? Explain.
3.) Is the petition of the prosecution to discharge Pedro as a state witness proper and meritorious? Explain.
4.) If the court denied the petition of the prosecution for the discharge of Pedro, may Pedro testify for the prosecution? Explain.
5.) Is it proper for the court to consider only the evidence presented during the Petition for Bail in resolving the petition for the discharge of Pedro as a state witness? Explain.

SUGGESTED ANSWERS:

1.) **YES**. Since Rape is a capital offense being punishable by death, bail is not a matter of right. The court will still have to determine whether the evidence of guilt is strong for purposes of granting the petition for Bail. In view thereof, a hearing is necessary even if the prosecution did not oppose the petition.

2.) **NO**. The Order of the court denying or granting a petition for bail should spell out at least a resume of the evidence on which its order is based. In once case it was held that an order of the court merely stating the number of witnesses and the court's conclusion that the evidence of guilt was not "sufficiently strong" such order is defective in for m and substance and consequently voidable. (***Carpio, et.al. vs. Maglalang, etc. G.R. No. 78162, April 19, 1991).***

3.) **NO**. Under Rule 119, Sec. 17, when two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution, before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the State. Thus, where the motion is made after the prosecution rests its case, such motion is not proper and meritorious.

4.) **NO**. To order Pedro to testify for the prosecution despite denial of the prosecution's motion for his discharge as state witness would violate his right against self-incrimination.

5.) **NO**. In a petition for bail, the court receives evidence to determine whether the evidence of guilt of the accused is strong. On the other hand, in a petition for the discharge of an accused to be a state witness, the prosecution presents evidence to prove that: (a) There is absolute necessity for the testimony of the accused whose discharge is required; (b) There is no other direct evidence available for the proper prosecution of the offense committed except the testimony of said accused; (c) The testimony of said accused can be substantially corroborated in its material points; (d) Said accused does not appear to be the most guilty; and (e) Said accused has not at any time been convicted of any offense involving moral turpiture.

QUESTION 5:

Peter was charged with the RTC of the crime of murder. At arraignment, he pleaded " Not Guilty" to the charge. After the prosecution rested its case, Peter filed, without prior leave of court, a " Demurrer to Evidence." The prosecution opposed the motion. The court then promulgated a decision declaring that Peter committed only "Homicide" convicting him of said crime.

1.) Assuming that the Prosecution proved only Homicide, was it proper for the Court to render a Decision on the basis of said demurrer convicting Peter for said crime? Explain.

2.) Would it be proper for the Prosecutor to file a motion for the reconsideration of the Decision of the Court without placing Peter in double jeopardy? Explain.

SUGGESTED ANSWERS:

1.) **YES**. When the demurrer to evidence is filed without leave of court, the accused waives his right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. Hence, where the evidence presented by the prosecution proves Homicide, the court may render a decision convicting the accused of Homicide.

2.) **NO.** Section 1 of Rule 121 does not provide for a motion for new trial or reconsideration by the prosecution as the reopening of the case and introduction of additional evidence by the prosecution, without the consent of the accused, would result in double jeopardy.

QUESTION 6:

Rene drove his car with gross negligence resulting in his car colliding with the car of Bert. Because of the impact, the car of Bert bumped the car owned by Lando. As a result of said accident, the cars of Bert and Lando wee damaged at the cost of P 100,000 each. Bert died while Rosa, his wife who was also in the car, sustained serious physical injuries. After Preliminary investigation, the prosecutor filed two (2) separate Information, namely an Information for " Reckless Imprudence resulting in Homicide, Damage to Property (referring to the car of Bert) and Serious Physical Injuries" and another Information for "Reckless Imprudence resulting in Damage to Property for the damage to the car of Lando.

1.) Was it proper for the prosecutor to file two (2) separate informations? Explain.
2.) Would it be proper for the prosecutor to file only one (1) information based on said accident? Explain.
3.) If two (2) separate Information were filed by the prosecutor, may the trial of the 2 cases be consolidated in one court? Explain.

SUGGESTED ANSWER:

1.) **YES**. Sec. 13 of Rule 110 states that a complaint or information must charge only one offense, except when the law prescribes a single punishment for various offenses. In this case, the two felonies allegedly committed by the accused must be contained in two separate informations because they have different objects.
2.) **NO**. The felonies involved do not constitute as an exception to the rule proscribing duplicity of offense. The two offenses do not fall under the complex crime under the RPC where a single penalty is imposed and the special complex crimes or composite crimes penalized therein.
3.) **YES**, this is authorized by Sec. 22 of Rule 119 which provides that charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court.

QUESTION 7

After Mario pleaded " Not Guilty" to the charge of Rape, Mario proceeded to the house of Perla and threatened to kill her unless she agreed to marry him. Afraid, Perla married Mario. Immediately thereafter, Perla filed a complaint with the RTC for the declaration of the nullity of her marriage to Mario. During pre-trial in the criminal case, Mario filed a motion to quash the Information on the grounds of extinction of the crime of Rape and of his criminal liability for said crime. Mario attached to his motion a certified true copy of his marriage contract with Perla. The prosecutor opposed the Motion of Mario claiming that such a motion cannot be filed after arraignment. The prosecutor moved that the criminal case be suspended until after the termination of the civil case for nullity of the marriage. Mario opposed the motion of the prosecutor and moved that the civil case should be suspended instead.

Resolve the respective claims/motions of the Prosecutor and Mario.

SUGGESTED ANSWER:

As a general rule, a motion to quash must be filed before the arraignment, otherwise, they are deemed waived. This rule however admits of several exceptions. One of which is when the ground invoked is that the criminal action or liability has been extinguished. In case of Rape, marriage of the offended woman and the accused extinguishes criminal liability. Hence, the motion to quash filed by Mario can still be entertained by the court even after his arraignment.

The motion of the Prosecutor to suspend the criminal case is proper. The decision in the civil case for declaration of nullity of marriage is prejudicial to the outcome of the criminal case. Although one of the elements of a prejudicial question is that is must have been previously instituted than the criminal case, the same should not be strictly applied in the case at bar. The resolution in the case for declaration of the nullity of marriage between the herein accused and the offended party is determinative of whether the case for rape will prosper. If the marriage is declared void, the criminal liability of Mario would not be distinguished and will result to the denial of his motion to quash.

QUESTION 8:

Pedro was charged of the complex crime of "Murder" and "Frustrated Murder" under Art. 248 in relation with Articles 6 and 48 of the RPC, punishable with death penalty. It was alleged in the Information that Pedro shot Juan and Rodolfo with his licensed gun killing Juan and inflicting serious physical injuries on Rodolfo who managed to survive despite his wounds. Upon arraignment, Pedro offered to plead guilty to the "lesser offense of "Murder."

1.) May the court grant Pedro's offer if the Public Prosecutor and the heirs of Juan agree but Rodolfo does not? Explain.

2.) If Rodolfo, the heirs of Juan, the Public Prosecutor and the Court agree to the offer of Pedro, is the Court mandated to conduct searching inquiry into the voluntariness and full comprehension of Pedro's plea? Explain.

SUGGESTED ANSWERS:

1.) **NO**. For a plea of guilty to a lesser offense, the consent of the prosecutor, as well as of the offended party, and the approval of the court must be obtained. Where these requirements were not observed, the accused cannot claim double jeopardy if he should be charged anew with the graver offense subject of the original information or complaint. (Sec. 2, Rule 116)

2.) **YES**. The rules provide that when the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and shall require the prosecution to prove his guilt and the precise degree of culpability . (Sec. 3, Rule 116)

QUESTION 9:

Appended to the Information for Rape against William were the Affidavits of Perla, the private complainant, the Medico-Legal Report on Perla, and the Police Report on the Police investigation of Perla's comlaint.

May the trial court rely solely on the allegations of the information and the appendages thereof for the purpose of ascertaining probable cause for the issuance of a warrant of arrest against William? Explain.

SUGGESTED ANSWER:

NO. The case involved in the present case requires a preliminary investigation. As such, the judge conducting the preliminary investigation cannot outrightly issue a warrant of arrest solely on the basis of the information and supporting affidavits of the prosecution. The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. He shall thereafter submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The warrant of arrest may only issue if the trial judge is satisfied that a probable cause exists and that in his sound judgment there is necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice.

QUESTION 10:

Although Alex committed the special complex crime of "Roberry with Homicide" under Art. 294 par. 1 of the RPC, the Public Prosecutor filed two (2)separate Informations against Alex for "Robbery" and "Homicide." The court ordered a joint trial of the 2 cases.

May Alex file, before arraignment, a "Motion to Quash" the Information for "Homicide" on the ground of double jeopardy? Explain.

SUGGESTED ANSWER:

NO. As a general rule the Rules prohibit a duplicitous information and declares the same to be quashable including a situation where a complex crime which should properly be charged in a single information is made the subject of several informations by charging each component crime thereof separately.

However, in People vs. Milflores (L-32144-45, July 30, 1882), where the accused was charged with multiple murder in one information and murder in another, although said offenses constituted a single complex crime caused by a single explosive, it was held that since said cases were ***jointly tried***, the technical error was deemed cured and the accused could not claim double jeopardy.

QUESTION 11:

The court rendered judgment convicting Jojo of "Less Serious Phyical Injuries" and imposed on him the penalty of four (4) months of arresto mayor. However, the court did not, despite the evidence on record, order Jojo to pay actual damages and moral damages. A day after the promulgation of the Decision, Jojo filed a "Petition for Probation" with the court. Two (2) Days after Jojo had filed his petition, the private prosecutor, without the conformity of the Public Prosecutor, filed a " Motion for Reconsideration" of the Decision only on the civil liability of Jojo.

1.) Did the decision of the court become final and executory when Jojo filed his Petition for Probation? Explain.
2.) Did the court retain jurisdiction over the case to take cognizance of and resolve the motion of the Private Prosecutor? Explain.
3.) If the court granted the motion of the Private Prosecutor, may the court amend its Decision to include civil liability of Jojo without violating Jojo's right against double jeopardy? Explain.

SUGGESTED ANSWERS:

1.) **YES**. Section 7 of Rule 120 provides that a judgment in criminal case become final (a) when no appeal is seasonably filed; (b) when the accused commenced to serve sentence: (c) when the right to appeal is expressly waived in writing, except where the death penalty was imposed by trial court, and (d) when the accused applies for probation as he thereby waives the right to appeal.
2.) **YES**. The trial court can validly amend the civil portion of its decision within 15 days from promulgation thereof even though the appeal had in the meantime been perfected by the accused from the judgment of conviction. (People vs. Ursua, 60 Phil 252). It can, within the said period, order the accused to indemnify the offended party, although the judgment had become final. (People vs. Rodriguez, 97 Phil 349). The reason for this is that the court continues to retain jurisdiction insofar as the civil aspect is concerned. After the lapse if the 15-day period, there can no longer be any amendment of the decision.
3.) **YES**. This is an exception to the rule that a judgment of conviction cannot be modified after it has become final, otherwise such modification would amount to double jeopardy. As previously stated, the trial court can validly amend the civil portion of its decision within 15 days from promulgation thereof.

QUESTION 12:

The trial court found Allan guilty of violation of PD 1866 (possession of unlicensed firearm) and meted on him the penalty of from fifteen (15) years of reclusion temporal, as minimum, to 18 years of reclusion temporal, as maximum. Allan appealed the Decision to the Court of Appeals. During the pendency of the appeal, RA 8294 took effect. The Court of Appeals affirmed the Decision of the trial court but reduced the penalty to one (1) year of prision correctional as minimum, to 5 years of prision correccional, as maximum. The decision of the Court of Appeals became final and executory after which the records of the case were remanded to the trial court.

Is Allan entitled to probation under the Probation Law? Explain.

SUGGESTED ANSWER:

NO. Section 4 of PD 968 (Probation Law) provides that no application for probation shall be entertained or granted if the defendant has perfected an appeal from the judgment of conviction. Thus, when Allan has perfected his appeal, his right to apply for probation was lost.

QUESTION 13:

Pedro was charged in the RTC of the crime of theft under Art. 308 of the RPC. However, the Information did not allege the value of the property stolen.

If you are the counsel of Pedro, would you file a "Motion for a Bill of Particulars" or a "Motion to Quash" the Information? Explain.

SUGGESTED ANSWER:

I would file a Motion for a Bill of Particulars praying that the prosecution specify the value of the property stolen to enable my client, Pedro, to properly plead and prepare for trial. If the value of the property is considerably small, my client could raise the defense that one of the elements in the crime of theft is lacking, i.e., intent to gain.

QUESTION 14:

After the requisite preliminary investigation, the Ombudsman approved a resolution finding probable cause against Governor Pedro for violation of the Anti-Graft and Corrupt Practices Act. Governor Pedro filed a Petition for Certiorari with the Sandiganbayan, under the provisions of RA 7975, questioning the factual basis for the resolution. However, the Sandiganbayan dismissed the Petition contending that the Petition should be filed with the Supreme Court pursuant to Sec. 27 of the RA 6770.

Is the Sandiganbayan correct? Explain.

SUGGESTED ANSWER:

NO. In *Fabian vs. Disierto (GRN 129742, Sept. 16, 1998)* , Sec. 27 of RA 6770, which authorizes an appeal to the Supreme Court from decisions of the Office of the Ombudsman in administrative disciplinary cases, was declared violative of the proscription in Sec. 30, Art. VI, of the Constitution against a law which increases the appellate jurisdiction of the Supreme Court without its advice and consent. In addition, the Court noted that Rule 45 of the 1997 Rules of Civil Procedure precludes appeals from quasi-judicial agencies, like the Office of the Ombudsman, to the Supreme Court. Consequently, appeals from decisions of the Office of the Ombudsman in administrative cases should be taken to the Court of Appeals under Rule 43, as reiterated in the subsequent case of *Namuhe v. Ombudsman*.

In both *Fabian* and *Namuhe*, the petitions were referred to the Court of Appeals for final disposition and considered as petitions for review under Rule 43 of the 1997 Rules of Civil Procedure. ***(Villavert vs. Disierto, GRN 133715, February 23,2000)***

QUESTION 15:

Upon the filing of the Information of Homicide against Pedro, who was then at large, he filed a "Motion to Quash" the Information on the ground of lack of territorial jurisdiction of the Court and a "Motion to Suspend the Issuance of a Warrant of Arrest" pending resolution of his "Motion to Quash."

1.) May Pedro file the Motion to Quash before he is arrested or before he surrenders? Explain.
2.) May the court hold in abeyance the issuance of a warrant of arrest against Pedro pending resolution of his "Motion to Quash"? Explain.

SUGGESTED ANSWERS:

1.) **YES**. The Rules provide that "at any time before entering his plea, the accused may move to quash the complaint or information." (Sec. 1, Rule 117)
2.) **NO**.

QUESTION 16:

Juan was charged of "Frustrated Murder" with the RTC. During the pendency of the trial, the victim of the crime died but the Information was not amended to " Murder" although the prosecution informed the court of the death of the victim.

If the court finds Juan criminally liable for the killing of the victim, would it be proper for the court to convict Juan of "Murder" ? Explain.

SUGGESTED ANSWER:

NO. In the absence of an amendment, with leave of court, to the original complaint of Frustrated Murder, the accused cannot be convicted of Murder because that it would be in violation of his right to be informed of the nature of the accusation against him. However, such conviction shall not be a bar to the filing of a case for Murder. Sec. 7 of rule 117 provides that the conviction of an accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint when the graver offense developed due to supervening facts arising from the same act or omission constituting the former charge.

QUESTION 17:

Juan was charged of Murder with the RTC. During the trial, the prosecution, over the objection of Juan, presented evidence that the victim of the murder was the illegitimate son of Juan. After the prosecution rested its case, Juan escaped from detention. The court, thereupon, rendered its Decision convicting Juan of parricide with one generic aggravating circumstance and sentenced Juan to death. The court declared in its Decision that the Information was deemed amended to Parricide to conform to evidence.

1.) Was it proper for the court to render judgment after the escape of Juan form detention? Explain.
2.) Is the Decision of the court convicting Juan of parricide on the premise that the information was deemed amended to conform to evidence correct? Explain.
3.) Would it be proper for the court to promulgate its Decision despite the absence of Juan? Explain.
4.) Will the decision of the court become final and executory after the lapse of 15 days form promulgation if Juan is not arrested or does not surrender within said period? Explain.

SUGGESTED ANSWERS:

1.) **NO**. The escape of Juan from detention does not warrant an immediate rendition of judgment as the trial can proceed i*n absentia*.
2.) **NO**, because after arraignment during trial , the prosecution cannot alter, add or modify the accusations stated in the information over the objection of the accused.
3.) **YES,** provided that notice was properly served in accordance with Sec. 6 of Rule 120 of the Revised Rules in Criminal Procedure. The said rule provides that if the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.
4.) **YES,** if Juan does not surrender within 15 days from promulgation of judgment, he shall lose the remedies available in the Rules.

QUESTION 18:

What court has exclusive original jurisdiction over the following offenses?

1.) Libel punishable with prision correccional in its minimum and medium periods or a fine from P 2 00 to P 6,000, or both;
2.) Violation of BP 22 covering a check in the amount of P300,000

SUGGESTED ANSWERS:

1.) The Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts have jurisdiction since the imposable penalty does not exceed four years and two months and a fine of not more than four thousand pesos. (Sec. 31 [2] of BP 129)
2.) The jurisdiction for violation of BP 22 belongs to the aforesaid courts because it is now governed by the Rules on Summary Procedure.

QUESTION 19:

Under what circumstances may the MTC issue a warrant of arrest under the Rules on Summary Procedure? Explain.

SUGGESTED ANSWER:
Section 16 of the Revised Rules on Summary Procedure provides that " the court shall not order the arrest of the accused unless for failure to appear whenever required. Xxxxxx"

QUESTION 20:

May the Accused file a "Demurrer to Evidence" under the Rules on Summary Procedure? Explain.

SUGGESTED ANSWER:
YES. A petition for Demurrer to Evidence is not among the prohibited pleadings under the Rules on Summary Procedure.

QUESTION 21:

Pedro was charged of the crime of squatting penalized by PD 772. Pedro, in turn, filed a civil complaint against Juan, the Private Complainant in the criminal case, claiming ownership over the said property. Thereafter, Pedro filed, in the criminal case, a motion to suspend the proceedings on the ground of a prejudicial question. The court issued an Order granting the said motion. While Pedro was adducing evidence in the civil case, PD 772 was absolutely repealed.
Is the order of the court suspending the criminal case for squatting, on the ground of a prejudicial question correct? Explain.

SUGGESTED ANSWER:
NO. It has been held that a prejudicial question that which must precede the criminal case and the resolution of which is detrminative of the innocence or guilt of the accused. In this case, the civil case was filed after the institution of the criminal case, thus, it is not a prejudicial question.

QUESTION 22:

May the filiation of illegitimate children be proved by hearsay evidence? Explain.

SUGGESTED ANSWER:
YES, under Section 30 of Rule 130, pedigree may be proved by acts or declarations of relatives (whether legitimate or illegitimate since the law does not distinguish) provided that: (a) the actor or declarant is dead or unable to testify; (b) the act or declaration is made by a person related to the subject by birth or marriage; (c) the relationship between the declarant or the actor and the subject is shown by evidence other than such act or declaration; and (d) the act or declaratioin was made ante litem mortam, or prior to the controversy.

QUESTION 23:

If an Accused executed a valid extrajudicial confession, may he be convicted of the crime charges if the Prosecution adduced, in addition to the confession, only circumstancial evidence to prove corpus delicti? Explain.

SUGGESTED ANSWER:

YES. Section 3 of Rule 133 states that a mere voluntary extrajudicial confession uncorroborated by independent proof of the corpus delicti is not sufficient to sustain a judgment of conviction. There must be independent proof of the corpus delicti. The evidence may be circumstantial but just the same, there should be some evidence substantiating the confession. (US vs. De la Crux, 2 Phil. 148)

QUESTION 24:

Would you answer to the immediately preceding question be the same if the Prosecution adduced, an addition to the confession, only substantial evidence to prove corpus delicti? Explain.

SUGGESTED ANSWER:

YES. What is required is that some evidence apart from the confession would tend to show that the crime was in fact committed. This may be supplied by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

QUESTION 25:

Lucio was charged of Parricide. Upon arraignment, Lucio pleaded not guilty. During pre-trial, Lucio, with the assistance of counsel, admitted that the deceased was his wife and that he killed her. The court issued a Pre-Trial Order embodying the admissions of Lucio during the pre-trial. Both Lucio and his counsel signed the Pre-Trial Order.

1.) Are the admissions of Lucio during the pre-trial judicial admission against penal interest? Explain.
2.) Would your answer be the same if the admissions of Lucio, during the pre-trial, were not embodied in a "Pre-Trial Order" of the Court? Explain.
3.) If the Court rendered a Decision convicting Lucio of Parricide on the basis of his Admissions during the pre-trial embodied in the Pre-Trial Order of the Court, is not Lucio thereby deprived of his right to adduce evidence in his behalf? Explain.

SUGGESTED ANSWERS:

1.) **YES**. The testimony of the accused in a parricide case to the effect that he was married to the victim is an admission against his penal interest and can sustain his conviction even in the absence if independent evidence to prove such marriage. (People vs. Aling, L-38833, March 12, 1980). The same can be applied to the admission made by the accused during the pre-trial.
2.) **NO**. Where the admission is not embodied in the Pre-trial Order, the same cannot be used against the accused.
3.) **NO.** The admission of the accused in embodied in the Pre-trial order, being a judicial admission, does not require further proof. The admitter can no longer contradict such admission unless to show that it was made through palpable mistake or that no such admission was made.

INTER ALIA

BANK OF THE PHILIPPINE ISLANDS vs. ALS MANAGEMENT & DEVELOPMENT CORP.
[G.R. No. 151821. April 14, 2004.]

PANGANIBAN, J p:
FACTS:

On July 29, 1985, petitioner BPI Investment Corporation filed a complaint for a Sum of Money against ALS Management and Development Corporation alleging that the respondent failed to pay the necessary expenses for the registration of the Condominium Certificate as stipulated in the contract.

In its Answer with Compulsory Counterclaim, respondent averred among others that it has just and valid reasons for refusing to pay petitioner's legal claims because it is in clear and direct contravention of Section 25 of Presidential Decree No. 957 which provides that 'No fee except those required for the registration of the deed of sale in the Registry of Deeds shall be collected for the issuance of such title', the [petitioner] has jacked-up or increased the amount of its alleged advances for the issuance and registration of the Condominium Certificate of Title in the name of the [respondent], by including therein charges which should not be collected from buyers of condominium units. Respondent further alleged that the petitioner has breached conditions of their contract.

The appellate court sustained the trial court's finding that "while petitioner succeeded in proving its claim against the respondent for expenses incurred in the registration of [the latter's] title to the condominium unit purchased, . . . for its part respondent in turn succeeded in establishing an even bigger claim under its counterclaim."

Hence, this Petition.

ISSUE:

Whether or not the Honorable Court of Appeals erred in not holding that the trial court had no jurisdiction over the respondent's counterclaims.

HELD:

NO. Pursuant to Sec. 1 of PD 144 (Empowering the National Housing Authority to Issue Writs of Execution in the Enforcement of Its Decisions Under Presidential Decree No. 957) the respondent's counterclaim — being one for specific performance (correction of defects/deficiencies

in the condominium unit) and damages — falls under the jurisdiction of the HLURB and not the RTC. However, the issue of jurisdiction can no longer be raised in the instant case.

The general rule is that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. Indeed, the question of jurisdiction may be raised at any time, provided that such action would not result in the mockery of the tenets of fair play. As an exception to the rule, the issue may not be raised if the party is barred by estoppel.

In the present case, petitioner proceeded with the trial, and only after a judgment unfavorable to it did it raise the issue of jurisdiction. Thus, it may no longer deny the trial court's jurisdiction, for estoppel bars it from doing so. This Court cannot countenance the inconsistent postures petitioner has adopted by attacking the jurisdiction of the regular court to which it has voluntarily submitted.

The Court frowns upon the undesirable practice of submitting one's case for decision, and then accepting the judgment only if favorable, but attacking it for lack of jurisdiction if it is not. We also find petitioner guilty of estoppel by laches for failing to raise the question of jurisdiction earlier. From the time that respondent filed its counterclaim on November 8, 1985, the former could have raised such issue, but failed or neglected to do so. It was only upon filing its appellant's brief 26 with the CA on May 27, 1991, that petitioner raised the issue of jurisdiction for the first time.

In Tijam v. Sibonghanoy, we declared that the failure to raise the question of jurisdiction at an earlier stage barred the party from questioning it later.

Thus, we struck down the defense of lack of jurisdiction, since the appellant therein failed to raise the question at an earlier stage. It did so only after an adverse decision had been rendered. We further declared that if we were to sanction the said appellant's conduct, "we would in effect be declaring as useless all the proceedings had in the present case since it was commenced . . . and compel the judgment creditors to go up their Calvary once more. The inequity and unfairness of this is not only patent but revolting.

JOSE LAM vs. ADRIANA CHUA
[G.R. No. 131286. March 18, 2004]

AUSTRIA-MARTINEZ, *J.*:
FACTS:

On March 11, 1994 Adriana Chua filed a petition for declaration of nullity of marriage by Adriana Chua against Jose Lam in the Regional Trial Court of Pasay City. Adriana prayed that the marriage between her and Jose be declared null and void but she failed to claim and pray for the support of their child, John Paul. The trial court declared the marriage between Lam and Chua null and void and Jose Lam was ordered to give a monthly support to his son John Paul Chua Lam in the amount of ₱20,000.00.

On November 3, 1994, Jose filed a Motion for Reconsideration thereof but only insofar as the decision awarded monthly support to his son in the amount of ₱20,000.00. He argued that there was already a provision for support of the child as embodied in the decision dated February 28, 1994 of the Makati RTC wherein he and Adriana agreed to contribute ₱250,000.00 each to a common fund for the benefit of the child.

On August 22, 1995, the Pasay RTC issued an Order denying Jose Lam's motion for reconsideration ruling that the compromise agreement entered into by the parties and approved by the Makati RTC before the marriage was declared null and void *ab initio* by the Pasay RTC, is of no moment and cannot limit and/or affect the support ordered by the latter court.

Jose then appealed the Pasay RTC's decision to the Court of Appeals which affirmed the Pasay RTC's decision in all respects. Jose filed a motion for reconsideration of the Decision but in a Resolution dated October 27, 1997, the Court of Appeals denied the same.

Hence, Jose filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

ISSUES:

1. Whether the RTC-Pasay is barred from awarding support in favor of John Paul Law in view of the previous compromise agreement entered into by the parties.
2. Whether the decision rendered by the RTC-Pasay is tainted with irregularities.

HELD:

1. NO. The Pasay RTC and the Court of Appeals are both correct insofar as they ruled that the amount of support is by no means permanent. In *Advincula vs. Advincula*, we held that another action for support could be filed again by the same plaintiff notwithstanding the fact that the previous case for support filed against the same defendant was dismissed. We further held in said case that:

. . . Judgment for support does not become final. The right to support is of such nature that its allowance is essentially provisional; for during the entire period that a needy party is entitled to support, his or her alimony may be modified or altered, in accordance with his increased or decreased needs, and with the means of the giver. It cannot be regarded as subject to final determination.

Thus, there is no merit to the claim of Jose that the compromise agreement between him and Adriana, as approved by the Makati RTC and embodied in its decision dated February 28, 1994 in the case for voluntary dissolution of conjugal partnership of gains, is a bar to any further award of support in favor of their child John Paul. The provision for a common fund for the benefit of their child John Paul, as embodied in the compromise agreement between herein parties which had been approved by the Makati RTC, cannot be considered final and *res judicata* since any judgment for support is always subject to modification, depending upon the needs of the child and the capabilities of the parents to give support.

2. **YES.** The Court notes four circumstances that taint the regularity of the proceedings and the decision rendered by the trial court.

First, the only ground alleged in the petition for declaration of nullity of marriage filed by Adriana with the Pasay RTC is the psychological incapacity of Jose without any prayer for the support of her child. But on a motion to re-open filed subsequently by her, the trial court set the case for reception of evidence and subsequently allowed Adriana to present evidence on two previous marriages contracted by Jose with other women to prove that the marriage between Adriana and Jose was null and void for being bigamous. It is only later on that respondent Adriana first claimed support for John Paul when she testified in open court. The petition of Adriana was, in effect, substantially changed by the admission of the additional evidence. The ground relied on for nullity of the marriage was changed from the psychological incapacity of Jose to that of existence of previous marriages of Jose with two different women with an additional claim for support of the child. Such substantial changes were not reflected in the petition filed with the trial court, as no formal amendment was ever made by Adriana except the insertion of the handwritten phrase "*And for respondent to support the child of petitioner in an amount this Honorable Court may deem just and reasonable*" found at the ultimate paragraph of the petition, as allowed by the Pasay RTC. There is nothing on record to show that petitioner Jose was notified of the substantial changes in the petition of Adriana.

Second, the Pasay RTC did not give Jose an opportunity to be present on July 6, 1994 for the presentation of evidence by Adriana and to refute the same. **Third**, the records do not show that petitioner was sent a copy of the Order dated July 6, 1994 wherein the trial court granted the Urgent Motion to Re-Open of respondent Adriana and forthwith allowed her to present her evidence to prove that petitioner herein contracted previous marriages with different women.

Fourth, the evidence presented by respondent regarding her claim for support for John Paul is glaringly insufficient and cannot be made a valid basis upon which the Pasay RTC could have determined the monthly amount of ₱20,000.00 for the support to be given to John Paul by petitioner Jose. A party who has been declared in default is entitled to service of substantially amended or supplemental pleadings.Considering that in cases of declaration of nullity of marriage or annulment of marriage, there can be no default pursuant to Section 6, Rule 18 of the Revised Rules of Court in relation to Article 48 of the Family Code, it is with more reason that petitioner should likewise be entitled to notice of all proceedings.

Furthermore, it is also a general principle of law that a court cannot set itself in motion, nor has it power to decide questions except as presented by the parties in their pleadings. Anything that is decided beyond them is coram non-judice and void. **Therefore where a court enters a judgment or awards relief beyond the prayer of the complaint or the scope of its allegations the excessive relief is not merely irregular but is void for want of jurisdiction, and is open to collateral attack.**

The appellate court also ruled that a judgment of a court upon a subject within its general jurisdiction, but which is not brought before it by any statement or claim of the parties, and is foreign to the issues submitted for its determination, is a nullity. (Emphasis supplied)

Pursuant to the foregoing principle, it is a serious error for the trial court to have rendered judgment on issues not presented in the pleadings as it was beyond its jurisdiction to do so. The amendment of the petition to reflect the new issues and claims against Jose was, therefore, indispensable so as to authorize the court to act on the issue of whether the marriage of Jose and Adriana was bigamous and the determination of the amount that should have been awarded for the support of John Paul. When the trial court rendered judgment beyond the allegations contained in the copy of the petition served upon Jose, the Pasay RTC had acted in excess of its jurisdiction and deprived petitioner Lam of due process.

Insofar as the declaration of nullity of the marriage between Adriana and Jose for being bigamous is concerned, the decision rendered by the Pasay RTC could be declared as invalid for having been issued beyond its jurisdiction. Nonetheless, considering that Jose, did not assail the declaration of nullity of his marriage with Adriana in his motion for reconsideration which he filed with the Pasay RTC. In the petitions he filed in the Court of Appeals and with us, he likewise did not raise the issue of jurisdiction of the Pasay RTC to receive evidence and render judgment on his previous marriages with other woman which were not alleged in the petition filed by Adriana. Petitioner Jose is estopped from questioning the declaration of nullity of his marriage with Adriana and therefore, the Court will not undo the judgment of the Pasay RTC declaring the marriage of Adriana and Jose null and void for being bigamous. It is an axiomatic rule that while a jurisdictional question may be raised at any time, this, however, admits of an exception where estoppel has supervened.

TALLY OF THE MOST FREQUENTLY ASKED QUESTIONS

SUBJECTS		FREQUENCY	TOTAL
CIVIL PROCEDURE			
Actionable document	1986 1987 1990 1991 1996	1 1 1 1 1	**5**
Amended vs. Supplemental pleadings	1985	1	**1**
Amendment of Complaint	2003	1	**1**
Amendment of Pleadings	1986 1993 1994 2000	1 1 1 1	**4**
Amendment to Conform to Evidence	1992 2004	1 2	**3**
Bar by Prior Judgment	1999	1	**1**
Bar by prior judgment vs. conclusiveness of judgment	1997	1	**1**
Bill of Particulars	2003	1	**1**
Capacity to sue	1988	1	**1**
Cause of Action	1987 1988 1996 1997 1998 1999	1 1 1 1 1 2	**7**
Cause of action vs. action	1997 1999	1 1	**2**

Certiorari (Rule 45 vs. Rule 65)	1986 1991 1999 2000	1 1 1 1	**4**
Certiorari as mode of Appeal (Rule 45)	1986 1988 1999	1 2 1	**4**
Classification of Actions i.e. real actions, quasi in rem, in rem etc.	1994	5	**5**
Class suit	1991 1994	1 1	**2**
Compromise Judgment	1987 1996 1999	2 1 1	**4**
Construction of Rules of Court	1998	1	**1**
Counterclaim ➢ compulsory permissive	 1985 1994 1999 2004 1996 1998	 1 2 2 1 1 3	 **10**
Counterclaim vs. Cross-claim	1999	1	**1**
Cross-claim	1997	1	**1**
Death, effect on the Case	1999 1995	5 1	**6**
Declaratory Relief	1998	1	**1**
Decision	2003 2004	1	**2**
Default ➢ effect ➢ remedies motion to set aside order of default ➢ when may a party be declared in default	 1995 1999 2000 1998 2002 1999	 1 1 1 1 1 3	 **8**
Defenses in an Answer	1985	1	**1**
Demurrer to Evidence ➢ granted but reversed on appeal	1991 1994 2001 2004 2002 2003	1 1 1 1 1 2	 **7**
Denial of Complaint	1993	1	**1**
Depositions pending action	1997	1	**1**
Dismissal of Actions (Rule 17)	1989 1996	1 1	**2**
Dismissal of Action on the Ground of Prescription	1987	1	**1**

Docket fees	1991	1	**1**
Error of Judgment vs. error of jurisdiction	1989	1	**1**
Execution of Judgment	1985 1987 1992 1993 1997	1 1 1 1 1	**5**
Execution pending appeal	1990 1991 1995	1 1 1	**2**
Family Courts ➢ confidentiality	2002	1	**1**
Forum-shopping	1996 2000	1 1	**2**
Hierarchy of Courts	1993 1996	1 1	**2**
Improper Venue	1998	1	**1**
Indispensable party	1986 1996	1 1	**2**
Injunction	2003	1	**1**
Interpleader	1998	1	**1**
Intervention	1991 2000	1 1	**2**
Joinder of causes of action ➢ permissive joinder of actions	1985 1996 1999 1989	1 1 1 1	**4**
Joinder of parties ➢ Non-joinder of necessary parties	1986 1998	3 1	**4**
Joinder of causes of action vs. joinder of parties	1996	1	**1**
Judgment (basis)	2003	1	**1**
Judgment on the Pleadings	1999	3	**3**
Judgment on the pleadings vs. summary judgment	1985	1	**1**
Jurisdiction and venue in libel cases	1995	1	**1**
Jurisdiction of courts	1985 1986 1988 1989 1992 1993 1997 1998 2000 2004	2 2 1 1 1 1 4 1 2 1	**16**
Jurisdiction over the Person	1987 1994	1 1	**2**
Jurisdiction vs. Cause of Action	1988	1	**1**
Katarungang Pambarangay Law (PD 1508) ➢ execution of settlement/agreement	1985 1988 1995 1999 2002	1 1 1 1 2	**6**

Katarungang Pambarangay Law (Conciliation Proceedings) vs. Pre-Trial Conference	1999 2000 2001	1 1 1	**3**
Kinds of Pleadings	1996	1	**1**
Manner of Making Allegations in the Pleading	2004	1	**1**
Mandamus	1999	1	**1**
Misjoinder/non-joinder of parties	1986	1	**1**
Mode of Appeal	1986 1990 1991 1992 1994 1998	1 3 1 2 1 1	**9**
Motion for Extension of Time	1988	1	**1**
Motion for Reconsideration	1989 2000 2003	1 1 1	**3**
Motion to Dismiss	1985 1987 1988 1992 1996 1999	1 1 1 1 1 2	**7**
Order of Default	1999 2000 2001	2 1 1	**4**
Ordinary action vs. special proceedings	1996 1998	1 1	**2**
Perfection of Appeal	1989 1991	1 1	**2**
Pre-Trial	1989 1992 1993 2001 2002	1 1 1 1 1	**5**
Real Party-in-interest	1989	1	**1**
Records of child and family cases	2001	1	**1**
Remedies to set aside final & executory judgment	1995 1997	1 1	**2**
Reply	1996 2000	1 1	**2**
Res Judicata	1986 1989 2000	1 1 1	**3**
Rule 45 vs. Rule 65	1991	1	**1**
Splitting causes of action	1985 1996 1998 1999	1 1 1 1	**4**
Subpoena Duces tecum	1997	1	**1**

Supersedeas Bond	1988 1989 1990	1 1 1	**3**
Summary Judgment	1985 1987 1989 1996	1 1 1 1	**4**
Summary procedure	1986 1986 1988 1990 1995 1996 2004	1 2 1 2 1 2	**10**
Summons ➢ effect on corporations ➢ Extraterritorial Service	1989 1990 1999 2004 1999 1999 1993	1 1 1 1 1 1	**7**
Third-party Complaint	1993 1996 1997	1 1 1	**3**
Totality Rule in Jurisdiction	1989	1	**1**
Venue	1986 1988 1996	1 3 1	**5**
Verification of Pleadings	1996	2	**2**
Writ of Execution	1988 1995	1 1	**2**
Alias Writ of Execution	1985 1987	1 1	**2**
SPECIAL CIVIL ACTIONS			
Attachment	1986 1988	1 1	**2**
Contempt	1995 1998	1 1	**2**
Certiorari as an original action (Rule 65)	1996 1998 1999 2004	2 2 3	**8**
Declaratory relief	1985 1986	1 1	**2**
Ejectment	1985 1990 1991 1992 1996 1997 1998	2 1 1 1 1 2 1	**9**
Foreclosure of Real Estate Mortgage	1986 2003	1 1	**2**
Interpleader	1985 1988 1996	1 1 1	**3**

Partition	1986 2000	1 1	**2**
Preliminary Attachment ➢ When May be Attached, Damages	1996 1999 2001	1 2 1	**4**
Preliminary Injunction	1996 2001	1 2	**3**
Receivership	2001 2002	1 1	**2**
Replevin	1989 1996 1999	1 1 1	**3**
Rules on Summary Procedure	2004	1	**1**
Support Pendente Lite	1986 1999 2001 2002	1 1 1 1	**4**
Temporary Restraining Order (TRO) ➢ effect of violation ➢ issuance of TRO ex parte	1988 1989 1993 2002	1 1 1 1	**4**
Unlawful Detainer	1988	1	**1**
Writ of preliminary Attachment ➢ ex parte ➢ Discharge of Attachment Effect of Violation	1985 1990 2002 2000 1991 1993	2 1 1 1 1 1	**7**
Writ of Preliminary Injunction ➢ ex parte	1989 2002	1 1	**2**
Quo Warranto vs. Mandamus ➢ filed by Solicitor General, venue	2001 2001 2002 2002	1 1 1 1	**4**
SPECIAL PROCEEDINGS			
Actions against Executors and Administrators ➢ exceptions	1985 2002	2 1	**3**
Adoption	1985	2	**2**
Appointment of Administrator	1988 1998	1 1	**2**
Allowance or Disallowance of Will ➢ Lost or Destroyed Will	1999	1	**1**
Change of Name	1992	1	**1**
Claim Against Estate	1987	1	**1**
Civil Actions vs. Special Proceedings	1998	1	**1**
Correction of Entries	1993	1	**1**
Escheat, venue of	1997	1	**1**
Extra-judicial Settlement	1994 1998	1 2	**4**

	2001	1	
Guardianship	1985	1	**1**
Habeas Corpus	1985 1993 1995 1998 2003	1 1 2 1 1	 **6**
Habeas Corpus vs. Preliminary Citation	1995	1	**1**
How to Prove Money Claim against the Estate of the Deceased	1987	1	**1**
Preliminary Citation	1995	1	**1**
Probate of Will	1992	1	**1**
Probate Court, Jurisdiction	1990 2001 2002 2003	1 1 1 1	 **4**
Unlawful Detainer	1988	2	**2**
CRIMINAL PROCEDURE			
Amendment of information ➢ downgrades the nature of the offense	1985 1987 1997 2001 2002	1 2 1 1 1	 **6**
Amendment vs. Substitution of Information	1994	1	**1**
Bail ➢ forms of bail, when a matter of right and when a matter of discretion	1989 1991 1993 1994 1995 1996 1998 1999	1 1 1 1 1 1 2 4	 **12**
Change of Attorneys	1986	1	**1**
Civil liability (Rule 111)	1995 1996	2 1	 **3**
Complaint vs. Information	1999	1	**1**
Conditional examination of witnesses for the prosecution	1985	1	**1**
Continuous Trial system	1986	1	**1**
Custodial Investigation	1991	1	**1**
Demurrer to Evidence	1989 1996 1998 2001 2002 2003 2004	1 1 3 1 1 1 1	 **9**
Discharge of State Witness	1988	1	**1**
Dismissal on *nolle prosequi*	2003	1	**1**
Double Jeopardy	1985 1987	2 1	

	1988 1993 1994	1 2 1	**7**
Duplicity of Offense	1993	1	**1**
Effect of Death of accused on criminal liability	1995	1	**1**
Enjoinment of the Prosecution	1989	1	**1**
Equipoise Rule	1995	1	**1**
Extent of Prosecutor's duty in the prosecution of the case	1990 2000	1 1	**2**
Extradition Treaty and Law	2004		**1**
Finality of Judgment	1985	1	**1**
Information ➢ alleging aggravating circumstance	1994 1995 1996 2002	1 1 1 1	**4**
Jurisdiction ➢ continuing offense ➢ court martial ➢ Dangerous Drugs Act ➢ libel	 1989 1990 1994 1995	 1 1 1 1	**4**
Modification of Judgment	1989	1	**1**
Motion to Quash	1986 1987 1989 1994 1995 1998 2003	1 1 2 2 1 1 2	**10**
Newly Discovered Evidence, grounds	1998	2	**2**
Plea Bargaining	1995	1	**1**
Plea of Guilt, Effect of	1992 1993 1995 1996	2 1 2 1	**6**
Prejudicial Question	1995	1	**1**
Preliminary Investigation	1985 1986 1991 1998 2004	2 1 1 1 1	**6**
Preponderance of Evidence v. Substantial Evidence	2003	1	**1**
Prescription of Offense	1990 1993	1 1	**2**
Pre-Trial	1986 1989 2004	1 1	**3**
Promulgation of Judgment	1989	1	**1**
Prosecution of Civil Action	1996	1	**1**
Prosecution of B.P. 22	2001	1	

➢ civil action	2002	1	**2**
Prosecution of Criminal Actions (Who may Prosecute)	2000	1	**1**
Reservation of Independent Civil Action	1995 2000	1 1	**2**
Rights of Accused ➢ against self-incrimination / right to a counsel	1992 1996 1998 2004	1 2 1 2	**6**
Rights in Custodial Investigation	1990	1	**1**
Search and Seizure ➢ stop and frisk/ terry search	1994 1995 2003	1 1 1	**3**
State Witness	1988 1990 1994	1 1 1	**3**
Sufficiency of Information	1994 2001	1 1	**2**
Summary Procedure Suspension upon filing of Information	1989 2001	1 1	**1** **1**
Validity of a judgment of conviction	2004		**1**
Warrantless Arrest	1988 2000 2004	1 1 1	**3**
Writ of replevin, when it may be issueD	2003	1	**1**
EVIDENCE			
Admissibilty of Evidence	1991 1994 1998 2003	1 1 3 1	**6**
Admissibility of Electronic Evidence	2003	1	**1**
Admissibility of Illegally Seized Articles	1998	1	**1**
Ancient Document	1990	1	**1**
Best Evidence Rule	1988 1992 1994 2000 2002	1 2 2 1 1	**7**
Broad Side Objection vs. Specific Objection	1994	1	**1**
Circumstantial evidence	1986	1	**1**
Common Reputation	1986	1	**1**
Corpus Delicti	1990	1	**1**
Dead Man's Statute	1988 2001 2002	1 1 1	**3**
Dying Declaration	1987 1991 1993 1998 1999	1 1 1 1 1	**5**

Dying Declaration vs. Res Gestae	1991 1992 1995	1 1 1	**3**
Hearsay Rule ➢ Exceptions to Hearsay Rule	1987 1994 1999 1994 1999 2000	2 1 2 1 1 1	**8**
Extrajudicial Confession	1988	1	**1**
Formal offer of evidence	1997	1	**1**
Formal offer of Evidence vs. Offer of Proof	1991	1	**1**
Kinds of Evidence	1994	1	**1**
Laying the predicate	1996	1	**1**
Marital Disqualification Rule	1989 1995 2000	1 1 1	**3**
Marital Privilege	1998 2004	2	**2**
Modes of Discovery	2000	1	**1**
Offer of Compromise as implied admission of guilt	1986 1989	1 1	**2**
Offer of Evidence	1987	1	**1**
Offer of Testimony vs. Offer of Documentary Evidence	1994	1	**1**
Parental and Filial Privilege	1986 1998	1 1	**2**
Parol Evidence Rule vs. Best Evidence Rule	1985	1	**1**
Parol Evidence Rule ➢ exception	1988 2001 2002	1 1 1	**3**
Presentation of Evidence	1993 1995	1 1	**2**
Presentation of Witnesses	1997	2	**2**
Past Recollection Recorded	1996	1	**1**
Present Recollection Revived vs. Present Recollection Recorded	1985	1	**1**
Presumptions ➢ Conclusive ➢ Disputable	 1995 1985	 1 2	 **3**
Privileged communication	1986 1998	1 1	**2**
Qualification of Witnesses	1986 1994	3 3	**6**
Recall of Witnesses	1997	1	**1**
Res Gestae	1985 1988	1 1	**2**
Res Inter Alios Acta	1991	1	**1**
Right and Obligations of Witnesses	1986 1994	1 1	**2**
Weight of Testimony	1994	1	**1**

Ut In Omnibus Glorificetur Deus