|  | **Preliminary Attachment****RULE 57** | **Preliminary Injunction****RULE 58** | **Temporary Restraining Order (TRO)****RULE 58** | **Receivership****RULE 59** | **Replevin****RULE 60** | **Support Pendente Lite****RULE 61** |
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| **Definition/****Nature of Remedy** | A provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the adverse party therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching party against the adverse party. (Davao Light vs. CA)Kinds of Attachments(a)Preliminary Attachment(b)Garnishment- where the plaintiff seeks to subject the property of the defendants in the hands of a third person to his claim, Or the money which the third person owes the defendant(c)Levy on execution- a writ issued by the court after judgment by which the property of the judgment obligor is taken under custody of the court before the sale of the property on execution for the satisfaction of a final judgment | An order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or court, agency or a person to refrain from a particular act or acts/perform a particular act or acts. 2 Kinds(a)Preliminary Prohibitory/Preventive Injunction-refrain from a particular act or acts(b)Preliminary Mandatory Injunction-perform a particular act or acts*Prohibitory Injunction vs. Prohibition*Prohibitory injunction is a provisional remedy directed to a litigant not to a tribunal and is issued to require said party to refrain from a particular act whereas Prohibition is a special civil action seeking a judgment commanding a tribunal, corporation, board or officer to desist from further proceeding in the action because it has no jurisdiction, acting in excess of jurisdiction or has gravely abused its discretion amounting to lack of jurisdiction.*Mandatory Injunction vs. Mandamus*Mandatory injunction is directed to party litigant not to a tribunal and is issued to require a party to perform an act to restore the last peaceable uncontested status preceding the controversy whereas Mandamus is a special civil action seeking a judgment commanding a tribunal, board, officer or person to perform a ministerial duty required to be performed by law. | An order which may issue upon the filing of an application for preliminary injunction forbidding the defendant to do the threatened act until a hearing on the application can be had. 2 Kinds(a)The 72-hour TRO- issued by the executive judge of the multiple sala court or the presiding judge of the single sala court in matters of extreme urgency and grave injustice and irreparable injury(b)The normal 20 day TRO- issued by the regular court judge after raffle on the ground of great and irreparable injury | One by which the court appoints a receiver as its representative and in behalf of all the parties to an action for the purpose of preserving and conserving the property in litigation and to prevent possible wastage or dissipation or otherwise to carry the judgment into effect.Not the same concept of Receivership under Commercial Law or Financial Rehabilitation and Insolvency Act of 2010 (FRIA)Receiver-an indifferent person between the parties to a cause appointed by the court to receive and preserve the property or fund in litigation. | It is an action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken, or who wrongfully detains such goods or chattels. The action is primarily possessory in nature and generally determines nothing more than the right of possession, NOT Ownership*Replevin vs. Preliminary Attachment*The former is extends to personal property capable of manual delivery whereas the latter extends to all kinds of property whether real or personal. The former cannot be availed of if the property is in custodia legis, except when the seizure is illegal, whereas the latter can still be resorted to even if the property is in custodia legis | It is a provisional remedy which grants a person entitled to support an amount enough for his “sustenance, dwelling, clothing, medical attendance, education and transportation” while the action is pending in court. 2 instances for support pendente lite(a) In an action for support and such other appropriate civil case(b)In a criminal action where civil liability includes support for the offspring provided the civil aspect thereof has not been waived, reserved or instituted prior to its filing |
| **Purpose** | (a)To have the property of adverse party attached as security for the satisfaction of judgment that may be recovered in cases falling under Sec 1, Rule 57. | To require a party or a court, agency or a person to refrain from doing a particular act or acts or to require the performance of a particular act or acts. | (a)To preserve status quo(b)To prevent grave injustice and irreparable injury to the applicant before the application for a writ of preliminary injunction can be acted upon. | To preserve and protect the rights of the parties during the pendency of the litigation, during the pendency of the appeal or as an aid in the execution of judgment when the writ of execution has been returned unsatisfied.  | To recover possession of personal property | To compel the adverse party to give support for sustenance  |
| **Main action or only a provisional remedy?** | Provisional/Ancillary remedy only | Both (May be applied as a Main Action or as a provisional/ancillary remedyThe main action is injunction and the provisional remedy is preliminary injunction. | Both (May be applied as a Main Action or as a provisional/ancillary remedy | Both (May be applied as a Main Action or as a provisional/ ancillary remedy | Both (May be applied as a Main Action or as a provisional/ancillary remedy | Provisional/ancillary remedyThe main action may be Support and the provisional remedy is Support Pendente Lite |
| **When is it applied?** | (a)At the commencement of the action or(b) at any time prior to the entry of judgment | At any stage prior to the judgment or final orderFinal order- is that which disposes of the whole subject-matter or terminates the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined | During the pendency of the application for a writ or preliminary injunction | At any stage of the proceedingEven after the judgment becomes final and executory to aid execution or carry judgment into effect. (Philippine Trust Company vs. Santamaria) | a)At the commencement of the action or(b) at any time before answer | (a)At the commencement of the proper action or(b) at any time prior to the judgment or final order |
| **Grounds for issuance** | (a) In an action for the recovery of a specified amount of money or damages, other than moral and exemplary, on a cause of action arising from law, contract, quasi-contract, delict or quasi-delict against a party who is about to depart from the Philippines with intent to defraud his creditors;*-Insolvency or mere**inability of the debtor to fulfill his obligation to pay a debt in an action for a sum of money does not justify the issuance of writ of preliminary attachment**-Mere departure from the Philippines without showing intent to defraud will not warrant the issuance of the writ**-Cause of action must be money or damages, the amount of which must be specified arose from law, contract, quasi-contract, delict or quasi-delict**-Not applicable for action for recovery of moral or exemplary damages and other unliquidated and contingent claims*(b) In an action for money or property embezzled or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for awillful violation of duty;*- Applies to defendant or any person acting in a fiduciary character**-Person acted in a manner as to willfully violate his duty not to embezzle, fraudulently misapply or not to convert money or property for his own use**-Action against a public officer who misappropriate funds entrusted to him by virtue of his office**-Action against officer of the corporation who converted the corporate funds for personal use*(c) In an action to recover the possession of property unjustly or fraudulently taken, detained or converted, when the property, or any part thereof, has beenconcealed, removed, or disposed of to prevent its being found or taken by the applicant or an authorizedperson;(d) In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof;*2 kinds of fraud**(a)Casual fraud- fraud used to induce another to enter into a contract**(b)Incidental fraud- fraud employed by a party in the fulfillment of his obligation or after the obligation has been contracted*(e) In an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors; or*2 Elements:**(a)There is a removal or disposal of the property**(b)The removal or disposal must be with intent to defraud the creditor*(f) In an action against a party who does not reside and is not found in the Philippines, or on whom summons may be served by publication.(Sec 1, Rule 57)*-The attachment is intended to enable the court to acquire jurisdiction over the res by converting the action in personam to an action quasi in rem and thus, justifying summons by publication and other modes of summons (extraterritorial)**-Persons on whom summons maybe served by publication and against whose proper preliminary attachment may be availed of**-Applies to Resident defendants whose identity or whose whereabouts are unknown OR Resident defendants who are temporarily out of the country.* | (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts either for a limited period or perpetually;(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act oracts probably in violation of the rights of the applicantrespecting the subject of the action or proceeding, and tending to render the judgment ineffectual. | (a)The applicant will suffer great or irreparable injury before the matter can be heard on notice----the court to which application for preliminary injunction was made, may issue an ex parte TRO to be effective only for 20 days from service to the party.(b)Matters of extreme urgency and the applicant will suffer grave injustice and irreparable injury----the court may issue an ex parte TRO effective for only 72 hours from issuance. (Sec 5, Rule 58) | (a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;(b) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;(c) After judgment, to preserve the property during the pendency of an appeal, or to disposeof it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;(d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation.(Sec 1, Rule 59) | (a) That the applicant is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof and that the property is wrongfully detained by the adverse party, alleging the cause of detention thereof according to the best of his knowledge, information, and belief ; | When equity and justice require, having due regard to the probable outcome of the case and such other circumstances as may suggest the reasonability of granting support *pendente lite*The applicant states the grounds for claim and the financial conditions of both parties accompanied with affidavits, depositions or other authentic documents in support thereof |
| **Rule on Prior & Contemporaneous service of summons** | Enforcement of a writ of preliminary attachment must be preceded by or simultaneously accompanied by service of summons, copy of complaint, application and affidavits for the attachment and the bond upon the adverse party.**Remember the three stages**(1)Order granting the application for the issuance of the writ of preliminary attachment(2)Issuance of the Writ of Preliminary attachment itself(3)Enforcement or implementation of the WritPrior or Contemporaneous Service of Summon applies only on the 3rd stageIt DOES NOT apply(a)Where the summons could not be served personally or by substituted service despite diligent efforts(b)The defendant is a resident of the Philippines temporarily absent therefrom(c)defendant is a non-resident of the Philippines(d)the action is in rem or quasi in rem | When an application for a writ is made in a complaint or initiatory pleading, if filed in the multiple sala court, shall be raffled only after notice and in presence of the adverse party. Such notice must be preceded or contemporaneously accompanied by service of summons, together with the copy of the complaint or initiatory pleading, applicant’s bond upon the adverse party.(Sec 4)Except: Where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Phils temporarily absent therefrom or is a non-resident thereof. | See injunction🡨 | Requires Notice and hearing | Although the writ of replevin may be issued ex-parte, it cannot be implemented or enforced if not preceded or accompanied by a service of summons Notice and hearing is not required, may be issued ex parte provided bond was approved by the court. (Sec 3)The service is invalid if the writ of replevin was served without the required documents. | Requires Notice and Hearing |
| **Who may grant?** | Court where action is pending, the CA or the SC even if action is pending in the lower court.MTCs, RTC/FC, CA, SC | Court where the action is pending;MTCs, RTC/FC, CA,SCLower Court, CA or SC provided action is pending in the same court which issues the injunction.MTC may grant preliminary mandatory injunction as a provisional remedy for the main action of forcible entry or unlawful detainer. | Court where the action is pendingMTCs, RTC/FC, CA or SC  | Court where action is pending, the CA or the SC even if action is pending in the lower court. MTCs, RTC/FC,CA,SCAppellate court may allow application for receivership to be decided by the court of origin. | Court where the action is pendingMTCs, RTC/FC, CA,SChe Metropolitan Trial Courts jurisdiction is limited to not more than 300/400 hundred thousand pesos | Court where the case is pendingFamily CourtExcept: In criminal actions, as long as the civil aspect is tried together with it , the RTC or MTC having jurisdiction may also issue this remedy.(*e.g* Art. 345 (3) RPC, in crimes against chastity, “In every case to support the offspring..”) |
| **How is it Granted?** | Ex parte or upon motion with notice and hearing | Upon motion with notice and hearing. (Sec 5)NEVER ex parte!!! ☺ | Ex parte in appellate court, With notice and hearing in trial courts | Upon motion with notice and hearing | Ex Parte or upon motion of the party  | Upon motion with notice and hearing |
| **Requisites for granting/****Procedure** | (1) Applicant files an affidavit and must establish that a sufficient cause of action exists and that the case is one of those mentioned in section 1 hereof (2)That there is no other sufficient security for the claim sought to be enforced by the action, and(3) That the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. (4)The affidavit and the bond must be duly filed with the court before the order issues. | (1) Applicant must file verified applicationWhen the application or writ is included in the complaint or initiatory pleading if filed in multi-sala shall be raffled only after notice and in the presence of the party sought to be enjoined.(2) He must establish that he has a right of relief or a right to be protected and that the act against which injunction is sought violates such right(3) Applicant’s must file a bond unless otherwise exempted by the court(4) The plaintiff praying for a writ of preliminary injunction must further establish that he or she has a present and unmistakable right to be protected. | See injunction🡨 | (1) Applicant must file a verified application requesting for the appointment of the receiver (2)Applicant must have an interest in the property or funds subject of the action(3)Applicant must show that the property or funds is in danger of being lost, wasted, or dissipated(4)Application must be with notice and must be set for hearing(5)Before appointing a receiver, the court shall require applicant to post bond in favor of the adverse party. When the treceiver is appointed, the receiver shall file a bond then take his oath.(6) Before entering upon his duties, the receiver must be sworn to perform his duties faithfully. | 1) Applicant must file an application for the issuance of the Writ for the delivery of such property to him (2) He must show in his own affidavit or that of some other person who personally knows the facts that (i)he is the owner of the property claimed, particularly describing it, or is entitled to the possession thereof, (ii)that it is wrongfully detained by the adverse party, (iii)that the property has not been distrained or taken for a tax assessment or a fine pursuant to law, or seized under a writ of execution or preliminary attachment, or otherwise placed under custodial egis, (iv) the actual market value of said property(3)Applicant must give a bond executed to the adverse party in double the value of the property as stated in the affidavit.(4) When the court approves the application, the court shall issue an order and the corresponding writ of replevin. This order shall require the sheriff to take the property under his custody(5)Upon receipt of the court order, the sheriff must:(i)Serve a copy of the order, copy of application, affidavit and bond on the adverse party(ii)Take the custody of the property and must keep it in a secure place, (iii)Within 5 days from taking of the property, the sheriff shall wait for the move of the adverse party. If the adverse party does not object to the sufficiency of the bond after said period or performs an acts to effect the return to him of the property taken, the property shall be delivered to the applicant. | (1) Application must be verified stating grounds for claim and the financial conditions of both parties. (2) Application must be accompanied by affidavits, depositions or other authentic documents in support thereof.(3) A copy of the application and all supporting documents shall be served upon the adverse party, who shall have five days to comment thereon unless a different period is fixed by the court upon his motion. The comment shall be verified and shall be accompanied by affidavits, depositions or other authentic documents in support thereof. (4)Application shall be set for hearing. If granted, the court shall issue an order where it shall fix the amount of money to be provisionally paid for support. If denied, the principal case shall be tried and decided as early as possible. |
| **Does it require posting of a bond?** | YesIn an amount fixed by the court in its order/discretionary but not to exceed the applicant’s claimPurpose (a)To pay all cost which may be adjudged to the adverse party(b)To pay all damages which the adverse party may sustain by reason of the attachment if the court finally adjudge that the applicant was not entitled thereto(Sec 4) | YesIn an amount fixed by the courtPurposeTo pay all the damages which the adverse party may sustain by reason of the injunction, if the court finally decide that the applicant was not entitled thereto | YesBut the court may exempt | YesIn an amount fixed by the court/discretionary2 Kinds of Bond(a)Applicant’s bond(b)Receiver’s bondPurposeTo pay all the damages the adverse party may sustain by reason of the appointment of such receiver in case the applicant shall have procured such appointment without sufficient cause | YesIn an amount which is double the value of the property as stated in the affidavit (For both applicant’s bond and Redelivery bond)PurposeFor the return of the property to the adverse party if such return be adjudged, and for the payment to the adverse party of such sum as he may recover from the applicant in the action. | No |
| **Effectivity of the Writ** | During the pendency of the case unless earlier discharged or quashed by the court | It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. | Not exceeding 20 days-if issued by an MTC (M&Ms) or RTCNot exceeding 60 days-if issued by the CAFor further orders-if issued by the SCNOTE: TRO is automatically vacated upon expiration of the period. Effectivity is not extendible without need of any judicial declaration to that effect | It persists until discharged by the court | During the pendency of the case unless the defendant files redelivery bond | During the pendency of the case*Enforcement of the Order*The adverse party must comply with the order to give support pendente lite. If he does not, an order of execution shall be issued by the court either motu proprio or upon motion. Likewise, liable for contempt. |
| **How is it discharged or dissolved?** | (a)Filing of a counterbond executed to the attaching party(b)By the order of the court after notice and hearing on the ground that the preliminary attachment was (i) improperly or irregularly issued, (ii) Irregularly enforced, (iii) the bond is insufficient | (a) Filing of a counterbond executed to the other party when the applicant can be fully compensated for the damages(b)If it appears after hearing that although the applicant is entitled to the injunction , the issuance or continuance thereof would cause irreparable damage to the party*Denial of application*(1)Showing of insufficiency of application(2)On other grounds upon affidavits of the party or person enjoined, which may be opposed by the applicant also by affidavits(3)Applicant’s bond is insufficient | (a)Upon resolution by the court of the application for a writ of preliminary injunction or the expiration of the the 20-day period from service of the writ upon the party, whichever comes first(b)Upon affidavit of the party enjoined or after hearing if it appears that although the applicant is entitled to a TRO, the issuance or continuance thereof, would cause irreparable damage to the party enjoined while the applicant can be fully compensated for such damage as he may suffer upon he applicant’s filing of a counterbond | (a)Filing to the adverse party a counterbond(b)If it is shown that the appointment of a receiver was obtained without sufficient cause(c)The court motupropioor on motion shall determine that the necessity of a receiver no longer exist*Denial of application*(a)Applicant’s bond is insufficient(b)Receiver’s bond is insufficient |  | *Restitution*When the judgment finds that the persons giving support is not liable, the court shall:(a)Order the recipient to make restitution of what has been received with legal interest from the date of actual payment(b)If failed to do so, the person who gave the support may file an action against the person legally obliged to give support  |
| **Other matters** | This remedy is in the nature of quasi in rem although sometimes referred to as action in rem. Jurisdiction over the person of the defendant is not required as long as the court acquires jurisdiction over the res.**Where property is claimed by third person (Terceria)**When third-party claimant makes an affidavit of his title to the property or his right to the possession thereof, and serves such affidavit to the sheriff and a copy thereof to the attaching party, the sheriff shall not be bound to keep the property unless the attaching party files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied upon. Claim for damages for the taking or keeping the property must be filed within 120 days from filing of the bond. | Preventive Injunction does not lie in the ff. cases:(a)To restrain collection of taxes, except CA. (Sec 218 NIRC) (b)To restrain criminal prosecution(b) Against consummated acts. (PNB vs. Adi)Final Injunction- issued as a judgment, making the injunction permanent when if after trial of the action, it appears that the applicant is entitled to have the act or acts complained of permanently enjoined. It perpetually restrains a person from the continuance of commission of an act and confirms the previous preliminary injunction.**In re RA No. 8975**No Court, except the SC, shall issue any preliminary mandatory injunction against the government or its subdivisions, officials, or any person or entity, whether public or private, acting under the government direction, to restrain prohibit or compel the ff acts:(a)Acquisition,clearance and development of the right of way(b) Bidding or awarding of a contract or project etc | Status Quo Ante Order vs. Injunction vs. TROA status quo order is in the nature of a cease and desist order. It is resorted to when the projected proceeding in the case made the conservation of the status quo desirable or essential, but the affected party neither sought such relief nor did the allegations in his pleading sufficiently make out a case for a temporary restraining order.It does NOT direct the doing or undoing of acts but is an order to maintain the last, actual peaceable and uncontested state of things which preceded the controversy.It has the nature of a TRO. (Dojilo vs. COMELEC) | **General Powers of Receiver**(1)Bring and defend, in such capacity, actions in his own name(2)Take and keep possession of property in controversy(3)Receive rents(4)Collect debts due to himself as receiver or to the fund, property, estate, person(5)Compound for and compromise the same(6)Make transfers(7)Pay outstanding debts(8)Divide the money and other property that shall remain among persons legally entitled to receive the same(9)Invest funds in his hands only by order of the court upon written consent of all the parties to action(10)Do acts respecting the property as court may authorize.. | In debt cases when the debtor defaults, the creditor may obtain a writ of replevin as a preliminary step for the foreclosure.*Remedies of third person whose property is taken by Writ of replevin*(a)Third party shall file and serve affidavit upon sheriff and applicant stating his entitlement to possession(b)Sheriff shall return the property to third person unless applicant files a bond (same amount as the value of the property) approved by court to indemnify the third person(c)Claim for damages upon said bond mustbe filed within 120days from date of filing of the bond | The one claiming for support must establish before the court the relationship between the parties as to entitle one to receive support from the other.Support pendente lite maybe granted in rape cases for the offspring of the accused as a consequence of the rape |
| **Cases** | **Sievert vs. CA**Valid service of summons and a copy of the complaint will in such case vest jurisdiction in the court over the defendant both for purposes of the main case and for purposes of the ancillary remedy of attachment. In such case, notice of the main case is at the same time notice of the auxiliary proceeding in attachment. Where, however, the petition for a writ of preliminary attachment is embodied in a discrete pleading, such petition must be served either simultaneously with service of summons and a copy of the main complaint, or after jurisdiction over the defendant has already been acquired by such service of summons. Notice of the separate attachment petition is not notice of the main action. If a court has no jurisdiction over the subject matter or over the person of the defendant in the principal action, it simply has no jurisdiction to issue a writ of preliminary attachment against the defendant or his property.**Davao Light vs. CA**Rule 57 speaks of the grant of the remedy “at the commencement of the action or at any time thereafter” What the rule is saying is that after an action is properly commenced (by filing of the complaint and payment of all requisite docket and other fees), the plaintiff may apply for and obtain a writ of preliminary attachment. This he may do so, before or after, the summons to the defendant. The Court reiterates that writs of attachment may properly issue ex parte provided that the Court is satisfied that the relevant requisites therefor have been fulfilled by the applicant, although it may, in its discretion, require prior hearing on the application with notice to the defendant; but that levy on property pursuant to the writ thus issued may not be validly effected unless preceded, or contemporaneously accompanied, by service on the defendant of summons, a copy of the complaint (and of the appointment of guardian ad litem, if any), the application for attachment (if not incorporated in but submitted separately from the complaint), the order of attachment, and the plaintiff’s applicant bond.**Cuartero vs. Evangelista**Rule 57 of the Rules of Court, the only requisites for the issuance of the writ are the affidavit and bond of the applicant, no notice to the adverse party or hearing of the application is required inasmuch as the time which the hearing will take could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues. In such a case, a hearing would render nugatory the purpose of this provisional remedy. It is clear from our pronouncements that a writ of preliminary attachment may issue even before summons is served upon the defendant. However, we have likewise ruled that the writ cannot bind and affect the defendant. However, we have likewise ruled that the writ cannot bind and affect the defendant until jurisdiction over his person is eventually obtained. Therefore, it is required that when the proper officer commences implementation of the writ of attachment, service of summons should be simultaneously made.**Jardine-Manila Finance Inc vs. CA**An order of attachment shall be granted only when it is made to appear by the affidavit of the applicant or some other person who personally knows of the facts, that a sufficient cause of action exists, that the case is one of those mentioned in section 1 hereof, that there is no sufficient security for the claim sought to be enforced by the action, and that the amount due to applicant or the value of the property the possession of which he is entitled to recover is as much as the sum for which the order is granted above all legal counterclaims.Failure to allege in the affidavit the requisites prescribed for the issuance of the writ of preliminary attachment, renders the writ of preliminary attachment issued against the property of the defendant fatally defective, and the judge issuing it is deemed to have acted in excess of his jurisdiction. In fact, in such cases, the defect cannot even be cured by amendment.Since the attachment is a harsh and rigorous remedy which exposes the debtor to humiliation and annoyance, the rule authorizing its issuance must be strictly construed in favor of defendant. It is the duty of the court before issuing the writ to ensure that all the requisites of the law have been complied with. Otherwise, a judge acquires no jurisdiction to issue the writ.The general rule is that the affidavit is the foundation of the writ, and if none be filed or one be filed which wholly fails to set out some facts required by law to be stated therein, there is no jurisdiction and the proceedings are null and void. | **BACIWA vs. Labayen**The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the status quo until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. A restraining order, on the other hand, is issued to preserve the status quo until the hearing of the application for preliminary injunction which cannot be issued ex parte. Under Rule 58 of the Rules of Court, a judge may issue a temporary restraining order with a limited life of twenty (20) days from date of issue. If before the expiration of the twenty (20)-day period the application for preliminary injunction is denied, the temporary restraining order would be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary.**Rosauro vs. Cuneta**There are two requisites for the issuance of an injunction namely, (1) that the right to be protected exists; and (2) that the acts against which the injunction is to be directed are violative of said right. The existence of a rightviolated is a prerequisite to the granting of an injunction. An injunction will not issue to protect a right not in esse and which may never arise. 18 Failure to establish either the existence of a clear and positive right which should be judicially protectedthrough the writ of injunction, or that the defendant has committed or attempts to commit any act which has endangered or tends to endanger the existence of said right, is a sufficient ground for denying the injunction..**Rivera vs. Florendo**A mandatory injunction is granted only on a showing (a) that the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage. It is the fundamental rule of injunctions that a mandatory injunction will not issue in favor of a party whose rights are not clear and free of doubt or as yet undetermined. Another is that no advantage may be given to one to the prejudice of the other, a court should not by means of a preliminary injunction transfer the property in litigation from the possession of one party to another where the legal title is in dispute and the party having possession asserts ownership thereto.**Garayblas vs. Atienza**Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.35 The Court has distinguished the main action for injunction from the provisional or ancillary remedy of preliminary injunction, thus:The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the status quo until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction. |  | **Commodities Storage & Ice Plant Corp vs. CA**A petition for receivership under Section 1 (b) of Rule 59 requires that the property or fund which is the subject of the action must be in danger of loss, removal or material injury which necessitates protection or preservation. The guiding principle is the prevention of imminent danger to the property. If an action by its nature, does not require such protection or reservation, said remedy cannot be applied for and granted.The general rule is that neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested.The power to appoint a receiver must be exercised with extreme caution. There must be a clear showing of necessity therefor in order to save the plaintiff from grave and irremediable loss or damage. It is only when the circumstances so demand, either because there is imminent danger that the property sought to be placed in the hands of a receiver be lost or because they run the risk of being impaired, endeavouring to avoid that the injury thereby caused be greater than the one sought to be avoided.**Salientes vs. IAC**A receiver is a representative of the court appointing him for the purpose of preserving and conserving the property under receivership and preventing its possible destruction or dissipation, if it goes to the possession of another person.Section 7, Rule 59 of the Revised Rules of Court, the exercise of the general powers of a receiver is specifically made subject "to the control of the court in which action is pending".**National Investent and Development Corp et al vs. Aquino**A receiver of real or personal property, which is the subject of the action, may be appointed by the court when it appears from the pleadings that the party applying for the appointment of receiver has an interest in said property. The right, interest, or claim in property, to entitle one to a receiver over it, must be present and existing.Batjak in its petition for receivership, or in its amended petition therefor, failed to present any evidence, to establish the requisite condition that the property is in danger of being lost, removed or materially injured unless a receiver is appointed to guard and preserve it. | **Bagahalihog vs. Fernandez**The rule that property held as evidence in a criminal case cannot be replevined applies only where the property is lawfully held, that is, seized in accordance with the rule against warrantless searches and seizures or its accepted exceptions. | **Reyes vs, Ines-Luciano**Where petitioner failed to present evidence on the alleged adultery of his wife when the action for legal separation is heard on the merits, the grant of support pendente lite is valid. Adultery is a good defense and if properly proved and sustained will defeat the action. However, the alleged adultery of the wife must be established by competent evidence. Mere allegation would not suffice to bar her from receiving support pendente lite.In determining the amount to be awarded as support pendente lite it is not necessary to go fully into the merits of the case, it being sufficient that the court ascertain the kind and amount of evidence which it may deem sufficient to enable it to justly resolve the application, one way or the other, in view of the merely provisional character of the resolution to be entered. Mere affidavits may satisfy the court to pass upon the application for support pendente lite. It is enough that the facts be established by affidavits or other documentary evidence appearing in the record. |

**PROVISIONAL REMEDIES (INTERIM RELIEFS) IN A PETITION FOR WRIT OF AMPARO**

Upon filing of petition or at any time before final judgment

The Interim reliefs are:

1. Temporary protection order (TPO)

 Upon motion or motu proprio, may order that the petitioner or aggrieved party and any members of his immediate family be protected in a government agency or by an accredited person or private institution.

 May be issued motu proprio or ex parte without the need of hearing in view of its urgency.

1. Witness protection order (WPO)

 Upon motion or motu proprio may issue a witness protection order for a witness to be admitted to the witness protection program.

 May be issued motu proprio or ex parte

1. Inspection order (IO)

 Upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property to permit entry for the purpose of inspecting, measuring, surveying or photographing the property or any relevant object or operation thereon.

 Motion for inspection order shall be supported by affidavits or testimonies of witnesses having personal knowledge of the enforced disappearance or whereabouts of the aggrieved party

 If motion is opposed on the ground of national security or of privileged nature of the information, the court may conduct hearing in chamber to determine the merit of opposition.

 Cannot be issued motu proprio or ex parte

 Lifetime of 5 days but can be extended for justifiable circumstances

1. Production order (PO)

 Upon verified motion and after due hearing, may order the person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, object or tangible things, objects of digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing.

 Cannot be issued motu proprio or ex parte

 Under oath and should have supporting affidavits

 Lifetime of 5 days but can be extended for justifiable circumstances

 If the judge gravely abuse his discretion in issuing inspection order as when it compromise national security, the aggrieved party is not precluded from filing petition for certiorari with the SC.

“Like a horse, I can bring you closer to the river but I cannot compel you to drink. It’s all up to you”-JM