

SC RULINGS ON COMMERCIAL LAW

June 2014 Philippine Supreme Court Decisions on Commercial Law

Posted on **July 3, 2014** by **Hector M. de Leon Jr.** • Posted in **Commercial Law** • Tagged **corporation** •

Here are select June 2014 ruling of the Supreme Court of the Philippines on commercial law:

Corporations; capacity to sue of dissolved corporations. The trustee of a corporation may continue to prosecute a case commenced by the corporation within three years from its dissolution until rendition of the final judgment, even if such judgment is rendered beyond the three-year period allowed by Section 122 of the Corporation Code. However, there is nothing in the said cases which allows an already defunct corporation to initiate a suit after the lapse of the said three-year period. On the contrary, the factual circumstances in the abovesited cases would show that the corporations involved therein did not initiate any complaint after the lapse of the three-year period. In fact, as stated above, the actions were already pending at the time that they lost their corporate existence.

In the present case, petitioner filed its complaint not only after its corporate existence was terminated but also beyond the three-year period allowed by Section 122 of the Corporation Code. Thus, it is clear that at the time of the filing of the subject complaint petitioner lacks the capacity to sue as a corporation. To allow petitioner to initiate the subject complaint and pursue it until final judgment, on the ground that such complaint was filed for the sole purpose of liquidating its assets, would be to circumvent the provisions of Section 122 of the Corporation Code. *Alabang Development Corporation v. Alabang Hills Village Association and Rafael Tinio*, **G.R. No. 187456**, **June 2, 2014**.

Corporations; refusal to allow inspection is a criminal offense. We find inaccurate the pronouncement of the RTC that the act of refusing to allow inspection of the stock and transfer book is not a punishable offense under

the Corporation Code. Such refusal, when done in violation of Section 74(4) of the Corporation Code, properly falls within the purview of Section 144 of the same code and thus may be penalized as an offense. *Aderito Z. Yujuico and Bonifacio C. Sumbilla v. Cezar T. Quiambao and Eric C. Pilapil*, **G.R. No. 180416, June 2, 2014**.

Corporations; persons who may be held liable under Section 74. A perusal of the second and fourth paragraphs of Section 74, as well as the first paragraph of the same section, reveal that they are provisions that obligates a corporation: they prescribe what books or records a corporation is required to keep; where the corporation shall keep them; and what are the other obligations of the corporation to its stockholders or members in relation to such books and records. Hence, by parity of reasoning, the second and fourth paragraphs of Section 74, including the first paragraph of the same section, can only be violated by a corporation. It is clear then that a criminal action based on the violation of the second or fourth paragraphs of Section 74 can only be maintained against corporate officers or such other persons that are acting on behalf of the corporation. Violations of the second and fourth paragraphs of Section 74 contemplates a situation wherein a corporation, acting thru one of its officers or agents, denies the right of any of its stockholders to inspect the records, minutes and the stock and transfer book of such corporation.

The problem with the petitioners' complaint and the evidence that they submitted during preliminary investigation is that they do not establish that respondents were acting on behalf of STRADEC. Quite the contrary, the scenario painted by the complaint is that the respondents are merely outgoing officers of STRADEC who, for some reason, withheld and refused to tum-over the company records of STRADEC; that it is the petitioners who are actually acting on behalf of STRADEC; and that STRADEC 1s actually merely trying to recover custody of the withheld records. In other words, petitioners are not actually invoking their right to inspect the records and the stock and transfer book of STRADEC under the second and fourth paragraphs of Section 74. What they seek to enforce is the proprietary right of STRADEC to be in possession of such records and book. Such right, though certainly legally enforceable by other means, cannot be enforced by a criminal prosecution based on a violation of the second and fourth

paragraphs of Section 74. That is simply not the situation contemplated by the second and fourth paragraphs of Section 74 of the Corporation Code. *Aderito Z. Yujuico and Bonifacio C. Sumbilla v. Cezar T. Quiambao and Eric C. Pilapil*, *G.R. No. 180416, June 2, 2014*.

April 2014 Philippine Supreme Court Decisions on Commercial Law

Posted on [May 5, 2014](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [corporation](#), [merger](#) •

Here are select April 2014 rulings of the Supreme Court of the Philippines on commercial law:

Corporate officers; liability.

On the issue of the solidary obligation of the corporate officers impleaded vis-à-vis the corporation for Mapua's illegal dismissal, "[i]t is hornbook principle that personal liability of corporate directors, trustees or officers attaches only when: (a) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (b) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary the ir written objection; (c) they agree to hold themselves personally and solidarily liable with the corporation; or (d) they are made by specific provision of law personally answerable for their corporate action. *SPI Technologies, Inc., et al. v. Victoria K. Mapua*, *G.R. No. 199022, April 7, 2014*.

Corporate officers; liability. A corporation has a personality separate and distinct from its officers and board of directors who may only be held personally liable for damages if it is proven that they acted with malice or bad faith in the dismissal of an employee. Absent any evidence on record that petitioner Bautista acted maliciously or in bad faith in effecting the termination of respondent, plus the apparent lack of allegation in the pleadings of respondent that petitioner Bautista acted in such manner, the

doctrine of corporate fiction dictates that only petitioner corporation should be held liable for the illegal dismissal of respondent. *Mirant (Philippines) Corporation, et al. v. Joselito A. Caro*, *G.R. No. 181490, April 23, 2014*.

Corporations; merger; concept. Merger is a re-organization of two or more corporations that results in their consolidating into a single corporation, which is one of the constituent corporations, one disappearing or dissolving and the other surviving. To put it another way, merger is the absorption of one or more corporations by another existing corporation, which retains its identity and takes over the rights, privileges, franchises, properties, claims, liabilities and obligations of the absorbed corporation(s). The absorbing corporation continues its existence while the life or lives of the other corporation(s) is or are terminated. *Bank of Commerce v. Radio Philippines Network, Inc., et al.*, *G.R. No. 195615, April 21, 2014*.

Corporations; merger; de facto merger. A de facto merger can be pursued by one corporation acquiring all or substantially all of the properties of another corporation in exchange of shares of stock of the acquiring corporation. The acquiring corporation would end up with the business enterprise of the target corporation; whereas, the target corporation would end up with basically its only remaining assets being the shares of stock of the acquiring corporation. *Bank of Commerce v. Radio Philippines Network, Inc., et al.*, *G.R. No. 195615, April 21, 2014*.

Corporations; merger; effectivity. It is clear that no merger took place between Bancommerce and TRB as the requirements and procedures for a merger were absent. A merger does not become effective upon the mere agreement of the constituent corporations. All the requirements specified in the law must be complied with in order for merger to take effect. Section 79 of the Corporation Code further provides that the merger shall be effective only upon the issuance by the Securities and Exchange Commission (SEC) of a certificate of merger. *Bank of Commerce v. Radio Philippines Network, Inc., et al.*, *G.R. No. 195615, April 21, 2014*.

Corporations; nationality. The “control test” is still the prevailing mode of determining whether or not a corporation is a Filipino corporation, within

the ambit of Sec. 2, Art. II of the 1987 Constitution, entitled to undertake the exploration, development and utilization of the natural resources of the Philippines. When in the mind of the Court there is doubt, based on the attendant facts and circumstances of the case, in the 60-40 Filipino-equity ownership in the corporation, then it may apply the “grandfather rule.” *Narra Nickel Mining and Development Corp., et al. v. Redmont Consolidated Mines*, *G.R. No. 195580, April 21, 2014*.

March 2014 Philippine Supreme Court Decisions on Commercial Law

Posted on [April 4, 2014](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) •

Here are select March 2104 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; piercing the corporate veil. It has long been settled that the law vests a corporation with a personality distinct and separate from its stockholders or members. In the same vein, a corporation, by legal fiction and convenience, is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it. Nonetheless, the shield is not at all times impenetrable and cannot be extended to a point beyond its reason and policy. Circumstances might deny a claim for corporate personality, under the “doctrine of piercing the veil of corporate fiction.”

Piercing the veil of corporate fiction is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.

In the present case, we see an indubitable link between CBB’s closure and

Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business. *Eric Godfrey Stanley Livesey v. Binswanger Philippines, Inc. and Keith Elliot*, *G.R. No. 177493, March 19, 2014*.

Insurance contracts; health care agreement. For purposes of determining the liability of a health care provider to its members, jurisprudence holds that a health care agreement is in the nature of non-life insurance, which is primarily a contract of indemnity. Once the member incurs hospital, medical or any other expense arising from sickness, injury or other stipulated contingent, the health care provider must pay for the same to the extent agreed upon under the contract. *Fortune Medicare, Inc. v. David Robert U. Amorin*, *G.R. No. 195872, March 12, 2014*.

Insurance contracts; interpretation. In *Philamcare Health Systems, Inc. v. CA*, we ruled that a health care agreement is in the nature of a non-life insurance. It is an established rule in insurance contracts that when their terms contain limitations on liability, they should be construed strictly against the insurer. These are contracts of adhesion the terms of which must be interpreted and enforced stringently against the insurer which prepared the contract. This doctrine is equally applicable to health care agreements. *Fortune Medicare, Inc. v. David Robert U. Amorin*, *G.R. No. 195872, March 12, 2014*.

February 2014 Philippine Supreme Court Decisions on Commercial Law

Posted on *March 5, 2014* by *Hector M. de Leon Jr.* • Posted in *Commercial Law*,

Philippines - Cases, Philippines - Law •

Here are select February 2014 rulings of the Supreme Court of the Philippines on commercial law:

Corporate officer; intra-corporate dispute. There are two circumstances which must concur in order for an individual to be considered a corporate officer, as against an ordinary employee or officer, namely: (1) the creation of the position is under the corporation's charter or by-laws; and (2) the election of the officer is by the directors or stockholders. It is only when the officer claiming to have been illegally dismissed is classified as such corporate officer that the issue is deemed an intra-corporate dispute which falls within the jurisdiction of the trial courts. *Raul C. Cosare v. Broadcom Asia, Inc., et al.*, *G.R. No. 201298, February 5, 2014.*

Intra-corporate dispute; illegal dismissal case. As regards the issue of jurisdiction, the Court has determined that contrary to the ruling of the Court of Appeals (CA), it is the labor arbiter (LA), and not the regular courts, which has the original jurisdiction over the subject controversy. An intra-corporate controversy, which falls within the jurisdiction of regular courts, has been regarded in its broad sense to pertain to disputes that involve any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the state in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates, themselves.

Settled jurisprudence, however, qualifies that when the dispute involves a charge of illegal dismissal, the action may fall under the jurisdiction of the LAs upon whose jurisdiction, as a rule, falls termination disputes and claims for damages arising from employer-employee relations as provided in Article 217 of the Labor Code. Consistent with this jurisprudence, the mere fact that Cosare was a stockholder and an officer of Broadcomat the time the subject controversy developed failed to necessarily make the case an intra-corporate dispute.

In *Matling Industrial and Commercial Corporation v. Coros*, the Court distinguished between a "regular employee" and a "corporate officer" for purposes of establishing the true nature of a dispute or complaint for illegal

dismissal and determining which body has jurisdiction over it. Succinctly, it was explained that “[t]he determination of whether the dismissed officer was a regular employee or corporate officer unravels the conundrum” of whether a complaint for illegal dismissal is cognizable by the LA or by the RTC. “In case of the regular employee, the LA has jurisdiction; otherwise, the RTC exercises the legal authority to adjudicate.

Applying the foregoing to the present case, the LA had the original jurisdiction over the complaint for illegal dismissal because Cosare, although an officer of Broadcom for being its AVP for Sales, was not a “corporate officer” as the term is defined by law. *Raul C. Cosare v. Broadcom Asia, Inc., et al.*, *G.R. No. 201298, February 5, 2014*.

January 2014 Philippine Supreme Court Decisions on Commercial Law

Posted on *February 12, 2014* by *Hector M. de Leon Jr.* • Posted in *Commercial Law* •

Here are select January 2014 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; liability of corporate officers. As a general rule, the officer cannot be held personally liable with the corporation, whether civilly or otherwise, for the consequences his acts, if acted for and in behalf of the corporation, within the scope of his authority and in good faith. *Rodolfo Laborte, et al. v. Pagsanjan Tourism Consumers’ Cooperative, et al.*, *G.R. No. 183860, January 15, 2014*.

Banks; degree of diligence. Being a banking institution, DBP owed it to Guariña Corporation to exercise the highest degree of diligence, as well as to observe the high standards of integrity and performance in all its transactions because its business was imbued with public interest. The high standards were also necessary to ensure public confidence in the banking system. *Development Bank of the Philippines (DBP) v. Guariña Agricultural and Realty Development Corporation*, *G.R. No. 160758, January 15, 2014*.

December 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on [January 10, 2014](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) •

Here are select December 2013 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; doctrine of apparent authority. The doctrine of apparent authority provides that a corporation will be estopped from denying the agent's authority if it knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, and it holds him out to the public as possessing the power to do those acts. The doctrine of apparent authority does not apply if the principal did not commit any acts or conduct which a third party knew and relied upon in good faith as a result of the exercise of reasonable prudence. Moreover, the agent's acts or conduct must have produced a change of position to the third party's detriment. *Advance Paper Corporation and George Haw, in his capacity as President of Advance Paper Corporation v. Arma Traders Corporation, Manuel Ting, et al.*, [G.R. No. 176897, December 11, 2013](#).

Corporations; doctrine of apparent authority . In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, we ruled that the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus "clothing" its president with the power to bind the corporation. "Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation."

In the absence of a charter or bylaw provision to the contrary, the president

is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. *Advance Paper Corporation and George Haw, in his capacity as President of Advance Paper Corporation v. Arma Traders Corporation, Manuel Ting, et al.*, **G.R. No. 176897, December 11, 2013.**

September 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on **October 4, 2013** by **Hector M. de Leon Jr.** • Posted in **Commercial Law, Philippines - Cases, Philippines - Law** • Tagged **check, insurance, sale** •

Here are select September 2013 rulings of the Supreme Court of the Philippines on commercial law:

Checks; negotiable instruments. The check delivered to was made payable to cash. Under the Negotiable Instruments Law, this type of check was payable to the bearer and could be negotiated by mere delivery without the need of an indorsement. *People of the Philippines v. Gilbert Reyes Wagas*, **G.R. No. 157943, September 4, 2013.**

Insurance contracts; contract of adhesion. A contract of insurance is a contract of adhesion. When the terms of the insurance contract contain limitations on liability, courts should construe them in such a way as to preclude the insurer from non-compliance with his obligation. *Alpha Insurance and Surety Co. v. Arsenia Sonia Castor*, **G.R. No. 198174, September 2, 2013.**

Sale; subdivision lots. Presidential Decree No. 957 is a law that regulates the sale of subdivision lots and condominiums in view of the increasing number of incidents wherein “real estate subdivision owners, developers, operators, and/or sellers have reneged on their representations and obligations to provide and maintain properly” the basic requirements and amenities, as well as of reports of alarming magnitude of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles

free from liens and encumbrances.

Presidential Decree No. 957 authorizes the suspension and revocation of the registration and license of the real estate subdivision owners, developers, operators, and/or sellers in certain instances, as well as provides the procedure to be observed in such instances; it prescribes administrative fines and other penalties in case of violation of, or non-compliance with its provisions. *San Miguel Properties, Inc. v. Secretary of Justice, et al.*, **G.R. No. 166836, September 4, 2013.**

August 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on **September 4, 2013** by **Hector M. de Leon Jr.** • Posted in **Commercial Law, Philippines - Cases, Philippines - Law** • Tagged **banks, insurance, interest, receivership, trust receipts** •

Here are select August 2103 rulings of the Supreme Court of the Philippines on commercial law:

Insurance; prohibition against removal of property. Here, by the clear and express condition in the renewal policy, the removal of the insured property to any building or place required the consent of Malayan. Any transfer effected by the insured, without the insurer's consent, would free the latter from any liability.

Insurance; rescission. Considering that the original policy was renewed on an "as is basis," it follows that the renewal policy carried with it the same stipulations and limitations. The terms and conditions in the renewal policy provided, among others, that the location of the risk insured against is at the Sanyo factory in PEZA. The subject insured properties, however, were totally burned at the Pace Factory. Although it was also located in PEZA, Pace Factory was not the location stipulated in the renewal policy. There being an unconsented removal, the transfer was at PAP's own risk. Consequently, it must suffer the consequences of the fire. Thus, the Court agrees with the report of Cunningham Toplis Philippines, Inc., an

international loss adjuster which investigated the fire incident at the Pace Factory, which opined that “[g]iven that the location of risk covered under the policy is not the location affected, the policy will, therefore, not respond to this loss/claim.” It can also be said that with the transfer of the location of the subject properties, without notice and without Malayan’s consent, after the renewal of the policy, PAP clearly committed concealment, misrepresentation and a breach of a material warranty.

Accordingly, an insurer can exercise its right to rescind an insurance contract when the following conditions are present, to wit:

- 1) the policy limits the use or condition of the thing insured;
- 2) there is an alteration in said use or condition;
- 3) the alteration is without the consent of the insurer;
- 4) the alteration is made by means within the insured’s control; and
- 5) the alteration increases the risk of loss.

In the case at bench, all these circumstances are present. It was clearly established that the renewal policy stipulated that the insured properties were located at the Sanyo factory; that PAP removed the properties without the consent of Malayan; and that the alteration of the location increased the risk of loss. *Malayan Insurance Company, Inc. v. PAP co., Ltd. (Philippine Branch)*, **G.R. No. 200784, August 7, 2013**.

Interest; legal rate beginning July 1, 2013. The guidelines laid down in the case of Eastern Shipping Lines are accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, i.e., law, contracts, quasicontracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on “Damages” of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the 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. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty.

Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, **G.R. No. 189871, August 13, 2013.**

Receivership; power of Monetary Board. The Monetary Board (MB) may

forbid a bank from doing business and place it under receivership without prior notice and hearing.

It must be emphasized that R.A. No. 7653 is a later law and under said act, the power of the MB over banks, including rural banks, was increased and expanded. The Court, in several cases, upheld the power of the MB to take over banks without need for prior hearing. It is not necessary inasmuch as the law entrusts to the MB the appreciation and determination of whether any or all of the statutory grounds for the closure and receivership of the erring bank are present. The MB, under R.A. No. 7653, has been invested with more power of closure and placement of a bank under receivership for insolvency or illiquidity, or because the bank's continuance in business would probably result in the loss to depositors or creditors.

Accordingly, the MB can immediately implement its resolution prohibiting a banking institution to do business in the Philippines and, thereafter, appoint the PDIC as receiver. The procedure for the involuntary closure of a bank is summary and expeditious in nature. Such action of the MB shall be final and executory, but may be later subjected to a judicial scrutiny via a petition for certiorari to be filed by the stockholders of record of the bank representing a majority of the capital stock. Obviously, this procedure is designed to protect the interest of all concerned, that is, the depositors, creditors and stockholders, the bank itself and the general public. The protection afforded public interest warrants the exercise of a summary closure. *Alfeo D. Vivas, on his behalf and on behalf of the Shareholders or Eurocredit Community Bank v. The Monetary Board of the Bangko Sentral ng Pilipinas and the Philippine Deposit Insurance Corporation*, G.R. No. 191424, August 7, 2013.

Trust receipt transaction; definition. A trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (entregarla) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (devolvera) to the owner. *Hur Tin Yang v. People of the Philippines*, G.R. No. 195117, August 14, 2013.

Trust receipts. distinguished from loan. When both parties enter into an agreement knowing fully well that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Sec. 13 of PD 115 in relation to Art. 315, par. 1(b) of the RPC, as the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods. *Hur Tin Yang v. People of the Philippines*, [G.R. No. 195117, August 14, 2013](#).

July 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on [August 9, 2013](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law, Philippines - Cases, Philippines - Law](#) • Tagged [banks, common carrier](#) •

Here are select July 2013 rulings of the Supreme Court of the Philippines on commercial law:

Banks; outsourcing of functions. D.O. No. 10 is but a guide to determine what functions may be contracted out, subject to the rules and established jurisprudence on legitimate job contracting and prohibited labor only contracting.⁴¹ Even if the Court considers D.O. No. 10 only, BPI would still be within the bounds of D.O. No. 10 when it contracted out the subject functions. This is because the subject functions were not related or not integral to the main business or operation of the principal which is the lending of funds obtained in the form of deposits.⁴² From the very definition of “banks” as provided under the General Banking Law, it can easily be discerned that banks perform only two (2) main or basic functions – deposit and loan functions. Thus, cashiering, distribution and bookkeeping are but ancillary functions whose outsourcing is sanctioned under CBP Circular No. 1388 as well as D.O. No. 10. Even BPI itself recognizes that deposit and loan functions cannot be legally contracted out as they are directly related or integral to the main business or operation of banks. The CBP’s Manual of Regulations has even categorically stated and emphasized on the prohibition against outsourcing inherent banking functions, which refer to any contract

between the bank and a service provider for the latter to supply, or any act whereby the latter supplies, the manpower to service the deposit transactions of the former. *BPI Employees Union-Davao City-Fubu (BPIEU-Davao City-Fubu) v. Bank of the Philippine Islands (BPI), et al.*, **G.R. No. 174912, July 24, 2013**.

Carriage of Goods By the Sea; notice requirement. A letter of credit is a financial device developed by merchants as a convenient and relatively safe mode of dealing with sales of goods to satisfy the seemingly irreconcilable interests of a seller, who refuses to part with his goods before he is paid, and a buyer, who wants to have control of his goods before paying. However, letters of credit are employed by the parties desiring to enter into commercial transactions, not for the benefit of the issuing bank but mainly for the benefit of the parties to the original transaction,⁴⁵ in these cases, Nichimen Corporation as the seller and Universal Motors as the buyer. Hence, the latter, as the buyer of the Nissan CKD parts, should be regarded as the person entitled to delivery of the goods.

Accordingly, for purposes of reckoning when notice of loss or damage should be given to the carrier or its agent, the date of delivery to Universal Motors is controlling. *Asian Terminals, Inc. v. Philam Insurance Co., Inc. (now Chartis Philippines Insurance Inc.)/ Philam Insurance Co., Inc. (now Chartis Philippines Insurance Inc.) v. Westwind Shipping Corporation and Asian Terminals, Inc./ Westwind Shipping Corporation v. Philam Insurance Co., Inc. and Asian Terminals, Inc.*, **G.R. Nos. 181163/181262/181319, July 24, 2013**.

July 2013 Philippine Supreme Court Decisions on Criminal Law and Procedure

Law •

Here are select July 2013 rulings of the Supreme Court of the Philippines on criminal law and procedure:

1. REVISED PENAL CODE

Bigamy; elements. The elements of the crime of bigamy are: (1) the offender has been legally married; (2) the marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (3) that he contracts a second or subsequent marriage; and (4) that the second or subsequent marriage has all the essential requisites for validity. *James Walter P. Capili v. People of the Philippines*, *G.R. No. 183805, July 3, 2013*.

Bigamy; bigamy committed even if second marriage is subsequently declared void. In the present case, it appears that all the elements of the crime of bigamy were present when the Information was filed on June 28, 2004. It is undisputed that a second marriage between petitioner and private respondent was contracted on December 8, 1999, during the subsistence of a valid first marriage. Notably, the Regional Trial Court of Antipolo City itself declared the bigamous nature of the second marriage between petitioner and private respondent. Thus, the subsequent judicial declaration of nullity of the second marriage for being bigamous does not bar the prosecution of petitioner for the crime of bigamy. Jurisprudence is replete with cases holding that the accused may still be charged with the crime of bigamy, even if there is a subsequent declaration of the nullity of the second marriage, so long as the first marriage was still subsisting when the second marriage was celebrated. Finally, it is a settled rule that the criminal culpability attaches to the offender upon the commission of the offense, and from that instant, liability appends to him until extinguished as provided by law. It is clear then that the crime of bigamy was committed by petitioner from the time he contracted the second marriage with private respondent. Thus, the finality of the judicial declaration of nullity of petitioner's second marriage does not impede the filing of a criminal charge for bigamy against him. *James Walter P. Capili v. People of the Philippines*, *G.R. No. 183805, July 3, 2013*.

Estafa under Article 315, par. 1(b); elements. The crime charged was estafa under Article 315, paragraph 1(b) of the Revised Penal Code. Its elements are as follows: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or a denial of the receipt thereof; (3) that the misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender. Paragraph 1(b) provides liability for estafa committed by misappropriating or converting to the prejudice of another money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though that obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. *Fernando M. Espino v. People of the Philippines, G.R. No. 188217, July 3, 2013.*

Estafa under Article 315, par. 1(b); elements. This at least, is very clearly shown by the factual allegations of the Informations. First, personal property in the form of the checks was received by the offender in trust or on commission, with the duty to deliver it to Mr. Banaag. Even though the accused misrepresented the existence of a deliverable commission, it is a fact that he was obliged by KN Inc., the injured party, to deliver the check and account for it. Second, the accused rediscounted the checks to his aunt-in-law. Third, this rediscounting resulted in the wrongful encashment of the checks by someone who was not the payee and therefore not lawfully authorized to do so. Finally, this wrongful encashment prejudiced KN Inc., which lost the proceeds of the check. When accounting was demanded from the accused, he could not conjure any justifiable excuse. His series of acts precisely constitutes estafa under Article 315, paragraph 1 (b). *Fernando M. Espino v. People of the Philippines, G.R. No. 188217, July 3, 2013.*

Malversation of public funds; elements. The elements of malversation of public funds under Article 217 of the Revised Penal Code are: 1. that the offender is a public officer; 2. that he had the custody or control of funds or property by reason of the duties of his office; 3. that those funds or property were public funds or property for which he was accountable; and 4. that he appropriated, took, misappropriated or consented or, through abandonment

or negligence, permitted another person to take them. *Major Joel G. Cantos v. People of the Philippines*, *G.R. No. 184908, July 3, 2013*.

Malversation of public funds; presumption that missing fund or property have been converted to personal uses. The Sandiganbayan did not commit a reversible error in its decision convicting petitioner of malversation of public funds. The Supreme Court (SC) noted that all the above-mentioned elements are here present. Petitioner was a public officer occupying the position of commanding Officer of the 22nd FSU of the AFP Finance Center, PSG. By reason of his position, he was tasked to supervise the disbursement of the Special Duty Allowances and other Maintenance Operating Funds of the PSG personnel, which are indubitably public funds for which he was accountable. Petitioner in fact admitted in his testimony that he had complete control and custody of these funds. As to the element of misappropriation, indeed petitioner failed to rebut the legal presumption that he had misappropriated the fees to his personal use. In convicting petitioner, the Sandiganbayan cites the presumption in Article 217 of the Revised Penal Code, as amended, which states that the failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, is prima facie evidence that he has put such missing fund or property to personal uses. The presumption is, of course, rebuttable. Accordingly, if petitioner is able to present adequate evidence that can nullify any likelihood that he put the funds or property to personal use, then that presumption would be at an end and the prima facie case is effectively negated. In this case, however, petitioner failed to overcome this prima facie evidence of guilt. He failed to explain the missing funds in his account and to reconstitute the amount upon demand. His claim that the money was taken by robbery or theft is self-serving and has not been supported by evidence. In fact, petitioner even tried to unscrew the safety vault to make it appear that the money was forcibly taken. Moreover, petitioner's explanation that there is a possibility that the money was taken by another is belied by the fact that there was no sign that the steel cabinet was forcibly opened. The SC also took note of the fact that it was only petitioner who had the keys to the steel cabinet. Thus, the explanation set forth by petitioner is unsatisfactory and does not overcome the presumption that he has put the missing funds to personal use. *Major Joel G. Cantos v. People of the Philippines*, *G.R. No. 184908, July 3, 2013*.

Self-defense; elements; unlawful aggression. Accused-appellant Vergara

claims self-defense. The following are the essential elements of self-defense: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. A person who invokes self-defense has the burden of proof. He must prove all the elements of self-defense. However, the most important of all the elements is unlawful aggression on the part of the victim. Unlawful aggression must be proved first in order for self-defense to be successfully pleaded, whether complete or incomplete. Unlawful aggression is an actual physical assault, or at least a threat to inflict real imminent injury, upon a person. *People of the Philippines v. Garry Vergara y Oriel and Joseph Incencio y Paulino*, *G.R. No. 177763, July 3, 2013*.

Self-defense; elements; unlawful aggression. In the present case, the element of unlawful aggression is absent. By the testimonies of all the witnesses, the victim's actuations did not constitute unlawful aggression to warrant the use of force employed by accused-appellant Vergara. The records reveal that the victim had been walking home albeit drunk when he passed by accused-appellants. However, there is no indication of any untoward action from him to warrant the treatment that he had by accused-appellant Vergara's hands. As succinctly stated by the trial court: "The victim was just walking, he was neither uttering invectives words nor provoking the appellants into a fight. Appellant Vergara was the unlawful aggressor. He was the one who put the life of the victim in actual peril. This can be inferred from the wounds sustained by the victim." It is thus clear that there being no unlawful aggression on the part of the victim, the act of accused-appellant Vergara of taking a knife and stabbing the victim was not made in lawful self-defense. *People of the Philippines v. Garry Vergara y Oriel and Joseph Incencio y Paulino*, *G.R. No. 177763, July 3, 2013*.

Treachery. The Supreme Court ruled that treachery was correctly appreciated by the lower courts. A treacherous attack is one in which the victim was not afforded any opportunity to defend himself or resist the attack. The existence of treachery is not solely determined by the type of weapon used. If it appears that the weapon was deliberately chosen to insure the execution of the crime, and to render the victim defenseless, then treachery may be properly appreciated against the accused. Here, the Condes were unarmed when they were shot by appellant. The use of a 12-gauge shotgun against two unarmed victims is undoubtedly treacherous, as it

denies the victims the chance to fend off the offender. *People of the Philippines v. Regie Labia*, *G.R. No. 202867, July 15, 2013*.

Treachery. The Supreme Court found that the acts of accused-appellant Vergara constituted treachery qualifying the crime committed to murder. Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make. Here, accused-appellant Vergara after exchanging words with the victim, threw his arm around the victim's shoulder and proceeded to stab him. The victim was totally unaware of the evil that would befall him. The number and severity of the wounds received by the victim indicated that he was rendered immobile and without any real opportunity to defend himself other than feebly raising his arm to ward off the attack. *People of the Philippines v. Garry Vergara y Oriel and Joseph Incencio y Paulino*, *G.R. No. 177763, July 3, 2013*.

Treachery. The killing committed in this case is neither parricide nor infanticide and the same was attended with treachery. There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. In this case, treachery is evident from the fact that the victim could not have been aware of the imminent peril to his life. He was unprepared for the sudden, unexpected and unprovoked attack on his person when appellant stabbed his back with a knife then swiftly run away. Clearly, appellant's execution of the killing left the victim with no opportunity to defend himself or retaliate. *People of the Philippines v. Joemari Jalbonian alias "Budo"*, *G.R. No. 180281, July 1, 2013*.

2. SPECIAL PENAL LAWS

Anti-Graft and Corrupt Practices Act; conspiracy to defraud the Government. As found by the Sandiganbayan, petitioners' acts not only

show gross negligence amounting to bad faith, but, when taken together, also show that there was conspiracy in their wilful noncompliance with their duties in order to defraud the government. In order to establish the existence of conspiracy, unity of purpose and unity in the execution of an unlawful objective by the accused must be proven. Direct proof is not essential to show conspiracy. It is enough that there be proof that two or more persons acted towards the accomplishment of a common unlawful objective through a chain of circumstances, even if there was no actual meeting among them. As found by the Supreme Court, a cash advance request cannot be approved and disbursed without passing through several offices, including those of petitioners. It is outrageous that they would have us believe that they were not in conspiracy when over hundreds of vouchers were signed and approved by them in a course of 30 months, without their noticing irregularities therein that should have prompted them to refuse to sign the vouchers. Clearly, they were in cahoots in granting the cash advances to Gonzales. By these acts, petitioners defrauded the government of such a large sum of money that should not have been disbursed in the first place, had they been circumspect in performing their functions. Not only were petitioners unified in defrauding the government, but they were also unified in not reporting the negligence of their cohorts because of their own negligence. Cesa himself admitted knowing that Gonzales had unliquidated cash advances, yet he signed the vouchers. He also failed to inform the other officials that they should not sign the vouchers and tolerated their negligence when they affixed their signatures thereto. Petitioners, through their admissions before the Sandiganbayan, all knew that there were irregularities in the vouchers; still they failed to correct one another, because they themselves signed the vouchers despite the glaring irregularities therein. *Benilda N. Bacasmas v. Sandiganbayan and People of the Philippines/ Alan C. Gaviola v. People of the Philippines/ Eustaquio B. Cesa v. People of the Philippines*, *G.R. Nos. 189343/ 189369/ 189553, July 10, 2013*.

Anti-Graft and Corrupt Practices Act; undue injury to the government; elements. The essential elements of the crime defined in section 3(e) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, are: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his

functions. There is no question regarding the presence of the first requisite considering that at the time the subject appointments were made, both petitioners were faculty members and holding administrative positions in UP Diliman. What petitioners dispute is the existence of the second and third requisites. In Criminal Case No. 25465, the information charged that petitioners willfully, unlawfully and criminally gave unwarranted benefits to Dr. Posadas in appointing him as TMC Project Director, in violation of the prohibition against multiple positions and the rule on non-retroactivity of appointments, thereby causing undue injury to the Government. *Roger R. Posadas and Dr. Rolando P. Dayco v. Sandiganbayan and People of the Philippines*, *G.R. Nos. 168951 & 169000, July 17, 2013*.

Anti-Graft and Corrupt Practices Act; undue injury to the government; modes of commission. In *Cabrera v. Sandiganbayan*, the Supreme Court (SC) explained that there are two (2) ways by which a public official violates Section 3(e) of R.A. No. 3019 in the performance of his functions, namely: (a) by causing undue injury to any party, including the Government; or (b) by giving any private party any unwarranted benefits, advantage or preference. The accused may be charged under either mode or under both. The use of the disjunctive term “or” connotes that either act qualifies as a violation of Section 3(e) of R.A. No. 3019. Here, petitioners were charged with committing the offense under both modes. Upon the entire evidence on record, the Sandiganbayan was convinced that petitioners were guilty of causing undue injury to the Government. The SC sustained the decision of the Sandiganbayan holding petitioners liable for causing undue injury to the Government in appointing Dr. Posadas as TMC Project Director with evident bad faith. In this case, that petitioners acted in evident bad faith was duly established by the evidence. It was recalled that the Memorandum of Agreement was executed on September 18, 1995 and became effective upon the signature of the parties. Between that date and the China trip scheduled in the first week of November (the invitation was dated July 30, 1995), Dr. Posadas could have already appointed the Project Director and Consultant as indeed the retroactive appointment was even justified by them because supposedly “project activities” have already started by September 18, 1995. And yet he waited until the China trip, so that in his absence, the designated OIC Chancellor, Dr. Dayco, would be the one to issue the appointment. Apparently, Dr. Posadas’ appointment by Dr. Dayco in an OIC capacity was preconceived. *Dr. Roger R. Posadas and Dr. Rolando P. Dayco v. Sandiganbayan and People of the Philippines*, *G.R. Nos. 168951 & 169000*,

July 17, 2013.

Dangerous Drugs Act; chain of custody rule; proof of chain of custody. The prosecution carried the burden of establishing the chain of custody of the dangerous drugs that the police allegedly seized from the accused on the night of June 16, 2004. It should establish the following links in that chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. *People of the Philippines v. Romeo Oniza y Ong and Mercy Oniza y Cabarle*, *G.R. No. 202709, July 3, 2013.*

Dangerous Drugs Act; prosecution has burden of proving justifiable cause for non-compliance with chain of custody rule. Still, jurisprudence has established a rare exception with respect to the first required link—immediate seizure and marking of the seized items in the presence of the accused and others —namely, that (a) there must be justifiable grounds for non-compliance with the procedures; and (b) the integrity and evidentiary value of the seized items are properly preserved. Here, the prosecution’s own evidence, as recited by the lower courts, is that the police officers did not make a physical inventory of the seized drugs nor did they take a picture of the same in the presence of the accused, someone in the media, a Department of Justice (DOJ) representative, and any elected public official. All that Officer Albarico could say is that his companion, Officer Jiro, marked the plastic sachets with the initials of the accused already at the police station and then turned over the same to the desk officer who prepared the Request for Laboratory Examination. Yet, the police officers did not bother to offer any sort of reason or justification for their failure to make an inventory and take pictures of the drugs immediately after their seizure in the presence of the accused and the other persons designated by the law. Both the lower courts misapprehended the significance of such omission. It is imperative for the prosecution to establish a justifiable cause for non-compliance with the procedural requirements set by law. *People of the Philippines v. Romeo Oniza y Ong and Mercy Oniza y Cabarle*, *G.R. No. 202709, July 3, 2013.*

Dangerous Drugs Act; chain of custody rule; safeguard against police abuse and extortion. The procedures outlined in Section 21 of R.A. 9165 are not merely empty formalities—these are safeguards against abuse, the most notorious of which is its use as a tool for extortion. The accused were therefore absolved of the charges against them because of the police officers' outright failure without any justification to abide by the law governing the conduct of seizure operations involving dangerous drugs. *People of the Philippines v. Romeo Oniza y Ong and Mercy Oniza y Cabarle*, *G.R. No. 202709, July 3, 2013*.

The Ombudsman; the right of the Ombudsman to intervene in a case involving the enforcement of its decisions even though it is not itself a party to the case. Petitioner in this case, the Office of the Ombudsman, prayed that the Resolution of the Court of Appeals (CA) which denied its Motion for Intervention be reversed and set aside. The Supreme Court held that the assailed Resolution is patently erroneous, and that granting the Office of the Ombudsman the opportunity to be heard in the case pending before the lower court is of primordial importance even though it (the Ombudsman) is not itself a party to the case. Since its power to ensure the enforcement of its decision was in danger of being impaired in the case before the lower court, the Office of the Ombudsman had a clear legal interest in defending its right to have its judgment carried out. The CA patently erred in denying the Office of the Ombudsman's motion for intervention. *Office of the Ombudsman v. Ernesto M. De Chavez, et al*, *G.R. No. 172206, July 3, 2013*.

3. CRIMINAL PROCEDURE

Acquittal in criminal case; private offended party barred from pursuing a civil case based on the delict only if the judgment of acquittal explicitly declares that the act or omission from which the civil liability may arise did not exist. Section 2, Rule 111 of the Rules of Court provides that an acquittal in a criminal case does not bar the private offended party from pursuing a subsequent civil case based on the delict, unless the judgment of acquittal explicitly declares that the act or omission from which the civil liability may arise did not exist. Based on the violation of petitioners' right to speedy disposition of cases as was discussed here, the present case stands to be dismissed even before either the prosecution or the defense has been given the chance to present any evidence. Thus, the Supreme Court is unable to make a definite pronouncement as to whether petitioners indeed committed

the acts or omissions from which any civil liability on their part might arise as prescribed under Section 2, Rule 120 of the Rules of Court. Consequently, absent this pronouncement, the Province is not precluded from instituting a subsequent civil case based on the delict if only to recover the amount of P20,000,000.00 in public funds attributable to petitioners' alleged malfeasance. *Rafael L. Coscolluela v. Sandiganbayan, et al./Edwin N. Nacionales, et al v. Sandiganbayan, et al*, *G.R. No. 191411/G.R. No. 191871, July 15, 2013*.

Ombudsman; preliminary investigations of Ombudsman subject to petitioners' right to speedy disposition of cases under the Constitution. A person's right to the speedy disposition of his case is guaranteed under section 16, Article III of the 1987 Philippine Constitution (Constitution) which provides: "All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This constitutional right is not limited to the accused in criminal proceedings but extends to all parties in all cases, be it civil or administrative in nature, as well as all proceedings, either judicial or quasi-judicial. In this accord, any party to a case may demand expeditious action to all officials who are tasked with the administration of justice. *Rafael L. Coscolluela v. Sandiganbayan, et al./Edwin N. Nacionales, et al v. Sandiganbayan, et al*, *G.R. No. 191411/G.R. No. 191871, July 15, 2013*.

Ombudsman; preliminary investigations of Ombudsman subject to petitioners' right to speedy disposition of cases under the Constitution. The right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient. Jurisprudence dictates that the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or even without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. Hence, in the determination of whether the defendant has been denied his right to a speedy disposition of a case, the following factors may be considered and balanced: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay. *Rafael L. Coscolluela v. Sandiganbayan, et al./Edwin N. Nacionales, et al v. Sandiganbayan, et al*, *G.R. No. 191411/G.R. No. 191871, July 15, 2013*.

Ombudsman; the Ombudsman's failure to resolve cases under preliminary investigation for eight years held to be unjustifiable and violated right of petitioners to a speedy disposition of their cases under the Constitution. The Supreme Court held that its prior decisions regarding the legal effects of a violation of the constitutional right of the accused to a speedy trial apply equally when a person's constitutional right to the speedy disposition of his case is violated. Since the proceedings relative to the preliminary investigation of the case against petitioners were terminated by the Ombudsman only after almost eight (8) years after the filing of the complaint, the Supreme Court found the delay in the Ombudsman's resolution of the case to be unjustified. The Supreme Court held: "[I]n view of the unjustified length of time miring the Office of the Ombudsman's resolution of the case as well as the concomitant prejudice that the delay in this case has caused, it is undeniable that petitioners' constitutional right to due process and speedy disposition of cases had been violated. As the institutional vanguard against corruption and bureaucracy, the Office of the Ombudsman should create a system of accountability in order to ensure that cases before it are resolved with reasonable dispatch and to equally expose those who are responsible for its delays, as it ought to determine in this case. Corollarily, for the [Sandiganbayan]'s patent and utter disregard of the existing laws and jurisprudence surrounding the matter, the Court finds that it gravely abused its discretion when it denied the quashal of the Information [against petitioners]. Perforce, the assailed resolutions must be set aside and the criminal case against petitioners be dismissed. . . . [T]he foregoing pronouncement should, as matter of course, result in the acquittal of the petitioners." *Rafael L. Coscolluela v. Sandiganbayan, et al./Edwin N. Nacionales, et al v. Sandiganbayan, et al*, *G.R. No. 191411/G.R. No. 191871*, July 15, 2013.

Withdrawal of Information filed in court; duty of a trial court to make an independent evaluation of the merits of a prosecutor's motion to withdraw an information and to indicate the bases of its conclusion in its order. When a trial court is confronted with "a motion to dismiss a case or to withdraw an Information," it is its "bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion." Here, the December 9, 2005 Order of the Regional Trial Court (RTC) denying the Motion to Withdraw Information failed to state cogent reasons behind the said court's refusal to grant the withdrawal of the Information. The RTC simply declared that it was denying the motion

for being “unmeritorious,” without further elaborating on the bases of its conclusion. Likewise, in its March 10, 2006 Order reiterating its denial of respondent’s Motion for Reconsideration, the RTC merely stated that the 5% interest is a matter of defense. There was never any discussion as to how it reached such a conclusion, or how the Department of Justice (DOJ) findings impacted on its ruling. Notably, the RTC in both Orders perfunctorily denied the motion to withdraw as it did not (1) positively state that the evidence against Purita is sufficient to make out a case for estafa; (2) include a discussion on the merits of the case; (3) assess if the DOJ’s conclusion is supported by evidence; (4) look at the basis of the DOJ’s recommendation; (5) embody its assessment in the said Orders; and, (6) state the reasons in denying the motion to withdraw information.” Hence, it is plain from the said Orders that the RTC failed to perform its bounden-duty to make an independent evaluation of the merits of the case. The Supreme Court thus directed the trial court to make an independent and thorough evaluation of the merits of the case. It must clearly state whether the evidence presented is sufficient to make out a case for estafa and whether the DOJ’s conclusion is supported by evidence. *Carolina B. Jose v. Purita Suarez*, *G.R. No. 176111*, *July 17, 2013*.

June 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on [July 8, 2013](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#), [derivative suit](#), [insurance](#), [trademark](#) •

Here are select June 2013 rulings of the Supreme Court of the Philippines on commercial law:

Corporation; derivative suit. A derivative suit is an action brought by a stockholder

on behalf of the corporation to enforce corporate rights against the corporation’s directors, officers or other insiders. Under Sections 23 and 36 of the Corporation Code, the directors or officers, as provided under the by-laws, have the right to decide whether or not a corporation should sue. Since these directors or officers will never be willing to sue themselves, or impugn

their wrongful or fraudulent decisions, stockholders are permitted by law to bring an action in the name of the corporation to hold these directors and officers accountable. In derivative suits, the real party in interest is the corporation, while the stockholder is a mere nominal party. *Juanito Ang, for and in behalf of Sunrise Marketing (Bacolod), Inc. v. Sps. Roberto and Rachel Ang*, G.R. No. 201675, June 19, 2013.

Corporation; shares of stock. In a sale of shares of stock, physical delivery of a stock certificate is one of the essential requisites for the transfer of ownership of the stocks purchased.

Here, FEGDI clearly failed to deliver the stock certificates, representing the shares of stock purchased by Vertex, within a reasonable time from the point the shares should have been delivered. This was a substantial breach of their contract that entitles Vertex the right to rescind the sale under Article 1191 of the Civil Code. It is not entirely correct to say that a sale had already been consummated as Vertex already enjoyed the rights a shareholder can exercise. The enjoyment of these rights cannot suffice where the law, by its express terms, requires a specific form to transfer ownership. *Fil-Estate Gold and Development, Inc., et al. v. Vertex Sales and Trading, Inc.*, G.R. No. 202079, June 10, 2013.

Insurance; collateral source rule. As part of American personal injury law, the collateral source rule was originally applied to tort cases wherein the defendant is prevented from benefiting from the plaintiff's receipt of money from other sources. Under this rule, if an injured person receives compensation for his injuries from a source wholly independent of the tortfeasor, the payment should not be deducted from the damages which he would otherwise collect from the tortfeasor. In a recent Decision by the Illinois Supreme Court, the rule has been described as "an established exception to the general rule that damages in negligence actions must be compensatory." The Court went on to explain that although the rule appears to allow a double recovery, the collateral source will have a lien or subrogation right to prevent such a double recovery.

The collateral source rule applies in order to place the responsibility for

losses on the party causing them. Its application is justified so that “the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons.” Thus, it finds no application to cases involving no-fault insurances under which the insured is indemnified for losses by insurance companies, regardless of who was at fault in the incident generating the losses. Here, it is clear that MMPC is a no-fault insurer. Hence, it cannot be obliged to pay the hospitalization expenses of the dependents of its employees which had already been paid by separate health insurance providers of said dependents. *Mitsubishi Motors Philippines Salaried Employees Union v. Mitsubishi Motors Philippines Corporation*, G.R. No. 175773, June 17, 2013.

Trademarks. Under the Paris Convention, the Philippines is obligated to assure nationals of the signatory-countries that they are afforded an effective protection against violation of their intellectual property rights in the Philippines in the same way that their own countries are obligated to accord similar protection to Philippine nationals. “Thus, under Philippine law, a trade name of a national of a State that is a party to the Paris Convention, whether or not the trade name forms part of a trademark, is protected “without the obligation of filing or registration.””

The present law on trademarks, Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, as amended, has already dispensed with the requirement of prior actual use at the time of registration. Thus, there is more reason to allow the registration of the subject mark under the name of Cointreau as its true and lawful owner. *Ecole De Cuisine Manille (Cordon Bleu of the Philippines), Inc. v. Renaud Cointreau & CIE and Le Condron Bleu Int’l., B.V.*, **G.R. No. 185830, June 5, 2013.**

Dissension in the Court: April 2013

Posted on **May 6, 2013** by **Rafael L. Encarnacion** • Posted in **Commercial Law, Constitutional Law, Philippines - Cases** •

The 1987 Constitution allows only one (1) member of a bicameral Congress to sit in the Judicial and Bar Council (JBC). This, according to the Supreme

Court in a majority decision penned by J. Mendoza and promulgated last April 16, 2013, was the intention of the framers of the Constitution who conceived of the JBC as an independent body representative of all the stakeholders in the judicial appointment process to recommend nominees to the President in order to rid such process of partisan political activities, and carefully worded Section 8, Article VIII of the 1987 Constitution in this wise:

Section 8. (1) A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and **a representative of the Congress as ex officio Members**, a representative of the Integrated Bar, a professor of law, retired Member of the Supreme Court, and a representative of the private sector.

The majority cannot accede to the argument of respondents that allowing only one representative from Congress in the JBC would lead to absurdity considering its bicameral nature, and that the failure of the framers to make the proper textual adjustment where there was a shift from unilateralism to bicameralism was a plain oversight. According to the majority, every language in the Constitution must be taken to have been deliberately chosen and that in opting to use the singular letter “a” to describe “representative of Congress,” the Filipino people through the framers intended that Congress be entitled to only one (1) seat in the JBC. There could not have been any plain oversight in the wordings of the provision since the other provisions of the 1987 Constitution were amended accordingly with the shift to a bicameral legislative body (e.g., Sections 4, 8 and 18 of Article VII where corresponding adjustments were made as to how a matter would be handled and voted upon by the two Houses of Congress), and this Court has no power to add another member by judicial construction.

According to the majority, it is clear that the framers were not keen on adjusting the provision on congressional representation in the JBC because (i) it was not in the exercise of its primary function to legislate, considering that the JBC was created to support the executive power to appoint and Congress, as one whole body, was merely assigned a contributory non-

legislative function, and (ii) there was no need to recognize the dichotomy of each House and to consider the interplay between the two Houses in their participation in the JBC because there is no interaction required between these two Houses in the screening and nomination of judicial officers. Thus, in providing for the membership of the JBC, the framers simply gave recognition to the Legislature, not because it was in the interest of a certain constituency, but in reverence to it as a major branch of government. And the argument that a senator cannot represent a member of the House of Representatives in the JBC and vice versa is misplaced because any member of Congress is constitutionally empowered to represent the entire Congress.

The majority went on to cite various authorities who, having perused the records of the Constitutional Commission, are of the view that “to allow Congress to have two representatives with one vote each is to negate the principle of equality among the three branches of government,” “the interpretation of two votes for Congress would give Congress more influence in the appointment of judges and would also increase the number of JBC members to eight, which could lead to a voting deadlock and is a clear violation of the seven enumerated members in the Constitution,” and “no parallelism can be drawn between the representative of Congress in the JBC and the exercise by Congress of its legislative and constituent powers under the Constitution – while the latter justifies the separateness of the two Houses as they relate inter se, no such dichotomy need be made when Congress interacts with the other two co-equal branches of government.”

In his dissenting opinion, J. Abad, joined by J. del Castillo, voted to grant respondents’ motion for reconsideration on the basis that the framers of the 1987 Constitution did not intend to limit representation of a bicameral Congress to only one member since the two Houses are still separate and distinct from each other and that neither House can by itself claim to represent the Congress. While Section 8(1), Article VIII provides for just “a representative of the Congress,” it also provides that such representation is “ex officio” or “by virtue of one’s office” and there are actually two persons in Congress – the Chairperson of the Senate Justice Committee and the Chairperson of the House of Representatives Justice Committee – who hold separate offices with the attached function of sitting in the JBC. Adhering to the majority’s literal translation of Section 8(1) would mean no representative from Congress will qualify as “ex officio” member of the JBC and would deny Congress the representation the framers intended it to

have. According to this dissenter, Fr. Joaquin Bernas, a member of the Constitutional Commission, himself admitted that the committee charged with making adjustments in the previously passed provisions covering the JBC, failed to consider the impact of a changed character of the Legislature on the inclusion of “a representative of the Congress” in the membership of the JBC.

In his separate dissenting opinion, J. Leonen agrees with J. Abad that limiting our interpretation only from the preposition “a” undermines the concept of a bicameral congress implied in all other 114 places in the Constitution that uses the word “Congress.” On the other hand, there is no compelling reason why we should blind ourselves to the meaning of “representative of Congress” and “ex officio” and to limit representation of a bicameral Congress to only one.

First, the provision did not provide for a number of members to the JBC, unlike the provisions creating many other bodies in the Constitution, and there does not have to be an odd number of members in the JBC since the decision made there is not a dichotomous one, i.e., a yes or a no, where a tie-breaker will be necessary, but rather one where the shortlisted nominees are decided by a plurality of votes. Second, Congress discharges its function to check and balance the power of both the Judiciary and the Executive in the JBC; thus, its representative has to consult with Congress as a whole. Since neither a Senator or a Member of the House of Representatives may represent Congress as a whole, and since Congress does not exist separate from the Senate and the House of Representatives, each chamber must be represented in the JBC and must be able to instruct their respective representatives who do not sit there just to represent themselves – again, they are “representatives of Congress” “ex officio.” Third, the belief that one co-equal branch should be represented by only one representative, while true for the Executive who has a political alter ego in the Secretary of Justice and may be represented by that single individual, cannot apply to Congress which may not be represented by only one individual since it operates through the Senate and the House of Representatives. Lastly, it is apparent from the chronology of events relating to the deliberations of the Constitutional Commission that the discussions perused by the authorities cited in the main ponencia took place when the commissioners were still contemplating a unicameral legislature and therefore any mention of the composition of the JBC having seven members during the dates cited was

within the context that the Commission had not yet voted and agreed upon a bicameral legislature. It is apparent that the Constitutional Commission was not able to amend the provisions concerning the JBC after it had decided to propose a bicameral Congress.

This dissenter believes that discerning that there should be a Senator and a Member of the House of Representatives sitting in the JBC so that Congress can be fully represented ex officio is not judicial activism, but is rather in keeping with the constitutional project of a bicameral Congress that is effective wherever it is represented and in tune with how our people understand Congress as described in the Constitution beyond a single isolated text. Thus, nothing less than having two representatives from Congress with one full vote each would carry out this understanding since previous mechanisms used to carry out the consequence of the majority's opinion – such as allowing two representatives but with half a vote each or alternating the seat between a Senator and a Member of the House of Representatives – are constitutionally abominable since in the former, either chamber of Congress is deemed only worth fifty percent of the wisdom of each other JBC member, while in the latter, alternating the seat would mean not giving a seat to the Congress at all since neither the Senator nor Member of the House of Representatives can represent Congress as a whole.

Francisco I. Chavez vs Judicial and Bar Council, Sen. Francis Joseph G. Escudero and Rep. Niel C. Tupas, Jr. (G.R. No. 202242); dissenting opinion: *Abad, J., Leonen, J.*

March 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on [April 5, 2013](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#), [piercing corporate veil](#) •

Here are select March 2013 rulings of the Supreme Court of the Philippines on commercial law:

Corporation; separate personality. A corporation is an artificial entity created

by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from that of its stockholders and from that of other corporations to which it may be connected. As a consequence of its status as a distinct legal entity and as a result of a conscious policy decision to promote capital formation, a corporation incurs its own liabilities and is legally responsible for payment of its obligations. In other words, by virtue of the separate juridical personality of a corporation, the corporate debt or credit is not the debt or credit of the stockholder. This protection from liability for shareholders is the principle of limited liability. Phil. National Bank vs. Hydro Resources Contractors Corp., [.G.R. Nos. 167530, 167561, 16760311. March 13, 2013](#)

Corporation; piercing the corporate veil. Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

However, the rule is that a court should be careful in assessing the milieu where the doctrine of the corporate veil may be applied. Otherwise an injustice, although unintended, may result from its erroneous application. Thus, cutting through the corporate cover requires an approach characterized by due care and caution:

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. x x x.

Sarona v. National Labor Relations Commission has defined the scope of application of the doctrine of piercing the corporate veil:

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. (Citation omitted.)

Phil. National Bank vs. Hydro Resources Contractors Corp., .G.R. Nos. 167530, 167561, 16760311. March 13, 2013

Corporation; piercing the corporate veil; alter ego theory. In this connection, case law lays down a three-pronged test to determine the application of the alter ego theory, which is also known as the instrumentality theory, namely:

- (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;
- (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and
- (3) The aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of.

The first prong is the “instrumentality” or “control” test. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, “is operating the business

directly for itself.”

The second prong is the “fraud” test. This test requires that the parent corporation’s conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms the plaintiff creditor. As such, it requires a showing of “an element of injustice or fundamental unfairness.”

The third prong is the “harm” test. This test requires the plaintiff to show that the defendant’s control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant’s exercise of control and improper use of the corporate form and, thereby, suffer damages.

To summarize, piercing the corporate veil based on the alter ego theory requires the concurrence of three elements: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. The absence of any of these elements prevents piercing the corporate veil.

This Court finds that none of the tests has been satisfactorily met in this case.

In applying the alter ego doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant’s relationship to that operation. With respect to the control element, it refers not to paper or formal control by majority or even complete stock control but actual control which amounts to “such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal.” In addition, the control must be shown to have been exercised at the time the acts complained of took place. *Phil. National Bank vs. Hydro Resources*

Contractors Corp., .G.R. Nos. 167530, 167561, 16760311. March 13, 2013

Corporation; piercing the corporate veil; ownership of shares. While ownership by one corporation of all or a great majority of stocks of another corporation and their interlocking directorates may serve as indicia of control, by themselves and without more, however, these circumstances are insufficient to establish an alter ego relationship or connection between DBP and PNB on the one hand and NMIC on the other hand, that will justify the puncturing of the latter's corporate cover. This Court has declared that "mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality." This Court has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations." *Phil. National Bank vs. Hydro Resources Contractors Corp., .G.R. Nos. 167530, 167561, 16760311. March 13, 2013*

February 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on [March 1, 2013](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [banks](#), [corporation](#), [loan](#), [piercing corporate veil](#), [trust](#) •

Here are select February 2013 rulings of the Supreme Court of the Philippines on commercial law:

Corporation; liability of officers and directors. Basic is the rule in corporation law that a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. Following this principle, obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation. Nevertheless, this legal fiction may be disregarded if it is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the

evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.

This is consistent with the provisions of the Corporation Code of the Philippines, which states:

Sec. 31. Liability of directors, trustees or officers. – Directors or trustees who wilfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

Solidary liability will then attach to the directors, officers or employees of the corporation in certain circumstances, such as:

1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to patently unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; and (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;
2. When a director or officer has consented to the issuance of watered stocks or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;
3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation; or
4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

Before a director or officer of a corporation can be held personally liable for corporate obligations, however, the following requisites must concur: (1) the complainant must allege in the complaint that the director or officer assented

to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith; and (2) the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.

While it is true that the determination of the existence of any of the circumstances that would warrant the piercing of the veil of corporate fiction is a question of fact which cannot be the subject of a petition for review on certiorari under Rule 45, this Court can take cognizance of factual issues if the findings of the lower court are not supported by the evidence on record or are based on a misapprehension of facts. *Heirs of Fe Tan Uy (Represented by her heir, Manling Uy Lim) vs. International Exchange Bank/Goldkey Development Corporation vs. International Exchange Bank*, G.R. No. 166282/G.R. No. 166283, February 13, 2013.

Corporations; piercing the corporate veil. It behooves this Court to emphasize that the piercing of the veil of corporate fiction is frowned upon and can only be done if it has been clearly established that the separate and distinct personality of the corporation is used to justify a wrong, protect fraud, or perpetrate a deception. As aptly explained in *Philippine National Bank v. Andrada Electric & Engineering Company*:

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application. *Heirs of Fe Tan Uy (Represented by her heir, Manling Uy Lim) vs. International Exchange Bank/Goldkey Development Corporation vs. International Exchange Bank*, G.R. No. 166282/G.R. No. 166283, February 13, 2013.

Corporation; piercing the corporate veil. Under a variation of the doctrine of piercing the veil of corporate fiction, when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or one and the same.

While the conditions for the disregard of the juridical entity may vary, the following are some probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, as laid down in *Concept Builders, Inc. v NLRC*:

- (1) Stock ownership by one or common ownership of both corporations;
- (2) Identity of directors and officers;
- (3) The manner of keeping corporate books and records, and
- (4) Methods of conducting the business.

Heirs of Fe Tan Uy (Represented by her heir, Manling Uy Lim) vs. International Exchange Bank/Goldkey Development Corporation vs. International Exchange Bank, **G.R. No. 166282/G.R. No. 166283, February 13, 2013.**

Nature of bank relationship with depositors; fiduciary nature does not convert the contract from a simple loan to a trust agreement; bank must observe high standards of integrity and performance. Contrary to the petitioner's position, UCPB did not become a trustee by the mere opening of the ACCOUNT. While this may seem to be the case, by reason of the fiduciary nature of the bank's relationship with its depositors, this fiduciary relationship does not "convert the contract between the bank and its depositors from a simple loan to a trust agreement, whether express or implied." It simply means that the bank is obliged to observe "high standards of integrity and performance" in complying with its obligations under the contract of simple loan. Per Article 1980 of the Civil Code, a creditor-debtor relationship exists between the bank and its depositor. The savings deposit agreement is between the bank and the depositor; by receiving the deposit, the bank impliedly agrees to pay upon demand and only upon the depositor's order. *Joseph Goyanko, Jr., as administrator of the Estate of Joseph Goyanko, Sr. vs. United Coconut Planters Bank, Mango Avenue Branch*, **G.R. No. 179096. February 6, 2013**

January 2013 Philippine Supreme Court Decisions on Commercial Law

Posted on February 1, 2013 by Hector M. de Leon Jr. • Posted in Commercial Law, Philippines - Cases, Philippines - Law • Tagged corporation, rehabilitation •

Here are select January 2013 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; power of bank employee to bind bank. Even assuming that the bank officer or employee whom petitioner claimed he had talked to regarding the March 22, 1984 letter had acceded to his own modified terms for the repurchase, their supposed verbal exchange did not bind respondent bank in view of its corporate nature. There was no evidence that said Mr. Lazaro or Mr. Fajardo was authorized by respondent bank's Board of Directors to accept petitioner's counter-proposal to repurchase the foreclosed properties at the price and terms other than those communicated in the March 22, 1984 letter. As this Court ruled in *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.*:

Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. Thus, contracts or acts of a corporation must be made either by the board of directors or by a corporate agent duly authorized by the board. Absent such valid delegation/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation.

Thus, a corporation can only execute its powers and transact its business through its Board of Directors and through its officers and agents when authorized by a board resolution or its by-laws.

In the absence of conformity or acceptance by properly authorized bank officers of petitioner's counter-proposal, no perfected repurchase contract was born out of the talks or negotiations between petitioner and Mr. Lazaro and Mr. Fajardo. Petitioner therefore had no legal right to compel respondent bank to accept the P600,000 being tendered by him as payment for the supposed balance of repurchase price. *Heirs of Fausto C. Ignacio vs. Home Bankers Savings and Trust Co., et al.*, **G.R. No. 177783. January 23, 2013.**

Dissolution; continuation of business. Section 122 of the Corporation Code prohibits a dissolved corporation from continuing its business, but allows it to continue with a limited personality in order to settle and close its affairs, including its complete liquidation. Thus:

Sec. 122. Corporate liquidation. – Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, **but not for the purpose of continuing the business for which it was established.** (emphasis supplied)

The Court fails to find in the prayers any intention to continue the corporate business of FQB+7. The Complaint does not seek to enter into contracts, issue new stocks, acquire properties, execute business transactions, etc. Its aim is not to continue the corporate business, but to determine and vindicate an alleged stockholder's right to the return of his stockholdings and to participate in the election of directors, and a corporation's right to remove usurpers and strangers from its affairs. The Court fails to see how the resolution of these issues can be said to continue the business of FQB+7. *Vitaliano N. Aguirre II and Fidel N. Aguirre II and Fidel N. Aguirre vs. FQB+, Inc., Nathaniel D. Bocobo, Priscila Bocobo and Antonio De Villa*, **G.R. No. 170770. January 9, 2013.**

Dissolution; board of directors. A corporation's board of directors is not rendered *functus officio* by its dissolution. Since Section 122 allows a corporation to continue its existence for a limited purpose, necessarily there

must be a board that will continue acting for and on behalf of the dissolved corporation for that purpose. In fact, Section 122 authorizes the dissolved corporation's board of directors to conduct its liquidation within three years from its dissolution. Jurisprudence has even recognized the board's authority to act as trustee for persons in interest beyond the said three-year period. Thus, the determination of which group is the *bona fide* or rightful board of the dissolved corporation will still provide practical relief to the parties involved. *Vitaliano N. Aguirre II and Fidel N. Aguirre II and Fidel N. Aguirre vs. FQB+, Inc., Nathaniel D. Bocobo, Priscila Bocobo and Antonio De Villa*, **G.R. No. 170770. January 9, 2013.**

Dissolution; effect on property rights. A party's stockholdings in a corporation, whether existing or dissolved, is a property right which he may vindicate against another party who has deprived him thereof. The corporation's dissolution does not extinguish such property right. Section 145 of the Corporation Code ensures the protection of this right, thus:

Sec. 145. *Amendment or repeal.* – No right or remedy in ***favor of or against*** any corporation, its stockholders, members, directors, trustees, or officers, nor any liability ***incurred by*** any such corporation, stockholders, members, directors, trustees, or officers, shall be removed or impaired either by the subsequent dissolution of said corporation or by any subsequent amendment or repeal of this Code or of any part thereof. (Emphasis supplied.)

Vitaliano N. Aguirre II and Fidel N. Aguirre II and Fidel N. Aguirre vs. FQB+, Inc., Nathaniel D. Bocobo, Priscila Bocobo and Antonio De Villa, **G.R. No. 170770. January 9, 2013.**

FRIA; retroactive application. Sec. 146 of the FRIA, which makes it applicable to “all further proceedings in insolvency, suspension of payments and rehabilitation cases x x x except to the extent that in the opinion of the court their application would not be feasible or would work injustice,” still presupposes a prospective application. The wording of the law clearly shows that it is applicable to all further proceedings. In no way could it be made retrospectively applicable to the Stay Order issued by the rehabilitation court back in 2002.

At the time of the issuance of the Stay Order, the rules in force were the

2000 Interim Rules of Procedure on Corporate Rehabilitation (the “Interim Rules”). Under those rules, one of the effects of a Stay Order is the stay of the “enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor.” Nowhere in the Interim Rules is the rehabilitation court authorized to suspend foreclosure proceedings against properties of third-party mortgagors. In fact, we have expressly ruled in *Pacific Wide Realty and Development Corp. v. Puerto Azul Land, Inc.* that the issuance of a Stay Order cannot suspend the foreclosure of accommodation mortgages. Whether or not the properties subject of the third-party mortgage are used by the debtor corporation or are necessary for its operation is of no moment, as the Interim Rules do not make a distinction. To repeat, when the Stay Order was issued, the rehabilitation court was only empowered to suspend claims against the debtor, its guarantors, and sureties not solidarily liable with the debtor. Thus, it was beyond the jurisdiction of the rehabilitation court to suspend foreclosure proceedings against properties of third-party mortgagors. *Situs Development Corporation, et al. vs. Asia Trust Bank, et al*, *G.R. No. 180036, January 16, 2013*.

December 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [January 7, 2013](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [corporation](#), [rehabilitation](#) •

Here are select December 2012 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; liability of corporate officers. Settled is the rule that debts incurred by directors, officers, and employees acting as corporate agents are not their direct liability but of the corporation they represent, except if they contractually agree/stipulate or assume to be personally liable for the corporation’s debts, as in this case. *Ildefonso S. Crisologo vs. People of the Philippines and China Banking Corporation*, *G.R. No. 199481, December 3, 2012*.

Rehabilitation; purpose. Rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency. It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings.

Rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated. *Express Investments III Private Ltd. and Export Development Canada Vs. Bayan Telecommunications, Inc., The Bank of New York (as trustee for holders of the US\$200,000,000 13.5% Senior notes of Bayan Telecommunications, Inc.) and Atty. Remigio A. Noval (as the Court-appointed Rehabilitation Receiver of Bayantel).* *G.R. Nos. 174457-59/G.R. Nos. 175418-20/G.R. No. 177270. December 5, 2012*

Rehabilitation; priority of secured creditors. The resolution of the issue at hand rests on a determination of whether secured creditors may enforce preference in payment during rehabilitation by virtue of a contractual agreement.

The principle of equality in equity has been cited as the basis for placing secured and unsecured creditors in equal footing or in pari passu with each other during rehabilitation. In legal parlance, pari passu is used especially of creditors who, in marshaling assets, are entitled to receive out of the same fund without any precedence over each other.

The Court laid the guidelines for the treatment of claims against corporations undergoing rehabilitation:

1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to

whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance with the provisions of Presidential Decree No. 902-A.

2. Secured creditors retain their preference over unsecured creditors, but enforcement of such preference is equally suspended upon the appointment of a management committee, rehabilitation receiver, board, or body. In the event that the assets of the corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.⁷⁵ (Emphasis supplied)

Express Investments III Private Ltd. and Export Development Canada Vs. Bayan Telecommunications, Inc., The Bank of New York (as trustee for holders of the US\$200,000,000 13.5% Senior notes of Bayan Telecommunications, Inc.) and Atty. Remigio A. Noval (as the Court-appointed Rehabilitation Receiver of Bayantel). **G.R. Nos. 174457-59/G.R. Nos. 175418-20/G.R. No. 177270. December 5, 2012**

Rehabilitation; constitutionality of pari passu treatment. Petitioners submit that the pari passu treatment of claims offends the Contract Clause under the 1987 Constitution.

Article III, Section 10 of the Constitution mandates that no law impairing the obligation of contracts shall be passed. Any law which enlarges, abridges, or in any manner changes the intention of the parties, necessarily impairs the contract itself. And even when the change in the contract is done by indirection, there is impairment nonetheless.

The prohibition embraces enactments of a governmental law-making body pertaining to its legislative functions. Strictly speaking, it does not cover the exercise by such law-making body of quasi-judicial power.

Verily, the Decision dated June 28, 2004 of the Rehabilitation Court is not a proper subject of the Non-impairment Clause. *Express Investments III Private Ltd. and Export Development Canada Vs. Bayan Telecommunications, Inc., The Bank of New York (as trustee for holders of*

the US\$200,000,000 13.5% Senior notes of Bayan Telecommunications, Inc.) and Atty. Remigio A. Noval (as the Court-appointed Rehabilitation Receiver of Bayantel). G.R. Nos. 174457-59/G.R. Nos. 175418-20/G.R. No. 177270. December 5, 2012

Rehabilitation; power of Monitoring Committee to manage operations. The management committee or rehabilitation receiver, board or body shall have the following powers: (1) to take custody of, and control over, all the existing assets and property of the distressed corporation; (2) to evaluate the existing assets and liabilities, earnings and operations of the corporation; (3) to determine the best way to salvage and protect the interest of the investors and creditors; (4) to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Rehabilitation Court; and (5) it may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

In this case, petitioner neither filed a petition for the appointment of a management committee nor presented evidence to show that there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of respondent corporation which may be prejudicial to the interest of the minority stockholders, the creditors or the public. Unless petitioner satisfies these requisites, we cannot sanction the exercise by the Monitoring Committee of powers that will amount to management of respondent's operations. *Express Investments III Private Ltd. and Export Development Canada Vs. Bayan Telecommunications, Inc., The Bank of New York (as trustee for holders of the US\$200,000,000 13.5% Senior notes of Bayan Telecommunications, Inc.) and Atty. Remigio A. Noval (as the Court-appointed Rehabilitation Receiver of Bayantel). G.R. Nos. 174457-59/G.R. Nos. 175418-20/G.R. No. 177270. December 5, 2012*

November 2012 Philippine Supreme

Court Decisions on Commercial Law

Posted on [December 10, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#) • Tagged [banks](#), [insurance](#), [trademark](#) •

Here are select November 2012 rulings of the Supreme Court of the Philippines on commercial law:

Banks; level of diligence required. Primarily, it bears noting that the doctrine of “mortgagee in good faith” is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title are not required to go beyond what appears on the face of the title. This is in deference to the public interest in upholding the indefeasibility of a certificate of title as evidence of lawful ownership of the land or of any encumbrance thereon. In the case of banks and other financial institutions, however, greater care and due diligence are required since they are imbued with public interest, failing which renders the mortgagees in bad faith. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner(s) thereof. The apparent purpose of an ocular inspection is to protect the “true owner” of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.

In this case, while Philbank failed to exercise greater care in conducting the ocular inspection of the properties offered for mortgage, its omission did not prejudice any innocent third parties. In particular, the buyer did not pursue her cause and abandoned her claim on the property. On the other hand, Sps. Delgado were parties to the simulated sale in favor of the Dys which was intended to mislead Philbank into granting the loan application. Thus, no amount of diligence in the conduct of the ocular inspection could have led to the discovery of the complicity between the ostensible mortgagors (the Dys) and the true owners (Sps. Delgado). In fine, Philbank can hardly be deemed negligent under the premises since the ultimate cause of the mortgagors’ (the Dys’) defective title was the simulated sale to which Sps. Delgado were privies.

Accordingly, in the interest of public policy, fair dealing, good faith and justice, the Court accords Philbank the rights of a mortgagee in good faith whose lien to the securities posted must be respected and protected. In this regard, Philbank is entitled to have its mortgage carried over or annotated on the titles of Cipriana Delgado over the said properties. *Philippine Banking Corporation vs. Arturo Dy, et al.*, *G.R. No. 183774. November 14, 2012.*

Insurance; theft clause. Records would show that respondents entrusted possession of their vehicle only to the extent that Sales will introduce repairs and not to permanently deprive them of possession thereof. Since, Theft can also be committed through misappropriation, the fact that Sales failed to return the subject vehicle to respondents constitutes Qualified Theft. Hence, since respondents' car is undeniably covered by a Comprehensive Motor Vehicle Insurance Policy that allows for recovery in cases of theft, petitioner is liable under the policy for the loss of respondents' vehicle under the "theft clause." *Paramount Insurance Corporation vs. Spouses Yves and Maria Teresa Remonduelaz*, *G.R. No. 173773, November 28, 2012*

Trademark; test for similarity. A trademark device is susceptible to registration if it is crafted fancifully or arbitrarily and is capable of identifying and distinguishing the goods of one manufacturer or seller from those of another. Apart from its commercial utility, the benchmark of trademark registrability is distinctiveness. Thus, a generic figure, as that of a shark in this case, if employed and designed in a distinctive manner, can be a registrable trademark device, subject to the provisions of the IP Code.

Corollarily, Section 123.1(d) of the IP Code provides that a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to the same or closely related goods or services, or has a near resemblance to such mark as to likely deceive or cause confusion.

In determining similarity and likelihood of confusion, case law has developed the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the dominant features of the competing trademarks that might cause confusion, mistake, and deception in

the mind of the ordinary purchaser, and gives more consideration to the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments. In contrast, the Holistic or Totality Test considers the entirety of the marks as applied to the products, including the labels and packaging, and focuses not only on the predominant words but also on the other features appearing on both labels to determine whether one is confusingly similar to the other as to mislead the ordinary purchaser. The “ordinary purchaser” refers to one “accustomed to buy, and therefore to some extent familiar with, the goods in question.” *Great White Shark Enterprises, Inc. Vs. Danilo M. Caralde, Jr.*, *G.R. No. 192294. November 21, 2012.*

October 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [November 5, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [banks](#), [mortgage](#), [rehabilitation](#) •

Here are select October 2012 rulings of the Supreme Court of the Philippines on commercial law:

Banks; degree of diligence required. Public interest is intimately carved into the banking industry because the primordial concern here is the trust and confidence of the public. This fiduciary nature of every bank’s relationship with its clients/depositors impels it to exercise the highest degree of care, definitely more than that of a reasonable man or a good father of a family. It is, therefore, required to treat the accounts and deposits of these individuals with meticulous care. The rationale behind this is well expressed in *Sandejas v. Ignacio*,

The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society – banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part.

Considering that banks can only act through their officers and employees, the fiduciary obligation laid down for these institutions necessarily extends to their employees. Thus, banks must ensure that their employees observe the same high level of integrity and performance for it is only through this that banks may meet and comply with their own fiduciary duty. It has been repeatedly held that “a bank’s liability as an obligor is not merely vicarious, but primary” since they are expected to observe an equally high degree of diligence, not only in the selection, but also in the supervision of its employees. Thus, even if it is their employees who are negligent, the bank’s responsibility to its client remains paramount making its liability to the same to be a direct one. *Westmont Bank, formerly Associates Bank now United Overseas Bank Philippines vs.. Myrna Dela Rosa-Ramos, Domingo Tan and William Co.*, **G.R. No. 160260. October 24, 2012.**

Corporate rehabilitation; results. Corporate rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. A principal feature of corporate rehabilitation is the Stay Order which defers all actions or claims against the corporation seeking corporate rehabilitation from the date of its issuance until the dismissal of the petition or termination of the rehabilitation proceedings. Under Section 24, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation which was in force at the time TCEI filed its petition for rehabilitation a quo, the approval of the rehabilitation plan also produces the following results:

- a. The plan and its provisions shall be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled;
- b. The debtor shall comply with the provisions of the plan and shall take all actions necessary to carry out the plan;
- c. Payments shall be made to the creditors in accordance with the provisions

of the plan;

d. Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply to the extent that they do not conflict with the provisions of the plan; and

e. Any compromises on amounts or rescheduling of timing of payments by the debtor shall be binding on creditors regardless of whether or not the plan is successfully implemented. *Town and Country Enterprises, Inc. vs. Hon. Norberto J. Quisumbing, Jr., et al./Town and Country Enterprises*, **G.R. No. 173610/G.R. No. 174132. October 1, 2012**

Rehabilitation stay order; effect on properties already foreclosed. Having purchased the subject realties at public auction on 7 November 2001, Metrobank undoubtedly acquired ownership over the same when TCEI failed to exercise its right of redemption within the three-month period prescribed under the foregoing provision. With ownership already vested in its favor as of 6 February 2002, it matters little that Metrobank caused the certificate of sale to be registered with the Cavite Provincial Registry only on 10 April 2002 and/or executed an affidavit consolidating its ownership over the same properties only on 25 April 2003. The rule is settled that the mortgagor loses all interest over the foreclosed property after the expiration of the redemption period and the purchaser becomes the absolute owner thereof when no redemption is made.³⁶ By the time that the Rehabilitation Court issued the 8 October 2002 Stay Order in SEC Case No. 023-02, it cannot, therefore, be gainsaid that Metrobank had long acquired ownership over the subject realties.

Viewed in the foregoing light, the CA cannot be faulted for upholding the RTC's grant of a writ of possession in favor of Metrobank on 11 January 2005. If the purchaser at the foreclosure sale, upon posting of the requisite bond, is entitled to a writ of possession even during the redemption period under Section 7 of Act 3135,³⁷ as amended, it has been consistently ruled that there is no reason to withhold said writ after the expiration of the redemption period when no redemption is effected by the mortgagor. Indeed, the rule is settled that the right of the purchaser to the possession of the foreclosed property becomes absolute after the redemption period, without a redemption being effected by the property owner. Since the basis of this

right to possession is the purchaser's ownership of the property, the mere filing of an ex parte motion for the issuance of the writ of possession would suffice, and no bond is required.

Considering that Metrobank acquired ownership over the mortgaged properties upon the expiration of the redemption period on 6 February 2002, TCEI is also out on a limb in invoking the Stay Order issued by the Rehabilitation Court on 8 October 2002 and the approval of its rehabilitation plan on 29 March 2004. An essential function of corporate rehabilitation is, admittedly, the Stay Order which is a mechanism of suspension of all actions and claims against the distressed corporation upon the due appointment of a management committee or rehabilitation receiver. The Stay Order issued by the Rehabilitation Court in SEC Case No. 023-02 cannot, however, apply to the mortgage obligations owing to Metrobank which had already been enforced even before TCEI's filing of its petition for corporate rehabilitation on 1 October 2002. *Town and Country Enterprises, Inc. vs. Hon. Norberto J. Quisumbing, Jr., et al./Town and Country Enterprises, G.R. No. 173610/G.R. No. 174132. October 1, 2012*

September 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [October 1, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [corporation](#), [intra-corporate controversy](#) • Here are select September 2012 rulings of the Supreme Court of the Philippines on commercial law:

Corporate officers; liability for employee's money claim. In the absence of bad faith, a corporate officer cannot be held liable for the money claims of an employee. Bad faith must be established clearly and convincingly as the same is never presumed. *Misamis Oriental II Electric Service Cooperative (MORESCO II) vs. Virgilio M. Cagalawan. G.R. No. 175170. September 5, 2012.*

Intra-corporate controversy; fraud. It is essential for the complaint to show

on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction. This is because fraud in intra-corporate controversies must be based on "devises and schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association," as stated under Rule 1, Section 1 (a)(1) of the Interim Rules. The act of fraud or misrepresentation complained of becomes a criterion in determining whether the complaint on its face has merits, or within the jurisdiction of special commercial court, or merely a nuisance suit. *Simny G. Guy, Geraldine G. Guy, Gladys G. Yao and the Heirs of the late Grace G. Cheu vs. Gilbert Guy/Simny G. Guy, Geraldine G. Guy, Gladys G. Yao and the heirs of the late Grace G. Cheu vs. The Hon. Ofelia C. Calo, in her capacity as Presiding Judge of the RTC-Mandaluyong City-Branch 211 and Gilbert Guy* *G.R. No. 189486/G.R. No. 189699. September 5, 2012*

Stock certificate; endorsement. In *Santamaria v. Hongkong and Shanghai Banking Corp.*, this Court held that when a stock certificate is endorsed in blank by the owner thereof, it constitutes what is termed as "street certificate," so that upon its face, the holder is entitled to demand its transfer into his name from the issuing corporation. Such certificate is deemed quasi-negotiable, and as such the transferee thereof is justified in believing that it belongs to the holder and transferor.

While there is a contrary ruling, as an exception to the general rule enunciated above, what the Court held in *Neugene Marketing Inc., et al., v CA*, where stock certificates endorsed in blank were stolen from the possession of the beneficial owners thereof constraining this Court to declare the transfer void for lack of delivery and want of value, the same cannot apply to Gilbert because the stock certificates which Gilbert endorsed in blank were in the undisturbed possession of his parents who were the beneficial owners thereof and who themselves as such owners caused the transfer in their names. *Simny G. Guy, Geraldine G. Guy, Gladys G. Yao and the Heirs of the late Grace G. Cheu vs. Gilbert Guy/Simny G. Guy, Geraldine G. Guy, Gladys G. Yao and the heirs of the late Grace G. Cheu vs. The Hon. Ofelia C. Calo, in her capacity as Presiding Judge of the RTC-Mandaluyong City-Branch 211 and Gilbert Guy* *G.R. No. 189486/G.R. No.*

189699. September 5, 2012

August 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [September 3, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#) • Tagged [mortgage](#), [rehabilitation](#) •

Here are select August 2012 ruling of the Supreme Court of the Philippines on commercial law:

Liquidation; right of secured creditor to foreclose mortgage. In the case of *Consuelo Metal Corporation v. Planters Development Bank*, which involved factual antecedents similar to the present case, the court has already settled the above question and upheld the right of the secured creditor to foreclose the mortgages in its favor during the liquidation of a debtor corporation. *Manuel D. Yngson, Jr., (in his capacity as the Liquidator of ARCAM & Co., Inc.) vs. Philippine National Bank*, *G.R. No. 171132, August 15, 2012*.

Liquidation; right of secured creditor to foreclose mortgage. Under Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, the right of a secured creditor to enforce his lien during liquidation proceedings is retained. Section 114 of said law thus provides:

SEC. 114. Rights of Secured Creditors. – The Liquidation Order shall not affect the right of a secured creditor to enforce his lien in accordance with the applicable contract or law. A secured creditor may:

(a) waive his rights under the security or lien, prove his claim in the liquidation proceedings and share in the distribution of the assets of the debtor; or

(b) maintain his rights under his security or lien;

If the secured creditor maintains his rights under the security or lien:

(1) the value of the property may be fixed in a manner agreed upon by the creditor and the liquidator. When the value of the property is less than the claim it secures, the liquidator may convey the property to the secured creditor and the latter will be admitted in the liquidation proceedings as a creditor for the balance; if its value exceeds the claim secured, the liquidator may convey the property to the creditor and waive the debtor's right of redemption upon receiving the excess from the creditor;

(2) the liquidator may sell the property and satisfy the secured creditor's entire claim from the proceeds of the sale; or

(3) the secured creditor may enforce the lien or foreclose on the property pursuant to applicable laws.

In this case, PNB elected to maintain its rights under the security or lien; hence, its right to foreclose the mortgaged properties should be respected, in line with our pronouncement in *Consuelo Metal Corporation. Manuel D. Yngson, Jr., (in his capacity as the Liquidator of ARCAM & Co., Inc.) vs. Philippine National Bank*, *G.R. No. 171132, August 15, 2012*.

Liquidation; preference for unpaid wages. As to petitioner's argument on the right of first preference as regards unpaid wages, the Court has elucidated in the case of *Development Bank of the Philippines v. NLRC* that a distinction should be made between a preference of credit and a lien. A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 of the Labor Code, does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor. Consequently, the right of first preference for unpaid wages may not be invoked in this case to nullify the foreclosure sales conducted pursuant to

PNB 's right as a secured creditor to enforce its lien on specific properties of its debtor, *ARCAM. Manuel D. Yngson, Jr., (in his capacity as the Liquidator of ARCAM & Co., Inc.) vs. Philippine National Bank*, *G.R. No. 171132, August 15, 2012*.

July 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on *August 1, 2012* by *Hector M. de Leon Jr.* • Posted in *Commercial Law, Philippines - Cases, Philippines - Law* • Tagged *COGSA, diligence, insurance, prescription* •

Here are select July 2012 rulings of the Supreme Court of the Philippines on commercial law:

Banks; diligence required. FEBTC should have been more circumspect in dealing with its clients. It cannot be over emphasized that the banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of a Roman pater familias or a good father of a family. The highest degree of diligence is expected. In handling loan transactions, banks are under obligation to ensure compliance by the clients with all the documentary requirements pertaining to the approval and release of the loan applications. For failure of its branch manager to exercise the requisite diligence in abiding by the MORB and the banking rules and practices, FEBTC was negligent in the selection and supervision of its employees. *Far East Bank and Trust Company (now Bank of the Philippine Islands) vs. Tentmakers Group, Inc., Gregoria Pilares Santos and Rhoel P. Santos*, *G.R. No. 171050, July 4, 2012*.

Carriage of Goods by Sea Act; prescription. The COGSA is the applicable law for all contracts for carriage of goods by sea to and from Philippine ports in foreign trade; it is thus the law that the Court shall consider in the present case since the cargo was transported from Brazil to the Philippines.

Under Section 3(6) of the COGSA, the carrier is discharged from liability

for loss or damage to the cargo “unless the suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.” Jurisprudence, however, recognized the validity of an agreement between the carrier and the shipper/consignee extending the one-year period to file a claim. *Benjamin Cua (Cua Hian Tek) vs. Wallem Philippines Shipping, Inc. and Advance Shipping Corporation*, *G.R. No. 171337. July 11, 2012.*

Insurance; double insurance. By the express provision of Section 93 of the Insurance Code, double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest. The requisites in order for double insurance to arise are as follows:

1. The person insured is the same;
2. Two or more insurers insuring separately;
3. There is identity of subject matter;
4. There is identity of interest insured; and
5. There is identity of the risk or peril insured against. *Malayan Insurance Co., Inc. vs. Philippine First Insurance, Co., Inc., et al.*, *G.R. No. 184300, July 11, 2012.*

Insurance; other insurance clause. Section 5 is actually the other insurance clause (also called “additional insurance” and “double insurance”), one akin to Condition No. 3 in issue in *Geagonia v. CA*, which validity was upheld by the Court as a warranty that no other insurance exists. The Court ruled that Condition No. 3 is a condition which is not proscribed by law as its incorporation in the policy is allowed by Section 75 of the Insurance Code. It was also the Court’s finding that unlike the other insurance clauses, Condition No. 3 does not absolutely declare void any violation thereof but expressly provides that the condition “shall not apply when the total insurance or insurances in force at the time of the loss or damage is not more than P200,000.00.” *Malayan Insurance Co., Inc. vs. Philippine First*

Insurance, Co., Inc., et al., G.R. No. 184300, July 11, 2012.

Insurance; overinsurance clause. Section 12 of the SR Policy, on the other hand, is the over insurance clause. More particularly, it covers the situation where there is over insurance due to double insurance. In such case, Section 15 provides that Malayan shall “not be liable to pay or contribute more than its ratable proportion of such loss or damage.” This is in accord with the principle of contribution provided under Section 94(e) of the Insurance Code, which states that “where the insured is over insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute ratably to the loss in proportion to the amount for which he is liable under his contract.” *Malayan Insurance Co., Inc. vs. Philippine First Insurance, Co., Inc., et al., G.R. No. 184300, July 11, 2012.*

Insurance; false claim. It has long been settled that a false and material statement made with an intent to deceive or defraud voids an insurance policy. In *Yu Cua v. South British Insurance Co.*, the claim was fourteen times bigger than the real loss; in *Go Lu v. Yorkshire Insurance Co.*, eight times; and in *Tuason v. North China Insurance Co.*, six times. In the present case, the claim is *twenty five times* the actual claim proved.

The most liberal human judgment cannot attribute such difference to mere innocent error in estimating or counting but to a deliberate intent to demand from insurance companies payment for indemnity of goods not existing at the time of the fire. This constitutes the so-called “fraudulent claim” which, by express agreement between the insurers and the insured, is a ground for the exemption of insurers from civil liability.

In its Reply, UMC admitted the discrepancies when it stated that “discrepancies in its statements were not covered by the warranty such that any discrepancy in the declaration in other instruments or documents as to matters that may have some relation to the insurance coverage voids the policy.”

On UMC’s allegation that it did not breach any warranty, it may be argued that the discrepancies do not, by themselves, amount to a breach of warranty. However, the Insurance Code provides that “a policy may declare that a violation of specified provisions thereof shall avoid it.” Thus, in fire

insurance policies, which contain provisions such as Condition No. 15 of the Insurance Policy, a fraudulent discrepancy between the actual loss and that claimed in the proof of loss voids the insurance policy. Mere filing of such a claim will exonerate the insurer.

Considering that all the circumstances point to the inevitable conclusion that UMC padded its claim and was guilty of fraud, UMC violated Condition No. 15 of the Insurance Policy. Thus, UMC forfeited whatever benefits it may be entitled under the Insurance Policy, including its insurance claim.

While it is a cardinal principle of insurance law that a contract of insurance is to be construed liberally in favor of the insured and strictly against the insurer company, contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense. Courts are not permitted to make contracts for the parties; the function and duty of the courts is simply to enforce and carry out the contracts actually made. *United Merchants Corporation vs. Country Bankers Insurance Corporation, G.R. No. 198588, July 11, 2012.*

Insurance; limitation in liability. An insurer who seeks to defeat a claim because of an exception or limitation in the policy has the burden of establishing that the loss comes within the purview of the exception or limitation. If loss is proved apparently within a contract of insurance, the burden is upon the insurer to establish that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability. In the present case, CBIC failed to discharge its primordial burden of establishing that the damage or loss was caused by arson, a limitation in the policy. *United Merchants Corporation vs. Country Bankers Insurance Corporation, G.R. No. 198588, July 11, 2012.*

Rehabilitation; when appropriate. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits

its employees, creditors, stockholders and, in a larger sense, the general public.

Rehabilitation proceedings in our jurisdiction, much like the bankruptcy laws of the United States, have equitable and rehabilitative purposes. On one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors; and on the other, to provide debtors with a "fresh start" by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs. The rationale of Presidential Decree No. 902-A, as amended, is to "effect a feasible and viable rehabilitation," by preserving a floundering business as going concern, because the assets of a business are often more valuable when so maintained than they would be when liquidated.

Under Section 23, Rule 4 of the Interim Rules, a rehabilitation plan may be approved if there is a showing that rehabilitation is feasible and the opposition entered by the creditors holding a majority of the total liabilities is unreasonable. In determining whether the objections to the approval of a rehabilitation plan are reasonable or otherwise, the court has the following to consider: (a) that the opposing creditors would receive greater compensation under the plan than if the corporate assets would be sold; (b) that the shareholders would lose their controlling interest as a result of the plan; and (c) that the receiver has recommended approval.

Rehabilitation is therefore available to a corporation who, while illiquid, has assets that can generate more cash if used in its daily operations than sold. Its liquidity issues can be addressed by a practicable business plan that will generate enough cash to sustain daily operations, has a definite source of financing for its proper and full implementation, and anchored on realistic assumptions and goals. This remedy should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by the following: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; (c) speculative capital infusion or complete lack thereof for the execution of the business plan; (d) cash flow cannot sustain daily operations; and (e) negative net worth and the assets are near full depreciation or fully depreciated. *Wonder Book Corporation vs. Philippine Bank of Communications*, *G.R. No. 187316, July 16, 2012*.

June 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [July 11, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [check](#), [corporation](#), [derivative suit](#), [diligence](#), [negotiable instruments](#), [piercing corporate veil](#), [trust receipts](#) •

Here are select June 2012 rulings of the Supreme Court of the Philippines on commercial law:

Banks; diligence required. Republic Act No. 8971, or the General Banking Law of 2000, recognizes the vital role of banks in providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking; thus, the law requires banks to have high standards of integrity and performance. The fiduciary nature of banking requires banks to assume a degree of diligence higher than that of a good father of a family. In the case at bar, petitioner itself was negligent in the conduct of its business when it extended unsecured loans to the debtors. Worse, it was in serious breach of its duty as the trustee of the MTI. It was not able to protect the interests of the parties and was even instrumental in violating the terms of the MTI, to the detriment of the parties thereto. Thus, petitioner has only itself to blame for being left with insufficient recourse against petitioner under the assailed MTI. *Metropolitan Bank and Trust Company vs. Centro Development Corp., et al.*, [G.R. No. 180974, June 13, 2012](#).

Corporation; corporate approval for appointment of trustee. Reading carefully the Secretary's Certificate, it is clear that the main purpose of the directors' Resolution was to appoint petitioner as the new trustee of the previously executed and amended MTI. Going through the original and the revised MTI, we find no substantial amendments to the provisions of the contract. We agree with petitioner that the act of appointing a new trustee of the MTI was a regular business transaction. The appointment necessitated only a decision of at least a majority of the directors present at the meeting in which there was a quorum, pursuant to Section 25 of the Corporation Code. *Metropolitan Bank and Trust Company vs. Centro Development*

Corp., et al., G.R. No. 180974, June 13, 2012.

Corporation; derivative suits. The requisites for a derivative suit are as follows:

- a) the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;
- b) he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and
- c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.

In this case, petitioners, as members of the Board of Directors of the condominium corporation *before* the election in question, filed a complaint against the newly-elected members of the Board of Directors for the years 2004-2005, questioning the validity of the election held on April 2, 2004, as it was allegedly marred by lack of quorum, and praying for the nullification of the said election.

As stated by the Court of Appeals, petitioners' complaint seek to nullify the said election, and to protect and enforce their individual right to vote. Petitioners seek the nullification of the election of the Board of Directors for the years 2004-2005, composed of herein respondents, who pushed through with the election even if petitioners had adjourned the meeting allegedly due to lack of quorum. Petitioners are the injured party, whose rights to vote and to be voted upon were directly affected by the election of the new set of board of directors. The party-in-interest are the petitioners as stockholders, who wield such right to vote. The cause of action devolves on petitioners, not the condominium corporation, which did not have the right to vote. Hence, the complaint for nullification of the election is a **direct action** by petitioners, who were the members of the Board of Directors of

the corporation *before* the election, against respondents, who are the newly-elected Board of Directors. Under the circumstances, the derivative suit filed by petitioners in behalf of the condominium corporation in the Second Amended Complaint is improper.

The stockholder's right to file a derivative suit is not based on any express provision of *The Corporation Code*, but is impliedly recognized when the law makes corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties, which is not the issue in this case. *Legaspi Towers 300, Inc., Lilia Marquez Palanca, et al. vs. Amelia P. Muer, Samuel M. Tanchoco, et al.*, *G.R. No. 170783. June 18, 2012.*

Corporations; solidary liability of corporate officers. Go may have acted in behalf of EEMI but the company's failure to operate cannot be equated to bad faith. Cessation of business operation is brought about by various causes like mismanagement, lack of demand, negligence, or lack of business foresight. Unless it can be shown that the closure was deliberate, malicious and in bad faith, the Court must apply the general rule that a corporation has, by law, a personality separate and distinct from that of its owners. As there is no evidence that Go, as EEMI's President, acted maliciously or in bad faith in handling their business affairs and in eventually implementing the closure of its business, he cannot be held jointly and solidarily liable with EEMI. *Ever Electrical Manufacturing, Inc. (EEMI) and Vicente Go vs. Samahang Manggagawa ng Ever Electrical/NAMAWU Local 224 represented by Felimon Panganiban*, *G.R. No. 194795. June 13, 2012.*

Corporation; piercing the corporate veil. This Court sustains the ruling of the LA as affirmed by the NLRC that Miramar and Mar Fishing are separate and distinct entities, based on the marked differences in their stock ownership. Also, the fact that Mar Fishing's officers remained as such in Miramar does not by itself warrant a conclusion that the two companies are one and the same. As this Court held in *Sesbreño v. Court of Appeals*, the mere showing that the corporations had a common director sitting in all the boards without more does not authorize disregarding their separate juridical personalities.

Neither can the veil of corporate fiction between the two companies be

pierced by the rest of petitioners' submissions, namely, the alleged take-over by Miramar of Mar Fishing's operations and the evident similarity of their businesses. At this point, it bears emphasizing that since piercing the veil of corporate fiction is frowned upon, those who seek to pierce the veil must clearly establish that the separate and distinct personalities of the corporations are set up to justify a wrong, protect a fraud, or perpetrate a deception. This, unfortunately, petitioners have failed to do. *Vivian T. Ramirez, et al. vs. Mar Fishing Co., Inc., et al.*, *G.R. No. 168208, June 13, 2012*.

Corporation; piercing the corporate veil. the RTC had sufficient factual basis to find that petitioner and Travel and Tours Advisers, Inc. were one and the same entity, specifically:– (a) documents submitted by petitioner in the RTC showing that William Cheng, who claimed to be the operator of Travel and Tours Advisers, Inc., was also the President/Manager and an incorporator of the petitioner; and (b) Travel and Tours Advisers, Inc. had been known in *Sorsogon as Goldline. Gold Line Tours, Inc. vs. Heirs of Maria Concepcion Lacsa*, *G.R. No. 159108, June 18, 2012*.

Crossed check. The checks that Interco issued in favor of SSPI were all crossed, made payable to SSPI's order, and contained the notation "account payee only." This creates a reasonable expectation that the payee alone would receive the proceeds of the checks and that diversion of the checks would be averted. This expectation arises from the accepted banking practice that crossed checks are intended for deposit in the named payee's account only and no other. At the very least, the nature of crossed checks should place a bank on notice that it should exercise more caution or expend more than a cursory inquiry, to ascertain whether the payee on the check has authorized the holder to deposit the same in a different account. It is well to remember that "[t]he banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safe-keeping and saving of money or as active instruments of business and commerce, banks have attained an [sic] ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, above all, trust and confidence. In this connection, it is important that banks should guard against injury attributable to negligence or bad faith on its part. As repeatedly emphasized, since the banking business is impressed with public interest, the trust and confidence of the public in it is of

paramount importance. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are required of it.”

Equitable did not observe the required degree of diligence expected of a banking institution under the existing factual circumstances.

The fact that a person, other than the named payee of the crossed check, was presenting it for deposit should have put the bank on guard. It should have *verified* if the payee (SSPI) authorized the holder (Uy) to present the same in its behalf, or indorsed it to him. Considering however, that the named payee does not have an account with Equitable (hence, the latter has no specimen signature of SSPI by which to judge the genuineness of its indorsement to Uy), the bank knowingly assumed the risk of relying solely on Uy’s word that he had a good title to the three checks. Such misplaced reliance on empty words is tantamount to gross negligence, which is the “absence of or failure to exercise even slight care or diligence, or the entire absence of care, evincing a thoughtless disregard of consequences without exerting any effort to avoid them. *Equitable Banking Corporation vs. Special Steel Products, Inc. and Augusto L. Pardo*, *G.R. No. 175350, June 13, 2012*.

Manager’s check; delivery. An *ordinary check* refers to a bill of exchange drawn by a depositor (drawer) on a bank (drawee), requesting the latter to pay a person named therein (payee) or to the order of the payee or to the bearer, a named sum of money. The issuance of the check does not of itself operate as an assignment of any part of the funds in the bank to the credit of the drawer. Here, the bank becomes liable only after it accepts or certifies the check. After the check is accepted for payment, the bank would then debit the amount to be paid to the holder of the check from the account of the depositor-drawer.

There are checks of a special type called *manager’s* or *cashier’s checks*. These are bills of exchange drawn by the bank’s manager or cashier, in the name of the bank, against the bank itself. Typically, a manager’s or a cashier’s check is procured from the bank by allocating a particular amount of funds to be debited from the depositor’s account or by directly paying or depositing to the bank the value of the check to be drawn. Since the bank

issues the check in its name, with itself as the drawee, the check is deemed accepted in advance. Ordinarily, the check becomes the primary obligation of the issuing bank and constitutes its written promise to pay upon demand.

Nevertheless, the mere issuance of a manager's check does not *ipso facto* work as an automatic transfer of funds to the account of the payee. In case the procurer of the manager's or cashier's check retains custody of the instrument, does not tender it to the intended payee, or fails to make an effective delivery, we find the following provision on undelivered instruments under the Negotiable Instruments Law applicable:

Sec. 16. *Delivery; when effectual; when presumed.* – **Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto.** As between immediate parties and as regards a remote party other than a holder in due course, the **delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing**, as the case may be; and, in such case, the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. (Emphasis supplied.)

Petitioner acknowledges that the Manager's Check was procured by respondents, and that the amount to be paid for the check would be sourced from the deposit account of Hi-Tri. When Rosmil did not accept the Manager's Check offered by respondents, the latter retained custody of the instrument instead of cancelling it. As the Manager's Check neither went to the hands of Rosmil nor was it further negotiated to other persons, the instrument remained undelivered. Petitioner does not dispute the fact that respondents retained custody of the instrument.

Since there was no delivery, presentment of the check to the bank for payment did not occur. An order to debit the account of respondents was never made. In fact, petitioner confirms that the Manager's Check was never

negotiated or presented for payment to its Ermita Branch, and that the allocated fund is still held by the bank. As a result, the assigned fund is deemed to remain part of the account of Hi-Tri, which procured the Manager's Check. The doctrine that the deposit represented by a manager's check automatically passes to the payee is inapplicable, because the instrument – although accepted in advance – remains undelivered. Hence, respondents should have been informed that the deposit had been left inactive for more than 10 years, and that it may be subjected to escheat proceedings if left unclaimed. *Rizal Commercial Banking Corporation vs. Hi-Tri Development Corporation and Luz R. Bakunawa*, **G.R. No. 192413, June 13, 2012**.

Trust receipts; definition. There are two obligations in a trust receipt transaction. The first is covered by the provision that refers to money under the obligation to deliver it (*entregarla*) to the owner of the merchandise sold. The second is covered by the provision referring to merchandise received under the obligation to return it (*devolvera*) to the owner. Thus, under the Trust Receipts Law, intent to defraud is presumed when (1) the entrustee fails to turn over the proceeds of the sale of goods covered by the trust receipt to the entruster; or (2) when the entrustee fails to return the goods under trust, if they are not disposed of in accordance with the terms of the trust receipts.

In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative – the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed. When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan, where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

Based on these premises, we cannot consider the agreements between the parties in this case to be trust receipt transactions because (1) from the start, the parties were aware that ACDC could not possibly be obligated to reconvey to LBP the materials or the end product for which they were used; and (2) from the moment the materials were used for the government

projects, they became public, not LBP's, property. *Land Bank of the Philippines vs. Lamberto C. Perez, et al.*, *G.R. No. 166884. June 13, 2012.*

April 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on *May 8, 2012* by *Hector M. de Leon Jr.* • Posted in *Commercial Law, Philippines - Cases, Philippines - Law* • Tagged *corporation, derivative suit, doing business, intra-corporate controversy* •

Here are select April 2012 rulings of the Philippine Supreme Court on commercial law:

Corporation; derivative suit. In *Hi-Yield Realty, Incorporated v. Court of Appeals*, the Court enumerated the requisites for filing a derivative suit, as follows:

(a) the party bringing the suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;

(b) he has tried to exhaust intra-corporate remedies, i.e., has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

(c) the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit. *Lisam Enterprises, Inc., represented by Lolita A. Soriano and Lolita A. Soriano vs. Banco de Oro Unibank, Inc., et al.*, *G.R. No. 143264, April 23, 2012.*

Corporation; doing business without a license. The appointment of a distributor in the Philippines is not sufficient to constitute “doing business” unless it is under the full control of the foreign corporation. On the other hand, if the distributor is an independent entity which buys and distributes products, other than those of the foreign corporation, for its own name and

its own account, the latter cannot be considered to be doing business in the Philippines. It should be kept in mind that the determination of whether a foreign corporation is doing business in the Philippines must be judged in light of the attendant circumstances.

In the case at bench, it is undisputed that DISI was founded in 1979 and is independently owned and managed by the spouses Leandro and Josephine Bantug. In addition to Steelcase products, DISI also distributed products of other companies including carpet tiles, relocatable walls and theater settings. The dealership agreement between Steelcase and DISI had been described by the owner himself as:

basically a buy and sell arrangement whereby we would inform Steelcase of the volume of the products needed for a particular project and Steelcase would, in turn, give ‘special quotations’ or discounts after considering the value of the entire package. In making the bid of the project, we would then add out profit margin over Steelcase’s prices. After the approval of the bid by the client, we would thereafter place the orders to Steelcase. The latter, upon our payment, would then ship the goods to the Philippines, with us shouldering the freight charges and taxes.

This clearly belies DISI’s assertion that it was a mere conduit through which Steelcase conducted its business in the country. From the preceding facts, the only reasonable conclusion that can be reached is that DISI was an independent contractor, distributing various products of Steelcase and of other companies, acting in its own name and for its own account. *Steelcase, Inc. vs. Design International Selections, Inc.* *G.R. No. 171995, April 18, 2012.*

Corporation; doing business without a license; estoppel. As shown in the previously cited cases, this Court has time and again upheld the principle that a foreign corporation doing business in the Philippines without a license may still sue before the Philippine courts a Filipino or a Philippine entity that had derived some benefit from their contractual arrangement because the latter is considered to be estopped from challenging the personality of a corporation after it had acknowledged the said corporation by entering into a

contract with it.

In *Antam Consolidated, Inc. v. Court of Appeals*, this Court had the occasion to draw attention to the common ploy of invoking the incapacity to sue of an unlicensed foreign corporation utilized by defaulting domestic companies which seek to avoid the suit by the former. The Court cannot allow this to continue by always ruling in favor of local companies, despite the injustice to the overseas corporation which is left with no available remedy. *Steelcase, Inc. vs. Design International Selections, Inc.*, *G.R. No. 171995, April 18, 2012*.

Corporation; head office and branch as one entity. The Court begins by examining the manner by which a foreign corporation can establish its presence in the Philippines. It may choose to incorporate its own subsidiary as a domestic corporation, in which case such subsidiary would have its own separate and independent legal personality to conduct business in the country. In the alternative, it may create a branch in the Philippines, which would not be a legally independent unit, and simply obtain a license to do business in the Philippines.

In the case of Citibank and BA, it is apparent that they both did not incorporate a separate domestic corporation to represent its business interests in the Philippines. Their Philippine branches are, as the name implies, merely branches, without a separate legal personality from their parent company, Citibank and BA. Thus, being one and the same entity, the funds placed by the respondents in their respective branches in the Philippines should not be treated as deposits made by third parties subject to deposit insurance under the PDIC Charter.

For lack of judicial precedents on this issue, the Court seeks guidance from American jurisprudence. In the leading case of *Sokoloff v. The National City Bank of New York*, where the Supreme Court of New York held:

Where a bank maintains branches, each branch becomes a separate business entity with separate books of account. A depositor in one branch cannot issue checks or drafts upon another branch or demand payment from such other branch, and in many other respects the branches are considered separate corporate entities and as distinct from one another as any other

bank. Nevertheless, when considered with relation to the parent bank they are not independent agencies; they are, what their name imports, merely branches, and are subject to the supervision and control of the parent bank, and are instrumentalities whereby the parent bank carries on its business, and are established for its own particular purposes, and their business conduct and policies are controlled by the parent bank and their property and assets belong to the parent bank, although nominally held in the names of the particular branches. Ultimate liability for a debt of a branch would rest upon the parent bank.

This ruling was later reiterated in the more recent case of *United States v. BCCI Holdings Luxembourg* where the United States Court of Appeals, District of Columbia Circuit, emphasized that “while individual bank branches may be treated as independent of one another, each branch, unless separately incorporated, must be viewed as a part of the parent bank rather than as an independent entity.”

In addition, Philippine banking laws also support the conclusion that the head office of a foreign bank and its branches are considered as one legal entity. *PDIC vs. Citibank, N.A. and Bank of America, S.T. & N.A.*, *G.R. No. 170290, April 11, 2012.*

Corporation; intra-corporate controversy. An intra-corporate controversy is one which “pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State in so far as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves.”

Based on the foregoing definition, there is no doubt that the controversy in this case is essentially intra-corporate in character, for being between a condominium corporation and its members-unit owners. In the recent case of *Chateau De Baie Condominium Corporation v. Sps. Moreno*, an action involving the legality of assessment dues against the condominium owner/developer, the Court held that, the matter being an intra-corporate dispute, the RTC had jurisdiction to hear the same pursuant to R.A. No. 8799. *Philip L. Go, Pacifico Q. Lim, et al. vs. Distinction Properties*

Development and Construction, Inc., G.R. No. 194024, April 25, 2012.

PDIC Law; Inter-branch deposits; not covered by PDIC Law. As explained by the respondents, the transfer of funds, which resulted from the inter-branch transactions, took place in the books of account of the respective branches in their head office located in the United States. Hence, because it is payable outside of the Philippines, it is not considered a deposit pursuant to Section 3(f) of the PDIC Charter:

Sec. 3(f) The term “deposit” means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account or which is evidenced by its certificate of deposit, and trust funds held by such bank whether retained or deposited in any department of said bank or deposit in another bank, together with such other obligations of a bank as the Board of Directors shall find and shall prescribe by regulations to be deposit liabilities of the Bank; Provided, that any obligation of a bank which is payable at the office of the bank located outside of the Philippines shall not be a deposit for any of the purposes of this Act or included as part of the total deposits or of the insured deposits; Provided further, that any insured bank which is incorporated under the laws of the Philippines may elect to include for insurance its deposit obligation payable only at such branch.

The testimony of Mr. Shaffer as to the treatment of such inter-branch deposits by the FDIC, after which PDIC was modelled, is also persuasive. Inter-branch deposits refer to funds of one branch deposited in another branch and both branches are part of the same parent company and it is the practice of the FDIC to exclude such inter-branch deposits from a bank’s total deposit liabilities subject to assessment. *PDIC vs. Citibank, N.A. and Bank of America, S.T. & N.A., G.R. No. 170290, April 11, 2012.*

February 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [March 2, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law, Philippines - Cases, Philippines - Law](#) • Tagged [COGSA](#), [insurance](#) •

Here are select February 2012 rulings of the Supreme Court of the Philippines on commercial law:

Carriage of Goods by Sea Act (COGSA); applicability of prescription period to arrastre operator. Under the COGSA, the carrier and the ship may put up the defense of prescription if the action for damages is not brought within one year after the delivery of the goods or the date when the goods should have been delivered. It has been held that not only the shipper, but also the consignee or legal holder of the bill may invoke the prescriptive period. However, the COGSA does not mention that an arrastre operator may invoke the prescriptive period of one year; hence, it does not cover the arrastre operator. *Insurance Company of North America vs. Asian Terminals, Inc.*, [G.R. No. 180784, February 15, 2012](#).

COGSA; bad order survey. As early as November 29, 2002, the date of the last withdrawal of the goods from the arrastre operator, respondent ATI was able to verify that five (5) packages of the shipment were in bad order while in its custody. The certificate of non-delivery referred to in the Contract is similar to or identical with the examination report on the request for bad order survey. Like in the case of *New Zealand Insurance Company Ltd. v. Navarro*, the verification and ascertainment of liability by respondent ATI had been accomplished within thirty (30) days from the date of delivery of the package to the consignee and within fifteen (15) days from the date of issuance by the Contractor (respondent ATI) of the examination report on the request for bad order survey. Although the formal claim was filed beyond the 15-day period from the issuance of the examination report on the request for bad order survey, the purpose of the time limitations for the filing of claims had already been fully satisfied by the request of the consignee's broker for a bad order survey and by the examination report of the arrastre operator on the result thereof, as the arrastre operator had become aware of and had verified the facts giving rise to its liability. Hence, the arrastre operator suffered no prejudice by the lack of strict compliance with the 15-day limitation to file the formal complaint. *Insurance Company of North America vs. Asian Terminals, Inc.*, [G.R. No. 180784, February 15, 2012](#).

Insurance policy; misrepresentation. Lourdes points out that, seeing the unfilled spaces in Manuel's pension plan application relating to his medical history, Philam Plans should have returned it to him for completion. Since Philam Plans chose to approve the application just as it was, it cannot cry concealment on Manuel's part. Further, Lourdes adds that Philam Plans never queried Manuel directly regarding the state of his health. Consequently, it could not blame him for not mentioning it.

But Lourdes is shifting to Philam Plans the burden of putting on the pension plan application the true state of Manuel's health. She forgets that since Philam Plans waived medical examination for Manuel, it had to rely largely on his stating the truth regarding his health in his application. For, after all, he knew more than anyone that he had been under treatment for heart condition and diabetes for more than five years preceding his submission of that application. But he kept those crucial facts from Philam Plans.

Besides, when Manuel signed the pension plan application, he adopted as his own the written representations and declarations embodied in it. It is clear from these representations that he concealed his chronic heart ailment and diabetes from Philam Plans. *Ma. Lourdes S. Florendo vs. Philam Plans, Inc., Perla Abcede, et al.*, *G.R. No. 186983, February 22, 2012.*

Insurance policy; misrepresentation. Lourdes insists that Manuel had concealed nothing since Perla, the soliciting agent, knew that Manuel had a pacemaker implanted on his chest in the 70s or about 20 years before he signed up for the pension plan. But by its tenor, the responsibility for preparing the application belonged to Manuel. Nothing in it implies that someone else may provide the information that Philam Plans needed. Manuel cannot sign the application and disown the responsibility for having it filled up. If he furnished Perla the needed information and delegated to her the filling up of the application, then she acted on his instruction, not on Philam Plans' instruction. *Ma. Lourdes S. Florendo vs. Philam Plans, Inc., Perla Abcede, et al.*, *G.R. No. 186983, February 22, 2012.*

Insurance policy; incontestability clause. In a final attempt to defend her claim for benefits under Manuel's pension plan, Lourdes points out that any defect or insufficiency in the information provided by his pension plan

application should be deemed waived after the same has been approved, the policy has been issued, and the premiums have been collected.

The Court cannot agree. The comprehensive pension plan that Philam Plans issued contains a one-year incontestability period. It states:

VIII. INCONTESTABILITY

After this Agreement has remained in force for one (1) year, we can no longer contest for health reasons any claim for insurance under this Agreement, except for the reason that installment has not been paid (lapsed), or that you are not insurable at the time you bought this pension program by reason of age. If this Agreement lapses but is reinstated afterwards, the one (1) year contestability period shall start again on the date of approval of your request for reinstatement.

The above incontestability clause precludes the insurer from disowning liability under the policy it issued on the ground of concealment or misrepresentation regarding the health of the insured after a year of its issuance.

Since Manuel died on the eleventh month following the issuance of his plan, the one year incontestability period has not yet set in. Consequently, Philam Plans was not barred from questioning Lourdes' entitlement to the benefits of her husband's pension plan. *Ma. Lourdes S. Florendo vs. Philam Plans, Inc., Perla Abcede, et al.*, *G.R. No. 186983, February 22, 2012*.

January 2012 Philippine Supreme Court Decisions on Commercial Law

Posted on [February 6, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [contract](#), [corporation](#), [piercing corporate veil](#), [rehabilitation](#), [securities](#) •

Here are selected January 2012 rulings of the Supreme Court of the Philippines on commercial law:

Contract; insurance surety. Section 175 of the Insurance Code defines a suretyship as a contract or agreement whereby a party, called the surety, guarantees the performance by another party, called the principal or obligor, of an obligation or undertaking in favor of a third party, called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued under Act 536, as amended. Suretyship arises upon the solidary binding of a person – deemed the surety – with the principal debtor, for the purpose of fulfilling an obligation. Such undertaking makes a surety agreement an ancillary contract as it presupposes the existence of a principal contract. Although the contract of a surety is in essence secondary only to a valid principal obligation, the surety becomes liable for the debt or duty of another although it possesses no direct or personal interest over the obligations nor does it receive any benefit therefrom. And notwithstanding the fact that the surety contract is secondary to the principal obligation, the surety assumes liability as a regular party to the undertaking. *First Lepanto-Taisho Insurance Corporation (now known as FLT Prime Insurance Corporation) vs. Chevron Philippines, inc. (formerly known as Caltex Philippines, Inc.), G.R. No. 177839, January 18, 2012.*

Corporation; piercing the corporate veil. A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.

Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such

an extent that injustice, fraud, or crime was committed against another, in disregard of rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. *Timoteo H. Sarona vs. National Labor Relations Commission, Royale Security Agency, et al.*, *G.R. No. 185280, January 18, 2012.*

Corporation; circumstances justifying piercing. Evidence abound showing that Royale is a mere continuation or successor of Sceptre and fraudulent objectives are behind Royale's incorporation and the petitioner's subsequent employment therein. These are plainly suggested by events that the respondents do not dispute and which the CA, the NLRC and LA Gutierrez accept as fully substantiated but misappreciated as insufficient to warrant the use of the equitable weapon of piercing.

As correctly pointed out by the petitioner, it was Aida who exercised control and supervision over the affairs of both Sceptre and Royale. Contrary to the submissions of the respondents that Roso had been the only one in sole control of Sceptre's finances and business affairs, Aida took over as early as 1999 when Roso assigned his license to operate Sceptre on May 3, 1999. As further proof of Aida's acquisition of the rights as Sceptre's sole proprietor,

she caused the registration of the business name “Sceptre Security & Detective Agency” under her name with the DTI a few months after Roso abdicated his rights to Sceptre in her favor. As far as Royale is concerned, the respondents do not deny that she has a hand in its management and operation and possesses control and supervision of its employees, including the petitioner. As the petitioner correctly pointed out, that Aida was the one who decided to stop giving any assignments to the petitioner and summarily dismiss him is an eloquent testament of the power she wields insofar as Royale’s affairs are concerned. The presence of actual common control coupled with the misuse of the corporate form to perpetrate oppressive or manipulative conduct or evade performance of legal obligations is patent; Royale cannot hide behind its corporate fiction.

Aida’s control over Sceptre and Royale does not, by itself, call for a disregard of the corporate fiction. There must be a showing that a fraudulent intent or illegal purpose is behind the exercise of such control to warrant the piercing of the corporate veil. However, the manner by which the petitioner was made to resign from Sceptre and how he became an employee of Royale suggest the perverted use of the legal fiction of the separate corporate personality. It is undisputed that the petitioner tendered his resignation and that he applied at Royale at the instance of Karen and Cesar and on the impression they created that these were necessary for his continued employment. They orchestrated the petitioner’s resignation from Sceptre and subsequent employment at Royale, taking advantage of their ascendancy over the petitioner and the latter’s lack of knowledge of his rights and the consequences of his actions. Furthermore, that the petitioner was made to resign from Sceptre and apply with Royale only to be unceremoniously terminated shortly thereafter leads to the ineluctable conclusion that there was intent to violate the petitioner’s rights as an employee, particularly his right to security of tenure. The respondents’ scheme reeks of bad faith and fraud and compassionate justice dictates that Royale and Sceptre be merged as a single entity, compelling Royale to credit and recognize the petitioner’s length of service with Sceptre. The respondents cannot use the legal fiction of a separate corporate personality for ends subversive of the policy and purpose behind its creation or which could not have been intended by law to which it owed its being. *Timoteo H. Sarona vs. National Labor Relations Commission, Royale Security Agency, et al.*, *G.R. No. 185280, January 18, 2012*.

Investment contract; definition. The Securities Regulation Code treats investment contracts as “securities” that have to be registered with the SEC before they can be distributed and sold. An investment contract is a contract, transaction, or scheme where a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

Apart from the definition, which the Implementing Rules and Regulations provide, Philippine jurisprudence has so far not done more to add to the same. Of course, the United States Supreme Court, grappling with the problem, has on several occasions discussed the nature of investment contracts. That court’s rulings, while not binding in the Philippines, enjoy some degree of persuasiveness insofar as they are logical and consistent with the country’s best interests.

The United States Supreme Court held in *Securities and Exchange Commission v. W.J. Howey Co.* that, for an investment contract to exist, the following elements, referred to as the Howey test must concur: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Thus, to sustain the SEC position in this case, PCI’s scheme or contract with its buyers must have all these elements.

An example that comes to mind would be the long-term commercial papers that large companies, like San Miguel Corporation (SMC), offer to the public for raising funds that it needs for expansion. When an investor buys these papers or securities, he invests his money, together with others, in SMC with an expectation of profits arising from the efforts of those who manage and operate that company. SMC has to register these commercial papers with the SEC before offering them to investors.

Here, PCI’s clients do not make such investments. They buy a product of some value to them: an Internet website of a 15-MB capacity. The client can use this website to enable people to have internet access to what he has to offer to them, say, some skin cream. The buyers of the website do not invest money in PCI that it could use for running some business that would generate profits for the investors. The price of US\$234.00 is what the buyer

pays for the use of the website, a tangible asset that PCI creates, using its computer facilities and technical skills. *Securities and Exchange Commission vs. Prosperity.Com, Inc.*, *G.R. No. 164197, January 25, 2012.*

Rehabilitation; property covered by rehabilitation. Cash dividends held by Belson and claimed by both the Alcantaras and Advent Capital does not constitute corporate assets of the latter that the rehabilitation court may, upon motion, require to be conveyed to the rehabilitation receiver for his disposition.

Advent Capital asserts that the cash dividends in Belson's possession formed part of its assets based on paragraph 9 of its Trust Agreement with the Alcantaras,

According to Advent Capital, it could automatically deduct its management fees from the Alcantaras' portfolio that they entrusted to it. Paragraph 9 of the Trust Agreement provides that Advent Capital could automatically deduct its trust fees from the Alcantaras' portfolio, "at the end of each calendar quarter," with the corresponding duty to submit to the Alcantaras a quarterly accounting report within 20 days after.

But the problem is that the trust fees that Advent Capital's receiver was claiming were for past quarters. Based on the stipulation, these should have been deducted as they became due. As it happened, at the time Advent Capital made its move to collect its supposed management fees, it neither had possession nor control of the money it wanted to apply to its claim. Belson, a third party, held the money in the Alcantaras' names. Whether it should deliver the same to Advent Capital or to the Alcantaras is not clear. What is clear is that the issue as to who should get the same has been seriously contested.

The real owner of the trust property is the trustor-beneficiary. In this case, the trustors-beneficiaries are the Alcantaras. Thus, Advent Capital could not dispose of the Alcantaras' portfolio on its own. The income and principal of the portfolio could only be withdrawn upon the Alcantaras' written instruction or order to Advent Capital. The latter could not also assign or encumber the portfolio or its income without the written consent of the Alcantara. All these are stipulated in the Trust Agreement. *Advent Capital*

and Finance Corporation vs. Nicasio I. Alcantara and Editha I. Alcantara, G.R. No. 183050, January 25, 2012.

Single proprietorship; applicability of piercing the corporate veil. For the piercing doctrine to apply, it is of no consequence if Sceptre is a sole proprietorship. As ruled in *Prince Transport, Inc., et al. v. Garcia, et al.*, it is the act of hiding behind the separate and distinct personalities of juridical entities to perpetuate fraud, commit illegal acts, evade one's obligations that the equitable piercing doctrine was formulated to address and prevent:

A settled formulation of the doctrine of piercing the corporate veil is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that these two entities are distinct and treat them as identical or as one and the same. In the present case, it may be true that Lubas is a single proprietorship and not a corporation. However, petitioners' attempt to isolate themselves from and hide behind the supposed separate and distinct personality of Lubas so as to evade their liabilities is precisely what the classical doctrine of piercing the veil of corporate entity seeks to prevent and remedy.

Also, Sceptre and Royale have the same principal place of business. As early as October 14, 1994, Aida and Wilfredo became the owners of the property used by Sceptre as its principal place of business by virtue of a Deed of Absolute Sale they executed with Roso. Royale, shortly after its incorporation, started to hold office in the same property. These, the respondents failed to dispute.

The respondents do not likewise deny that Royale and Sceptre share the same officers and employees. Karen assumed the dual role of Sceptre's Operation Manager and incorporator of Royale. With respect to the petitioner, even if he has already resigned from Sceptre and has been employed by Royale, he was still using the patches and agency cloths of Sceptre during his assignment at Highlight Metal.

Royale also claimed a right to the cash bond which the petitioner posted when he was still with Sceptre. If Sceptre and Royale are indeed separate entities, Sceptre should have released the petitioner's cash bond when he

resigned and Royale would have required the petitioner to post a new cash bond in its favor.

Taking the foregoing in conjunction with Aida's control over Sceptre's and Royale's business affairs, it is patent that Royale was a mere subterfuge for Aida. Since a sole proprietorship does not have a separate and distinct personality from that of the owner of the enterprise, the latter is personally liable. This is what she sought to avoid but cannot prosper. *Timoteo H. Sarona vs. National Labor Relations Commission, Royale Security Agency, et al.*, *G.R. No. 185280, January 18, 2012*.

Surety; liability. The extent of a surety's liability is determined by the language of the suretyship contract or bond itself. It cannot be extended by implication, beyond the terms of the contract. Thus, to determine whether petitioner is liable to respondent under the surety bond, it becomes necessary to examine the terms of the contract itself.

The law is clear that a surety contract should be read and interpreted together with the contract entered into between the creditor and the principal. Section 176 of the Insurance Code states:

Sec. 176. The liability of the surety or sureties shall be joint and several with the obligor and shall be limited to the amount of the bond. It is determined strictly by the terms of the contract of suretyship in relation to the principal contract between the obligor and the obligee.

A surety contract is merely a collateral one, its basis is the principal contract or undertaking which it secures. Necessarily, the stipulations in such principal agreement must at least be communicated or made known to the surety particularly in this case where the bond expressly guarantees the payment of respondent's fuel products withdrawn by Fumitechniks in accordance with the terms and conditions of their agreement. The bond specifically makes reference to a written agreement. It is basic that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Moreover, being an onerous undertaking, a surety agreement is strictly construed against the creditor, and every doubt is resolved in favor of the solidary debtor. Having accepted the bond, respondent as creditor must be

held bound by the recital in the surety bond that the terms and conditions of its distributorship contract be reduced in writing or at the very least communicated in writing to the surety. Such non-compliance by the creditor (respondent) impacts not on the validity or legality of the surety contract but on the creditor's right to demand performance. *First Lepanto-Taisho Insurance Corporation (now known as FLT Prime Insurance Corporation) vs. Chevron Philippines, inc. (formerly known as Caltex Philippines, Inc.)*, *G.R. No. 177839, January 18, 2012*.

December 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on [January 6, 2012](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

Here are selected December 2011 rulings of the Supreme Court of the Philippines on commercial law:

Corporation; contracts before incorporation. With respect to petitioners' contention that the Management Contract executed between respondent and petitioner Lucila has no binding effect on petitioner corporation for having been executed way before its incorporation, this Court finds the same meritorious.

Logically, there is no corporation to speak of prior to an entity's incorporation. And no contract entered into before incorporation can bind the corporation. *March II Marketing, Inc. and Lucila V. Joson vs. Alfredo M. Joson*, *G.R. No. 171993, December 12, 2011*.

Corporation; corporate officers. In the context of Presidential Decree No. 902-A, corporate officers are those officers of a corporation who are given that character either by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code specifically enumerated who are these corporate officers, to wit: (1) president; (2) secretary; (3) treasurer; and (4) such other officers as may be provided for in the by-laws.

With the given circumstances and in conformity with *Matling Industrial and Commercial Corporation v. Coros*, this Court rules that respondent was not a corporate officer of petitioner corporation because his position as General Manager was not specifically mentioned in the roster of corporate officers in its corporate by-laws. The enabling clause in petitioner corporation's by-laws empowering its Board of Directors to create additional officers, i.e., General Manager, and the alleged subsequent passage of a board resolution to that effect cannot make such position a corporate office. Matling clearly enunciated that the board of directors has no power to create other corporate offices without first amending the corporate by-laws so as to include therein the newly created corporate office. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be viewed as corporate officers under Section 25 of the Corporation Code. In view thereof, this Court holds that unless and until petitioner corporation's by-laws is amended for the inclusion of General Manager in the list of its corporate officers, such position cannot be considered as a corporate office within the realm of Section 25 of the Corporation Code. *March II Marketing, Inc. and Lucila V. Joson vs. Alfredo M. Joson*, *G.R. No. 171993, December 12, 2011*.

November 2011 Philippine Supreme Court Decisions on Political Law

Posted on [December 21, 2011](#) by [Vicente D. Gerochi IV](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) •

Here are selected November 2011 rulings of the Supreme Court of the Philippines on political law.

Constitutional Law

Agrarian reform; control over agricultural lands. Upon review of the facts and circumstances, the Court concluded that the farm worker beneficiaries (FWBs) will never have control over the agricultural lands as long as they remain as stockholders of HLI. Since control over agricultural lands must

always be in the hands of the farmers, the Court reconsidered its earlier ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI. A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement upon which the proposal was based reveals that the total assets of HLI is PhP590,554,220, while the value of the 4,915.7466 hectares is PhP196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares needed by the FWBs to acquire control of HLI. Hence, control can never be attained by the FWBs. There is even no assurance that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked. Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657. *Hacienda Luisita Incorporated vs. Presidential Agrarian Reform Council, et al.*, **G.R. No. 171101. November 22, 2011.**

Command responsibility. One of the issues raised in this case was whether or not the President, as commander-in-chief of the military, can be held responsible or accountable for extrajudicial killings and enforced disappearances. The Supreme Court held that the President may be held

responsible or accountable. To hold someone liable under the doctrine of command responsibility, the following elements must obtain: (a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; (b) the superior knew or had reason to know that the crime was about to be or had been committed; and (c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. The President, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. On the issue of knowledge, it must be pointed out that although international tribunals apply a strict standard of knowledge, i.e., actual knowledge, the same may nonetheless be established through circumstantial evidence. In the Philippines, a more liberal view is adopted and superiors may be charged with constructive knowledge. Knowledge of the commission of irregularities, crimes or offenses is presumed when: (a) the acts are widespread within the government official's area of jurisdiction; (b) the acts have been repeatedly or regularly committed within his area of responsibility; or (c) members of his immediate staff or office personnel are involved. As to the issue of failure to prevent or punish, it is important to note that as the commander-in-chief of the armed forces, the President has the power to effectively command, control and discipline the military. The Supreme Court held, however, that aside from Rodriguez's general averments, there is no piece of evidence that could establish former President Arroyo's responsibility or accountability for his abduction. Neither was there even a clear attempt to show that she should have known about the violation of his right to life, liberty or security, or that she had failed to investigate, punish or prevent it. *In the Matter of the Petition for the Writ of Amparo and Habeas Data in favor of Noriel H. Rodriguez; Noriel H. Rodriguez vs. Gloria Macapagal-Arroyo, et al.*, *G.R. No. 191805 & G.R. No. 193160. November 15, 2011.*

Expropriation; denial of due process. In this case, the petitioner argues that it was deprived of its right to due process when it was not given an opportunity to present its evidence. The petitioner claims that the committee tasked by the court to receive evidence on just compensation did not conduct any hearing to enable the parties to present their respective evidence. Instead, the committee based the Report on documents submitted by the parties, verifications from offices, ocular inspections and local market conditions, and unsubstantiated statements as to the highest and best use of

the properties, and the devaluation of the peso. The Supreme Court held that there was no such deprivation of due process. The pleadings it submitted and the testimonial evidence presented during the several hearings conducted all prove that the petitioner was given its day in court. The Court noted that the RTC acceded to the petitioner's request, over the respondents' objection, for the reconvening of the Committee for reception of evidence and further proceedings. It also heard and allowed both sides to present evidence during the clarificatory hearings and rendered a decision based on the evidence presented. *Republic of the Philippines vs. Sps. Tan Song Bok, G.R. No. 191448. November 16, 2011.*

Expropriation; valuation of expropriated property. One of the issues in this case was whether or not the RTC and the CA had sufficient basis in arriving at the questioned amount of just compensation of the subject properties. The Supreme Court held that even in expropriation cases, "questions of facts are beyond the pale of Rule 45 of the Rules of Court as a petition for review may only raise questions of law. Moreover, factual findings of the trial court, particularly when affirmed by the Court of Appeals, are generally binding on this Court." Thus, the Court affirmed the ruling of the RTC and the CA that the Report is founded on evidence. The petitioner's tax declarations, the BIR zonal valuation and the deeds of sale it presented are not the only proof of the fair value of properties. Zonal valuation is just one of the indices of the fair market value of real estate. By itself, this index cannot be the sole basis of "just compensation" in expropriation cases. Various factors come into play in the valuation of specific properties singled out for expropriation. Tax values can serve as guides but cannot be absolute substitutes for just compensation. *Republic of the Philippines vs. Sps. Tan Song Bok, G.R. No. 191448. November 16, 2011.*

Operative fact doctrine. The operative fact doctrine does not only apply to laws subsequently declared unconstitutional or unlawful, as it also applies to executive acts subsequently declared as invalid. The Court rejected the view that the applicability of the operative fact doctrine should be limited to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature. While orders, rules and regulations issued by the President or the executive branch have fixed definitions and meaning in the Administrative Code and jurisprudence, the phrase "executive act" does not have such specific definition under existing laws. The term "executive act"

is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court. Even assuming that the operative fact doctrine applies only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness. Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected. *Hacienda Luisita Incorporated vs. Presidential Agrarian Reform Council, et al.*, **G.R. No. 171101. November 22, 2011.**

Presidential immunity from suit; non-sitting president. The Court of Appeals found respondents in G.R. No. 191805 – with the exception of Calog, Palacpac or Harry – to be accountable for the violations of Rodriguez’s right to life, liberty and security committed by the 17th Infantry Battalion, 5th Infantry Division of the Philippine Army. It, however, dismissed the petition with respect to former President Arroyo on account of her presidential immunity from suit. Regarding this issue, the Supreme Court held that a non-sitting President does not enjoy immunity from suit, even for acts committed during the latter’s tenure. Thus, the rationale for the CA’s dropping of the case against former President Arroyo no longer exists in the present case. It will be anomalous to hold that immunity is an inoculation from liability for unlawful acts and omissions. The rule is that unlawful acts of public officials are not acts of the State and the officer who acts illegally is not acting as such but stands in the same footing as any other trespasser. The intent of the framers of the Constitution is clear that the immunity of the president from suit is concurrent only with his tenure and

not his term. Applying the foregoing rationale to this case, it is clear that former President Arroyo cannot use the presidential immunity from suit to shield herself from judicial scrutiny that would assess whether, within the context of *amparo* proceedings, she was responsible or accountable for the abduction of Rodriguez. *In the Matter of the Petition for the Writ of Amparo and Habeas Data in favor of Noriel H. Rodriguez; Noriel H. Rodriguez vs. Gloria Macapagal-Arroyo, et al., G.R. No. 191805 & G.R. No. 193160. November 15, 2011.*

Taking and just compensation in agrarian reform. The Court maintains its earlier ruling in this case that the date of “taking” is November 21, 1989, the date when PARC approved HLI’s Stock Distribution Plan (SDP) per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the farm worker beneficiaries (FWBs) were considered to have owned and possessed the agricultural lands in Hacienda Luisita. These lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP. Such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. The minority contends that it is the date of the notice of coverage, that is, January 2, 2006, which is determinative of the just compensation HLI is entitled to for its expropriated lands. To support its contention, it cited numerous cases where the time of the taking was reckoned on the date of the issuance of the notice of coverage. However, a perusal of the cases cited by the minority would reveal that none of them involved the stock distribution scheme. Thus, said cases do not squarely apply to this case. Moreover, it should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two different modalities under the agrarian reform program. In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLI’s preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, “[i]nstead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs.” It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took

the place of a notice of coverage issued under compulsory acquisition. *Hacienda Luisita Incorporated vs. Presidential Agrarian Reform Council, et al.*, *G.R. No. 171101. November 22, 2011.*

Election Law

Barangay elections; three-consecutive term limit rule. Mendoza was a candidate for *Barangay* Captain of *Barangay* Balatasan, Oriental Mindoro, in the 29 October 2007 *Barangay* Elections. Prior thereto, Mendoza had been elected as *Barangay* Captain of *Barangay* Balatasan for three consecutive terms, on 9 May 1994, 12 May 1997 and 15 July 2002. On 26 October 2007, respondent Senen C. Familara (Familara) filed a Petition to Disqualify Mendoza averring that Mendoza, under Section 2 of RA No. 9164, is ineligible to run again for *Barangay* Captain of *Barangay* Balatasan, having been elected and having served in the same position for three consecutive terms immediately prior to the 2007 *Barangay* Elections. When the case was brought to the Supreme Court, one of the issues Mendoza raised was the constitutionality of the retroactive application to the 1994 *Barangay* Elections of the three-consecutive term limit rule. The Supreme Court held that the issue has already been settled in the case of COMELEC v. Cruz. The Court reiterated that no retroactive application was made because the three-term limit has been there all along as early as the second *barangay* law (RA No. 6679) after the 1987 Constitution took effect; it was continued under the Local Government Code and can still be found in the current law. *Constancio F. Mendoza vs. Senen C. Familara & Commission Elections*, *G.R. No. 191017. November 15, 2011.*

November 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on *December 12, 2011* by *Hector M. de Leon Jr.* • Posted in *Commercial Law* • Here are selected November 2011 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; piercing the corporate veil. Piercing the veil of corporate

fiction is warranted only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. As succinctly discussed by the Court in *Velarde v. Lopez, Inc.*:

Petitioner argues nevertheless that jurisdiction over the subsidiary is justified by piercing the veil of corporate fiction. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.

In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. (Citations omitted.)

Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations.

Hacienda Luisita Incorporated vs. Presidential Agrarian Reform Council, G.R. No. 171101, November 22, 2011.

Corporations; piercing the corporate veil. Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction as in the instant case. *Hacienda Luisita Incorporated vs. Presidential Agrarian Reform Council*, *G.R. No. 171101, November 22, 2011.*

Mark; infringement. A “mark” is any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.

In McDonald’s Corporation and McGeorge Food Industries, Inc. v. L.C. Big Mak Burger, Inc., this Court held:

To establish trademark infringement, the following elements must be shown: (1) the validity of plaintiff’s mark; (2) the plaintiff’s ownership of the mark; and (3) the use of the mark or its colorable imitation by the alleged infringer results in “likelihood of confusion.” Of these, it is the element of likelihood of confusion that is the gravamen of trademark infringement.

A mark is valid if it is distinctive and not barred from registration. Once registered, not only the mark’s validity, but also the registrant’s ownership of the mark is prima facie presumed. *Gemma Ong a.k.a. Ma. Theresa Gemma Catacutan vs. People of the Philippines*, *G.R. No. 169440, November 23, 2011.*

October 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on *November 2, 2011* by *Hector M. de Leon Jr.* • Posted in *Commercial Law* • Here are selected October 2011 rulings of the Supreme Court of the Philippines on commercial law:

Check; issuance for consideration. Upon issuance of a check, in the

absence of evidence to the contrary, it is presumed that the same was issued for valuable consideration which may consist either in some right, interest, profit or benefit accruing to the party who makes the contract, or some forbearance, detriment, loss or some responsibility, to act, or labor, or service given, suffered or undertaken by the other side. Under the Negotiable Instruments Law, it is presumed that every party to an instrument acquires the same for a consideration or for value. As petitioner alleged that there was no consideration for the issuance of the subject checks, it devolved upon him to present convincing evidence to overthrow the presumption and prove that the checks were in fact issued without valuable consideration. Sadly, however, petitioner has not presented any credible evidence to rebut the presumption, as well as North Star's assertion, that the checks were issued as payment for the US\$85,000 petitioner owed. *Engr. Jose E. Cayanana vs. North Star International Travel, Inc.* *G.R. No. 172954. October 5, 2011*

Rehabilitation receiver; role. As an officer of the court and an expert, the rehabilitation receiver plays an important role in corporate rehabilitation proceedings. In *Pryce Corporation v. Court of Appeals*, the Court held that, "the purpose of the law in directing the appointment of receivers is to protect the interests of the corporate investors and creditors." Section 14 of the Interim Rules of Procedure on Corporate Rehabilitation enumerates the powers and functions of the rehabilitation receiver: (1) verify the accuracy of the petition, including its annexes such as the schedule of debts and liabilities and the inventory of assets submitted in support of the petition; (2) accept and incorporate, when justified, amendments to the schedule of debts and liabilities; (3) recommend to the court the disallowance of claims and rejection of amendments to the schedule of debts and liabilities that lack sufficient proof and justification; (4) submit to the court and make available for review by the creditors a revised schedule of debts and liabilities; (5) investigate the acts, conduct, properties, liabilities, and financial condition of the debtor, the operation of its business and the desirability of the continuance thereof, and any other matter relevant to the proceedings or to the formulation of a rehabilitation plan; (6) examine under oath the directors and officers of the debtor and any other witnesses that he may deem appropriate; (7) make available to the creditors documents and notices necessary for them to follow and participate in the proceedings; (8) report to the court any fact ascertained by him pertaining to the causes of the debtor's

problems, fraud, preferences, dispositions, encumbrances, misconduct, mismanagement, and irregularities committed by the stockholders, directors, management, or any other person; (9) employ such person or persons such as lawyers, accountants, appraisers, and staff as are necessary in performing his functions and duties as rehabilitation receiver; (10) monitor the operations of the debtor and to immediately report to the court any material adverse change in the debtor's business; (11) evaluate the existing assets and liabilities, earnings and operations of the debtor; (12) determine and recommend to the court the best way to salvage and protect the interests of the creditors, stockholders, and the general public; (13) study the rehabilitation plan proposed by the debtor or any rehabilitation plan submitted during the proceedings, together with any comments made thereon; (14) prohibit and report to the court any encumbrance, transfer, or disposition of the debtor's property outside of the ordinary course of business or what is allowed by the court; (15) prohibit and report to the court any payments outside of the ordinary course of business; (16) have unlimited access to the debtor's employees, premises, books, records, and financial documents during business hours; (17) inspect, copy, photocopy, or photograph any document, paper, book, account, or letter, whether in the possession of the debtor or other persons; (18) gain entry into any property for the purpose of inspecting, measuring, surveying, or photographing it or any designated relevant object or operation thereon; (19) take possession, control, and custody of the debtor's assets; (20) notify the parties and the court as to contracts that the debtor has decided to continue to perform or breach; (21) be notified of, and to attend all meetings of the board of directors and stockholders of the debtor; (22) recommend any modification of an approved rehabilitation plan as he may deem appropriate; (23) bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan; (24) recommend the appointment of a management committee in the cases provided for under Presidential Decree No. 902-A, as amended; (25) recommend the termination of the proceedings and the dissolution of the debtor if he determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public; and (26) apply to the court for any order or directive that he may deem necessary or desirable to aid him in the exercise of his powers. *Siochi Fishery Enterprises, Inc., et al. vs. Bank of the Philippine Islands*, **G.R. No. 193872**. *October 19, 2011*.

Rehabilitation; rehabilitation plan. The rehabilitation plan is an indispensable requirement in corporate rehabilitation proceedings. Section 5 of the Rules enumerates the essential requisites of a rehabilitation plan:

The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, dacion en pago, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

The Court notes that petitioners failed to include a liquidation analysis in their rehabilitation plan. *Siochi Fishery Enterprises, Inc., et al. vs. Bank of the Philippine Islands*, *G.R. No. 193872. October 19, 2011.*

September 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on [October 3, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) •

Here are selected September 2011 rulings of the Supreme Court of the Philippines on commercial law:

Banks; degree of diligence required. The General Banking Law of 2000 requires of banks the highest standards of integrity and performance. The banking business is impressed with public interest. Of paramount importance is the trust and confidence of the public in general in the banking industry. Consequently, the diligence required of banks is more than that of

a Roman pater familias or a good father of a family. The highest degree of diligence is expected. *Philippine Commercial Bank vs. Antonio B. Balmaceda and Rolando N. Ramos*, *G.R. No. 158143, September 21, 2011*.

Banks; unilateral freezing of bank account. We also find that PCIB acted illegally in freezing and debiting Ramos' bank account. In *BPI Family Bank v. Franco*, we cautioned against the unilateral freezing of bank accounts by banks, noting that:

More importantly, [BPI Family Bank] does not have a unilateral right to freeze the accounts of Franco based on its mere suspicion that the funds therein were proceeds of the multi-million peso scam Franco was allegedly involved in. To grant [BPI Family Bank], or any bank for that matter, the right to take whatever action it pleases on deposits which it supposes are derived from shady transactions, would open the floodgates of public distrust in the banking industry.

We see no legal merit in PCIB's claim that legal compensation took place between it and Ramos, thereby warranting the automatic deduction from Ramos' bank account. For legal compensation to take place, two persons, in their own right, must first be creditors and debtors of each other. While PCIB, as the depositary bank, is Ramos' debtor in the amount of his deposits, Ramos is not PCIB's debtor under the evidence the PCIB adduced. PCIB thus had no basis, in fact or in law, to automatically debit from Ramos' bank account. *Philippine Commercial Bank vs. Antonio B. Balmaceda and Rolando N. Ramos*, *G.R. No. 158143, September 21, 2011*.

Checks; crossed checks. A crossed check is one where two parallel lines are drawn across its face or across its corner. Based on jurisprudence, the crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once — to the one who has an account with the bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course. In other words, the crossing of a check is a warning that the check should be

deposited only in the account of the payee. When a check is crossed, it is the duty of the collecting bank to ascertain that the check is only deposited to the payee's account. In complete disregard of this duty, PCIB's systems allowed Balmaceda to encash 26 Manager's checks which were all crossed checks, or checks payable to the "payee's account only." *Philippine Commercial Bank vs. Antonio B. Balmaceda and Rolando N. Ramos*, *G.R. No. 158143, September 21, 2011*.

Payment; foreign currency. A stipulation of payment in dollars is not prohibited by any prevailing law or jurisprudence at the time the loans were taken. In this regard, Article 1249 of the Civil Code provides:

Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

Although the Civil Code took effect on August 30, 1950, jurisprudence had upheld the continued effectivity of Republic Act No. 529, which took effect earlier on June 16, 1950. Pursuant to Section 1 of Republic Act No. 529, any agreement to pay an obligation in a currency other than the Philippine currency is void; the most that could be demanded is to pay said obligation in Philippine currency to be measured in the prevailing rate of exchange at the time the obligation was incurred. On June 19, 1964, Republic Act No. 4100 took effect, modifying Republic Act No. 529 by providing for several exceptions to the nullity of agreements to pay in foreign currency.

On April 13, 1993, Central Bank Circular No. 1389 was issued, lifting foreign exchange restrictions and liberalizing trade in foreign currency. In cases of foreign borrowings and foreign currency loans, however, prior Bangko Sentral approval was required. On July 5, 1996, Republic Act No. 8183 took effect, expressly repealing Republic Act No. 529 in Section 2 thereof. The same statute also explicitly provided that parties may agree that the obligation or transaction shall be settled in a currency other than Philippine currency at the time of payment.

Although the Credit Line Agreement between the spouses Tiu and Union Bank was entered into on November 21, 1995, when the agreement to pay in foreign currency was still considered void under Republic Act No. 529, the

actual loans, as shown in the promissory notes, were taken out from September 22, 1997 to March 26, 1998, during which time Republic Act No. 8183 was already in effect. *Union Bank of the Philippines vs. Spouses Rodolfo T. Tiu and Victoria N. Tiu*, **G.R. Nos. 173090-91. September 7, 2011.**

August 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on **September 2, 2011** by **Hector M. de Leon Jr.** • Posted in **Commercial Law** •

Here are selected August 2011 rulings of the Supreme Court of the Philippines on commercial law:

Securities Regulation Code; public company. The Philippine Veterans Bank (the “Bank”) argued that it is not a “public company” subject to the reportorial requirements under Section 17.1 of the SRC because its shares can be owned only by a specific group of people, namely, World War II veterans and their widows, orphans and compulsory heirs, and is not open to the investing public in general. The Bank also requested the Court to take into consideration the financial impact to the cause of “veteranism”; compliance with the reportorial requirements under the SRC, if the Bank would be considered a “public company,” would compel the Bank to spend approximately P40 million just to reproduce and mail the “Information Statement” to its 400,000 shareholders nationwide.

Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC defines a “public company” as “any corporation with a class of equity securities listed on an Exchange or with assets in excess of Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more holders, at least two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities.”

From these provisions, it is clear that a “public company,” as contemplated by the SRC, is not limited to a company whose shares of stock are publicly listed; even companies like the Bank, whose shares are offered only to a

specific group of people, are considered a public company, provided they meet the requirements enumerated above.

The records establish, and the Bank does not dispute, that the Bank has assets exceeding P50,000,000.00 and has 395,998 shareholders. It is thus considered a public company that must comply with the reportorial requirements set forth in Section 17.1 of the SRC. *Philippine Veterans Bank vs. Justina Callangan, etc. and/or the Securities and Exchange Commission G.R. No. 191995, August 3, 2011.*

July 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on [August 1, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Civil Law](#), [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [common carrier](#), [insurance](#) •

Here are selected July 2011 rulings of the Supreme Court of the Philippines on commercial law:

Insurance; effectivity of bonds. Lagman anchors his defense on two (2) arguments: 1) the 1989 Bonds have expired and 2) the 1990 Bond novates the 1989 Bonds. The Court of Appeals held that the 1989 bonds were effective only for one (1) year, as evidenced by the receipts on the payment of premiums. The Supreme Court did not agree.

The official receipts in question serve as proof of payment of the premium for one year on each surety bond. It does not, however, automatically mean that the surety bond is effective for only one (1) year. In fact, the effectivity of the bond is not wholly dependent on the payment of premium. Section 177 of the Insurance Code expresses:

Sec. 177. The surety is entitled to payment of the premium as soon as the contract of suretyship or bond is perfected and delivered to the obligor. No contract of suretyship or bonding shall be valid and binding unless and until the premium therefor has been paid, except where the obligee has accepted the bond, in which case the bond becomes valid and enforceable irrespective of whether or not the premium has been paid by the obligor to the

surety: Provided, That if the contract of suretyship or bond is not accepted by, or filed with the obligee, the surety shall collect only reasonable amount, not exceeding fifty per centum of the premium due thereon as service fee plus the cost of stamps or other taxes imposed for the issuance of the contract or bond: Provided, however, That if the non-acceptance of the bond be due to the fault or negligence of the surety, no such service fee, stamps or taxes shall be collected.

Country Bankers Insurance Corporation v. Antonio Lagman, G.R. No. 165487, July 13, 2011.

Limited liability rule; availability. With respect to petitioners' position that the Limited Liability Rule under the Code of Commerce should be applied to them, the argument is misplaced. The said rule has been explained to be that of the real and hypothecary doctrine in maritime law where the shipowner or ship agent's liability is held as merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. In this jurisdiction, this rule is provided in three articles of the Code of Commerce. These are:

Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel; but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freight it may have earned during the voyage.

Art. 590. The co-owners of the vessel shall be civilly liable in the proportion of their interests in the common fund for the results of the acts of the captain referred to in Art. 587.

Each co-owner may exempt himself from this liability by the abandonment, before a notary, of the part of the vessel belonging to him.

Art. 837. The civil liability incurred by shipowners in the case prescribed in this section, shall be understood as limited to the value of the vessel with all its appurtenances and freightage served during the voyage.

Article 837 specifically applies to cases involving collision which is a necessary consequence of the right to abandon the vessel given to the

shipowner or ship agent under the first provision – Article 587. Similarly, Article 590 is a reiteration of Article 587, only this time the situation is that the vessel is co-owned by several persons. Obviously, the forerunner of the Limited Liability Rule under the Code of Commerce is Article 587. Now, the latter is quite clear on which indemnities may be confined or restricted to the value of the vessel pursuant to the said Rule, and these are the – “indemnities in favor of third persons which may arise from the conduct of the captain in the care of the goods which he loaded on the vessel.” Thus, what is contemplated is the liability to third persons who may have dealt with the shipowner, the agent or even the charterer in case of demise or bareboat charter.

The only person who could avail of this is the shipowner, Concepcion. He is the very person whom the Limited Liability Rule has been conceived to protect. The petitioners cannot invoke this as a defense. *Agustin P. Dela Torre v. The Hon. Court of Appeals, et al./Philippine Trigon Shipyard Corporation, et al. v. Crisostomo G. Concepcion, et al.*, *G.R. No. 160088/G.R. No. 160565, July 13, 2011*

Charterer and sub-charterer; liability. In the present case, the charterer and the sub-charterer through their respective contracts of agreement/charter parties, obtained the use and service of the entire LCT-Josephine. The vessel was likewise manned by the charterer and later by the sub-charterer’s people. With the complete and exclusive relinquishment of possession, command and navigation of the vessel, the charterer and later the sub-charterer became the vessel’s owner *pro hac vice*. Now, and in the absence of any showing that the vessel or any part thereof was commercially offered for use to the public, the above agreements/charter parties are that of a private carriage where the rights of the contracting parties are primarily defined and governed by the stipulations in their contract.

Although certain statutory rights and obligations of charter parties are found in the Code of Commerce, these provisions as correctly pointed out by the RTC, are not applicable in the present case. Indeed, none of the provisions found in the Code of Commerce deals with the specific rights and obligations between the real shipowner and the charterer obtaining in this case. Necessarily, the Court looks to the New Civil Code to supply the deficiency.

Thus, Roland, who, in his personal capacity, entered into the Preliminary Agreement with Concepcion for the dry-docking and repair of LCT-Josephine, is liable under Article 1189 of the New Civil Code. There is no denying that the vessel was not returned to Concepcion after the repairs because of the provision in the Preliminary Agreement that the same “should” be used by Roland for the first two years. Before the vessel could be returned, it was lost due to the negligence of Agustin to whom Roland chose to sub-charter or sublet the vessel.

PTSC is liable to Concepcion under Articles 1665 and 1667 of the New Civil Code. As the charterer or lessee under the Contract of Agreement dated June 20, 1984, PTSC was contract-bound to return the thing leased and it was liable for the deterioration or loss of the same.

Agustin, on the other hand, who was the sub-charterer or sub-lessee of LCT-Josephine, is liable under Article 1651 of the New Civil Code. Although he was never privy to the contract between PTSC and Concepcion, he remained bound to preserve the chartered vessel for the latter. Despite his non-inclusion in the complaint of Concepcion, it was deemed amended so as to include him because, despite or in the absence of that formality of amending the complaint to include him, he still had his day in court as he was in fact impleaded as a third-party defendant by his own son, Roland – the very same person who represented him in the Contract of Agreement with Larrazabal.

In any case, all three petitioners are liable under Article 1170 of the New Civil Code. *Agustin P. Dela Torre v. The Hon. Court of Appeals, et al./Philippine Trigon Shipyard Corporation, et al. v. Crisostomo G. Concepcion, et al.*, *G.R. No. 160088/G.R. No. 160565, July 13, 2011*

June 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on [July 3, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [trademark](#) •

Here are selected June 2011 rulings of the Supreme Court of the Philippines on commercial law:

Bank secrecy; foreign currency deposits. Republic Act No. 1405 was enacted for the purpose of giving encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country. It covers all bank deposits in the Philippines and no distinction was made between domestic and foreign deposits. Thus, Republic Act No. 1405 is considered a law of general application. On the other hand, Republic Act No. 6426 was intended to encourage deposits from foreign lenders and investors. It is a special law designed especially for foreign currency deposits in the Philippines. A general law does not nullify a specific or special law. *Generalia specialibus non derogant*. Therefore, it is beyond cavil that Republic Act No. 6426 applies in this case.

Applying Section 8 of Republic Act No. 6426, absent the written permission from Domsat, Westmont Bank cannot be legally compelled to disclose the bank deposits of Domsat, otherwise, it might expose itself to criminal liability under the same act. *Government Service Insurance System vs. Court of Appeals, et al.*, *G.R. No. 189206. June 8, 2011.*

Trademark; Harvard. There is no question then, and this Court so declares, that “Harvard” is a well-known name and mark not only in the United States but also internationally, including the Philippines. The mark “Harvard” is rated as one of the most famous marks in the world. It has been registered in at least 50 countries. It has been used and promoted extensively in numerous publications worldwide. It has established a considerable goodwill worldwide since the founding of Harvard University more than 350 years ago. It is easily recognizable as the trade name and mark of Harvard University of Cambridge, Massachusetts, U.S.A., internationally known as one of the leading educational institutions in the world. As such, even before Harvard University applied for registration of the mark “Harvard” in the Philippines, the mark was already protected under Article 6bis and Article 8 of the Paris Convention. Again, even without applying the Paris Convention, Harvard University can invoke Section 4(a) of R.A. No. 166 which prohibits the registration of a mark “which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs x x x.” *Fredco Manufacturing Corporation vs. President and Fellows of Harvard College*

(*Harvard University*), *G.R. No. 185917, June 1, 2011.*

May 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on [June 18, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) •

Here are selected May 2011 rulings of the Supreme Court of the Philippines on commercial law:

Mining Act; meeting 72 hour requirement via fax. It is clear from Section 8 of DAO 63 that the MGB Central Office processes all FTAA applications after payment of the requisite fees. Section 8 requires the FTAA applicant to furnish the MGB Regional Office a copy of the FTAA application within 72 hours from filing of the FTAA application.

In the present case, the records show that Newmont filed its FTAA applications with the MGB Central Office in Quezon City on 20 December 1994. After Newmont paid the filing and processing fees, the MGB Central Office registered Newmont's FTAA applications on the same date. On the other hand, Diamond Drilling filed its MPSA application with the MGB-CAR Regional Office in Baguio City on 20 December 1994. However, since the pertinent documents needed by the MGB-CAR Regional Office were lacking, it took two more days for Diamond Drilling to complete the requirements. Diamond Drilling paid its filing and processing fees only on 22 December 1994 or two days after Newmont's FTAA applications were registered with the MGB Central Office. Thus, Diamond Drilling's MPSA application was registered by the MGB-CAR Regional Office only on 22 December 1994.

Since Newmont's FTAA applications preceded that of Diamond Drilling's MPSA application, priority should be given to Newmont. Section 8 of DAO 63 is clear. It states that in the event there are two or more applicants over the same area, priority shall be given to the applicant that first filed its application.

Newmont in fact furnished the MGB-CAR Regional Office with copies of its FTAA applications, through fax transmission, within 72 hours from filing of the FTAA applications. Considering the distance between Quezon City and Baguio City where the MGB-CAR Regional Office is located, and the requirement to furnish the proper Regional Office (some of which are located in Visayas and Mindanao) a copy of the FTAA application within a short period of 72 hours, a fax machine copy is a reasonable and sufficient mode of serving a copy of the FTAA application to the proper Regional Office. Section 8 of DAO 63 does not specify how a copy of the FTAA application should be furnished to the proper Regional Office.

Being the first to file its FTAA applications ahead of Diamond Drilling's MPSA application, and having furnished copies of its FTAA applications to the MGB-CAR Regional Office within 72 hours from filing, Newmont must be given preferential right to utilize the area included in its FTAA applications. *Diamond Drilling Corporation of the Philippines v. Newmont Philippines, Inc.*, *G.R. No. 183576, May 30, 2011*.

April 2011 Philippine Supreme Court Decisions on Commercial Law

Posted on *May 5, 2011* by *Hector M. de Leon Jr.* • Posted in *Commercial Law, Philippines - Cases, Philippines - Law* •

Here are selected April 2011 rulings of the Supreme Court of the Philippines on commercial law:

Insurance; presentation of policy as a condition for recovery by insurance company. The presentation in evidence of the marine insurance policy is not indispensable before the insurer may recover from the common carrier the insured value of the lost cargo in the exercise of its subrogatory right. The subrogation receipt, by itself, is sufficient to establish the amount paid to settle the insurance claim. The right of subrogation accrues simply upon payment by the insurance company of the insurance claim. In *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, the Supreme Court explained:

Indeed, jurisprudence has it that the marine insurance policy needs to be presented in evidence before the trial court or even belatedly before the appellate court. In *Malayan Insurance Co., Inc. v. Regis Brokerage Corp.*, the Court stated that the presentation of the marine insurance policy was necessary, as the issues raised therein arose from the very existence of an insurance contract between Malayan Insurance and its consignee, ABB Koppel, even prior to the loss of the shipment. In *Wallem Philippines Shipping, Inc. v. Prudential Guarantee and Assurance, Inc.*, the Court ruled that the insurance contract must be presented in evidence in order to determine the extent of the coverage. This was also the ruling of the Court in *Home Insurance Corporation v. Court of Appeals*.

However, as in every general rule, there are admitted exceptions. In *Delsan Transport Lines, Inc. v. Court of Appeals*, the Court stated that the presentation of the insurance policy was not fatal because the loss of the cargo undoubtedly occurred while on board the petitioner's vessel, unlike in *Home Insurance* in which the cargo passed through several stages with different parties and it could not be determined when the damage to the cargo occurred, such that the insurer should be liable for it.

As in *Delsan*, there is no doubt that the loss of the cargo in the present case occurred while in petitioner's custody. Moreover, there is no issue as regards the provisions of Marine Open Policy No. MOP-12763, such that the presentation of the contract itself is necessary for perusal, not to mention that its existence was already admitted by petitioner in open court. And even though it was not offered in evidence, it still can be considered by the court as long as they have been properly identified by testimony duly recorded and they have themselves been incorporated in the records of the case.

Similarly, in this case, the presentation of the insurance contract or policy was not necessary. *Asian Terminals, Inc. v. Malayan Insurance, Co., Inc.*, *G.R. No. 171406, April 4, 2011*.

March 2011 Philippine Supreme

Court Decisions on Commercial Law

Posted on [April 1, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) • [2 Comments](#)

Here are selected March 2011 rulings of the Supreme Court of the Philippines on commercial law:

Corporations; liability of officers in general. Obligations incurred by corporate officers, acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent. As such, they should not be generally held jointly and solidarily liable with the corporation, except:

1. When directors and trustees or, in appropriate cases, the officers of a corporation –
 - (a) vote for or assent to [patently] unlawful acts of the corporation;
 - (b) act in bad faith or with gross negligence in directing the corporate affairs;
 - (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons;
2. When the director or officer has consented to the issuance of watered stock or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto;
3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation;
4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.

The general rule is grounded on the theory that a corporation has a legal personality separate and distinct from the persons comprising it. To warrant the piercing of the veil of corporate fiction, the officer's bad faith or wrongdoing must be established clearly and convincingly as bad faith is

never presumed. *Harpoon Marine Services, Inc., et al. v. Fernan H. Francisco*, *G.R. No. 167751, March 2, 2011*.

Corporations; liability of officers for labor claims. The Court of Appeals' basis for petitioner Rosit's liability was that he acted in bad faith when he approached respondent and told him that the company could no longer afford his salary and that he will be paid instead his separation pay and accrued commissions. This finding, however, could not substantially justify the holding of any personal liability against petitioner Rosit. The records are bereft of any other satisfactory evidence that petitioner Rosit acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of his authority as company president. Indeed, petitioner Rosit informed respondent that the company wishes to terminate his services since it could no longer afford his salary. Moreover, the promise of separation pay, according to petitioners, was out of goodwill and magnanimity. At the most, petitioner Rosit's actuations only show the illegality of the manner of effecting respondent's termination from service due to absence of just or valid cause and non-observance of procedural due process but do not point to any malice or bad faith on his part. Besides, good faith is still presumed. In addition, liability only attaches if the officer has assented to patently unlawful acts of the corporation.

Thus, it was error for the Court of Appeals to hold petitioner Rosit solidarily liable with petitioner Harpoon for illegally dismissing respondent. *Harpoon Marine Services, Inc., et al. v. Fernan H. Francisco*, *G.R. No. 167751, March 2, 2011*.

Corporations; liability of officers for labor claims. There is solidary liability when the obligation expressly so states, when the law so provides, or when the nature of the obligation so requires. In *MAM Realty Development Corporation v. NLRC*, the solidary liability of corporate officers in labor disputes was discussed in this wise:

A corporation, being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents, are not theirs but the direct accountabilities of the

corporation they represent. True, solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:

1. When directors and trustees or, in appropriate cases, the officers of a corporation—

(a) vote for or assent to patently unlawful acts of the corporation;

(b) act in bad faith or with gross negligence in directing the corporate affairs;

x x x x

In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the termination of employment of employees done with malice or in bad faith.

From the decisions of the LA, the NLRC, and the CA, there is no indication that Estrella's dismissal was effected with malice or bad faith on the part of Grandteq's officers. Their liability for Estrella's illegal dismissal, the consequential monetary award arising from such dismissal and the other money claims awarded in the LA's decision, as correctly affirmed by the CA, could thus only be joint, not solidary. This pronouncement does not extend to Estrella's claims for commissions, allowances, and incentives, as the same are still subject to the LA's scrutiny. *Grandteq Industrial Steel Products, Inc., et al. vs. Annaliza M. Estrella*, *G.R. No. 192416. March 23, 2011*

Intellectual property; infringement. The essential element of infringement under R.A. No. 8293 is that the infringing mark is likely to cause confusion. In determining similarity and likelihood of confusion, jurisprudence has developed tests the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and

visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.

In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words, but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other.

Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, viz.: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.

Applying the Dominancy Test to the case at bar, this Court finds that the use of the stylized “S” by respondent in its Strong rubber shoes infringes on the mark already registered by petitioner with the IPO. While it is undisputed that petitioner’s stylized “S” is within an oval design, to this Court’s mind, the dominant feature of the trademark is the stylized “S,” as it is precisely the stylized “S” which catches the eye of the purchaser. Thus, even if respondent did not use an oval design, the mere fact that it used the same stylized “S”, the same being the dominant feature of petitioner’s trademark, already constitutes infringement under the Dominancy Test. *Skechers, U.S.A., Inc. vs. Inter Pacific Industrial Trading Corp., et al.*, *G.R. No. 164321, March 28, 2011.*

February 2011 Philippine Supreme

Court Decisions on Commercial Law

Posted on [March 4, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#), [Philippines - Regulation](#) •

Here are selected February 2011 rulings of the Supreme Court of the Philippines on commercial law:

Corporate rehabilitation; feature. Corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover more, by way of the present value of payments projected in the rehabilitation plan, if the corporation continues as a going concern than if it is immediately liquidated. It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings

A principal feature of corporate rehabilitation is the suspension of claims against the distressed corporation. *Jose Marcel Panlilio, et al. vs. Regional Trial Court, et al., People of the Philippines and Social Security System, G.R. No. 173846, February 2, 2011*

Corporate rehabilitation; suspension of criminal proceedings. The rehabilitation of SIHI and the settlement of claims against the corporation is not a legal ground for the extinction of petitioners' criminal liabilities. There is no reason why criminal proceedings should be suspended during corporate rehabilitation, more so, since the prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order. As correctly observed in *Rosario*, it would be absurd for one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer.

The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities. Such being the case, the purpose of the law for the issuance of the stay order is not compromised, since the appointed rehabilitation receiver can still fully discharge his functions as mandated by law. It bears to stress that the rehabilitation receiver is not charged to defend the officers of the corporation. If there is anything that the rehabilitation receiver might be remotely interested in is whether the court also rules that petitioners are civilly liable. Such a scenario, however, is not a reason to suspend the criminal proceedings, because as aptly discussed in *Rosario*, should the court prosecuting the officers of the corporation find that an award or indemnification is warranted, such award would fall under the category of claims, the execution of which would be subject to the stay order issued by the rehabilitation court. The penal sanctions as a consequence of violation of the SSS law, in relation to the revised penal code can therefore be implemented if petitioners are found guilty after trial. However, any civil indemnity awarded as a result of their conviction would be subject to the stay order issued by the rehabilitation court. Only to this extent can the order of suspension be considered obligatory upon any court, tribunal, branch or body where there are pending actions for claims against the distressed corporation.

Congress has recently enacted Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act of 2010. Section 18 thereof explicitly provides that criminal actions against the individual officer of a corporation are not subject to the Stay or Suspension Order in rehabilitation proceedings. *Jose Marcel Panlilio, et al. vs. Regional Trial Court, et al., People of the Philippines and Social Security System, G.R. No. 173846, February 2, 2011.*

Suspension of payments; properties owned by private individuals. In *Chung Ka Bio v. Intermediate Appellate Court*, this Court resolved in the negative the issue of whether private individuals can file with the SEC petitions for declaration in a state of suspension of payments. We held that Sec. 5(d) of PD 902-A clearly does not allow a mere individual to file the petition, which is limited to “corporations, partnerships or associations.” Besides, We pointed out that the SEC, being a mere

administrative agency, is a tribunal of limited jurisdiction and, as such, can only exercise those powers, which are specifically granted to them by their enabling statutes. We, thus, concluded that where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. In short, the SEC has no jurisdiction over private individuals relative to any petition for suspension of payments, whether the private individual is a petitioner or a co-petitioner. We have said time and again that the SEC's "jurisdiction is limited only to corporations and corporate assets;" it has no jurisdiction over the properties of private individuals or natural persons, even if they are the corporation's officers or sureties. We have, thus, consistently applied this ruling to the subsequent *Ong v. Philippine Commercial International Bank*, *Modern Paper Products, Inc. v. Court of Appeals*, and *Union Bank of the Philippines v. Court of Appeals*.

Here, it is undisputed that the petition for suspension of payments was collectively filed by the five corporations owned by the Lee family. It is likewise undisputed that together with the consolidated petition is a list of properties, which included the subject Antipolo properties owned by Samuel and Pauline Lee. The fact, however, that the subject properties were included in the list submitted to the SEC does not confer jurisdiction on the SEC over such properties. It is apparent that even if the members of the Lee family are joined as co-petitioners with the five corporations, still, this could not confer jurisdiction on the SEC over the Lee family members—as private individuals—nor could this affect their privately owned properties.

Further, the fact that the debts of MDEC and MHI to Bangkok Bank are secured by the Lee family through the guarantees will not likewise put the Lee family and their privately owned properties under the jurisdiction of the SEC through the consolidated petition for suspension of payments.

Therefore, the February 20, 1998 Suspension Order issued by the SEC did not and could not have included the subject properties. *Samuel U. Lee, et al. vs. Bangkok Bank Public Company, Limited*, *G.R. No. 173349, February 9, 2011*.

January 2011 Philippine Supreme

Court Decisions on Commercial Law

Posted on [February 2, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Philippines - Cases](#), [Philippines - Law](#) • Tagged [corporation](#), [intra-corporate controversy](#) • Here are selected January 2011 rulings of the Supreme Court of the Philippines on commercial law:

Corporate officers; definition. “‘Corporate officers’ in the context of Presidential Decree No. 902-A are those officers of the corporation who are given that character by the Corporation Code or by the corporation’s by-laws. There are three specific officers whom a corporation must have under Section 25 of the Corporation Code. These are the president, secretary and the treasurer. The number of officers is not limited to these three. A corporation may have such other officers as may be provided for by its by-laws like, but not limited to, the vice-president, cashier, auditor or general manager. The number of corporate officers is thus limited by law and by the corporation’s by-laws.

It has been consistently held that “[a]n ‘office’ is created by the charter of the corporation and the officer is elected (or appointed) by the directors or stockholders.” Clearly here, respondents failed to prove that petitioner was appointed by the board of directors. Thus, we cannot subscribe to their claim that petitioner is a corporate officer. Having said this, we find that there is no intra-corporate relationship between the parties insofar as petitioner’s complaint for illegal dismissal is concerned and that same does not satisfy the relationship test. *Renato Real vs. Sangu Philippines, Inc. et al.*, [G.R. No. 168757, January 19, 2011](#).

Intra-corporate controversy. Respondents terminated the services of petitioner for the following reasons: (1) his continuous absences at his post at Ogino Philippines, Inc; (2) respondents’ loss of trust and confidence on petitioner; and, (3) to cut down operational expenses to reduce further losses being experienced by the corporation. Hence, petitioner filed a complaint for illegal dismissal and sought reinstatement, backwages, moral damages and attorney’s fees. From these, it is not difficult to see that the reasons given by respondents for dismissing petitioner have something to do with his being a Manager of respondent corporation and nothing with his being a director or stockholder. For one, petitioner’s continuous absences in his post

in Ogino relates to his performance as Manager. Second, respondents' loss of trust and confidence in petitioner stemmed from his alleged acts of establishing a company engaged in the same line of business as respondent corporation's and submitting proposals to the latter's clients while he was still serving as its Manager. While we note that respondents also claim these acts as constituting acts of disloyalty of petitioner as director and stockholder, we, however, think that same is a mere afterthought on their part to make it appear that the present case involves an element of intra-corporate controversy. This is because before the Labor Arbiter, respondents did not see such acts to be disloyal acts of a director and stockholder but rather, as constituting willful breach of the trust reposed upon petitioner as Manager. It was only after respondents invoked the Labor Arbiter's lack of jurisdiction over petitioner's complaint in the Supplemental Memorandum of Appeal filed before the NLRC that respondents started considering said acts as such. Third, in saying that they were dismissing petitioner to cut operational expenses, respondents actually want to save on the salaries and other remunerations being given to petitioner as its Manager. Thus, when petitioner sought for reinstatement, he wanted to recover his position as Manager, a position which we have, however, earlier declared to be not a corporate position. He is not trying to recover a seat in the board of directors or to any appointive or elective corporate position which has been declared vacant by the board. Certainly, what we have here is a case of termination of employment which is a labor controversy and not an intra-corporate dispute. In sum, we hold that petitioner's complaint likewise does not satisfy the nature of controversy test.

With the elements of intra-corporate controversy being absent in this case, we thus hold that petitioner's complaint for illegal dismissal against respondents is not intra-corporate. Rather, it is a termination dispute and, consequently, falls under the jurisdiction of the Labor Arbiter pursuant to Section 217 of the Labor Code. *Renato Real vs. Sangu Philippines, Inc. et al.*, *G.R. No. 168757, January 19, 2011*.

December 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [January 3, 2011](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law, Philippines - Cases, Philippines - Law](#) • Tagged [board of directors, lease](#) •

Here are selected December 2010 rulings of the Supreme Court of the Philippines on commercial law:

Board members; criminal liability for illegal trading of petroleum products. Sec. 4 of BP 33, as amended, provides for the penalties and persons who are criminally liable, thus:

Sec. 4. Penalties. — Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (P20,000) but not more than fifty thousand pesos (P50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding, overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a corporation, partnership, or other juridical person, the president, the general manager, managing partner, or such other officer charged with the management of the business affairs thereof, or employee responsible for the violation shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office. (Emphasis supplied.)

Relying on the third paragraph of the above statutory proviso, petitioners argue that they cannot be held liable for any perceived violations of BP 33, as amended, since they are mere directors of Omni who are not in charge of the management of its business affairs. Reasoning that criminal liability is personal, liability attaches to a person from his personal act or omission but not from the criminal act or negligence of another. Since Sec. 4 of BP 33, as amended, clearly provides and enumerates who are criminally liable, which do not include members of the board of directors of a corporation, petitioners, as mere members of the board of directors who are not in charge of Omni's business affairs, maintain that they cannot be held liable for any perceived violations of BP 33, as amended. To bolster their position, they attest to being full-time employees of various firms as shown by the Certificates of Employment[71] they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable thereof not being in any way connected with the commission of the alleged violations, and, consequently, the criminal complaints filed against them based solely on their being members of the board of directors as per the GIS submitted by Omni to SEC are grossly discriminatory.

On this point, we agree with petitioners except as to petitioner Arnel U. Ty who is indisputably the President of Omni.

It may be noted that Sec. 4 above enumerates the persons who may be held liable for violations of the law, viz: (1) the president, (2) general manager, (3) managing partner, (4) such other officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

It is undisputed that petitioners are members of the board of directors of Omni at the time pertinent. There can be no quibble that the enumeration of persons who may be held liable for corporate violators of BP 33, as amended, excludes the members of the board of directors. This stands to reason for the board of directors of a corporation is generally a policy making body. Even if the corporate powers of a corporation are reposed in

the board of directors under the first paragraph of Sec. 23 of the Corporation Code, it is of common knowledge and practice that the board of directors is not directly engaged or charged with the running of the recurring business affairs of the corporation. Depending on the powers granted to them by the Articles of Incorporation, the members of the board generally do not concern themselves with the day-to-day affairs of the corporation, except those corporate officers who are charged with running the business of the corporation and are concomitantly members of the board, like the President. Section 25 of the Corporation Code requires the president of a corporation to be also a member of the board of directors.

Thus, the application of the legal *maxim expressio unius est exclusio alterius*, which means the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect. The fourth officer in the enumerated list is the catch-all “such other officer charged with the management of the business affairs” of the corporation or juridical entity which is a factual issue which must be alleged and supported by evidence. *Arnel U. Ty, et al. vs. National Bureau of Investigation Supervising Agent Marvin E. De Jemil, et al.*, *G.R. No. 182147, December 15, 2010*.

Financial leasing. Republic Act No. 8556 (RA 8556), otherwise known as the Financing Company Act of 1998, Section 3(d) of RA 8556 defines financial leasing as:

a mode of extending credit through a non-cancelable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract.

Thus, in a true financial leasing, whether under RA 5980 or RA 8556, a finance company purchases on behalf of a cash-strapped lessee the equipment the latter wants to buy but, due to financial limitations, is incapable of doing so. The finance company then leases the equipment to the lessee in exchange for the latter's periodic payment of a fixed amount of rental.

In this case, however, TMI already owned the subject equipment before it transacted with PCILF. Therefore, the transaction between the parties in this case cannot be deemed to be in the nature of a financial leasing as defined by law.

In the present case, since the transaction between PCILF and TMI involved equipment already owned by TMI, it cannot be considered as one of financial leasing, as defined by law, but simply a loan secured by the various equipment owned by TMI. *PCI Leasing and Finance, inc. vs. Trojan Metal Industries Inc., et al.*, *G.R. No. 176381, December 15, 2010*.

November 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [December 6, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [intra-corporate controversy](#), [patent](#) •

Here are selected November 2010 rulings of the Supreme Court of the Philippines on commercial law:

Intellectual property; right of patentees. It is clear from Section 37 of Republic Act No. 165 that the exclusive right of a patentee to make, use and sell a patented product, article or process exists only during the term of the patent. In the instant case, Philippine Letters Patent No. 21116, which was the basis of respondents in filing their complaint with the BLA-IPO, was issued on July 16, 1987. This fact was admitted by respondents themselves in their complaint. They also admitted that the validity of the said patent is until July 16, 2004, which is in conformity with Section 21 of RA 165, providing that the term of a patent shall be seventeen (17) years from the

date of issuance thereof. Section 4, Rule 129 of the Rules of Court provides that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof and that the admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. In the present case, there is no dispute as to respondents' admission that the term of their patent expired on July 16, 2004. Neither is there evidence to show that their admission was made through palpable mistake. Hence, contrary to the pronouncement of the CA, there is no longer any need to present evidence on the issue of expiration of respondents' patent. *Phil Pharmawealth, Inc. vs. Pfizer, Inc and Pfizer (Phil.) Inc.*, *G.R. No. 167715, November 17, 2010*.

Intra-corporate dispute; definition. An intra-corporate dispute is understood as a suit arising from intra-corporate relations or between or among stockholders or between any or all of them and the corporation. Applying what has come to be known as the relationship test, it has been held that the types of actions embraced by the foregoing definition include the following suits: (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; and, (d) among the stockholders, partners or associates themselves. As the definition is broad enough to cover all kinds of controversies between stockholders and corporations, the traditional interpretation was to the effect that the relationship test brooked no distinction, qualification or any exemption whatsoever.

However, the unqualified application of the relationship test has been modified on the ground that the same effectively divests regular courts of jurisdiction over cases for the sole reason that the suit is between the corporation and/or its incorporators. It was held that the better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy. Under the nature of the controversy test, the dispute must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as

well as the internal and intra-corporate regulatory rules of the corporation. The combined application of the relationship test and the nature of the controversy test has, consequently, become the norm in determining whether a case is an intra-corporate controversy or is purely civil in character. *Strategic Alliance Development Corporation vs. Star Infrastructure Development Corporation Corporation, BEDE S. Tabalingcos, et al.*, *G.R. No. 187872, November 17, 2010*.

Dissension in the Court: October 2010

Posted on November 10, 2010 by Jose Ma. G. Hofileña • Posted in Commercial Law, Constitutional Law, Remedial Law • Tagged COMELEC, election contest, interest, judgment •

The following are decisions promulgated by the High Court in October 2010 where at least one Justice felt compelled to express his or her dissent from the decision penned by the *ponente*.

When is a case really final? When can the High Court review a lower tribunal's findings of fact? To some extent, each of the cases cited below deal with a long-standing rule and its' exceptions that are, at the end of the day, really very broad. The wide expanse of these exceptions is a fertile ground upon which Justices may disagree. So with this background, and in the wake of the forthcoming Pacquiao-Margarito bout, it is timely to once again declare, "*Let's get ready to rumble!*"

1. Interest and Immutability (*Brion v. Bersamin*)

The decision and dissent in the case of *Apo Fruits Corporation and Hijo Plantation, Inc. vs. Land Bank of the Philippines* promulgated on October 12, 2010 essentially involved a divergence of positions on: (a) the conditions in which a 12% legal interest may be imposed in the payment of just compensation, and (b) the principle of immutability of judgments.

A. Legal Interest

In the main decision, Justice Arturo D. Brion ruled that the obligation of the

State to make just compensation payments effectively constitutes a forbearance on the part of Government upon which interest should become due.

According to the ponente, “[a]part from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be ‘just,’ must also be made without delay. Without prompt payment, compensation cannot be considered ‘just’ *if the property is immediately taken* as the property owner suffers the immediate deprivation of both his land and its fruits or income.”

Justice Brion added: “[t]his is the principle at the core of the present case where the petitioners were made to wait for more than a decade *after the taking of their property* before they actually received the full amount *of the principal* of the just compensation due them. What they have not received to date is the *income of their landholdings* corresponding to what they would have received had no uncompensated taking of these lands been immediately made. This income, in terms of the interest on the unpaid principal, is the subject of the current litigation.”

Accordingly, Justice Brion finds that in the instant case, when the Land Bank of the Philippines (LBP) took the petitioners’ lands without the corresponding full payment, LBP became liable for the income the landholdings would have earned had they not immediately been taken from Apo Fruits Corporation and Hijo Plantation, Inc. (the “Petitioners”).

For the majority then, in just compensation cases, the unpaid amount of just compensation should earn interest at the legal rate of 12% per annum from the date the properties are taken up to the time of full payment.

In turn, the sole dissenter, Justice Lucas P. Bersamin, asserts that the legal interest of 12% per annum should be deemed as a form of damages which, according to the Civil Code and certain existing jurisprudence, should be imposable only where there is delay in the payment of just compensation. Citing an earlier case of *Land Bank of the Philippines v. Wycoco*, Justice Bersamin pointed out that the Supreme Court has “held that

the interest of 12% *per annum* on the just compensation is due the landowner in case of delay in payment, which will in effect make the obligation on the part of the government one of forbearance. On the other hand, interest in the form of damages cannot be applied, where there was prompt and valid payment of just compensation.” In these cases, the delay should be sufficiently established.

Since, according to the dissenter, LBP had paid a portion of the just compensation promptly after the valuation had been handed down by the Department of Agrarian Reform (which amounts the Petitioners also promptly withdrew), LBP could not be said to have been in delay. Any subsequent recourse by LBP to the courts on the issue of just compensation cannot be construed as unjustified delay on its part considering that assailing an erroneous order before a higher court is a remedy afforded by law to every losing party.

B. Immutability of Judgments

The October 12, 2010 decision of the Supreme Court *en banc* stemmed from a motion filed by the Petitioners for the High Court to entertain a second motion for reconsideration (with a motion to refer the same to the Court *en banc*) which motion was filed slightly less than 2 weeks after an Entry of Judgment had already been given on the case. Expectedly, LBP protested that the decision in the case had already attained finality and that the principles of immutability of judgments should restrict the Court from entertaining the second motion for reconsideration.

Justice Bersamin justified the *en banc*’s giving of due course to the second motion for reconsideration on the grounds that there are recognized exceptions to the immutability of judgments principle, which principle states that “a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it.”

The majority decision quoted from the 2004 case of *Barnes v. Padilla* (482 Phil. 903), which enumerated exceptions to the application of the rule on immutability of judgments:

“However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.”

Contrary to the position of LBP that the instant case involved merely matter of private interest, Justice Bersamin believed that it actually posed issues of transcendental importance involving as it does, constitutional limitations on eminent domain and because the subject matter involved—agrarian reform—covers a societal objective that the government has unceasingly sought to achieve in the past half century. Thus, the interests of substantial justice should prevail over a procedural rule concerning the finality of judgments.

On the issue of immutability, the dissent of Justice Brion concedes that there are indeed exceptions such as: (a) the correction of clerical errors; (b) the *nunc pro tunc* entries that cause no prejudice to any party; (c) void judgments; and (d) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. However, Justice Brion does not believe that the case provides any basis to apply any of the exceptions.

As the dissenter concludes, he “cannot bring [himself] to agree that this case is impressed at all with public interest, involving as it does only a “private claim for interest and attorney’s fees which cannot even be classified as unprecedented,” which “does not qualify either as a substantial or transcendental matter, or as an issue of paramount public interest for no special or compelling circumstance was present to warrant the relaxation of the doctrine of immutability in favor of the petitioners.”

(Apo Fruits Corporation, et al. vs. Land Bank of the Philippines; G.R. No. 164195, October 12, 2010. See dissenting opinion [here](#).)

(author’s note: On the matter of legal interest, the author agrees in the

principle espoused by the majority that the concept of “just” compensation should involve not just the amount of the payment but the timeliness in the payment of the full amount. Otherwise, it would indeed be less than just. On the immutability issue, this is again, to the author, one of those rules which allows of an exceedingly broad set of exceptions which can be applied anytime, anywhere (and thus the real exception would once again be, whenever the Supreme Court wants to). Consider the following exceptions cited by the Supreme Court from the Barnes decision: (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby. Doesn’t this cover virtually every case brought before the Supreme Court?)

2. An Arbitrary, Despotical and Hostile Comelec—A Rematch (Brion v. Velasco)

In Dissension in the Court: August 2010 posted in Lexoterica on September 6, 2010, the case of *Abraham Kahlil B. Mitra vs. Commission on Elections, Antonio V. Gonzales and Orlando R. Balbon, Jr.* in which Justice Arturo D. Brion was discussed. In that decision, the majority held that the Commission on Elections (Comelec) gravely abused its discretion in its evaluation and appreciation of factual evidence. On this basis, the Court ruled that the evidence on hand supported the fact that Abraham Mitra had sufficiently transferred his residence in Palawan from Puerto Princesa to Aborlan.

Justice Presbitero J. Velasco penned a dissenting opinion and noted that there was no grave abuse of discretion on the part of the Comelec that would justify the High Court’s substituting the Comelec’s factual findings with the Court’s own.

The Comelec, Antonio Gonzales and Orlando Balbon each asked the Supreme Court to reconsider that decision.

In the view expressed by the ponente, the motions for reconsideration consisted of mere rehashes of their previous submissions and raised the same arguments already resolved by the Court earlier. Given that no new substantial points were raised, Justice Brion, for the majority, decided to deny such motions for reconsideration. Even so, the majority proceeded to address the points raised “if only to put an end to lingering doubts on the correctness of [their] July 2, 2010 Decision.”

The succeeding discourse in the main decision then consisted essentially of pointing out why the Comelec gravely abused its discretion in the appreciation of the evidence presented to it.

Similarly, Justice Velasco reiterated the basis for his earlier dissent arguing that the Comelec did not gravely abuse its discretion in appreciating the factual evidence and asserted anew that the Court could not under those circumstances, supplant the Comelec’s factual findings with its own.

(Abraham Kahlil B. Mitra vs. Commission on Elections, Antonio vs. Gonzales and Orlando R. Balbon Jr.; G.R. No. 191938, October 19, 2010. See dissenting opinion [here](#).)

October 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [November 2, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [check](#), [corporation](#), [novation](#), [trademark](#) •

Here are selected October 2010 rulings of the Supreme Court of the Philippines on commercial law:

Corporation Law

Corporation; liability of corporate officers. With respect to the personal liability of Hartmannshenn and Schumacher, this Court has held that corporate directors and officers are only solidarily liable with the

corporation for termination of employment of corporate employees if effected with malice or in bad faith. Bad faith does not connote bad judgment or negligence; it imports dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of unknown duty through some motive or interest or ill will; it partakes of the nature of fraud. To sustain such a finding, there should be evidence on record that an officer or director acted maliciously or in bad faith in terminating the employee.

Petitioners withheld respondent's salary in the sincere belief that respondent did not work for the period in question and was, therefore, not entitled to it. There was no dishonest purpose or ill will involved as they believed there was a justifiable reason to withhold his salary. Thus, although they unlawfully withheld respondent's salary, it cannot be concluded that such was made in bad faith. Accordingly, corporate officers, Hartmannshenn and Schumacher, cannot be held personally liable for the corporate obligations of SHS. *SHS Perforated Materials, Inc., et al. vs. Manuel F. Diaz*, [*G.R. No. 185814, October 13, 2010*](#).

Corporation; persons considered as corporate officers. Conformably with Section 25 of the Corporation Code, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office. Thus, the creation of an office pursuant to or under a By-Law enabling provision is not enough to make a position a corporate office. *Guerrea v. Lezama*, the first ruling on the matter, held that the only officers of a corporation were those given that character either by the *Corporation Code* or by the By-Laws; the rest of the corporate officers could be considered only as employees or subordinate officials.

This interpretation is the correct application of Section 25 of the *Corporation Code*, which plainly states that the corporate officers are the President, Secretary, Treasurer *and* such other officers as may be provided for in the By-Laws. Accordingly, the corporate officers in the context of PD No. 902-A are exclusively those who are given that character either by the *Corporation Code* or by the corporation's By-Laws.

A different interpretation can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.

It is relevant to state in this connection that the SEC, the primary agency administering the *Corporation Code*, adopted a similar interpretation of Section 25 of the *Corporation Code* in its Opinion dated November 25, 1993,

Moreover, the Board of Directors of Matling could not validly delegate the power to create a *corporate* office to the President, in light of Section 25 of the *Corporation Code* requiring the Board of Directors itself to elect the corporate officers. Verily, the power to elect the *corporate* officers was a discretionary power that the law exclusively vested in the Board of Directors, and could not be delegated to subordinate officers or agents. The office of Vice President for Finance and Administration created by Matling's President pursuant to By Law No. V was an ordinary, not a corporate, office.

The petitioners' reliance on *Tabang, supra*, is misplaced. The statement in *Tabang*, to the effect that offices not expressly mentioned in the By-Laws but were created pursuant to a By-Law enabling provision were also considered corporate offices, was plainly *obiter dictum* due to the position subject of the controversy being mentioned in the By-Laws. Thus, the Court held therein that the position was a corporate office, and that the determination of the rights and liabilities arising from the ouster from the position was an intra-corporate controversy within the SEC's jurisdiction.

In *Nacpil v. Intercontinental Broadcasting Corporation*, which may be the more appropriate ruling, the position subject of the controversy was not expressly mentioned in the By-Laws, but was created pursuant to a By-Law enabling provision authorizing the Board of Directors to create other offices that the Board of Directors might see fit to create. The Court held there that the position was a corporate office, relying on the *obiter dictum* in *Tabang*.

Considering that the observations earlier made herein show that the soundness of their *dicta* is not unassailable, *Tabang* and *Nacpil* should no longer be controlling. *Matling Industrial and Commercial Corp., et al. vs. Ricardo R. Coros*, [*G.R. No. 157802, October 13, 2010*](#).

Negotiable Instruments Law

Dishonor; acceptance as resulting in novation. Petitioner's claim that respondent's acceptance of the Solid Bank check which replaced the

dishonored Prudential bank check resulted to novation which discharged the latter check is unmeritorious. □ In *Nyco Sales Corporation v. BA Finance Corporation*, we found untenable petitioner Nyco's claim that novation took place when the dishonored BPI check it endorsed to BA Finance Corporation was subsequently replaced by a Security Bank check.

In this case, respondent's acceptance of the Solid Bank check, which replaced the dishonored Prudential Bank check, did not result to novation as there was no express agreement to establish that petitioner was already discharged from his liability to pay respondent the amount of ₱214,000.00 as payment for the 300 bags of rice. As we said, novation is never presumed, there must be an express intention to novate. In fact, when the Solid Bank check was delivered to respondent, the same was also indorsed by petitioner which shows petitioner's recognition of the existing obligation to respondent to pay ₱214,000.00 subject of the replaced Prudential Bank check. *Anamer Salazar vs. J.Y. Brothers Marketing Corporation*, [*G.R. No. 171998, October 20, 2010*](#).

Dishonor; liability of accommodation indorser. Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. We have taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash. Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein. The change in the mode of paying the obligation was not a change in any of the objects or principal condition of the contract for novation to take place.

Considering that when the Solid Bank check, which replaced the Prudential Bank check, was presented for payment, the same was again dishonored; thus, the obligation which was secured by the Prudential Bank check was not extinguished and the Prudential Bank check was not discharged. Thus, we found no reversible error committed by the CA in holding petitioner liable as an accommodation indorser for the payment of the dishonored Prudential Bank check. *Anamer Salazar vs. J.Y. Brothers Marketing Corporation*, [*G.R. No. 171998, October 20, 2010*](#).

Intellectual Property Law

Mark; likelihood of confusion. According to Section 123.1(d) of R.A. No. 8293, a mark cannot be registered if it is identical with a registered mark belonging to a different proprietor with an earlier filing or priority date, with respect to: (1) the same goods or services; (2) closely related goods or services; or (3) near resemblance of such mark as to likely deceive or cause confusion.

In determining similarity and likelihood of confusion, jurisprudence has developed tests—the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.

In contrast, the Holistic or Totality Test necessitates a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both labels so that the observer may draw conclusion on whether one is confusingly similar to the other. *Berris Agricultural Co., Inc. vs. Norvy Abyadang*, [*G.R. No. 183404, October 13, 2010*](#).

Mark; ownership. The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122 of R.A. No. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. R.A. No. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register. In other

words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused. Moreover, the presumption may likewise be defeated by evidence of prior use by another person, *i.e.*, it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.

The determination of priority of use of a mark is a question of fact. Adoption of the mark alone does not suffice. One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market. Accordingly, receipts, sales invoices, and testimonies of witnesses as customers, or orders of buyers, best prove the actual use of a mark in trade and commerce during a certain period of time.

Here, Berris was able to establish that it was using its mark “D-10 80 WP” since June 20, 2002, even before it filed for its registration with the IPO on November 29, 2002, as shown by its DAU which was under oath and notarized, bearing the stamp of the Bureau of Trademarks of the IPO on April 25, 2003, and which stated that it had an attachment as Annex “B” sales invoices and official receipts of goods bearing the mark. Indeed, the DAU, being a notarized document, especially when received in due course by the IPO, is evidence of the facts it stated and has the presumption of regularity, entitled to full faith and credit upon its face. Thus, the burden of proof to overcome the presumption of authenticity and due execution lies on the party contesting it, and the rebutting evidence should be clear, strong, and convincing as to preclude all controversy as to the falsity of the certificate. What is more, the DAU is buttressed by the Certification dated April 21, 2006 issued by the Bureau of Trademarks that Berris’ mark is still valid and existing. *Berris Agricultural Co., Inc. vs. Norvy Abyadang*, [*G.R. No. 183404, October 13, 2010*](#).

Mark; ownership. Under Section 123(d) of RA 8293, the registration of a mark is prevented with the filing of an earlier application for registration. This must not, however, be interpreted to mean that ownership should be based upon an earlier filing date. While RA 8293 removed the previous requirement of proof of actual use prior to the filing of an

application for registration of a mark, proof of prior and continuous use is necessary to establish ownership of a mark. Such ownership constitutes sufficient evidence to oppose the registration of a mark.

Sec. 134 of the IP Code provides that “any person who believes that he would be damaged by the registration of a mark x x x” may file an opposition to the application. The term “any person” encompasses the true owner of the mark^{3/4}the prior and continuous user.

Notably, the Court has ruled that the prior and continuous use of a mark may even overcome the presumptive ownership of the registrant and be held as the owner of the mark.

Here, the incontrovertible truth, as established by the evidence submitted by the parties, is that EYIS is the prior user of the mark. On the other hand, Shen Dar failed to refute the evidence cited by the BLA in its decision. More importantly, Shen Dar failed to present sufficient evidence to prove its own prior use of the mark “VESPA.”

As such, EYIS must be considered as the prior and continuous user of the mark “VESPA” and its true owner. Hence, EYIS is entitled to the registration of the mark in its name. *E.Y. Industrial Sales, Inc. and Engracio Yap vs. Shen Dar Electricity Machinery Co., Ltd.*, [*G.R. No. 184850, October 20, 2010.*](#)

September 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [October 1, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) •

Here are selected September 2010 rulings of the Supreme Court of the Philippines on commercial law:

Corporation; dissolution. Under Section 122 of the Corporation Code, a dissolved corporation shall nevertheless continue as a body corporate for three (3) years for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose and convey

its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. Within those three (3) years, the corporation may appoint a trustee or receiver who shall carry out the said purposes beyond the three (3)-year winding-up period. Thus, a trustee of a dissolved corporation may commence a suit which can proceed to final judgment even beyond the three (3)-year period of liquidation.

In the same manner, during and beyond the three (3)-year winding-up period of RMC, the Board of Trustees of RMCPRF may do no more than settle and close the affairs of the Fund. The Board retains its authority to act on behalf of its members, *albeit*, in a limited capacity. It may commence suits on behalf of its members but not continue managing the Fund for purposes of maximizing profits. Here, the Board's act of issuing the Resolution authorizing petitioner to release the Fund to its beneficiaries is still part of the liquidation process, that is, satisfaction of the liabilities of the Plan, and does not amount to doing business. Hence, it was properly within the Board's power to promulgate. *Metropolitan Bank & trust Company, Inc. vs. The Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, et al.*, *G.R. No. 176959, September 8, 2010*.

Corporation; liability of officers and directors. Doctrine dictates that a corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach, as a rule, only when – (1) he assents to a patently unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders, or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action. *Queensland-Tokyo Commodities, Inc., et al. vs. Thomas George*, *G.R. No. 172727, September 8, 2010*.

How to Replace Lost, Stolen or Destroyed Stock Certificates

Posted on [September 27, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) •

A stock certificate is tangible evidence of the share it represents. A person who wishes to sell his shares of stock would normally be required to deliver the stock certificates to the buyer. A person who wishes to pledge his shares would also be required to deliver the stock certificates to the pledgee.

If the stock certificates are lost, stolen, or destroyed, the corporation cannot simply issue new stock certificates in the name of the stockholder. The Corporation Code provides the procedure for the replacement of a lost, stolen, or destroyed stock certificate. These are:

(1) The registered owner of the lost stock certificate (or his duly authorized representative) must file with the corporation an affidavit of loss. The affidavit of loss must be executed in triplicate and must set forth the following: (a) the circumstances as to how the certificate was lost; (b) the number of shares represented by the certificate; (c) the serial number of the certificate; and (d) the name of the issuing corporation. He must also submit such other information and evidence which he may deem necessary.

(2) After verifying the affidavit and other information and evidence with the books of the corporation, the corporation must publish, at the expense of the stockholder, a notice in a newspaper of general circulation in the place where the corporation has its principal office, once a week for three consecutive weeks. The notice shall state the following: (a) the name of the corporation; (b) the name of the registered owner; (c) the serial number of the lost certificate; (d) the number of shares represented by such certificate; and (e) that after the expiration of one year from the date of the last publication, if no contest has been presented to the corporation regarding the certificate of stock, the right to make such contest shall be barred and the corporation shall cancel in its books the certificate of stock which has been lost, stolen or destroyed and issue in lieu thereof new certificate of stock, unless the registered owner files a bond or other security in lieu thereof as

may be required, effective for a period of one year, for such amount and in such form and with such sureties as may be satisfactory to the board of directors, in which case a new certificate may be issued even before the expiration of the one year period.

(3) After a period of one year from the date of last publication, the corporation can cancel in its books the lost certificate and issue a new stock certificate if no contest was presented to the corporation regarding the lost certificate. The corporation can also issue the replacement stock certificates prior to the lapse of the one year period if the owner files a bond or other security satisfactory to the board of directors.

(4) If a contest has been presented to the corporation or if an action is pending in court regarding the ownership of said certificate of stock which has been lost, stolen or destroyed, the issuance of the new certificate of stock will be suspended until the final decision by the court regarding the ownership of said certificate of stock which has been lost, stolen or destroyed.

If the corporation observes the foregoing procedure, no action can be brought against the corporation which issued the replacement stock certificates (except in case of fraud, bad faith, or negligence on the part of the corporation and its officers).

Dissension in the Court: August 2010

Posted on [September 6, 2010](#) by [Jose Ma. G. Hofileña](#) • Posted in [Commercial Law](#), [Constitutional Law](#) • Tagged [local government](#), [merger](#) •

The following are selected decisions promulgated by the High Court in August 2010 where at least one Justice felt compelled to express his or her dissent from the decision penned by the *ponente*.

1. [\[Union\] Shop Talk](#) (*Leonardo-De Castro vs. Brion and Carpio*)

Apart from the wide-spread paranoia about a possible Y2K global computer

cataclysm, one other significant development occurring around the start of the twenty-first century was the merger of two giant banking institutions—Far East Bank and Trust Company (FEBTC) and Bank of the Philippine Islands (BPI)—with BPI being the surviving entity. One of several legal issues spawned by that merger was the subject matter of *Republic of the Philippines vs. Bank of the Philippine Islands* penned by Justice Teresita J. Leonardo-De Castro.

At the time of the merger, the BPI Employees Union-Davao Chapter (the “Union”) constituted the exclusive bargaining agent of BPI’s rank and file employees in Davao City. Their existing collective bargaining agreement (CBA) with BPI included a “Union Shop” clause which read as follows:

Article II:

x x x

Section 2. Union Shop – New employees falling within the bargaining unit as defined in Article I of this Agreement, who may hereafter be regularly employed by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment. It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.

Once the FEBTC-BPI merger took effect, the Union required BPI to implement the Union Shop Clause and compel the former FEBTC employees to join the Union. BPI took the position that the former FEBTC employees were not covered by the Union Security Clause on the ground that the former FEBTC employees were not new employees who were hired and subsequently regularized, but were absorbed employees “by operation of law” because the “former employees of FEBTC can be considered assets and liabilities of the absorbed corporation.”

While the Voluntary Arbitrator sided with BPI, the Court of Appeals reversed the Voluntary Arbitrator’s decision. The Court of Appeals held that while there is indeed a distinction between “absorbed” employees and “new” employees, such distinction applied only with respect to recognition of the past service of the “absorbed” employees with their former employer,

FEBTC. However, for purposes of applying the Union Shop Clause, they should be deemed to be “new” employees as otherwise, inequities would arise.

Justice Leonardo-De Castro upheld the position of the Court of Appeals that the Union Shop Clause should be made applicable to the former FEBTC employees that were now BPI employees. The ponente reminded the litigants of the principles behind, and the validity of, union security clause (of which a union shop clause is one) and likewise pointed out that there is nothing in the CBA that speaks about how one becomes a “regular” BPI employee for purposes of the Union Shop Clause.

Moreover, Justice Leonardo-De Castro added, there is nothing in the Corporation Law and the merger agreement mandating the automatic employment of the employees of the absorbed corporation as regular employees by the surviving corporation in the merger. Contrary to the assertion of BPI, the former employees of FEBTC are not “assets and liabilities” of FEBTC which are required to be absorbed by BPI by operation of law and it is against public policy to declare the former FEBTC employees as forming part of the assets or liabilities of FEBTC that were transferred and absorbed by BPI in the Articles of Merger. In fact, noted Justice Leonardo-De Castro, the Corporation Code does not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger.

Unlike chattel, employees may not be unilaterally transferred as employment is a personal consensual contract and absorption by BPI of a former FEBTC employee without the consent of the employee is in violation of an individual’s freedom to contract.

Reiterating that it an inequity would arise if the former FEBTC employees were not made subject of the Union Shop Clause (there being nothing in the Labor Code and other applicable laws or the CBA provision at issue that requires that a new employee has to be of probationary or non-regular status at the beginning of the employment relationship.), the ponente stresses that a union security clause in a CBA should be interpreted to give meaning and

effect to its purpose, which is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit.

In his dissent, among other things, Justice Antonio T. Carpio took exception to the majority decision's ruling regarding the effect of a merger with respect to the absorption by the surviving corporation of the employees of the non-surviving entity. In Justice Carpio's view, based on the Corporation Code, "[u]pon merger, BPI, as the surviving entity, absorbs FEBTC and continues the combined business of the two banks. BPI assumes the legal personality of FEBTC, and automatically acquires FEBTC's rights, privileges and powers, as well as its liabilities and obligations." Among the obligations and liabilities that BPI assumes is the obligation of FEBTC to continue the employment of the latter's employees.

He observed that under the CBA, the BPI employees required to acquire or maintain union membership as a condition for their continued employment are (1) the union members at the time of the effectivity of the CBA and (2) the "new employees" who were hired during the effectivity of the CBA. Non-union BPI employees at the time of the effectivity of the CBA were not, and are still not, required to join the Union.

The former employees of FEBTC should not be treated in the same way as "new employees" for purposes of the Union Shop Clause. At the time new employees are hired by BPI, they knew that they were required to join the Union within 30 days from regularization as a condition for continued employment with BPI. This is not the case with the absorbed employees who, upon the merger, are immediately regularized and made permanent employees of BPI; they are immediately given the same permanent status as old employees of BPI.

Therefore, In the same way that an existing non-union BPI employee is given the constitutional right to choose whether or not to join the Union, an absorbed employee should be equally given the same right. And this right must be conferred to the absorbed employee upon the effectivity of the merger between FEBTC and BPI.

Justice Arturo D. Brion observed that the majority decision appears to consider only the purely labor law aspect of the case in determining the relationships among BPI, FEBTC and the absorbed employees. However, he believed that “[m]ore than anything else, however, the issues before us are rooted in the corporate merger that took place; thus, the first priority in resolving the issues before us should be to consider and analyze the nature and consequences of the BPI-FEBTC merger—essentially a matter under the Corporation Code. On the basis of this analysis, the application of labor law can follow.”

He pointed out that under Section 76 of the Corporation Code, in a merger or consolidation, no liquidation of the assets of the dissolved corporations takes place, and the surviving or consolidated corporation assumes ipso jure the liabilities of the dissolved corporations, regardless of whether the creditors consented to the merger or consolidation. *“In a total merger, the merged corporation transfers everything – figuratively speaking, its “body and soul” – to the surviving corporation.* This was what happened in the BPI-FEBTC merger.“

Included among those that the surviving corporation takes over are the obligations of the non-surviving corporation under the employment contracts it entered into with its employees. “In the BPI-FEBTC situation, these employment contracts are part of the obligations that the merging parties have to account and make provisions for under the Constitution and the Corporation Code; in the absence of any clear agreement, these employment contracts subsist, subject to the right of the employees to reject them as they cannot be compelled to render service but can only be made to answer in damages if the rejection constitutes a breach.”

Accordingly, Justice Brion likewise took the position that the absorbed FEBTC employees are not “new employees” as contemplated in the Union Shop Clause. What is clearly a requirement for the application of the Union Shop Clause is the grant of regular status, or, to those recently given regular employment and who, by necessary implication, were hired as non-regular employees and were thereafter accorded regular status.

In contrast with the non-regular employees that the CBA clearly referred to, absorbed FEBTC employees did not undergo the process of waiting for the

grant of regular status; their regular employment simply continued from FEBTC to BPI without any break because BPI only succeeded to the role of FEBTC as employer in a merger, where the same employment was maintained and only the employer's personality changed.

(Bank of the Philippine Islands vs. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank; G.R. No. 164301. August 18, 2010. See dissenting opinion of Carpio, J [here](#) and dissenting opinion of Brion, J [here](#).)

(author's note: This author is pretty much convinced that in a merger, the employees of the non-surviving corporation do become employees of the surviving entity without interruption even as the employees retain the right to resign from that employment and the employer retains the right to terminate the employees to the extent permitted by law. Thus, on this legal point, he would side with the dissenters. This author is curious as to what ripple legal effects there might be within the labor/management community on account of the pronouncement—or at least that's how it appears to this author—that in a merger of two corporations, employees of the non-surviving entity are not automatically absorbed into the surviving corporation.)

2. Local Government Unit Criteria (*Carpio vs. Velasco*)

The decision of the Supreme Court in *League of Cities of the Philippines, et al. vs. Commission on Elections, et al.* issued in August 21, 2010 followed a series of prior rulings by the Supreme Court on the same subject matter.

On 18 November 2008, a majority vote of the Supreme Court en banc struck down 16 Cityhood Laws for violating Section 10, Article X of the 1987 Constitution and the equal protection clause.

On March 31 2009, the Supreme Court *En Banc*, again by a majority vote, denied the respondents' first motion for reconsideration. On April 28, 2009, the Supreme Court *En Banc*, by a *split* vote, denied the respondents' second motion for reconsideration and accordingly, at least according to the ponente

of the majority decision, Justice Antonio T. Carpio, the November 18, 2008 decision became final and executory and was recorded, in due course, in the Book of Entries of Judgments on May 21, 2009.

After the finality of the November 18, 2008 decision, however, the Court *En Banc* reversed the November 18, 2008 decision by upholding the constitutionality of the Cityhood Laws in a decision issued on December 21, 2009, prompting the filing of motions to reconsider and annul that December 21, 2009 decision.

In this ruling, the majority ruled to set aside the December 21, 2009 decision and reinstate the November 18, 2008 decision declaring the Cityhood Laws to be unconstitutional.

The majority decision ruled that the Cityhood Laws, which consisted of a series of legislative enactments that essentially exempted certain municipalities from the generally applicable income requirements set out in the Local Government Code, as amended, were unconstitutional because they violated Section 10, Article X of the Constitution which states:

No province, city, municipality, or barangay shall be created, divided, merged, abolished or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

According to Justice Carpio, per the Constitution, the creation of local government units must follow the criteria established only in the Local Government Code and not in any other law. Since the Cityhood Laws are laws different from the Local Government Code, then the Cityhood Laws are unconstitutional for having adopted criteria that is not set out in the Local Government Code.

On this point, Justice Presbitero Velasco, the sole dissenter, took the view that the word “code” in Section 10, Article X of the Constitution refers to a law Congress enacts in line with its plenary power to create local political subdivisions. He noted that the December 21, 2009 Decision explained that the only conceivable reason why the Constitution employs the clause “in

accordance with the criteria established in the local government code” is to lay stress that it is Congress alone, and no other, which can define, prescribe and impose the criteria. Thus, the imposition may be effected either in a consolidated set of laws or a single-subject enactment. And provided the imperatives of the equal protection clause are not transgressed, an exemption from the imposition may be allowed, just like the Cityhood Laws each of which contained exemption from the income requirement set out in the amendatory legislation to the Local Government Code.

Said Justice Velasco, “It cannot be emphasized enough that if Congress has the plenary power to create political units, it surely can exercise the lesser power of requiring a menu of criteria and standards for their creation. As it is, the amendatory RA 9009 increasing the codified income requirement from Php20 million to Php100 million is really no different from the enactment of any of the Cityhood Law exempting the unit covered thereby from the codified standards.”

(League of Cities of the Phil. rep by LCP National President Jerry P. Trenas, et al. vs. COMELEC, et al.; G.R. No. 176951/G.R. No. 177499/G.R. No. 178056. August 24, 2010. See dissenting opinion [here](#).)

August 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [September 1, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [board of directors](#), [check](#), [corporation](#), [merger](#), [negligence](#), [negotiable instruments](#), [trademark](#) •

Here are selected August 2010 rulings of the Supreme Court of the Philippines on commercial law:

Corporation; liability of directors and officers. Elementary is the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it and from that of any other legal entity to which it may be related. “Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is

not of itself sufficient ground for disregarding the separate corporate personality.”

In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith. Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud. *Wensha Spa Center, inc. and/or Xu Zhi Jie vs. Loreta T. Yung*, *G.R. No. 185122, August 16, 2010*.

Crossed check; effect. A check is a bill of exchange drawn on a bank payable on demand. There are different kinds of checks. In this case, crossed checks are the subject of the controversy. A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. It may be crossed generally or specially.

A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. It is crossed generally when only the words “and company” are written or nothing is written at all between the parallel lines, as in this case. It may be issued so that presentment can be made only by a bank.

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once — to one who has an account with a bank; and (c) the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

The Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effect of crossing a check, thus, relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein. The crossing of a check is a warning that the check should be deposited only in the account of the payee. Thus, it is the duty of the collecting bank to ascertain that the check be deposited to the payee's account only. *Vicente Go vs. Metropolitan Bank and Trust Co.*, *G.R. No. 168842, August 11, 2010.*

Crossed check; liability of bank for lack of indorsement. Respondent bank was negligent in permitting the deposit and encashment of the crossed checks without the proper indorsement. An indorsement is necessary for the proper negotiation of checks specially if the payee named therein or holder thereof is not the one depositing or encashing it. Knowing fully well that the subject checks were crossed, that the payee was not the holder and that the checks contained no indorsement, respondent bank should have taken reasonable steps in order to determine the validity of the representations made by Chua. Respondent bank was amiss in its duty as an agent of the payee. Prudence dictates that respondent bank should not have merely relied on the assurances given by Chua.

Negligence was committed by respondent bank in accepting for deposit the crossed checks without indorsement and in not verifying the authenticity of the negotiation of the checks. The law imposes a duty of extraordinary diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity. As a business affected with public interest and because of the nature of its functions, the banks are under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of the relationship. The fact that this arrangement had been practiced for three

years without Mr. Go/Hope Pharmacy raising any objection does not detract from the duty of the bank to exercise extraordinary diligence. Thus, the Decision of the RTC, as affirmed by the CA, holding respondent bank liable for moral damages is sufficient to remind it of its responsibility to exercise extraordinary diligence in the course of its business which is imbued with public interest. *Vicente Go vs. Metropolitan Bank and Trust Co.*, *G.R. No. 168842, August 11, 2010*.

Directors; per diem. Under section 30 of the Corporation Code, the directors of a corporation shall not receive any compensation for being members of the board of directors, except for reasonable per diems. The two instances where the directors are to be entitled to compensation shall be when it is fixed by the corporation's by-laws or when the stockholders, representing at least a majority of the outstanding capital stock, vote to grant the same at a regular or special stockholder's meeting, subject to the qualification that, in any of the two situations, the total yearly compensation of directors, as such directors, shall in no case exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year. *Gabriel C. Singson, et al. vs. Commission on Audit*, *G.R. No. 159355, August 9, 2010*.

Financial institutions; negligence. The petitioner, being a banking institution, had the direct obligation to supervise very closely the employees handling its depositors' accounts, and should always be mindful of the fiduciary nature of its relationship with the depositors. Such relationship required it and its employees to record accurately every single transaction, and as promptly as possible, considering that the depositors' accounts should always reflect the amounts of money the depositors could dispose of as they saw fit, confident that, as a bank, it would deliver the amounts to whomever they directed. If it fell short of that obligation, it should bear the responsibility for the consequences to the depositors, who, like the respondent, suffered particular embarrassment and disturbed peace of mind from the negligence in the handling of the accounts. *Citytrust Banking Corporation vs. Carlos Romulo N. Cruz*, *G.R. No. 157049, August 11, 2010*.

Merger; effect on employment and seniority rights. Although not binding on this Court, American jurisprudence on the consequences of voluntary mergers on the right to employment and seniority rights is persuasive and illuminating. We quote the following pertinent discussion from the

American Law Reports:

Several cases have involved the situation where as a result of mergers, consolidations, or shutdowns, one group of employees, who had accumulated seniority at one plant or for one employer, finds that their jobs have been discontinued except to the extent that they are offered employment at the place or by the employer where the work is to be carried on in the future. Such cases have involved the question whether such transferring employees should be entitled to carry with them their accumulated seniority or whether they are to be compelled to start over at the bottom of the seniority list in the “new” job. It has been recognized in some cases that the accumulated seniority does not survive and cannot be transferred to the “new” job.

In *Carver v Brien* (1942) 315 Ill App 643, 43 NE2d 597, the shop work of three formerly separate railroad corporations, which had previously operated separate facilities, was consolidated in the shops of one of the roads. Displaced employees of the other two roads were given preference for the new jobs created in the shops of the railroad which took over the work. A controversy arose between the employees as to whether the displaced employees were entitled to carry with them to the new jobs the seniority rights they had accumulated with their prior employers, that is, whether the rosters of the three corporations, for seniority purposes, should be “dovetailed” or whether the transferring employees should go to the bottom of the roster of their new employer. Labor representatives of the various systems involved attempted to work out an agreement which, in effect, preserved the seniority status obtained in the prior employment on other roads, and the action was for specific performance of this agreement against a demurring group of the original employees of the railroad which was operating the consolidated shops. The relief sought was denied, the court saying that, absent some specific contract provision otherwise, seniority rights were ordinarily limited to the employment in which they were earned, and concluding that the contract for which specific performance was sought was not such a completed and binding agreement as would support such equitable relief, since the railroad, whose concurrence in the arrangements made was essential to their effectuation, was not a party to the agreement.

Where the provisions of a labor contract provided that in the event that a

trucker absorbed the business of another private contractor or common carrier, or was a party to a merger of lines, the seniority of the employees absorbed or affected thereby should be determined by mutual agreement between the trucker and the unions involved, it was held in *Moore v International Brotherhood of Teamsters, etc.* (1962, Ky) 356 SW2d 241, that the trucker was not required to absorb the affected employees as well as the business, the court saying that they could find no such meaning in the above clause, stating that it dealt only with seniority, and not with initial employment. Unless and until the absorbing company agreed to take the employees of the company whose business was being absorbed, no seniority problem was created, said the court, hence the provision of the contract could have no application. Furthermore, said the court, it did not require that the absorbing company take these employees, but only that if it did take them the question of seniority between the old and new employees would be worked out by agreement or else be submitted to the grievance procedure. (Emphasis ours.)

Indeed, from the tenor of local and foreign authorities, in voluntary mergers, absorption of the dissolved corporation's employees or the recognition of the absorbed employees' service with their previous employer may be demanded from the surviving corporation if required by provision of law or contract. The dissent of Justice Arturo D. Brion tries to make a distinction as to the terms and conditions of employment of the absorbed employees in the case of a corporate merger or consolidation which will, in effect, take away from corporate management the prerogative to make purely business decisions on the hiring of employees or will give it an excuse not to apply the CBA in force to the prejudice of its own employees and their recognized collective bargaining agent. In this regard, we disagree with Justice Brion.

Justice Brion takes the position that because the surviving corporation continues the personality of the dissolved corporation and acquires all the latter's rights and obligations, it is duty-bound to absorb the dissolved corporation's employees, even in the absence of a stipulation in the plan of merger. He proposes that this interpretation would provide the necessary protection to labor as it spares workers from being "left in legal limbo."

However, there are instances where an employer can validly discontinue or terminate the employment of an employee without violating his right to security of tenure. Among others, in case of redundancy, for example,

superfluous employees may be terminated and such termination would be authorized under Article 283 of the Labor Code.

Moreover, assuming for the sake of argument that there is an obligation to hire or absorb all employees of the non-surviving corporation, there is still no basis to conclude that the terms and conditions of employment under a valid collective bargaining agreement in force in the surviving corporation should not be made to apply to the absorbed employees. *Bank of the Philippine Islands vs. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, *G.R. No. 164301, August 18, 2010*.

Merger; mandatory absorption of employees of corporation. The lack of a provision in the plan of merger regarding the transfer of employment contracts to the surviving corporation could have very well been deliberate on the part of the parties to the merger, in order to grant the surviving corporation the freedom to choose who among the dissolved corporation's employees to retain, in accordance with the surviving corporation's business needs. If terminations, for instance due to redundancy or labor-saving devices or to prevent losses, are done in good faith, they would be valid. The surviving corporation too is duty-bound to protect the rights of its own employees who may be affected by the merger in terms of seniority and other conditions of their employment due to the merger. Thus, we are not convinced that in the absence of a stipulation in the merger plan the surviving corporation was compelled, or may be judicially compelled, to absorb all employees under the same terms and conditions obtaining in the dissolved corporation as the surviving corporation should also take into consideration the state of its business and its obligations to its own employees, and to their certified collective bargaining agent or labor union.

Even assuming we accept Justice Brion's theory that in a merger situation the surviving corporation should be compelled to absorb the dissolved corporation's employees as a legal consequence of the merger and as a social justice consideration, it bears to emphasize his dissent also recognizes that the employee may choose to end his employment at any time by voluntarily resigning. For the employee to be "absorbed" by BPI, it requires the employees' implied or express consent. It is because of this human

element in employment contracts and the personal, consensual nature thereof that we cannot agree that, in a merger situation, employment contracts are automatically transferable from one entity to another in the same manner that a contract pertaining to purely proprietary rights – such as a promissory note or a deed of sale of property – is perfectly and automatically transferable to the surviving corporation. *Bank of the Philippine Islands vs. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank*, *G.R. No. 164301, August 18, 2010*.

Trademark; rights. A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. Inarguably, it is an intellectual property deserving protection by law. In trademark controversies, each case must be scrutinized according to its peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point.

As Myra correctly posits, as a registered trademark owner, it has the right under Section 147 of R.A. No. 8293 to prevent third parties from using a trademark, or similar signs or containers for goods or services, without its consent, identical or similar to its registered trademark, where such use would result in a likelihood of confusion. *Dermaline, Inc. vs. Myra Phamaceuticals, Inc.*, *G.R. No. 190065, August 16, 2010*.

Trademark; infringement. Among the elements of trademark infringement, the element of likelihood of confusion is the gravamen of trademark infringement. There are two types of confusion in trademark infringement: confusion of goods and confusion of business. In *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft*, the Court distinguished the two types of confusion:

“Callman notes two types of confusion. The first is the confusion of goods “in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other.” In which case, “defendant’s goods are then bought as the plaintiff’s, and the

poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the confusion of business: "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."

There are two tests to determine likelihood of confusion: the dominance test and holistic test. The dominance test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Infringement takes place when the competing trademark contains the essential features of another. Imitation or an effort to imitate is unnecessary. The question is whether the use of the marks is likely to cause confusion or deceive purchasers.

The holistic test considers the entirety of the marks, including labels and packaging, in determining confusing similarity. The focus is not only on the predominant words but also on the other features appearing on the labels.

In cases involving trademark infringement, no set of rules can be deduced. Each case must be decided on its own merits. Jurisprudential precedents must be studied in the light of the facts of each particular case.

In the light of the facts of the present case, the Court holds that the dominance test is applicable. *Socete Des Produits Nestle, S.A. vs. Martin T. Dy, Jr.*, *G.R. No. 172276, August 8, 2010*.

Trademark; infringement. In determining likelihood of confusion, case law has developed two (2) tests, the Dominance Test and the Holistic or Totality Test.

The Dominance Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion or deception. It is applied when the trademark sought to be registered contains the main, essential and dominant features of the earlier registered trademark, and confusion or deception is likely to result. Duplication or imitation is not even required; neither is it necessary that the label of the applied mark for

registration should suggest an effort to imitate. The important issue is whether the use of the marks involved would likely cause confusion or mistake in the mind of or deceive the ordinary purchaser, or one who is accustomed to buy, and therefore to some extent familiar with, the goods in question. Given greater consideration are the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments. The test of dominancy is now explicitly incorporated into law in Section 155.1 of R.A. No. 8293.

On the other hand, the Holistic Test entails a consideration of the entirety of the marks as applied to the products, including labels and packaging, in determining confusing similarity. The scrutinizing eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels so that a conclusion may be drawn as to whether one is confusingly similar to the other.

Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, viz: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent. *Dermaline, Inc. vs. Myra Phamaceuticals, Inc.*, *G.R. No. 190065, August 16, 2010*.

July 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [August 2, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [common carrier](#), [corporation](#), [interest](#), [prescription](#) •

Here are selected July 2010 rulings of the Supreme Court of the Philippines on commercial law:

Carriage of Goods by Sea; liability of carrier. It is to be noted that the Civil Code does not limit the liability of the common carrier to a fixed amount per package. In all matters not regulated by the Civil Code, the rights and obligations of common carriers are governed by the Code of Commerce and special laws. Thus, the COGSA supplements the Civil Code by establishing a provision limiting the carrier's liability in the absence of a shipper's declaration of a higher value in the bill of lading.

In the present case, the shipper did not declare a higher valuation of the goods to be shipped.

In light of the foregoing, petitioner's liability should be limited to \$500 per steel drum. In this case, as there was only one drum lost, private respondent is entitled to receive only \$500 as damages for the loss. In addition to said amount, as aptly held by the trial court, an interest rate of 6% *per annum* should also be imposed, plus 25% of the total sum as attorney's fees. *Unsworth Transportation International (Phils.), Inc. vs. Court of Appeals and Pioneer Insurance and Surety Corporation*, *G.R. No. 166250*, *July 26, 2010*.

Carriage of Goods by Sea; prescription for claim. Under Section 3 (6) of the Carriage of Goods by Sea Act, notice of loss or damages must be filed within three days of delivery. Admittedly, respondent did not comply with this provision.

Under the same provision, however, a failure to file a notice of claim within three days will not bar recovery if a suit is nonetheless filed within one year from delivery of the goods or from the date when the goods should have been delivered.

In *Loadstar Shipping Co., Inc. v. Court of Appeals*, the Court ruled that a claim is not barred by prescription as long as the one-year period has not lapsed. Thus, in the words of the *ponente*, Chief Justice Hilario G. Davide Jr.: "Inasmuch as neither the Civil Code nor the Code of Commerce states a specific prescriptive period on the matter, the Carriage of Goods by Sea Act

(COGSA) — which provides for a one-year period of limitation on claims for loss of, or damage to, cargoes sustained during transit — may be applied suppletorily to the case at bar.” *Wallem Philippines Shipping, Inc. vs. S.R. Farms, Inc.*, *G.R. No. 161849, July 9, 2010*.

Corporation; authority of corporate officer. Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. The power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.

However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to its officers, committees or agents. The authority of these individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. Actual authority is either express or implied. The extent of an agent’s express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal. The doctrine of “apparent authority,” on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through:

- (1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or
- (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. *Violeta Tudit Banate, et al. vs. Philippine Countryside Rural*

Bank (Liloan, Cebu), Inc. and Teofilo Soon, Jr., G.R. No. 163825, July 13, 2010.

Corporation sole; conversion into corporation aggregate. A corporation may change its character as a corporation sole into a corporation aggregate by mere amendment of its articles of incorporation without first going through the process of dissolution.

True, the Corporation Code provides no specific mechanism for amending the articles of incorporation of a corporation sole. However, Section 109 of the Corporation Code allows the application to religious corporations of the general provisions governing non-stock corporations.

For non-stock corporations, the power to amend its articles of incorporation lies in its members. The code requires two-thirds of their votes for the approval of such an amendment. So how will this requirement apply to a corporation sole that has technically but one member (the head of the religious organization) who holds in his hands its broad corporate powers over the properties, rights, and interests of his religious organization?

Although a non-stock corporation has a personality that is distinct from those of its members who established it, its articles of incorporation cannot be amended solely through the action of its board of trustees. The amendment needs the concurrence of at least two-thirds of its membership. If such approval mechanism is made to operate in a corporation sole, its one member in whom all the powers of the corporation technically belongs, needs to get the concurrence of two-thirds of its membership. The one member, here the General Superintendent, is but a trustee, according to Section 110 of the Corporation Code, of its membership.

There is no point to dissolving the corporation sole of one member to enable the corporation aggregate to emerge from it. Whether it is a non-stock corporation or a corporation sole, the corporate being remains distinct from its members, whatever be their number. The increase in the number of its corporate membership does not change the complexion of its corporate responsibility to third parties. The one member, with the concurrence of two-thirds of the membership of the organization for whom he acts as

trustee, can self-will the amendment. He can, with membership concurrence, increase the technical number of the members of the corporation from “sole” or one to the greater number authorized by its amended articles. *Iglesia Evangelica Metodista En Las Islas Filipinas (IEMELIF), Inc., et al. vs. Bishop Nathanael Lazaro, et al.*, *G.R. No. 184088, July 6, 2010*.

Freight forwarder; bill of lading. A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order. It operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties. *Unsworth Transportation International (Phils.), Inc. vs. Court of Appeals and Pioneer Insurance and Surety Corporation*, *G.R. No. 166250, July 26, 2010*

Freight forwarder; definition. The term “freight forwarder” refers to a firm holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and, in the ordinary course of its business, (1) to assemble and consolidate, or to provide for assembling and consolidating, shipments, and to perform or provide for break-bulk and distribution operations of the shipments; (2) to assume responsibility for the transportation of goods from the place of receipt to the place of destination; and (3) to use for any part of the transportation a carrier subject to the federal law pertaining to common carriers. *Unsworth Transportation International (Phils.), Inc. vs. Court of Appeals and Pioneer Insurance and Surety Corporation*, *G.R. No. 166250, July 26, 2010*.

Freight forwarder; liability. A freight forwarder’s liability is limited to damages arising from its own negligence, including negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport,

even though the forwarder does not carry the merchandise itself. *Unsworth Transportation International (Phils.), Inc. vs. Court of Appeals and Pioneer Insurance and Surety Corporation*, *G.R. No. 166250, July 26, 2010*.

Usury Law; interest rate ceiling. The Usury Law had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983. These circulars removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the Usury Law is within the range of judicial notice which courts are bound to take into account. Although interest rates are no longer subject to a ceiling, the lender still does not have an unbridled license to impose increased interest rates. The lender and the borrower should agree on the imposed rate, and such imposed rate should be in writing.

Here, the stipulations on interest rate repricing are valid because (1) the parties mutually agreed on said stipulations; (2) repricing takes effect only upon Solidbank's written notice to Permanent of the new interest rate; and (3) Permanent has the option to prepay its loan if Permanent and Solidbank do not agree on the new interest rate. The phrases "irrevocably authorize," "at any time" and "adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent," emphasize that Permanent should receive a written notice from Solidbank as a condition for the adjustment of the interest rates. *Solidbank Corporation vs. Permanent Homes, Inc.*, *G.R. No. 171925, July 23, 2010*.

June 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [July 2, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

Here are selected June 2010 rulings of the Supreme Court of the Philippines

on commercial law:

Shares; proposed sale by stockholder not holding stock certificate. On December 27, 1995, when McFoods offered for sale one Class “A” share of stock to MSCI for the price of P2,800,000.00 for the latter to exercise its pre-emptive right as required by Section 30(e) of MSCI’s Amended By-Laws, it legally had the right to do so since it was already an owner of a Class “A” share by virtue of its payment on November 28, 1995, and the Deed of Absolute Share dated December 15, 1995, notwithstanding the fact that the stock certificate was issued only on January 5, 1996. A certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not a stock in the corporation but is merely evidence of the holder’s interest and status in the corporation, his ownership of the share represented thereby. It is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but is not essential to the existence of a share of stock or the nature of the relation of shareholder to the corporation. *Makati Sports Club, Inc. vs. Cecile H. Cheng, et al.*, *G.R. No. 178523, June 16, 2010.*

Shares; preemptive rights. McFoods properly complied with the requirement of Section 30(e) of the Amended By-Laws on MSCI’s pre-emptive rights. Without doubt, MSCI failed to repurchase McFoods’ Class “A” share within the thirty (30) day pre-emptive period as provided by the Amended By-Laws. It was only on January 29, 1996, or 32 days after December 28, 1995, when MSCI received Mc Foods’ letter of offer to sell the share, that Mc Foods and Hodreal executed the Deed of Absolute Sale over the said share of stock.

MSCI cannot argue that McFoods was not yet a registered owner of the share of stock when the latter offered it for resale, in order to void the transfer from Mc Foods to Hodreal. The corporation’s obligation to register is ministerial upon the buyer’s acquisition of ownership of the share of stock. The corporation, either by its board, its by-laws, or the act of its officers, cannot create restrictions in stock transfers. *Makati Sports Club, Inc. vs. Cecile H. Cheng, et al.*, *G.R. No. 178523, June 16, 2010.*

Stock certificate; issuance. Upon payment by McFoods of P1,800,000.00

to MSCI and the execution of the Deed of Absolute Sale on December 15, 1995, it then had the right to demand the delivery of the stock certificate in its name. The right of a transferee to have stocks transferred to its name is an inherent right flowing from its ownership of the stocks. *Makati Sports Club, Inc. vs. Cecile H. Cheng, et al.*, *G.R. No. 178523, June 16, 2010*.

How to amend articles of incorporation

Posted on [June 30, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

After its incorporation, a corporation may wish to make changes to its articles of incorporation. These changes may include, for example, a change in the corporate name, a change in the principal place of business of the corporation, or a change in the number of directors.

The major steps for making changes to the articles of incorporation are:

1. The board of directors approves the amendments in a meeting called for the purpose;
2. The stockholders approve the amendments in a meeting called for the purpose (or in cases allowed by law, by giving their written assent to the amendment);
3. The SEC approves the amendment.

Let's discuss each of these steps:

1. Approval by the board of directors

Under the Corporation Code, an amendment of the articles of incorporation must be approved by a majority of the board of directors in a meeting called for the purpose (sec. 16). A higher vote requirement may be required in the articles of incorporation/by-laws or pursuant to provisions of special laws.

2. Approval by the stockholders

Under the Corporation Code, an amendment of the articles of incorporation requires the vote or written assent of the stockholders representing at least 2/3 of the outstanding capital stock (sec. 16). A higher vote requirement may also be required in the articles of incorporation/by-laws or pursuant to provisions of special laws.

The Corporation Code provides that the stockholders may approve by “written assent”, meaning that such vote need not be taken at a stockholders’ meeting. In certain cases, the Corporation Code requires a meeting of the stockholders for the approval of an amendment, such as when the amendment consists of extending or shortening the corporate term (sec. 37) or increasing or decreasing the authorized capital stock (sec. 38).

The articles of incorporation is deemed a contract between the corporation and its stockholders. Thus, the Corporation Code provides that holders of non-voting shares will nevertheless be entitled to vote on any proposal to amend the articles of incorporation (sec. 16).

3. Approval by the SEC

The following documents must be submitted to the SEC for the amendment of the articles of incorporation:

- (a) the Amended Articles of Incorporation (where changes to the articles are underscored);
- (b) a Directors’ Certificate, which is a notarized document signed by the Corporate Secretary and a majority of the directors. The Directors’ Certificate certifies the amendment of the Articles of Incorporation and indicates, among others, the amended provisions, the vote of the directors and the stockholders, and the date and place of the meetings. The SEC requires that the tax identification number of the signatories must be indicated below their names.

Depending on the nature of the provisions amended, the corporation may also need to submit other documents to the SEC. For example, if there is a change in the corporate name, the corporation must also submit a name verification slip. Similarly, there are special documentary requirements for an increase or decrease of authorized capital stock, or the reclassification, declassification or conversion of shares.

The SEC will not allow the amendment of the articles if, among others, the amendment will be contrary to law or is not for a “legitimate purpose” (sec. 16; see sec. 17).

When the SEC is satisfied that the amendment should be allowed, the SEC will issue a certificate indicating its approval. Under the Corporation Code, the amendment shall take effect upon approval by the SEC or from the date of filing with the SEC if not acted upon within 6 months from the date of filing for a cause not attributable to the corporation (sec. 16).

How to pledge shares of stock

Posted on **June 9, 2010** by **Hector M. de Leon Jr.** • Posted in **Civil Law, Commercial Law** • Tagged **corporation, pledge, stamp tax, stockholders** •

A stockholder may wish to raise money for personal or business use. For this purpose, he may obtain a loan from a lender. To secure payment of the loan, the lender may require the borrower to pledge personal properties (such as shares of stock) owned by the borrower.

A pledge is an agreement by which the borrower delivers to the lender (or a third person agreed upon by the parties) personal properties for the purpose of securing the fulfillment of an obligation (such as repayment of a loan), with the understanding that when the obligation is fulfilled (or in case of a loan, when the borrower pays the loan), the thing delivered is returned by the lender to the borrower. The person who gives the pledge is called a pledgor, while the person in whose favor the pledge is given is called the pledgee.

The basic steps in creating a pledge over shares of stock are:

1. Negotiation, execution and notarization of the pledge agreement (often called a deed of pledge);

2. Delivery of the thing pledged to the pledgee (or an authorized third person);
3. Payment of the documentary stamp (DST) tax on the pledge and the filing of the appropriate return with the Bureau of Internal Revenue (BIR).

Let's discuss each of those steps:

1. Pledge agreement

The basic pledge agreement will contain the following:

- (a) the name and other personal details (e.g., civil status, citizenship, address, etc.) of the pledgor and the pledgee;
- (b) a description of the shares of stock being pledged (including the number of shares pledged, the par value of shares, the class of shares (if applicable) and the relevant stock certificate numbers);
- (c) a provision that the pledgor creates a pledge over the shares of stock;
- (d) representations and warranties of the pledgor (e.g., that the pledgor is the legal and beneficial owner of the shares, that the shares of stock are free from liens and encumbrances, etc.); and
- (e) the date of the pledge.

Some notes:

- (a) To create a pledge, the pledgor must be the absolute owner of the thing pledged (Civil Code, art. 2085). In other words, a person does not have the power to create a pledge over property he does not own. Of course, this does not preclude the pledgor from pledging his personal property through a duly authorized agent.

It is not necessary that the pledgor is also the borrower. A third party may pledge shares of stock owned by him to secure the loan obligation of the borrower (Civil Code, sec. 2085).

(b) The pledgor must have free disposal of the property pledged, and in the absence thereof, that he is legally authorized to do so (Civil Code, art. 2085). In this regard, a corporation has the power to pledge shares owned by it (Corporation Code, sec. 36[7]; see Corporation Code, sec. 40).

(c) Under the Civil Code, a “pledge shall not take effect against third persons if a description of the thing pledged and the date of the pledge do not appear in a public instrument.” (Civil Code, art. 2096). In general, contracts are binding only upon the parties to the contract (and their successors-in-interest). However, certain contracts (such as a pledge agreement) can be binding upon third parties. For example, a person who buys pledged shares must recognize the pledge over the shares. In order that a pledge may be binding upon third persons, the Civil Code requires that the pledge agreement must appear in a public instrument (e.g., notarized) and must contain a description of the thing pledged and the date of the pledge.

2. Delivery of the property pledged

In order to create a pledge, the thing pledged must be placed in the possession of the pledgee or a third party agreed upon by the pledgor and the pledgee. With respect to shares of stock, this generally means that the stock certificates representing the shares pledged must be delivered to the pledgee (or an authorized third party)(see Civil Code, sec. 2094). A pledge is not created without delivery of the thing pledged.

Some notes:

(a) With the consent of the pledgee, the pledgor can sell the shares of stock pledged. However, the pledge remains and the stock certificates remain in the possession of the pledgee. The buyer can acquire ownership of the shares of stock subject to the pledge (Civil Code, art. 2097).

(b) The pledgee cannot deposit the thing pledged with a third person, unless there was an agreement between the parties that the pledgee can do so

(Civil Code, art. 2100).

(c) Unless the parties agree otherwise, the pledge extends to the interest and earnings of the right pledged (Civil Code, sec. 2102). Thus, in case of shares of stock, the pledge extends to dividends received on the pledged shares of stock (unless the parties agree otherwise). In this regard, the stock certificates covering the stock dividends must also be delivered to the pledgee (or the authorized third person). The parties can execute a pledge supplement to cover the stock dividends. Note that this is not a new pledge but simply a supplement to the existing pledge agreement for the purpose of covering additional properties that are originally intended to be covered by the pledge agreement.

(d) In case of pledged shares in stock corporations, the pledgor has the right to attend and vote at meetings of stockholders, unless the pledgee is expressly given by the pledgor such right in writing which is recorded on the appropriate corporate books (Corporation Code, sec. 55).

3. DST

A pledge is subject to DST at following rate:

(a) when the amount secured does not exceed five thousand pesos (P5,000), twenty pesos (P20.00);

(b) on each five thousand pesos (P5,000), or fractional part thereof in excess of five thousand pesos (P5,000), of the amount secured, an additional tax of ten pesos (P10.00)(Tax Code, sec. 195).

Under the Tax Code, the DST may be paid either by the borrower or the lender (see Tax Code, sec. 173). In practice, the borrower assumes payment of DST. The DST must be paid (and the corresponding DST return filed) not later than the 5th day of the month following the date of the transaction. For example, if the pledge agreement was executed during the month of June, the DST must be paid not later than July 5.

Non-payment of the DST does not make the pledge agreement invalid. However, if DST is not paid, the pledge agreement cannot be used in

evidence in any court until the DST due is paid (Tax Code, sec. 201). Thus, it is in the interest of lenders to ensure that the DST due is paid.

Regulations Update: Business Names Law Implementing Rules

Posted on [May 31, 2010](#) by [Imelda A. Manguiat](#) • Posted in [Commercial Law, Philippines - Regulation](#) •

The Department of Trade and Industry (DTI) issued Administrative Order No. 10-03, Series of 2010 on April 10, 2010, entitled Revised Implementing Rules and Regulations of Act. No. 3883, as amended, otherwise known as the Business Name Law. This regulation is an amendment of an administrative order earlier issued by the DTI on February 8, 2010 on the same subject matter.

The Business Name Law was passed in 1931 and makes it unlawful for any person to use or sign on any written or printed receipt, agreement or business transaction, any name used in connection with his business, other than his true name, or exhibit in plain view in the place of his business any sign announcing his firm name or business name, without first registering such other name, firm name or business name with the then Bureau of Commerce (now the DTI). A violation of the law may subject the guilty person to a fine of between P50 to P200, or imprisonment of 20 days to three months, or both.

The Implementing Rules issued in February (the “February Implementing Rules”) clarified that only natural persons doing business or proposing to do business using a business name as defined in the Implementing Rules are covered. Juridical persons such as corporations or partnerships, which use the same name as that registered with the government agency mandated to register names, are not covered. Thus, if a corporation or partnership already registered with the Securities and Exchange Commission (SEC) will use the same name as that registered with the SEC, that corporation or partnership need not register under the Business Name Law and its implementing rules.

Among the significant amendments introduced by the February Implementing Rules is the acceptance of online application by accessing the BN Registration System website and filling-up the web-based application form. Payment of the registration fee may be done through an accredited bank or to the field office of the DTI. Upon confirmation of compliance by the applicant with the necessary requirements, which may be submitted online, the business name certificate shall be issued. Such certificate may be sent by courier or downloaded electronically.

The February Implementing Rules also recognized the right of the public to access information subject to certain rules. For instance, reasonable verbal queries pertaining to information in the business name registration database may be given at no cost. However, requests for affirmative or negative certifications may be granted only upon written request and payment of the prescribed fees.

The revised Implementing Rules issued last April amended certain provisions of the February Implementing Rules, such as that the applicant for a business name must be at least 18 years old (instead of 21) and that the original application must be filed within six months before the commencement of the applicant's business operations instead of just one month before commencement of business operations.

How to sell shares of stock

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At some point, a stockholder may wish to sell his shares in the corporation. The basic steps in the process are:

1. Negotiation and execution of the deed of sale;
2. Payment of the capital gains tax/donor's tax (if any) and the

documentary stamp tax, and the filing of the appropriate returns with the Bureau of Internal Revenue (BIR);

3. Issuance of the tax clearance certificate/Certificate Authorizing Registration (CAR) by the BIR;

4. Presentation of the CAR to the Corporate Secretary, the registration by the Corporate Secretary of the sale in the stock and transfer book of the corporation, the cancellation by the Corporate Secretary of the stock certificates in the name of the seller and the issuance by the Corporate Secretary of new stock certificates to the buyer.

Let's discuss each of those steps.

1. The Deed of Sale

The basic Deed of Sale will contain the following:

- (a) the name and other personal details (e.g., civil status, citizenship, address, etc.) of the seller and the buyer;
- (b) a description of the shares of stock being sold (including the number of shares sold, the par value of shares, the class of shares (if applicable) and the relevant stock certificate numbers);
- (c) the purchase price for the shares (and terms of payment, if applicable).

The basic Deed of Sale may also include:

- (a) representations and warranties of the seller (e.g., that the seller is the legal and beneficial owner of the shares, that the shares of stock are free from any liens and encumbrances, that the shares of stock are fully paid and non-assessable, etc.);
- (b) provisions on payment of taxes and who will be responsible for obtaining the CAR.

Some notes:

- (a) an agent may sign on behalf of a party to the transaction but such agent must be duly authorized by his principal (through a power of attorney);
- (b) if the stock certificate is in the name of a person who holds the shares in trust for the beneficial owner, the trustee need not be a party to the deed of sale if the trustee has executed a declaration of trust with a special power of attorney authorizing the beneficial owner to sell the shares;
- (c) legally, the deed of sale need not be notarized but it would be advisable to do so (particularly so that the risk that the BIR will raise any issue as to when the relevant taxes are due will be minimized);
- (d) upon execution of the deed of sale, the seller should deliver the seller's stock certificates to the buyer (unless no stock certificates have been issued because the shares have not been fully paid) so that the Corporate Secretary can subsequently cancel the stock certificates in the name of the seller and issue new stock certificates in the name of the buyer;
- (e) usually, no governmental approvals are required for the sale of shares but there may be instances when such approvals are required (e.g., the corporation is covered by special laws regulating ownership of shares in such corporation).

2. Capital gains tax/donor's tax and documentary stamp tax.

On the assumption that the stockholder is not a dealer in securities or otherwise exempt from capital gains tax, the sale of shares in a Philippine corporation will be subject to capital gains tax/donor's tax and documentary stamp tax.

(a) Capital gains tax/donor's tax

The sale of shares not listed in the stock exchange and held as a capital asset is subject to a capital gains tax at the rate of 5% for the first PhP100,000 of

gain, and at the rate of 10% for gain exceeding PhP100,000. This tax is imposed on the seller. If the seller is a resident of a country that has an income tax treaty with the Philippines, the seller may be able to claim exemption from capital gains tax. The current position of the BIR is that a person who wishes to claim the benefits of a tax treaty must file an application for tax treaty relief with the BIR.

To determine the capital gains derived by the seller, the seller's cost basis in the shares as well as the seller's expenses of sale are deducted from the amount of consideration received by the seller (see [Revenue Regulations No. 6-2008](#), sec. 7(c.3.1)). In this regard, in case of a cash sale, the selling price shall be the total consideration per deed of sale (see [Revenue Regulations No. 6-2008](#), sec. 7(c.1.1)). However, under [Revenue Regulations No. 6-2008](#), in case the fair market value of the shares of stock sold is greater than the amount of money received by the seller, the excess of the fair market value of the shares of stock sold over the amount of money received as consideration shall be deemed a gift subject to the donor's tax under Section 100 of the Tax Code (sec. 7(c.1.4)). In other words, in that situation, the transaction will be subject to donor's tax. Thus, there may be situations where a sale transaction will be subject to both capital gains tax and donor's tax, such as when a seller sells shares with a fair market value of PhP1000 at a selling price of PhP700 when his cost basis in the shares is PhP500. Here, PhP200 (i.e., PhP700 less PhP500) would be subject to capital gains tax while PhP300 (i.e., PhP1000 less PhP700) will be subject to donor's tax.

The imposition of gift tax on the sale of shares under the scenario described above benefits individuals who are selling shares to their relatives (within the 4th degree of consanguinity), as these individuals may be able to avail of a rate of tax (ranging from 2% to 8%, depending on the amount of the gift) lower than the 10% capital gains tax that would have been applicable if the 10% capital gains tax (instead of donor's tax) was imposed. On the other hand, persons (including corporations) who sell to unrelated parties are placed at a disadvantage, as the amount of the gift will be subject to donor's tax at the flat rate of 30%. My personal view is that Section 100 of the Tax Code does not apply to ordinary business transactions where there is no donative intent (see, e.g., BIR Ruling DA-652-06 dated November 6, 2006).

The **capital gains tax return** must be filed and any capital gains tax due must be paid within 30 days after each transaction. The seller must also file a **consolidated return** after the close of the taxable year. The **donor's tax return** must be filed and the donor's tax must also be paid within 30 days after the gift is made.

(b) Documentary stamp tax

The sale of shares is subject to documentary stamp tax of PhP0.75 on each PhP200 of the par value (not the fair market value) of the shares sold. For shares with no par value, the amount of the documentary stamp tax payable is twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock.

The documentary stamp tax can be paid either by the seller or the buyer. Generally, the buyer shoulders the documentary stamp tax.

The **documentary stamp tax return** and the documentary stamp tax must be paid not later than the 5th day of the month following the date of the transaction.

3. Certificate Authorizing Registration

After payment of the relevant taxes, the BIR can then issue the CAR, which is then presented to the Corporate Secretary to support the request for the registration of the transfer of shares in the books of the corporation. Section 11 of Revenue Regulations No. 6-2008 provides:

SEC. 11. EFFECT OF NON-PAYMENT OF TAX. – No sale, exchange, transfer or similar transaction intended to convey ownership of, or title to any share of stock shall be registered in the books of the corporation unless the receipts of payment of the tax herein imposed is filed with and recorded by the stock transfer agent or secretary of the corporation. It shall be the duty of the aforesaid persons to inform the Bureau of Internal Revenue in case of non-payment of tax. Any stock transfer agent or secretary of the corporation or the stockbroker, who caused the registration of transfer of ownership or title on any share of stock in violation of the aforementioned requirements shall be punished in accordance with the provisions of Title X, Chapters I

and II of the Tax Code, as amended.

Because the buyer has an interest in seeing to it that the sale of shares is recorded in the books of the corporation as soon as possible, the buyer would usually wish to be responsible for obtaining the CAR.

4. Recording of sale and issuance of new stock certificates

□ The final step in the sale process is the recoding of the transfer of shares in the corporate books, the cancellation of the stock certificates in the name of the buyer, and the issuance of new stock certificates in the name of the seller. In this regard, Section 63 of the Corporation Code provides:

No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

It must be noted that no shares of stock against which the corporation holds an unpaid claim is transferable in the books of the corporation (Corporation Code, sec. 63).

April 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [May 14, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [negotiable instruments](#), [trademark](#), [unfair competition](#) •

Here are selected April 2010 rulings of the Supreme Court of the Philippines on commercial law:

Negotiable Instruments Law

Holder in due course; crossed check. Section 52 of the Negotiable Instruments Law defines a holder in due course, thus: “A holder in due

course is a holder who has taken the instrument under the following conditions: (a) That it is complete and regular upon its face; (b) That he became the holder of it before it was overdue, and without notice that it has been previously dishonored, if such was the fact; (c) That he took it in good faith and for value; (d) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.”

In the case of a crossed check, as in this case, the following principles must additionally be considered: A crossed check (a) may not be encashed but only deposited in the bank; (b) may be negotiated only once — to one who has an account with a bank; and (c) warns the holder that it has been issued for a definite purpose so that the holder thereof must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course.

Based on the foregoing, respondents had the duty to ascertain the indorser’s, in this case Lobitana’s, title to the check or the nature of her possession. This respondents failed to do. Respondents’ verification from Metrobank on the funding of the check does not amount to determination of Lobitana’s title to the check. Failing in this respect, respondents are guilty of gross negligence amounting to legal absence of good faith, contrary to Section 52(c) of the Negotiable Instruments Law. Hence, respondents are not deemed holders in due course of the subject check. *Roberto Dino vs. Maria Luisa Judal-Loot, joined by her husband Vicente Loot, G.R. No. 170912, April 19, 2010.*

Holder in due course; recourse if not holder in due course. The fact that respondents are not holders in due course does not automatically mean that they cannot recover on the check. The Negotiable Instruments Law does not provide that a holder who is not a holder in due course may not in any case recover on the instrument. The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it were non-negotiable. Among such defenses is the absence or failure of consideration, which petitioner sufficiently established in this case. Petitioner issued the subject check supposedly for a loan in favor of Consing’s group, who turned out to be a syndicate defrauding gullible individuals. Since there is in fact no valid loan to speak of, there is no consideration for the issuance of the check. Consequently, petitioner cannot be obliged to pay the face value of the check.

Respondents can collect from the immediate indorser, in this case Lobitana. Significantly, Lobitana did not appeal the trial court's decision, finding her solidarily liable to pay, among others, the face value of the subject check. Therefore, the trial court's judgment has long become final and executory as to Lobitana. *Roberto Dino vs. Maria Luisa Judal-Loot, joined by her husband Vicente Loot*, *G.R. No. 170912, April 19, 2010*.

Intellectual Property Code

Trademark; right to file action for infringement. Section 22 of RA 166 states that only a registrant of a mark can file a case for infringement. Corollary to this, Section 19 of RA 166 provides that any right conferred upon the registrant under the provisions of RA 166 terminates when the judgment or order of cancellation has become final. The cancellation of registration of a trademark has the effect of depriving the registrant of protection from infringement from the moment judgment or order of cancellation has become final.

In the present case, by operation of law, specifically Section 19 of RA 166, the trademark infringement aspect of SUPERIOR's case has been rendered moot and academic in view of the finality of the decision in the Registration Cancellation Case. In short, SUPERIOR is left without any cause of action for trademark infringement since the cancellation of registration of a trademark deprived it of protection from infringement from the moment judgment or order of cancellation became final. To be sure, in a trademark infringement, title to the trademark is indispensable to a valid cause of action and such title is shown by its certificate of registration. With its certificates of registration over the disputed trademarks effectively cancelled with finality, SUPERIOR's case for trademark infringement lost its legal basis and no longer presented a valid cause of action. *Superior Commercial Enterprises, Inc. vs. Kunnan Enterprises Ltd. and Sports Concept & Distributor, Inc.*, *G.R. No. 169974, April 20, 2010*.

Trademark; unfair competition. From jurisprudence, unfair competition has been defined as the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. The essential elements of unfair competition are (1) confusing

similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor.

Jurisprudence also formulated the following “true test” of unfair competition: whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates. One of the essential requisites in an action to restrain unfair competition is proof of fraud; the intent to deceive, actual or probable must be shown before the right to recover can exist.

In the present case, no evidence exists showing that KUNNAN ever attempted to pass off the goods it sold (*i.e.* sportswear, sporting goods and equipment) as those of SUPERIOR. In addition, there is no evidence of bad faith or fraud imputable to KUNNAN in using the disputed trademarks. Specifically, SUPERIOR failed to adduce any evidence to show that KUNNAN by the above-cited acts intended to deceive the public as to the identity of the goods sold or of the manufacturer of the goods sold. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, we held that there can be trademark infringement without unfair competition such as when the infringer discloses on the labels containing the mark that he manufactures the goods, thus preventing the public from being deceived that the goods originate from the trademark owner. In this case, no issue of confusion arises because the same manufactured products are sold; only the ownership of the trademarks is at issue. Furthermore, KUNNAN's January 29, 1993 notice by its terms prevents the public from being deceived that the goods originated from SUPERIOR since the notice clearly indicated that KUNNAN is the manufacturer of the goods bearing the trademarks “KENNEX” and “PRO KENNEX.” *Superior Commercial Enterprises, Inc. vs. Kunnan Enterprises Ltd. and Sports Concept & Distributor, Inc.*, *G.R. No. 169974, April 20, 2010.*

Corporate Rehabilitation

Corporate rehabilitation; function. Corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover by way of the present value of payments projected in

the rehabilitation plan, more if the corporation continues as a going concern than if it is immediately liquidated. It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.

An essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation, which operates upon the due appointment of a management committee or rehabilitation receiver. The governing law concerning rehabilitation and suspension of actions for claims against corporations is P.D. No. 902-A, as amended. Section 6(c) of the law mandates that, upon appointment of a management committee, rehabilitation receiver, board, or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board, or body shall be suspended. *Ricardo V. Castillo vs. Uniwide Warehouse Club, Inc. and/or Jimmy Gow*, *G.R. No. 169725, April 30, 2010*.

Corporate rehabilitation; labor claim. The term “claim” has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid. It was referred to, in *Arranza v. B.F. Homes, Inc.*, as an action involving monetary considerations and in *Philippine Airlines v. Kurangking*, the term was identified as the right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. Furthermore, the actions that were suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature. More importantly, the new rules on corporate rehabilitation, as well as the interim rules, provide an all-encompassing definition of the term and, thus, include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. There is no doubt that petitioner’s claim in this case, arising as it does from his alleged illegal dismissal, is a claim covered by the suspension order issued by the SEC, as it is one for pecuniary consideration. *Ricardo V. Castillo vs. Uniwide Warehouse Club, Inc. and/or Jimmy Gow*, *G.R. No. 169725, April 30, 2010*.

Corporate rehabilitation; suspension of proceedings. Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to “all actions for claims” filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. In the oft-cited case of *Rubberworld (Phils.) Inc. v. NLRC*, the Court noted that aside from the given exception, the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.* *Philippine Airlines, Inc. v. Zamora* declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.

The reason behind the imperative nature of a suspension or stay order in relation to the creditors’ claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.

At this juncture, it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that as long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate revival, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.

It is, thus, not difficult to see why the subject action for illegal dismissal and damages against respondent corporation ought to have been suspended at the

first instance respondents submitted before the Labor Arbiter their motion to suspend proceedings in the illegal dismissal case. This, considering that at the time the labor case was filed on August 26, 2002, respondent corporation was undergoing proceedings for rehabilitation and was later on declared to be in a state of suspension of payments. *Ricardo V. Castillo vs. Uniwide Warehouse Club, Inc. and/or Jimmy Gow*, *G.R. No. 169725, April 30, 2010*.

How Stock Certificates Are Issued

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A stock certificate is a written instrument signed by the proper officers of the corporation certifying that the person named therein is the registered owner of a designated number of shares of stock in the corporation. It indicates the name of the registered holder, the number, kind and class of shares represented and the date of the issuance. (see Corporation Code Annotated, P. 542 [2006]). A stock certificate is not necessary to render a person a stockholder in a corporation. However, a stock certificate is tangible evidence of the stock itself (see Corporation Code Annotated, P. 543 [2006]).

After the corporation is formed, the Corporate Secretary (or the Assistant Corporate Secretary) may issue the stock certificates to the stockholders who fully paid their subscription. For this purpose, the Corporate Secretary will take the following steps:

- (a) obtain a stock and transfer book;
- (b) register the stock and transfer book with the Securities and Exchange Commission (SEC);
- (c) obtain blank stock certificates (which the Corporate Secretary can obtain from bookstores or from printers);

- (d) fill-up the relevant information in the stock and transfer book and in the stock certificate;
- (e) sign the stock certificate as Corporate Secretary;
- (f) forward the stock certificate to the President (or the Vice-President) of the corporation for signature;
- (g) seal the stock certificate with the corporate seal; and
- (h) deliver the stock certificate to the stockholder.

The by-laws of the corporation may provide other requirements for the issuance of stock certificates.

The Corporate Secretary may issue the stock certificate only if the stockholder has paid the full amount of subscription (Corporation Code, sec. 64). In other words, no stock certificate can be issued if the subscription price is not yet fully paid. Holders of subscribed shares not fully paid have all the rights of a stockholder (even if they don't hold stock certificates), provided that the shares are not delinquent (see Corporation Code, sec. 72). Shares are considered delinquent if the stockholder failed to pay any unpaid subscription within 30 days from the due date thereof (Corporation Code, sec. 67).

The Tax Code subjects the original issuance of shares by a Philippine corporation to documentary stamp tax (DST), which must be paid by either the corporation or the stockholder. If the shares have par value, the DST payable is PhP1 for every PhP200 of par value. Thus, if 1,000,000 shares with a par value of PhP1 each are issued, DST of PhP5,000 is payable. If the DST is not paid on time, the BIR will impose a surcharge of 25% (plus interest).

In this regard, the date of payment of DST on the issuance of shares is counted from the date the SEC approves the incorporation of the corporation, and not from the date the stock certificates are actually issued.

For example, if the SEC approved the incorporation of the corporation on May 7, DST on the issuance of the shares must be paid not later than June 5 (in accordance with the rule that DST should be paid not later than the 5th day of the next month after the date of the transaction). If the stockholder subscribes to shares after incorporation, then the date of the subscription will be deemed to be the date of the transaction (and DST paid not later than the due date thereof). Note that DST is due on the issuance of shares (which should not be confused with the issuance of stock certificates), whether or not the subscription price on the shares was fully paid. Under RMC Circular 8-98 (as amended), citing *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, the DST on original issuance of shares attaches upon acceptance of the stockholder's subscription in the capital stock of a corporation regardless of the physical issuance and delivery to the stockholder of the certificate of stock evidencing his stockholding. According to the BIR, "what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. . . issuance means the point at which the stockholder acquires and may exercise attributes of ownership over the stocks. . . ." As stated previously, holders of subscribed shares not fully paid generally have all the rights of a stockholder.

How Board Meetings Are Conducted

Posted on [April 28, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

The board of directors of a corporation exercise the powers of the corporation. Under the Corporation Code, the corporate powers of a corporation, all business conducted and all property of a corporation are generally controlled and held by the board of directors.

The validity of a corporate act is predicated on the following requisites:

- (1) meeting of the directors;
- (2) presence of the required quorum;

- (3) decision of majority of the quorum, or in other cases, a majority of the board (or the vote requirement provided in the by-laws);
- (4) meeting at the time, place, and manner provided in the by-laws. (see Corporation Code, sec. 25; see Corporation Code of the Philippines Annotated, p. 267 [2006]).

A typical agenda for a board meeting is as follows:

1. Call to Order

During this part of the meeting, the person authorized to call the meeting states that he is calling the meeting to order. Unless otherwise provided in the by-laws, the President of the corporation has authority to preside at all meetings of board of directors (Corporation Code, sec. 54). If there is a Chairman of the Board, the Chairman of the Board will usually call the meeting to order.

After the presiding officer calls the meeting to order, the presiding officer will usually note that the Corporate Secretary will record the proceedings. The Corporate Secretary prepares the minutes of meeting, which he will co-sign with the members of the board.

2. Certification of Quorum

A quorum is necessary in order that business can be transacted during the board meeting. During this part of the meeting, Corporate Secretary certifies that a quorum exists for the transaction of business by the board. Unless the articles of incorporation or the by-laws provide a greater majority, a majority of the number of directors as fixed in the articles of incorporation constitutes a quorum for the transaction of corporate business. (Corporation Code, sec. 25) Hence, if the articles of incorporation provide for 5 directors, 3 directors are required to constitute a quorum. In this regard, vacancies in the board of directors do not affect the minimum number required for a quorum. Thus, if there are only 4 directors in a 5-man board, 3 directors are still required to constitute a quorum.

If notice of the meeting was not given within the period provided in the by-laws, the Corporate Secretary will also certify whether the members of the board have waived the notice requirement.

Sometime 2001, the SEC allowed directors to attend board meetings via teleconference or videoconference. If some directors are attending via teleconference or video conference, the Corporate Secretary takes a roll call at the start of the scheduled meeting. Every director and each participant must state, for the record, the following: (a) full name; (b) location; and (c) for those attending though tele/vide Conferencing, each such participant shall confirm that: (i) he can completely and clearly hear the others who can clearly hear him at the end of the line; (ii) state whether he has received the agenda and all the materials for the meeting; (iii) specify type of device used. Thereafter, the Corporate Secretary shall confirm and note the contact numbers being used by the directors and participants not physically present. After the roll call, the Secretary may certify the existence of a quorum.

3. Transaction of corporate business

During this part of the meeting, management will submit for consideration and approval by the board various matters that may require board approval.

In general, every decision of at least a majority of the directors present at a meeting at which there is a quorum is valid as a corporate act. (Corporation Code, sec. 25) For example, if the articles provide for 5 directors and 3 of the directors are present during the meeting, the vote of 2 directors is sufficient to approve the proposed corporate act. In certain instances, the majority vote of all members of the board is required, such as the election of officers.

If some directors are joining the meeting via teleconference, the proceeding must be recorded and all participants must identify themselves for the record before speaking and must clearly hear and/or see each other in the course of the meeting. If a person fails to identify himself, the Secretary must state the identity of the last speaker. If the person speaking is not physically present and the Secretary is not certain of the identity of the speaker, the Secretary must inquire to elicit a confirmation or correction. If a statement of a director/participant in the meeting via tele/vide Conferencing is interrupted

or garbled, the Secretary must request for a repeat or reiteration, and if need be, the Secretary must repeat what he heard the director/participant was saying for confirmation or correction.

4. Adjournment

If there is no other business to be conducted, the meeting is adjourned.

March 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [April 16, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#), [doing business](#), [piercing corporate veil](#), [tradenname](#) •

Here are selected March 2010 rulings of the Supreme Court of the Philippines on commercial law:

Bank; same day crediting. Based on the records, there is no sufficient evidence to show that BPI conclusively confirmed the same-day crediting of the RCBC check which Suarez's client deposited late on 16 June 1997.

Clearly, Suarez failed to prove that BPI confirmed the same-day crediting of the RCBC check, or that BPI assured Suarez that he had sufficient available funds in his account. Accordingly, BPI was not estopped from dishonoring the checks for inadequacy of available funds in Suarez's account since the RCBC check remained uncleared at that time.

While BPI had the discretion to undertake the same-day crediting of the RCBC check, and disregard the banking industry's 3-day check clearing policy, Suarez failed to convincingly show his entitlement to such privilege. As BPI pointed out, Suarez had no credit or bill purchase line with BPI which would qualify him to the exceptions to the 3-day check clearing policy.

Considering that there was no binding representation on BPI's part as

regards the same-day crediting of the RCBC check, no negligence can be ascribed to BPI's dishonor of the checks precisely because BPI was justified in dishonoring the checks for lack of available funds in Suarez's account. *Bank of the Philippines Islands Vs. Reynald R. Suarez*, **G.R. No. 167750, March 15, 2010**.

Corporation; corporate veil. The doctrine of piercing the corporate veil applies only in three (3) basic instances, namely: a) when the separate and distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or c) is used in alter ego cases, i.e., where a corporation is essentially a farce, since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.

In the present case, we see no competent and convincing evidence of any wrongful, fraudulent or unlawful act on the part of PRISMA to justify piercing its corporate veil. While Pantaleon denied personal liability in his Answer, he made himself accountable in the promissory note "in his personal capacity and as authorized by the Board Resolution" of PRISMA. With this statement of personal liability and in the absence of any representation on the part of PRISMA that the obligation is all its own because of its separate corporate identity, we see no occasion to consider piercing the corporate veil as material to the case. *Prisma Construction and Development Corporation and Rogelio S. Pantaleon vs. Arthur F. Menchavez*, **G.R. No. 160545, March 9, 2010**.

Corporation; doing business without a license. In this case, the contract between petitioner and NMC involved the purchase of molasses by petitioner from NMC. It was NMC, the domestic corporation, which derived

income from the transaction and not petitioner. To constitute “doing business,” the activity undertaken in the Philippines should involve profit-making. Besides, under Section 3(d) of RA 7042, “soliciting purchases” has been deleted from the enumeration of acts or activities which constitute “doing business.”

Other factors which support the finding that petitioner is not doing business in the Philippines are: (1) petitioner does not have an office in the Philippines; (2) petitioner imports products from the Philippines through its non-exclusive local broker, whose authority to act on behalf of petitioner is limited to soliciting purchases of products from suppliers engaged in the sugar trade in the Philippines; and (3) the local broker is an independent contractor and not an agent of petitioner.

In the present case, petitioner is a foreign company merely importing molasses from a Philippine exporter. A foreign company that merely imports goods from a Philippine exporter, without opening an office or appointing an agent in the Philippines, is not doing business in the Philippines. *Cargill, Inc. Vs. Intra Strata Assurance Corporation, G.R. No. 168266, March 15, 2010.*

Tradename; infringement. In *Prosource International, Inc. v. Horphag Research Management SA*, this Court laid down what constitutes infringement of an unregistered trade name, thus:

- (1) The trademark being infringed is registered in the Intellectual Property Office; however, in infringement of trade name, the same need not be registered;
- (2) The trademark or trade name is reproduced, counterfeited, copied, or colorably imitated by the infringer;
- (3) The infringing mark or trade name is used in connection with the sale, offering for sale, or advertising of any goods, business or services; or the infringing mark or trade name is applied to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with such goods, business, or services;

(4) The use or application of the infringing mark or trade name is likely to cause confusion or mistake or to deceive purchasers or others as to the goods or services themselves or as to the source or origin of such goods or services or the identity of such business; and

(5) It is without the consent of the trademark or trade name owner or the assignee thereof.

Clearly, a trade name need not be registered with the IPO before an infringement suit may be filed by its owner against the owner of an infringing trademark. All that is required is that the trade name is previously used in trade or commerce in the Philippines.

Section 22 of Republic Act No. 166, as amended, required registration of a trade name as a condition for the institution of an infringement suit.

However, RA 8293, which took effect on 1 January 1998, has dispensed with the registration requirement. Section 165.2 of RA 8293 categorically states that trade names shall be protected, even prior to or without registration with the IPO, against any unlawful act including any subsequent use of the trade name by a third party, whether as a trade name or a trademark likely to mislead the public. Thus: “It is the likelihood of confusion that is the gravamen of infringement. But there is no absolute standard for likelihood of confusion. Only the particular, and sometimes peculiar, circumstances of each case can determine its existence. Thus, in infringement cases, precedents must be evaluated in the light of each particular case. *Coffee Partners, Inc. vs. San Francisco Coffee & Roastery, Inc.*, *G.R. No. 169504, March 3, 2010*.”

Tradename; infringement; test. In determining similarity and likelihood of confusion, our jurisprudence has developed two tests: the dominancy test and the holistic test. The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, infringement occurs. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or

to deceive consumers.

In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.

Applying either the dominance test or the holistic test, petitioner's "San Francisco Coffee" trademark is a clear infringement of respondent's "San Francisco Coffee & Roastery, Inc." Trade name. The descriptive words "San Francisco Coffee" are precisely the dominant features of respondent's trade name. Petitioner and respondent are engaged in the same business of selling coffee, whether wholesale or retail. The likelihood of confusion is higher in cases where the business of one corporation is the same or substantially the same as that of another corporation. In this case, the consuming public will likely be confused as to the source of the coffee being sold at petitioner's coffee shops. Petitioner's argument that "San Francisco" is just a proper name referring to the famous city in California and that "coffee" is simply a generic term, is untenable. Respondent has acquired an exclusive right to the use of the trade name "San Francisco Coffee & Roastery, Inc." Since the registration of the business name with the DTI in 1995. Thus, respondent's use of its trade name from then on must be free from any infringement by similarity. Of course, this does not mean that respondent has exclusive use of the geographic word "San Francisco" or the generic word "coffee." Geographic or generic words are not, per se, subject to exclusive appropriation. It is only the combination of the words "San Francisco Coffee," which is respondent's trade name in its coffee business, that is protected against infringement on matters related to the coffee business to avoid confusing or deceiving the public.

In *Philips Export B.V. v. Court of Appeals*, this court held that a corporation has an exclusive right to the use of its name. The right proceeds from the theory that it is a fraud on the corporation which has acquired a right to that name and perhaps carried on its business thereunder, that another should attempt to use the same name, or the same name with a slight variation in such a way as to induce persons to deal with it in the belief that they are dealing with the corporation which has given a reputation to the name.

Coffee Partners, Inc. vs. San Francisco Coffee & Roastery, Inc., G.R. No. 169504, March 3, 2010.

How Stockholders' Meetings Are Conducted

Posted on [March 24, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

In general, all corporate powers are exercised by the board of directors; stockholders' approval for corporate acts is usually not required. However, the Corporation Code requires (and the by-laws of the corporation may require) stockholders' approval for certain corporate acts. Stockholders' approval is usually given during a stockholders' meeting where the matter is submitted to the stockholders for approval.

Let's run through a typical agenda for a stockholders' meeting:

1. Call to Order

During this part of the meeting, the person authorized to call the meeting states that he is calling the meeting to order. Unless otherwise provided in the by-laws, the President of the corporation has authority to preside at all meetings of stockholders (Corporation Code, sec. 54). Hence, the President would normally call the meeting to order.

If the person entitled to preside is not present at the time the meeting is convened, the stockholders present may request a stockholder to temporarily preside at the meeting (Corporation Code of the Philippines Annotated, p. 480).

After the presiding officer calls the meeting to order, the presiding officer will usually note that the Corporate Secretary will record the proceedings. The Corporate Secretary prepares the minutes of meeting, which he will co-sign with the presiding officer of the meeting.

2. Certification of Quorum

A quorum is necessary in order that business can be transacted during the stockholders' meeting. During this part of the meeting, Corporate Secretary certifies that a quorum exists for the transaction of business by the stockholders. Unless otherwise provided in the Corporation Code or in the by-laws, a quorum consists of stockholders representing a majority of the outstanding capital stock.

If notice of the meeting was not given within the period provided in the by-laws, the Corporate Secretary will also certify whether the stockholders have waived the notice requirement.

3. Election of Directors/Approval of corporate acts

During the annual or regular meeting of stockholders, the stockholders would normally proceed to elect the directors for the current year.

Management may also submit to stockholders for approval matters requiring stockholders' approval. In general, all corporate powers are exercised by the board of directors and stockholders' approval is usually not required. However, the Corporation Code requires (and the by-laws of the corporation may require) stockholders' approval for certain corporate acts. Listed below are the corporate acts that require stockholders' approval under the Corporation Code (as well as the required vote for approval under the Corporation Code):

- (a) amendment of articles of incorporation – vote (or written assent) of at least 2/3 of outstanding capital stock (Corporation Code, sec. 16);
- (b) election of directors – vote of stockholders representing at least a majority of the outstanding capital stock (Corporation Code, sec. 24);
- (c) removal of directors – vote of stockholders holding or representing 2/3 of the outstanding capital stock (Corporation Code, sec. 28);

- (d) ratifying a contract of a director/officer with the corporation – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 32);
- (e) extending or shortening the corporate term – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 37);
- (f) increase or decrease of the capital stock – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 38);
- (g) incurring, creating or increasing bonded indebtedness – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 38);
- (h) sale, lease, exchange, mortgage, pledge of all or substantially all the corporate assets – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 40);
- (i) investment of corporate funds in another corporation or for any purpose other than the primary purpose for which the corporation was organized – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 42);
- (j) issuance of stock dividends – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 43);
- (k) execution of management contracts – vote of stockholders representing at least a majority of the outstanding capital stock (Corporation Code, sec. 44);
- (l) adoption of by-laws – vote of stockholders representing at least a majority of the outstanding capital stock (Corporation Code, sec. 46);
- (m) amendment or repeal of by-laws – vote of stockholders representing at least a majority of the outstanding capital stock (Corporation Code, sec. 48);

- (n) delegation to board of the power to amend or repeal the by-laws or adopt new by-laws – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 48);
- (o) revocation of the power given to the board to amend or repeal the by-laws or to adopt new by-laws – vote of stockholders representing at least a majority of the outstanding capital stock (Corporation Code, sec. 48);
- (p) fixing issue price of no par value shares – a majority of the quorum of the board of directors if authorized by the articles of incorporation, or in the absence of such authority, by a majority of the outstanding capital stock (Corporation Code, sec. 62);
- (q) approval or amendment of a plan of merger or consolidation – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 77);
- (r) dissolution of a corporation – vote of stockholders representing at least 2/3 of the outstanding capital stock (Corporation Code, sec. 77);
- (s) adoption of plan of distribution of assets of a non-stock corporation - vote of 2/3 of members having voting rights (Corporation Code, sec. 95).

During meetings, only stockholders who hold voting shares may vote. Thus, holders of non-voting shares generally cannot vote. However, the Corporation Code allows holders of non-voting shares to vote on the following matters:

- (a) amendment of the articles of incorporation;
- (b) adoption and amendment of by-laws;
- (c) sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
- (d) incurring, creating or increasing bonded indebtedness;

- (e) increase or decrease of capital stock;
- (f) merger or consolidation of the corporation with another corporation or other corporations;
- (g) investment of corporate funds in another corporation or business in accordance with the Corporation Code; and
- (h) dissolution of the corporation.

A stockholder may vote: (1) directly (i.e., in person); or (2) indirectly through a representative. This representative may be a proxy, a trustee under a voting trust agreement, or an executor or other legal representative appointed by the court. With respect to shares of stock that have been pledged, the pledgor still has the right to attend and vote at stockholders' meetings unless the pledgee is expressly given such right in writing which is recorded on the appropriate books by the pledgor. (Corporation Code, sec. 55). In case of shares of stock owned jointly by 2 or more persons, in order to vote the same, the consent of all the co-owners is necessary, unless there is a written proxy signed by all co-owners authorizing one or some of them or any other person to vote such share. Where the shares are owned in an "and/or" capacity, any one of the joint owners can vote said shares or appoint a proxy to vote the shares. (Corporation Code, sec. 56).

4. Adjournment

This is the part of the meeting where the presiding officer adjourns the meeting.

How Corporate Meetings Are Called

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The powers of a corporation are vested in the board of directors and the stockholders as a body and not as individuals (see Corporation Code of the

Philippines Annotated, p. 465). Hence, corporate actions can generally be taken and approved only in properly convened meetings of the stockholders or directors of the corporation.

A meeting of stockholders can either be regular or special. A regular meeting refers to the yearly meeting of the stockholders on the date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors. A special meeting of stockholders is one held at any time deemed necessary (as may be provided in the by-laws).

Similarly, a meeting of the board of directors can either be regular or special. The regular meeting of the board of directors refers to one held on a monthly basis as provided in the Corporation Code (unless the by-laws provide otherwise). On the other hand, a special meeting of the board is one held at any time upon the call of the President (or as may be provided in the by-laws). (Corporation Code, sec. 53)

The by-laws normally state who are authorized to call meetings of the corporation. The by-laws typically provide that stockholders' meetings may be called by the President, the Board of Directors or at the written request of stockholders representing a majority of the outstanding capital stock. For directors' meetings, by-laws typically provide that the meeting may be called by the Chairman, the President or at the request of a majority of the directors. If there is no person authorized to call a meeting, the SEC, upon petition of a stockholder and upon showing of good cause, may issue an order to the petitioning stockholder directing him to call a meeting of the corporation by giving proper notice of the meeting. (Corporation Code, sec. 50)

Prior to the holding of a stockholders' meeting, the Corporate Secretary must first send notices of meetings to the stockholders (Corporation Code, sec. 50). Unless otherwise provided in the by-laws, written notice of regular meetings must be sent to all stockholders of record at least 2 weeks prior to a regular meeting or at least 1 week prior to a special meeting. With respect to board meetings, notice of the regular or special meeting of the board of directors must be sent to every director at least 1 day prior to the scheduled meeting (unless otherwise provided in the by-laws).

Among the items included in the notice of meeting are the following:

- (a) the date and time of the meeting;
- (b) the place of the meeting (which, in the case of a stockholders' meeting must be in the city or municipality where the principal office of the corporation is located, and if practicable, in the principal office of the corporation; in the case of a board meeting, the meeting may be held anywhere in or outside the Philippines);
- (c) the agenda for the meeting (i.e., the matters that will be taken up during the meeting).

For stockholders' meetings, the notice of meeting would generally include, as an attachment, a proxy form that a stockholder can execute in the event that he cannot attend the stockholders' meeting and he wishes to authorize another person to attend on his behalf. The notice of stockholders' meeting usually states the deadline for filing the signed proxy forms with the Corporate Secretary. Under Section 192 of the Tax Code, a stamp tax of PhP15 must be paid on "each proxy for voting at any election for officers of any company or association, or for any other purpose, except proxies issued affecting the affairs of associations or corporations organized for religious, charitable or literary purposes. . . ." In addition to the proxy form, there may be other attachments to the notice of stockholders' meeting (particularly if the company is a public or a listed company).

Proxy forms are not attached to a notice of meeting of directors since the law does not allow directors to designate a proxy for directors' meeting.

In case the notice of meeting is sent late such that the relevant notice period provided in the Corporation Code or in the by-laws will not be complied with, the notice of meeting generally includes a waiver form that the stockholder or the director can sign. In that waiver form, the stockholder or director consents to the holding of the meeting and waives formal call and notice of meeting, whether required under the law or the by-laws. Under the Corporation Code, notice of meeting may be waived, expressly or impliedly, by any stockholder or director. (Corporation Code, secs. 50, 53).

It is important the meetings are properly called and held since business transacted at an improperly called or held meeting may be questioned. Under the Corporation Code, all proceedings transacted at a stockholders' meeting will be valid even if the meeting is improperly called or held if the following requisites are present: (a) the business transacted is within the power or authority of the corporation; and (b) all stockholders or members of the corporation are present or duly represented. (Corporation Code, sec. 51). In case of an improperly held board meeting, resolutions and acts approved in said meeting may be questioned unless subsequently ratified expressly by the board of directors in a duly convened meeting or impliedly by the corporation's course of conduct. (Lopez Realty vs. Fontecha, 247 SCRA 183 [1995])

February 2010 Philippine Supreme Court Decision on Commercial Law

Posted on [March 12, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#), [PCGG](#) •

Corporation; sequestered corporation. Tañada, et al. posit the view that the conversion of shares needs the acquiescence of the 14 CIIF companies.

The SMC shares allegedly owned by the CIIF companies are sequestered assets under the control and supervision of the PCGG pursuant to Executive Order No. 1, Series of 1986. It is the duty of the PCGG to preserve the sequestered assets and prevent their dissipation. In the exercise of its powers, the PCGG need not seek or obtain the consent or even the acquiescence of the sequestered assets owner with respect to any of its acts intended to preserve such assets. Otherwise, it would be well-nigh impossible for PCGG to perform its duties and exercise its powers under existing laws, for the owner of the sequestered assets will more often than not oppose or resist PCGG's actions if their consent is a condition precedent. The act of PCGG of proposing the conversion of the sequestered SMC shares to Series 1 Preferred Shares was clearly an exercise of its mandate under existing laws, where the consent of the CIIF Companies is rendered unnecessary.

Additionally, the above contention has been rendered moot with the filing on October 26, 2009 of the Manifestation dated October 23, 2009. Attached to such Manifestation is the Secretary's Certificate of the 14 CIIF companies approving the conversion of the SMC Common Shares into Series 1 Preferred Shares. *Philippine Coconut Producers Federation, Inc. (COCOFED), et al. vs. Republic of the Philippines*, *G.R. Nos. 177857-58/G.R. No. 178193/G.R. No. 180705, February 11, 2010*.

How to draft by-laws

Posted on [February 24, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

In addition to articles of incorporation, a corporation must have by-laws. The by-laws contain provisions for the corporation's internal government and for the government of its stockholders as well as those having the direction, management and control of the corporation. (see Corporation Code of the Philippines Annotated, p. 441 [2006].)

Under the Corporation Code, the corporation must adopt the by-laws within one month after receipt of official notice of the issuance of its certificate of incorporation by the Securities and Exchange Commission (SEC). (Corporation Code, sec. 46). In practice, the incorporators of a corporation usually submit the articles of incorporation and the by-laws for approval by the SEC at the same time.

For the adoption of by-laws after incorporation, the approval of stockholders representing at least majority of the outstanding capital stock must be obtained. The approval of the majority of the directors must also be obtained. (see Corporation Code, sec. 46).

What provisions should be included in the by-laws? Section 47 of the Corporation Code lists some of the matters that may be included in the by-laws:

1. The time, place and manner of calling and conducting regular or special meetings of the directors or trustees;

2. The time and manner of calling and conducting regular or special meetings of the stockholders or members;
3. The required quorum in meetings of stockholders or members and the manner of voting therein;
4. The form for proxies of stockholders and members and the manner of voting them;
5. The qualifications, duties and compensation of directors or trustees, officers and employees;
6. The time for holding the annual election of directors of trustees and the mode or manner of giving notice thereof;
7. The manner of election or appointment and the term of office of all officers other than directors or trustees;
8. The penalties for violation of the by-laws;
9. In the case of stock corporations, the manner of issuing stock certificates; and
10. Such other matters as may be necessary for the proper or convenient transaction of its corporate business and affairs.

☐ Here are some notes to each of the foregoing:

1. The time, place and manner of calling and conducting regular or special meetings of the directors or trustees. Unless otherwise provided in the by-laws:
 - (a) regular meetings of the board of directors or trustees of every corporation must be held monthly;
 - (b) special meetings of the board of directors or trustees may be held at any time upon the call of the president;

(c) meetings of directors or trustees of corporations may be held anywhere in or outside of the Philippines;

(d) notice of regular or special meetings stating the date, time and place of the meeting must be sent to every director or trustee at least one (1) day prior to the scheduled meeting; and

(e) the president shall preside at all meetings of the directors or trustee as well as of the stockholders or members. (see Corporation Code, secs. 53, 54).

2. The time and manner of calling and conducting regular or special meetings of the stockholders or members. Unless otherwise provided in the by-laws:

(a) regular meetings of stockholders or members must be held annually on any date in April of every year as determined by the board of directors;

(b) written notice of regular meetings must be sent to all stockholders or members of record at least two (2) weeks prior to the meeting;

(c) at least one (1) week written notice must be sent to all stockholders or members prior to a special meeting.

Stockholder's or member's meetings, whether regular or special, must be held in the city or municipality where the principal office of the corporation is located, and if practicable in the principal office of the corporation. In this regard, Metro Manila is considered a city or municipality.

Notice of meetings must be in writing, and the time and place thereof stated therein.

3. The required quorum in meetings of stockholders or members and the manner of voting therein. Unless otherwise provided for in the Corporation Code or in the by-laws, the quorum for stockholders' meetings consist of the stockholders representing a majority of the outstanding capital stock or a majority of the members in the case of non-stock corporations. (Corporation Code, sec. 52). In certain instances, the Corporation Code requires the

approval of stockholders representing at least 2/3 of the outstanding capital stock (or 2/3 of the members in case of non-stock corporations). Quorum for such meetings would be higher.

4. The form for proxies of stockholders and members and the manner of voting them. Stockholders and members may vote in person or by proxy in all meetings of stockholders or members. Proxies must be in writing, signed by the stockholder or member and filed before the scheduled meeting with the corporate secretary. Unless otherwise provided in the proxy, it is valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at any one time. (Corporation Code, sec. 58).

Directors cannot designate proxies for board meetings.

5. The qualifications, duties and compensation of directors or trustees, officers and employees. The by-laws may fix the qualifications of directors and officers. However, the by-laws cannot dispense with the minimum legal requirements that a director must be a registered owner of at least one share of stock and that at least a majority of the directors must be residents of the Philippines. (see Corporation Code of the Philippines Annotated, p. 455 [2005]). Similarly, the by-laws cannot do away with the requirement that the President must be a director or that the Corporate Secretary must be resident and citizen of the Philippines. (Corporation Code, sec. 25).

The by-laws may validly provide for the disqualification for the position of directors (e.g., a person engaged in the business which competes or is antagonistic to the business of the corporation (see *Gokongwei vs. SEC*, 89 SCRA 336 [1979])).

In the absence of any provision in the by-laws fixing their compensation, the directors do not receive any compensation, as such directors, except for reasonable per diems. Any such compensation other than per diems may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, as such directors, exceed ten (10%) percent of the net income before income tax of the corporation during the preceding year. (Corporation Code, sec. 30).

The by-laws do not usually fix the compensation of officers and employees. It is within the power of the board of directors to fix the compensation of corporate officers appointed by it. (See Corporation Code Annotated, p. 252 [2005]).

The by-laws do not normally define the duties of directors (which duties are governed by law); however, the by-laws normally define the powers of the board of directors.

6. The time for holding the annual election of directors of trustees and the mode or manner of giving notice thereof. Directors or trustees are normally elected during the annual stockholders' meetings. The notice requirements are normally the same as any other stockholders' meeting.

7. The manner of election or appointment and the term of office of all officers other than directors or trustees. In general, corporate officers (such as President, Treasurer and Corporate Secretary) are appointed by majority vote of the members of the board of directors.

8. The penalties for violation of the by-laws. In the absence of any provision in the by-laws authorizing the imposition of penalties, a violation of the by-laws would merely constitute in appropriate cases an actionable wrong for which the ultimate remedy resides in the courts. (see Corporation Code Annotated, p. 456 [2005]).

9. In the case of stock corporations, the manner of issuing stock certificates. The capital stock of stock corporations are divided into shares for which certificates are signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation. (Corporation Code, sec. 63) Stock certificates cannot be issued to a subscriber until the full amount of his subscription together with interest and expenses (in case of delinquent shares), if any is due, has been paid.

10. Such other matters as may be necessary for the proper or convenient transaction of its corporate business and affairs. These may include:

(a) authorization given to the board of directors to fix the issue price of no

par value shares (Corporation Code, sec. 62);

(b) rate of interest for unpaid subscriptions or for failure to pay on due date (Corporation Code, secs. 66, 67);

(c) entries that will be made in the stock and transfer book (Corporation Code, sec. 74);

(d) restrictions on the transfer of shares;

(e) appointment of external auditors;

(f) fiscal year of the corporation; and

(g) dividend policies.

The SEC has sample by-laws. One such sample is found [here](#). It is prudent to have the by-laws reviewed by your lawyer prior to submission to the SEC.

How to draft articles of incorporation

Posted on [February 12, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

In order to form a corporation, the incorporators must submit the articles of incorporation to the Securities and Exchange Commission (SEC).

While sample form articles of incorporation are available from the SEC, it is advisable that the incorporators request their legal counsel to draft (or review) the articles of incorporation prior to submission to the SEC, especially if the incorporators wish to add special provisions not found in the sample SEC form. Review by the incorporators' legal counsel is also important because the filling up of the sample SEC form requires knowledge of certain provisions of the Corporation Code.

What information will the lawyer need from his client to draft the articles of

incorporation? Read the sample articles of incorporation below (taken from Section 15 of the Corporation Code) and find out. I inserted my annotation after each provision.

ARTICLES OF INCORPORATION OF _____ (Name of Corporation)

KNOW ALL MEN BY THESE PRESENTS:

The undersigned incorporators, all of legal age and a majority of whom are residents of the Philippines, have this day voluntarily agreed to form a (stock) (non-stock) corporation under the laws of the Republic of the Philippines;

Note: A corporation may be a stock corporation or a non-stock corporation. Corporations that issue shares and are authorized to distribute dividends to shareholders are stock corporations. All other corporations are non-stock corporation (Corporation Code, sec. 3). Many organizations that are not created for the purpose of gaining profit (such as charitable and religious organizations) are non-stock corporations.

As indicated above, the incorporators must all be of legal age and majority of whom are Philippine residents (not necessarily Philippines citizens). However, for corporations that will engage in nationalized or partly-nationalized activities, Filipino citizenship requirements must be complied with.

AND WE HEREBY CERTIFY:

FIRST: That the name of said corporation shall be

“....., INC. or CORPORATION”;

Note: See posting of January 27, 2010 on how to choose a corporate name.

SECOND: That the purpose or purposes for which such corporation is incorporated are: (If there is more than one purpose, indicate primary and secondary purposes);

Note: This is called the purpose clause. The primary purpose clause states the principal business activities that the corporation will engage in. The statement of the purpose or purposes of the corporation operates as an authorization to the corporation to enter into transactions that may be considered as included or incidental to the attainment of said purposes. It also imposes implied limitations on the powers of the corporation by the exclusion of lines of activity which are not covered. (Corporation Code Annotated, p. 152-153 [2005]). Where a corporation has more than one stated purpose, the articles of incorporation must state which is the primary purpose and which is/are the secondary purpose(s). A non-stock corporation may not include a purpose which would change or contradict its nature as such. (Corporation Code, sec. 15)

While the corporate purpose may be stated in broad and general terms, they should be stated with sufficient clarity to define with certainty the scope of business of the corporation. (Id.) The purpose of the corporation must be “lawful”. (Corporation Code, sec. 10).

THIRD: That the principal office of the corporation is located in the City/Municipality of, Province of, Philippines;

Note: The articles must state the “place where the principal office of the corporation is to be established or located.” The principal office must be located in the Philippines.

Under SEC Circ. No. 3, series of 2006, the SEC required that the articles must state the “(1) specific address of their principal office which shall include, if feasible, the street number, street name, barangay, city or municipality.” “Metro Manila” is no longer allowed as address of the principal office.

FOURTH: That the term for which said corporation is to exist is years from and after the date of issuance of the certificate

of incorporation;

Note: The usual period stated for the corporate term is 50 years. Under the Corporation Code, a corporation will exist for a period not exceeding 50 years from the date of incorporation unless sooner dissolved or unless the 50 year period is extended. The corporate term as originally stated in the articles of incorporation may be extended for periods not exceeding 50 years in any single instance by an amendment to the articles of incorporation. The application for extension cannot be made earlier than 5 years prior to the original or subsequent expiry dates unless there are justifiable reasons for an earlier extension as may be determined by the SEC. (Corporation Code, sec. 11)

FIFTH: That the names, nationalities and residences of the incorporators of the corporation are as follows:

NAME	NATIONALITY	RESIDENCE
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Note: There should be a minimum of 5 and a maximum of 15 incorporators, all of legal age and a majority of whom are residents of the Philippines. Each incorporator of a stock corporation must own or be a subscriber to at least 1 share of the capital stock of the corporation. (Corporation Code, sec. 10)

A corporation cannot be an incorporator (unless otherwise provided by special law that authorizes corporations to become incorporators). A corporation can be a subscriber of shares in the corporation.

SIXTH: That the number of directors or trustees of the corporation shall be; and the names, nationalities and residences of the first directors or trustees of the corporation are as follows:

NAME	NATIONALITY	RESIDENCE
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Note: There should be a minimum of 5 and a maximum of 15 directors or trustees. A non-stock corporation will have trustees in lieu of directors. The persons named as directors or trustees in the articles of incorporation will occupy those positions until the first regular directors or trustees are duly elected.

SEVENTH: That the authorized capital stock of the corporation is (P.....) PESOS in lawful money of the Philippines, divided into shares with the par value of (P.....) Pesos per share.

(In case all the share are without par value):

That the capital stock of the corporation is shares without par value. (In case some shares have par value and some are without par value): That the capital stock of said corporation consists of shares of which shares are of the par value of (P.....) PESOS each, and of which shares are without par value.

Note: The Corporation Code does not impose any minimum capital stock on stock corporations; however, the paid-in capital of the corporation must not be less than PhP5,000. There are special laws that require minimum capital stock for corporations that wish to engage in certain areas of activities. For example, a wholly owned Philippine subsidiary of a non-Philippine corporation may be required to have a minimum capitalization of US\$200,000.

The articles of incorporation must state the number and type of shares the corporation can issue. For corporations with a single class of shares, the number of shares is usually determined by dividing the proposed authorized capital stock with the proposed par value of the shares. In general, a corporation will have a single class of common shares. However, a corporation may have different classes of shares (e.g., common and preferred shares), which will entitle the holders thereof to such rights, privileges or restrictions as may be stated in the articles of incorporation. Shares may be voting, non-voting, preferred in the distribution of dividends, preferred in the distribution of assets in case of liquidation, convertible, redeemable, etc.

A par value share is one with a specific money value fixed in the articles of incorporation and appearing in the certificate of stock. The primary purpose of the par value is to fix the minimum subscription or issue price of the shares. (Corporation Code Annotated, p. 81 [2006]).

A no par value share is one without any stated value appearing on the face of the certificate of stock. It will have an “issued value”, i.e., the consideration fixed by the corporation for the issuance of the shares. (Id.)

Any restrictions on the transfer of shares should also be stated in the articles of incorporation. These restrictions may include rights of first refusal, rights

of last refusal, tag along rights, drag along rights, etc.

EIGHTH: That at least twenty five (25%) per cent of the authorized capital stock above stated has been subscribed as follows:

Name of Subscriber Subscribed	Nationality	No of Shares	Amount
.....
.....
.....
.....
.....

Note: At least 25% of the authorized capital stock of a stock corporation must be subscribed (and the Treasurer must submit a sworn statement confirming this requirement). (Corporation Code, sec. 14). Because the Corporation Code uses the phrase “at least twenty-five percent (25%) of the authorized capital stock of the corporation”, my view is that the 25% requirement should be based on amount of authorized capital stock, which is a peso amount, and not on the number of shares. I understand that there is a view (which I do not agree with) that the 25% requirement should also take into account the number of shares of the corporation.

NINTH: That the above-named subscribers have paid at least twenty-five (25%) percent of the total subscription as follows:

Name of Subscriber	Amount Subscribed	Total Paid-In
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(Modify Nos. 8 and 9 if shares are with no par value. In case the corporation is non-stock, Nos. 7, 8 and 9 of the above articles may be modified accordingly, and it is sufficient if the articles state the amount of capital or money contributed or donated by specified persons, stating the names, nationalities and residences of the contributors or donors and the respective amount given by each.)

Note: At least 25% of the total subscription must be paid. For example, if the corporation has an authorized capital stock of PhP1,000,000 with 1,000,000 shares having a par value of PhP1 each, the amount subscribed must be at least PhP250,000 (equivalent to 250,000 shares) and the amount paid must at least be PhP62,500, which amount must be deposited with the bank at the time the application for incorporation is filed.

Payment for shares may be in the form of cash, property, etc. However, additional documents must be submitted to the SEC if the payment is not in the form of cash.

TENTH: That has been elected by the subscribers as Treasurer of the Corporation to act as such until his successor is duly elected and qualified in accordance with the by-laws, and that as such Treasurer, he has been authorized to receive for and in the name and for the benefit of the corporation, all subscription (or

fees) or contributions or donations paid or given by the subscribers or members.

Note: The articles of incorporation must name the treasurer-in-trust, who holds in trust the subscriptions paid by the subscribers of the corporation.

ELEVENTH: (Corporations which will engage in any business or activity reserved for Filipino citizens shall provide the following):

“No transfer of stock or interest which shall reduce the ownership of Filipino citizens to less than the required percentage of the capital stock as provided by existing laws shall be allowed or permitted to recorded in the proper books of the corporation and this restriction shall be indicated in all stock certificates issued by the corporation.”

Note: The foregoing provision applies to corporations that will engage in partly-nationalized activities. The Foreign Investment Negative List issued pursuant to the Foreign Investments Act contains a summary of nationalized and partly-nationalized activities.

IN WITNESS WHEREOF, we have hereunto signed these Articles of Incorporation, this day of, 19 in the City/Municipality of, Province of, Republic of the Philippines.

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(Names and signatures of the incorporators)

SIGNED IN THE PRESENCE OF:

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(Notarial Acknowledgment)

The articles must be acknowledged by all of the incorporators. (Corporation Code, sec. 14)

January 2010 Philippine Supreme Court Decisions on Commercial Law

Posted on [February 5, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [loan](#), [Securities and Exchange Commission](#) •

Here are selected January 2010 rulings of the Supreme Court of the Philippines on commercial law:

SEC; power to fix compensation of liquidators. To countenance petitioner's posturing would be to unduly delimit the broad powers granted to the SEC under Presidential Decree No. 902-A, specifically the all-encompassing provision in Section 3 that the SEC has "absolute jurisdiction, supervision and control" over all corporations who are the grantees of primary franchises and/or license or permit issued by the government to operate in the Philippines. There is no gainsaying, therefore, that the SEC is authorized to determine the fees of receivers and liquidators not only when there is "failure of agreement" between the parties but also in the absence thereof. A contrary ruling would give license to corporations under liquidation or receivership to refuse to participate in negotiations for the fixing of the compensation of their liquidators or receivers so as to evade their obligation to pay the same.

Petitioner may not have been given the chance to meet face to face with respondent for the purpose of determining the latter's fee. But this fact alone should not invalidate the amount fixed by the SEC. What matters is the reasonableness of the fee in light of the services rendered by the liquidator. It is the policy of the SEC to provide uniform/fair and reasonable compensation or fees for the comparable services rendered by the duly designated members of the Management Committee (MANCOM), rehabilitation receivers and liquidators in corporations or partnerships placed under MANCOM/receivership or liquidation, pursuant to Section 6(d) of Presidential Decree No. 902-A, the SEC Rules on Corporate Recovery, the Corporation Code of the Philippines, the Securities Regulation Code, and other related laws enforced by the SEC. *Catmon Sales International Corporation vs. Atty. Manuel D. Yngson, Jr. as Liquidator of Catmon Sales International Corporation*, *G.R. No. 179761, January 15, 2010*.

Truth in Lending Act; disclosure of financial charges in the promissory note. Both the RTC and CA decisions cited BPI's alleged violation of the Truth in Lending Act and the ruling of the Court in *New Sampaguita Builders Construction, Inc. v. Philippine National Bank* to justify their deletion of the penalty charges.

In this case, although BPI failed to state the penalty charges in the disclosure statement, the promissory note that the Yus signed, on the same date as the disclosure statement, contained a penalty clause that said: "I/We jointly and severally, promise to further pay a late payment charge on any overdue amount herein at the rate of 3% per month." The promissory note is an acknowledgment of a debt and commitment to repay it on the date and under the conditions that the parties agreed on. It is a valid contract absent proof of acts which might have vitiated consent.

The question is whether or not the reference to the penalty charges in the promissory note constitutes substantial compliance with the disclosure requirement of the Truth in Lending Act.

The Court has affirmed that financial charges are amply disclosed if stated in the promissory note in the case of *Development Bank of the Philippines v. Arcilla, Jr.* The Court there said, "Under Circular 158 of the Central Bank, the lender is required to include the information required by R.A. 3765 in the

contract covering the credit transaction or any other document to be acknowledged and signed by the borrower. In addition, the contract or document shall specify additional charges, if any, which will be collected in case certain stipulations in the contract are not met by the debtor.” In this case, the promissory notes signed by the Yus contained data, including penalty charges, required by the Truth in Lending Act. They cannot avoid liability based on a rigid interpretation of the Truth in Lending Act that contravenes its goal. *Bank of the Philippines Islands, Inc. vs. Sps. Norman and Angelina Yu, et al.*, *G.R. No. 184122, January 20, 2010*.

How to choose a corporate name

Posted on [January 27, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

Prior to the incorporation of a corporation, the incorporators need to choose the corporate name. The incorporators may generally choose and use any name they see fit but there are limitations to the use of a corporate name. The SEC has the power to disapprove the use of a proposed corporate name (see Corporation Code, sec. 18; SEC Memorandum Circular No. 5, series of 2008, as amended).

Here are some basic guidelines:

1. Do not choose a corporate name that is identical or deceptively or confusingly similar to that of any existing corporation, partnership, or registered sole proprietorship, or to any other name already protected by law, or one that is patently deceptive, confusing or contrary to existing laws.

The rationale for the above guideline is clear – if any corporation can adopt at pleasure the name of another entity, the practice would cause confusion and unfair/fraudulent competition, open the door to fraud to the public, promote the evasion of legal obligation and duties, and result in difficulties in the administration and supervision of corporations. (Corporation Code Annotated, p. 177 [2006])

In one case, the Supreme Court held that the name “Universal Mills

Corporation” is confusingly and deceptively similar to “Universal Textile Mills, Inc.”, particularly where the former is engaged the manufacture, dyeing and selling of fabrics, which are activities that the latter is engaged in (see *Universal Mills Corporation vs. Textile Millls, Inc.*, G.R. No. L-28351, July 28, 1977). In another case, the Supreme Court held that “Industrial Refractories Corp. of the Phils.” is patently similar to “Refractories Corp of the Phils.”, especially considering that both cater to the same clientele (i.e., the steel industry). (see *Industrial Refractories Corporation vs. Court of Appeals*, 390 SCRA 252, 260 [2002]).

2. Put words that identify the entity as a corporation.

The name of a corporation must end with the word “Inc.” or “Incorporated” or “Corp.” or “Corporation”. On the other hand, partnerships use the word “Company” or “Co.” and if a limited partnership, the words “Limited” or “Ltd.”; hence, names such as “ABC Power Company Limited” or “X & Company Limited Partnership” indicate that the entity involved is a limited partnership. The corporate name of a foundation must use the word “Foundation”).

3. Do not use a tradename or trademark registered with the Intellectual Property Office unless the owner of the tradename or trademark gives consent to its use.

4. Do not use the name of a deceased person unless consent is given by his or her estate. The full name or surname of a stockholder may be used in the corporate name, but the SEC may require the registrant to explain the reason for the use of the person’s name.

5. Do not use the name of an internationally known foreign corporation or one similar to it without the consent of the foreign corporation. The subsidiary of a foreign corporation may carry the name of its parent company with the word “(Phil.)” or “(Philippines)”. However, the SEC will not allow the use of a foreign corporate name if the name violates good morals, public order or public policy, or has an offensive or indecorous meaning in any of the country’s official languages or major dialects.

6. Do not use the words “State”, “National”, “Bureau” “Commission” and other words that have gained wide acceptance in the Philippines by entities that perform governmental functions.
7. Do not use the name of a local geographical unit, site or location unless it is accompanied by a descriptive word or phrase (e.g., “Pasay Food Store, Inc.”).
8. Do not use the words “United Nations” or “UN”.
9. Do not use the words “Finance Company,” “Financing Company,” “Finance and Leasing Company,” “Investment Company,” “Investment House,” “Lending Company,” “Lending Investor,” “Pawnshop,” “Bank,” “Banking,” “Banker,” “Savings and Loan Association,” “Trust Corporation,” “Trust Company,” “Bonded, ” or “SPV-AMC” unless the corporation will engage in the business described in the corporate name.
10. Do not use the words “Investment(s) or “Capital” unless the corporation is an investment house, investment company, or holding company; the words “Asset,” “Investment.” “Fund.” “Financial Management,” “Asset Management Fund,” or “Financial Advisor” unless the corporation is an investment company or a holder of an investment management license.
11. Do not use the word “Association” or Organization” unless the corporation is primarily engaged in non-profit activities.
12. Do not use “Stock Exchange,” “Future Exchange,” “Derivatives Exchange,” “Stock Broker,” “Derivatives Broker,” “Commodity/Financial Futures Broker,” “Securities Clearing, Agency,” “Stock Clearing Agency,” “Plans,” or similar words or phrases unless the corporation is licensed as such under the Securities Regulations Code.

After a corporate name is chosen, a name verification slip must be obtained from the SEC. The name verification slip will indicate whether the proposed corporate name is available for use. However, the issuance of the name verification slip does not constitute approval for the use of the corporate name. The corporation must submit an affidavit (signed by at least

2 incorporators) containing an unqualified undertaking to change its name immediately upon receipt of notice or directive from the SEC that another corporation has acquired a prior right to the use of that name or that the name is misleading, deceptive, confusingly similar to a registered name, or is contrary to public morals, good customs or public policy. The affidavit is not required if the undertaking is contained in the articles of incorporation.

How to form a corporation

Posted on [January 25, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [corporation](#) •

One of the most common vehicles for conducting business is through a corporation. The advantages of using a corporation in conducting business include the following:

1. distinct personality – the corporation has legal capacity to act and contract in its own name as it deemed a “person” separate and distinct from its shareholders;
2. limited liability – the shareholders cannot generally be held liable for the debts and liabilities of the corporation;
3. continuity of existence – the corporation continues to exist notwithstanding the death or withdrawal of one of its shareholders;
4. free transferability of shares – in general, shareholders can freely transfer their shares in the corporation (see Corporation Code of the Philippines Annotated, p. 52 [2006]).

A corporation cannot come into existence by mere agreement of the parties. It is a creation of law; its creation requires the consent of the State. In the Philippines, the formation of a private corporation is governed by the Corporation Code and the consent of the State is given through the Securities and Exchange Commission (SEC).

The major steps involved in the formation of a corporation are:

1. the reservation of the corporate name with the SEC and the issuance by the SEC of a name verification slip, which confirms that the proposed corporate name is available for use;
2. the drafting of the articles of incorporation and by-laws of the corporation (see SEC sample form [here](#));
3. the opening of a bank account, the deposit of the required capitalization with the bank and the issuance by the bank of a certificate of deposit;
4. the payment of the SEC filing fees (which is the sum of: (a) basic filing fee of 1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock, whichever is higher, but not less than PhP1,000; and (b) a legal research fee equivalent to 1% of filing fee but not less than PhP10.00);
5. the filing with the SEC of six sets of all required incorporation documents, including: (a) the name verification slip; (b) the signed articles of incorporation and by-laws; (c) the treasurer's affidavit certifying the amount of subscribed capital stock and the amount paid; (d) the bank certificate of deposit; and (e) the affidavit of incorporators undertaking to change the corporate name (but this is not required if articles of incorporation contain a provision on this commitment). Other documents must be submitted to the SEC depending on the circumstances, such as when: (a) the payment for the subscription price is not cash; (b) the corporation is engaged in certain types of activities that require clearance from governmental agencies; and (c) non-Philippine nationals have equity investments in the corporation;
6. the review by the SEC of the incorporation documents, and if all documents are in order, the issuance by the SEC of the certificate of incorporation. The corporation comes into existence from the date the SEC issues a certificate of incorporation (Corporation Code, sec. 19).

The fact that an application to incorporate is filed with the SEC will not necessarily mean that the SEC will grant the application. The SEC may

reject the articles of incorporation if the same does not comply with the requirements of the Corporation Code. The following are grounds for such rejection or disapproval:

1. the articles of incorporation are not substantially in accordance with the form prescribed by the Corporation Code;
2. the purpose or purposes of the corporation are patently unconstitutional, illegal, immoral, or contrary to government rules and regulations;
3. the treasurer's affidavit concerning the amount of capital stock subscribed and/or paid is false;
4. the percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.
5. the articles of incorporation of banks, banking and quasi-banking institutions, building and loan associations, trust companies and other financial intermediaries, insurance companies, public utilities, educational institutions, and other corporations governed by special laws are not accompanied by a favorable recommendation of the appropriate government agency to the effect that such articles or amendment is in accordance with law. (Corporation Code, sec. 17).

The Corporation Code mandates that the SEC give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles of incorporation.

December 2009 Philippine Supreme Court Decisions on Commercial Law

Posted on [January 4, 2010](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [check](#), [corporation](#), [derivative suit](#) •

Here are selected December 2009 rulings of the Supreme Court of the Philippines on commercial law:

Check; indorsement by co-payee. Section 41 of the Negotiable Instruments Law provides: “Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse unless the one indorsing has authority to indorse for the others.”

Bitanga alone endorsed the crossed check, and petitioner allowed the deposit and release of the proceeds thereof, despite the absence of authority of Bitanga’s co-payee BA Finance to endorse it on its behalf.

Petitioner’s argument that since there was neither forgery, nor unauthorized indorsement because Bitanga was a co-payee in the subject check, the dictum in *Associated Bank v. CA* does not apply in the present case fails.

The payment of an instrument over a missing indorsement is the equivalent of payment on a forged indorsement or an unauthorized indorsement in itself in the case of joint payees.

Petitioner, through its employee, was negligent when it allowed the deposit of the crossed check, despite the lone endorsement of Bitanga, ostensibly ignoring the fact that the check did not carry the indorsement of BA Finance. *Metropolitan Bank and Trust Company, etc. vs. BA Finance Corporation and Malayan Insurance Co, Inc., G.R. No. 179952, December 4, 2009.*

Check; liability of collecting bank. The provisions of the Negotiable Instruments Law and underlying jurisprudential teachings on the black-letter law provide definitive justification for petitioner’s full liability on the value of the check.

To be sure, a collecting bank, Asianbank in this case, where a check is deposited and which indorses the check upon presentment with the drawee bank, is an indorser. This is because in indorsing a check to the drawee bank, a collecting bank stamps the back of the check with the phrase “all prior endorsements and/or lack of endorsement guaranteed” and, for all intents and purposes, treats the check as a negotiable instrument,

hence, assumes the warranty of an indorser. Without Asianbank's warranty, the drawee bank (China Bank in this case) would not have paid the value of the subject check.

Petitioner, as the collecting bank or last indorser, generally suffers the loss because it has the duty to ascertain the genuineness of all prior indorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of prior indorsements.

Accordingly, one who credits the proceeds of a check to the account of the indorsing payee is liable in conversion to the non-indorsing payee for the entire amount of the check.

Granting petitioner's appeal for partial liability would run counter to the existing principles on the liabilities of parties on negotiable instruments, particularly on Section 68 of the Negotiable Instruments Law which instructs that joint payees who indorse are deemed to indorse jointly and severally. When the maker dishonors the instrument, the holder thereof can turn to those secondarily liable — the indorser — for recovery. Since the law explicitly mandates a solidary liability on the part of the joint payees who indorse the instrument, the holder thereof (assuming the check was further negotiated) can turn to either Bitanga or BA Finance for full recompense. *Metropolitan Bank and Trust Company, etc. vs. BA Finance Corporation and Malayan Insurance Co, Inc., G.R. No. 179952, December 4, 2009.*

Corporation; derivative suit. It is well settled in this jurisdiction that where corporate directors are guilty of a breach of trust — not of mere error of judgment or abuse of discretion — and intracorporate remedy is futile or useless, a stockholder may institute a suit in behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong inflicted directly upon the corporation and indirectly upon the stockholders.

Santiago Cua, Jr., et al. vs. Miguel Ocampo Tan, et al./Santiago Cua, Sr., et al. vs. Court of Appeals, et al, G.R. No. 181455-56/G.R. No. 182008, December 4, 2009.

Corporation; officer. The issue revolves mainly on whether petitioner was an employee or a corporate officer of Slimmers World. Section 25 of the Corporation Code enumerates corporate officers as the president, secretary, treasurer and such other officers as may be provided for in the by-laws. In *Tabang v. NLRC*, the Supreme Court held that an “office” is created by the charter of the corporation and the officer is elected by the directors or stockholders. On the other hand, an “employee” usually occupies no office and generally is employed not by action of the directors or stockholders but by the managing officer of the corporation who also determines the compensation to be paid to such employee. *Leslie Okol vs. Slimmers World International, et al.*, *G.R. No. 160146, December 11, 2009*.

Corporation; liability of officers. A corporation is vested by law with a personality separate and distinct from the people comprising it. Ownership by a single or small group of stockholders of nearly all of the capital stock of the corporation is not by itself a sufficient ground to disregard the separate corporate personality. Thus, obligations incurred by corporate officers, acting as corporate agents, are direct accountabilities of the corporation they represent.

In this case, none of these exceptional circumstances is present. In its decision, the trial court failed to provide a clear ground why Eugene Lim was held solidarily liable with Shrimp Specialists. The trial court merely stated that Eugene Lim signed on behalf of the Shrimp Specialists as President without explaining the need to disregard the separate corporate personality. The CA correctly ruled that the evidence to hold Eugene Lim solidarily liable should be more than just signing on behalf of the corporation because artificial entities can only act through natural persons. Thus, the CA was correct in dismissing the case against Eugene Lim. *Shrimp Specialist, Inc., vs. Fuji-Triumph Agri-Industrial Corporation/Fuji-Trimph Agri-Industrial Corporation vs. Shrimp Specialist, Inc. et al.*, *G.R. No. 168756/G.R. No. 171476, December 7, 2009*.

Rehabilitation proceedings and the

non-impairment clause

Posted on [December 16, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Civil Law](#), [Commercial Law](#), [Constitutional Law](#) • Tagged [contract](#), [loan](#) •

Can a rehabilitation court compel a lender to accept a 50% reduction in the borrower's principal obligation? Would that violate the non-impairment of contracts clause of the Constitution?

In *Pacific Wide Realty and Development Corporation vs. PuertoAzul Land, Inc./Pacific Wide Realty and Development Corporation Vs. PuertoAzul Land, Inc.*, [G.R. No. 178768/G.R. No. 180893, November 25, 2009](#), the borrower, Puerto Azul Land, Inc. (PALI) is the owner and developer of the Puerto Azul Complex situated in Ternate, Cavite. Its business involves the development of Puerto Azul into a satellite city with residential areas, resort, tourism and retail commercial centers with recreational areas. In order to finance its operations, it obtained loans from various banks, the principal amount of which amounted to around PhP640 million.

Because of financial difficulties, PALI subsequently filed a petition for rehabilitation. After trial, the rehabilitation court issued a decision which reads, in part:

The rehabilitation of the petitioner, therefore, shall proceed as follows. . .

2. Creditors who will not opt for dacion shall be paid in accordance with the restructuring of the obligations as recommended by the Receiver as follows:

a) The obligations to secured creditors will be subject to a 50% haircut of the principal, and repayment shall be semi-annually over a period of 10 years, with 3-year grace period. Accrued interests and penalties shall be condoned. Interest shall be paid at the rate of 2% p.a. for the first 5 years and 5% p.a. thereafter until the obligations are fully paid. The petitioner shall allot 50% of its cash flow available for debt service for secured creditors. Upon completion of payments to government and employee accounts, the petitioner's cash flow available for debt service shall be used until the obligations are fully paid.

b) One half (1/2) of the principal of the petitioner's unsecured loan obligations to other creditors shall be settled through non-cash offsetting arrangements, with the balance payable semi-annually over a period of 10 years, with 3-year grace period, with interest at the rate of 2% p.a. for the first 5 years and 5% p.a. from the 6th year onwards until the obligations are settled in full. Accrued interest and penalties shall be condoned. (underscoring supplied)

One of the lenders, Export and Industry Bank (EIB), filed with the Court of Appeals (CA) a petition for review under Rule 42 of the Rules of Court. The CA affirmed the decision of the rehabilitation court.

In its petition before the Supreme Court, EIB argues that the rehabilitation plan was unreasonable and in violation of the non-impairment clause. The Supreme Court disagreed. The court first explained the nature of rehabilitation proceedings:

Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.

Under the Rules of Procedure on Corporate Rehabilitation, "rehabilitation" is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.

An indispensable requirement in the rehabilitation of a distressed corporation is the rehabilitation plan . . .

On EIB's argument that the rehabilitation plan violates the non-impairment clause, the court ruled:

In G.R. No. 180893, the rehabilitation plan is contested on the ground that the same is unreasonable and results in the impairment of the obligations of contract. PWRDC contests the following stipulations in PALI's rehabilitation plan: fifty percent (50%) reduction of the principal obligation; condonation of the accrued and substantial interests and penalty charges; repayment over a period of ten years, with minimal interest of two percent (2%) for the first five years and five percent (5%) for the next five years until fully paid, and only upon availability of cash flow for debt service.

We find nothing onerous in the terms of PALI's rehabilitation plan. The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, dacion en pago, or sale of assets or of the controlling interest.

The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor. Enlightening is the observation of the CA in this regard, viz.:

There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court a quo, a Special Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor. x x x.

We also find no merit in PWRDC's contention that there is a violation of the impairment clause. Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked. Furthermore, as held in *Oposa v. Factoran, Jr.* even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The

constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.

Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled.”

November 2009 Philippine Supreme Court Decisions on Commercial Law

Posted on [December 11, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [foreclosure](#), [mortgage](#), [rehabilitation](#), [stockholders](#) •

Here are selected November 2009 Philippine Supreme Court decisions on commercial law:

Corporate employees; appointment. Ordinary company employees are generally employed not by action of the directors and stockholders but by that of the managing officer of the corporation who also determines the compensation to be paid such employees. Corporate officers, on the other hand, are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation’s by-laws.

Here, it was the PDMC president who appointed petitioner Gomez administrator, not its board of directors or the stockholders. The president alone also determined her compensation package. Moreover, the administrator was not among the corporate officers mentioned in the PDMC by-laws. The corporate officers proper were the chairman, president, executive vice-president, vice-president, general manager, treasurer, and secretary. *Gloria V. Gomez vs. PNOC Development and Management*

Corporation (PDMC), G.R. No. 174044, November 27, 2009.

Rehabilitation; accommodation mortgagors. The rehabilitation court committed no reversible error when it removed TCT No. 133164 from the coverage of the stay order. The Interim Rules of Procedure on Corporate Rehabilitation is silent on the enforcement of claims specifically against the properties of accommodation mortgagors. It only covers the suspension, during the pendency of the rehabilitation, of the enforcement of all claims against the debtor, its guarantors and sureties not solidarily liable with the mortgagor.

Furthermore, the newly adopted Rules of Procedure on Corporate Rehabilitation has a specific provision for this special arrangement among a debtor, its creditor and its accommodation mortgagor. Section 7(b), Rule 3 of the said Rules explicitly allows the foreclosure by a creditor of a property not belonging to a debtor under corporate rehabilitation. *Pacific Wide Realty and Development Corporation vs. Puerto Azul Land, Inc./Pacific Wide Realty and Development Corporation Vs. Puerto Azul Land, Inc., G.R. No. 178768/G.R. No. 180893, November 25, 2009.*

Rehabilitation; opposition. Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled. *Pacific Wide Realty and Development Corporation vs. Puerto Azul Land, Inc./Pacific Wide Realty and Development Corporation Vs. Puerto Azul Land, Inc., G.R. No. 178768/G.R. No. 180893, November 25, 2009.*

Stockholders; liability. The “owners” of a corporate organization are its stockholders and they are to be distinguished from its directors and officers.

The petitioners here, with the exception of Audie Llona, are being charged in their capacities as stockholders of Bicol Gas. But the Court of Appeals forgets that in a corporation, the management of its business is generally vested in its board of directors, not its stockholders. Stockholders are basically investors in a corporation. They do not have a hand in running the day-to-day business operations of the corporation unless they are at the same time directors or officers of the corporation. Before a stockholder may be held criminally liable for acts committed by the corporation, therefore, it must be shown that he had knowledge of the criminal act committed in the name of the corporation and that he took part in the same or gave his consent to its commission, whether by action or inaction. *Manuel C. Espiritu, Jr., et al. vs. Petron Corporation, et al.*, *G.R. No. 170891, November 24, 2009*.

Iniquitous and unconscionable interest rate (again)

Posted on *December 9, 2009* by *Hector M. de Leon Jr.* • Posted in *Civil Law, Commercial Law* • Tagged *interest* •

In September 2009, the Supreme Court promulgated its decision in *Ileana Dr. Macalino vs. Bank of the Philippines Islands*, *G.R. No. 175490, September 17, 2009*, and held that the interest rate of 1.5% per month on credit card payments should be reduced to 1% per month.

In *Sps. Isagani & Diosdada Castro vs. Angelina de Leon Tan*, *G.R. No. 168940, November 24, 2009*, the Supreme Court again faced the issue of whether the interest rate imposed (this time under a loan agreement) is excessive. Here, the loan agreement (denominated as *Kasulatan ng Sanglaan ng Lupa at Bahay*) provided for an interest rate of 5% per month, compounded monthly. The principal amount of the loan was PhP30,000.

The borrowers (spouses Tan) failed to pay the loan and the lenders (spouses Castro) instituted an extra-judicial foreclosure of mortgage. The lenders emerged as the only bidder and the redemption period expired without the property being redeemed.

A Complaint for Nullification of Mortgage and Foreclosure and/or Partial Rescission of Documents and Damages was subsequently filed before the Regional Trial Court of Malolos, Bulacan. The complainants alleged, *inter alia*, that the interest rate imposed on the principal amount of P30,000.00 is unconscionable.

The Regional Trial Court reduced the interest rate to 12% per annum and the Court of Appeals affirmed.

In proceedings before the Supreme Court, the petitioners contend that with the removal by the Bangko Sentral of the ceiling on the rate of interest that may be stipulated in a contract of loan, the lender and the borrower could validly agree on any interest rate on loans. Thus, they argue that the Court of Appeals gravely erred when it declared the stipulated interest in the Kasulatan as null as if there was no express stipulation on the compounded interest.

On the other hand, respondents assert that the appellate court correctly struck down the said stipulated interest for being excessive and contrary to morals, if not against the law. They also point out that a contract has the force of law between the parties, but only when the terms, clauses and conditions thereof are not contrary to law, morals, public order or public policy.

The Supreme Court agreed with Court of Appeals and the Regional Trial Court. It ruled:

While we agree with petitioners that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates whenever unconscionable may still be declared illegal. There is certainly nothing in said circular which grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.

In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In

Medel v. Court of Appeals, we annulled a stipulated 5.5% per month or 66% per annum interest on a P500,000.00 loan and a 6% per month or 72% per annum interest on a P60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In Ruiz v. Court of Appeals, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% per annum.

In this case, the 5% monthly interest rate, or 60% per annum, compounded monthly, stipulated in the Kasulatan is even higher than the 3% monthly interest rate imposed in the Ruiz case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void ab initio for being violative of Article 1306 of the Civil Code. With this, and in accord with the Medel and Ruiz cases, we hold that the Court of Appeals correctly imposed the legal interest of 12% per annum in place of the excessive interest stipulated in the Kasulatan.

The Supreme Court also ruled that the imposition of a 12% rate per annum does not violate the freedom of contract:

Petitioners allege that the Kasulatan was entered into by the parties freely and voluntarily. They maintain that there was already a meeting of the minds between the parties as regards the principal amount of the loan, the interest thereon and the property given as security for the payment of the loan, which must be complied with in good faith. Hence, they assert that the Court of Appeals should have given due respect to the provisions of the Kasulatan. They also stress that it is a settled principle that the law will not relieve a party from the effects of an unwise, foolish or disastrous contract, entered into with all the required formalities and with full awareness of what he was doing.

Petitioners' contentions deserve scant consideration. In Abe v. Foster Wheeler Corporation, we held that the freedom of contract is not absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, morals, safety and welfare. One such legislative regulation is found in Article 1306 of the Civil Code which allows the contracting parties to "establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary

to law, morals, good customs, public order or public policy.”

To reiterate, we fully agree with the Court of Appeals in holding that the compounded interest rate of 5% per month, is iniquitous and unconscionable. Being a void stipulation, it is deemed inexistent from the beginning. The debt is to be considered without the stipulation of the iniquitous and unconscionable interest rate. Accordingly, the legal interest of 12% per annum must be imposed in lieu of the excessive interest stipulated in the agreement. . .

From the foregoing, it is clear that there is no unilateral alteration of the terms and conditions of the Kasulatan entered into by the parties. Surely, it is more consonant with justice that the subject interest rate be equitably reduced and the legal interest of 12% per annum is deemed fair and reasonable.

October 2009 Philippine Supreme Court Decisions on Commercial Law

Posted on [November 16, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#) • Tagged [board of directors](#), [by-laws](#) •

Here are selected October 2009 Philippine Supreme Court decisions on commercial law:

Board of trustees; qualification of Chairman. The Court of Appeals correctly held that petitioner Villafuerte’s nomination must of necessity be understood as being subject to or in accordance with the qualifications set forth in the By-Laws of the BAP-SBP. Since the said by-laws require the Chairman of the Board of Trustees to be a trustee himself, petitioner Villafuerte was not qualified since he had neither been elected nor appointed as one of the trustees of BAP-SBP. In other words, petitioner Villafuerte never validly assumed the position of Chairman because he failed in the first place to qualify therefor. *Rep. Luis R. Villafuerte, et al. vs. Gov. Oscar S. Moreno, et al., G.R. No. 186566, October 2, 2009*

By-laws; membership. Under the by-laws, a three-man panel is mandated to review, verify and validate the lists of members submitted by BAP and PB to FIBA based on an agreed set of criteria for membership formulated by the three-man panel. There is no question that the three-man panel had not yet formulated a set of criteria prior to or as of the time of signing of the Bangkok Agreement. If only for this, it stands to reason that the three-man panel could not have, by any stretch of the imagination, possibly validated all organizations proposed by the BAP and PB for BAP-SBP membership as “active” or “voting” members on a wholesale basis. It could not have done so since there was still no set of criteria by which to embark on such an endeavor. The rules and procedures for validation were formulated by the three-man panel only after the execution of the Bangkok Agreement. In fact, several of the petitioners actively participated in the membership validation process which was done after the execution of the Bangkok Agreement.

The membership validation resulted in the conferment of active membership status upon 19 BAP-SBP members, 17 of which participated in the June 12, 2008 meeting. Hence, respondents, who were elected by 17 of the 19 active and voting members of the BAP-SBP during the meeting held on June 12, 2008, are the legitimate officers of the organization, their election in accordance with the applicable rules on the said exercise. *Rep. Luis R. Villafuerte, et al. vs. Gov. Oscar S. Moreno, et al.*, *G.R. No. 186566, October 2, 2009*

Directors; liability. Section 31 of the Corporation Code makes directors-officers of corporations jointly and severally liable even to third parties for their gross negligence or bad faith in directing the affairs of their corporations.

Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation. It does not simply connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will. It partakes of the nature of fraud.

Gross negligence, on the other hand, is the want of even slight care, acting or

omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them; the want or absence of or failure to exercise slight care or diligence, or the entire absence of care.

Petitioner Sanchez of course claims that the funds they had collected proved inadequate even to meet expenses. But, as the appellate court held, he had been unable to substantiate such claims. As the officer charged with approving and implementing corporate disbursements, Sanchez had the duty to present documents showing how the incomes of the foundation were spent. But he failed to do so even after the DECS, which took custody of the records, asked Kahn to submit a list of the documents they needed for establishing their defenses so these may be made available to them. Under the circumstances, the indubitable conclusion is that petitioner Sanchez and Kahn acted with bad faith, if not with gross negligence, in failing to perform their duty to remit to DECS or keep in safe hands ULFI's incomes from the leases. *Manuel Luis S. Sanchez vs. Republic of the Philippines, Represented by the Department of Education, Culture and Sports, G.R. No. 172885, October 9, 2009.*

September 2009 Philippine Supreme Court Decisions on Commercial Law and Tax Law

Posted on [October 12, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Tax Law](#) • Tagged [board of directors](#), [corporation](#), [rehabilitation](#), [stamp tax](#) •

Here are selected September 2009 Philippine Supreme Court decisions on commercial law and tax law:

Commercial law

Corporation; board resolution. The second letter-agreement modified the

first one entered into by petitioner, through Atty. Jose Soluta, Jr. In previously allowing Atty. Soluta to enter into the first letter-agreement without a board resolution expressly authorizing him, petitioner had clothed him with apparent authority to modify the same via the second letter-agreement. *Associated Bank (now United Overseas Bank [Phils.]) vs. Spouses Rafael and Monaliza Pronstroller/Spouses Eduardo and Ma. Pilar Vaca (Intervenors)*, *G.R. No. 148444, September 3, 2009*.

Corporation; board vacancy. After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.

With the expiration of Makalintal's term of office, a vacancy resulted which, by the terms of Section 29 of the Corporation Code, must be filled by the stockholders of VVCC in a regular or special meeting called for the purpose. *Valle Verde Country Club, Inc., et al. Vs. Victor Africa*, *G.R. No. 151969, September 4, 2009*.

Corporation; corporation sole. Even if the transformation of IEMELIF from a corporation sole to a corporation aggregate was legally defective, its head or governing body, i.e., Bishop Lazaro, whose acts were approved by the Highest Consistory of Elders, still did not change. A corporation sole is one formed by the chief archbishop, bishop, priest, minister, rabbi or other presiding elder of a religious denomination, sect, or church, for the purpose of administering or managing, as trustee, the affairs, properties and temporalities of such religious denomination, sect or church. As opposed to a corporation aggregate, a corporation sole consists of a single member, while a corporation aggregate consists of two or more persons. If the transformation did not materialize, the corporation sole would still be Bishop Lazaro, who himself performed the questioned acts of removing Juane as Resident Pastor of the Tondo Congregation. If the transformation did materialize, the corporation aggregate would be composed of the Highest Consistory of Elders, which nevertheless approved the very same acts. As

either Bishop Lazaro or the Highest Consistory of Elders had the authority to appoint Juane as Resident Pastor of the IEMELIF Tondo Congregation, it also had the power to remove him as such or transfer him to another congregation. *Iglesia Evangelisca Metodista En Las Islas Filipinas (IEMELIF), Inc. vs. Nataniel B. Juane/Nataniel B. Juane Vs. Iglesia Evangelisca Metodista En Las Islas Filipinas (IEMELIF), Inc.*, **G.R. No. 172447, September 18, 2009.**

Corporation; stockholders. Upon the death of a shareholder, the heirs do not automatically become stockholders of the corporation and acquire the rights and privileges of the deceased as shareholder of the corporation. The stocks must be distributed first to the heirs in estate proceedings, and the transfer of the stocks must be recorded in the books of the corporation. Section 63 of the Corporation Code provides that no transfer shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation. During such interim period, the heirs stand as the equitable owners of the stocks, the executor or administrator duly appointed by the court being vested with the legal title to the stock. Until a settlement and division of the estate is effected, the stocks of the decedent are held by the administrator or executor. Consequently, during such time, it is the administrator or executor who is entitled to exercise the rights of the deceased as stockholder.

Thus, even if petitioner presents sufficient evidence in this case to establish that he is the son of Carlos L. Puno, he would still not be allowed to inspect respondent's books and be entitled to receive dividends from respondent, absent any showing in its transfer book that some of the shares owned by Carlos L. Puno were transferred to him. This would only be possible if petitioner has been recognized as an heir and has participated in the settlement of the estate of the deceased. *Joselito Musni Puno (as heir of the late Carlos Puno) vs. Puno Enterprises, Inc., represented by Jesusa Puno*, **G.R. No. 177066, September 11, 2009.**

Insurance; health maintenance organizations. Applying the "principal object and purpose test," there is significant American case law supporting the argument that a corporation (such as an HMO, whether or not organized

for profit), whose main object is to provide the members of a group with health services, is not engaged in the insurance business. *Philippine Health Providers, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 167330, September 18, 2009*.

Insurance; subrogation. Based on the applicable jurisprudence, because of the inadequacy of the Marine Cargo Risk Note for the reasons already stated, it was incumbent on respondent to present in evidence the Marine Insurance Policy, and having failed in doing so, its claim of subrogation must necessarily fail.

A marine risk note is not an insurance policy. It is only an acknowledgment or declaration of the insurer confirming the specific shipment covered by its marine open policy, the evaluation of the cargo and the chargeable premium. The Marine Risk Note relied upon by respondent as the basis for its claim for subrogation is insufficient to prove said claim. *Eastern Shipping Lines, Inc. vs. Prudential Guarantee and Assurance, Inc.*, *G.R. No. 174116, September 11, 2009*.

Rehabilitation; coverage. The claim of petitioners for payment of tuition fees from CAP is included in the definition of “claims” under the Interim Rules. In addition, the Interim Rules do not provide that a claim arising from a pre-need contract is an exception to the power of the trial court to stay enforcement of all claims upon the finding that the petition for rehabilitation is sufficient in form and substance. *Kei Marie and Bianca Angelica both surnamed Abrera, minors, represented by their parents Evelyn C. Abrera, et al. vs. Hon. Romeo F. Barza, in his capacity as Presiding Judge of Regional Trial Court, Branch 61, Makati City and College Assurance Plan Philippines, Inc.* *G.R. No. 171681, September 11, 2009*.

Tax law

DST; HMO. A health From the language of Section 185, it is evident that two requisites must concur before the DST can apply, namely: (1) the document must be a policy of insurance or an obligation in the nature of indemnity and (2) the maker should be transacting the business of accident, fidelity, employer’s liability, plate, glass, steam boiler, burglar, elevator, automatic sprinkler, or other branch of insurance (except life, marine, inland,

and fire insurance).

Health care agreements are clearly not within the ambit of Section 185 of the NIRC and there was never any legislative intent to impose the same on HMOs like petitioner. *Philippine Health Providers, Inc. vs. Commissioner of Internal Revenue*, *G.R. No. 167330, September 18, 2009*.

Power of board to elect replacement for resigned holdover director

Posted on *October 7, 2009* by *Hector M. de Leon Jr.* • Posted in *Commercial Law* • Tagged *board of directors, corporation* •

Under section 29 of the Corporation Code, the board of directors, if there remains a quorum, can fill up a vacancy in the board of directors, except when: (1) the vacancy was caused by the removal of a director by the stockholders; or (2) the vacancy was caused by the expiration of the term of the director.

If the vacancy was caused by the resignation of a director who was occupying the position in a hold-over capacity, can the remaining directors fill up the vacancy or would that power vest with the stockholders?

In *Valle Verde Country Club, Inc., et al. vs. Victor Africa*, *G.R. No. 151969, September 4, 2009*, the stockholders of Valle Verde Country Club (VVCC) elected the following as members of the board during its 1996 annual stockholders' meeting: Ernesto Villaluna, Jaime C. Dinglasan (Dinglasan), Eduardo Makalintal (Makalintal), Francisco Ortigas III, Victor Salta, Amado M. Santiago, Jr., Fortunato Dee, Augusto Sunico, and Ray Gamboa.

Because of lack of quorum, no stockholders' meetings were held in the years 1997, 1998, 1999, 2000, and 2001. Thus, the directors continued to serve in the VVCC Board in a hold-over capacity.

Dinglasan resigned from his position as member of the VVCC Board on September 1998. The following month, the remaining directors elected Eric Roxas (Roxas) to fill in the vacancy created by the resignation of Dinglasan. Subsequently, Makalintal also resigned as member of the VVCC Board. The remaining members of the VVCC board elected Jose Ramirez (Ramirez) to replace Makalintal on March 6, 2001.

Victor Africa (Africa), a member of VVCC, questioned the election of Roxas and Ramirez as members of the VVCC Board with the Securities and Exchange Commission (SEC) and the Regional Trial Court (RTC), respectively. In his nullification complaint before the RTC, Africa alleged that the election of Roxas was contrary to Section 29, in relation to Section 23, of the Corporation Code. According to Africa, the resulting vacancies should have been filled by the stockholders in a regular or special meeting called for that purpose, and not by the remaining members of the VVCC Board, as was done in this case. The SEC and the RTC agreed with Africa.

The Supreme Court also ruled that the authority to fill in the vacancy caused by the resignation of a holdover director lies with VVCC's stockholders, not the remaining members of its board of directors. According to the Supreme Court:

We are not persuaded by VVCC's arguments and, thus, find its petition unmeritorious.

To repeat, the issue for the Court to resolve is whether the remaining directors of a corporation's Board, still constituting a quorum, can elect another director to fill in a vacancy caused by the resignation of a hold-over director. The resolution of this legal issue is significantly hinged on the determination of what constitutes a director's term of office. . .

The word "term" has acquired a definite meaning in jurisprudence. In several cases, we have defined "term" as the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The term of office is not affected by the holdover. The term is fixed by statute and it does not change

simply because the office may have become vacant, nor because the incumbent holds over in office beyond the end of the term due to the fact that a successor has not been elected and has failed to qualify.

Term is distinguished from tenure in that an officer's "tenure" represents the term during which the incumbent actually holds office. The tenure may be shorter (or, in case of holdover, longer) than the term for reasons within or beyond the power of the incumbent.

Based on the above discussion, when Section 23 of the Corporation Code declares that "the board of directors...shall hold office for one (1) year until their successors are elected and qualified," we construe the provision to mean that the term of the members of the board of directors shall be only for one year; their term expires one year after election to the office. The holdover period – that time from the lapse of one year from a member's election to the Board and until his successor's election and qualification – is not part of the director's original term of office, nor is it a new term; the holdover period, however, constitutes part of his tenure. Corollary, when an incumbent member of the board of directors continues to serve in a holdover capacity, it implies that the office has a fixed term, which has expired, and the incumbent is holding the succeeding term.

After the lapse of one year from his election as member of the VVCC Board in 1996, Makalintal's term of office is deemed to have already expired. That he continued to serve in the VVCC Board in a holdover capacity cannot be considered as extending his term. To be precise, Makalintal's term of office began in 1996 and expired in 1997, but, by virtue of the holdover doctrine in Section 23 of the Corporation Code, he continued to hold office until his resignation on November 10, 1998. This holdover period, however, is not to be considered as part of his term, which, as declared, had already expired.

With the expiration of Makalintal's term of office, a vacancy resulted which, by the terms of Section 29 of the Corporation Code, must be filled by the stockholders of VVCC in a regular or special meeting called for the purpose. To assume – as VVCC does – that the vacancy is caused by Makalintal's resignation in 1998, not by the expiration of his term in 1997, is both illogical and unreasonable. His resignation as a holdover director did not change the nature of the vacancy; the vacancy due to the expiration of

Makalintal's term had been created long before his resignation. . .

VVCC's construction of Section 29 of the Corporation Code on the authority to fill up vacancies in the board of directors, in relation to Section 23 thereof, effectively weakens the stockholders' power to participate in the corporate governance by electing their representatives to the board of directors. The board of directors is the directing and controlling body of the corporation. It is a creation of the stockholders and derives its power to control and direct the affairs of the corporation from them. The board of directors, in drawing to themselves the powers of the corporation, occupies a position of trusteeship in relation to the stockholders, in the sense that the board should exercise not only care and diligence, but utmost good faith in the management of corporate affairs.

The underlying policy of the Corporation Code is that the business and affairs of a corporation must be governed by a board of directors whose members have stood for election, and who have actually been elected by the stockholders, on an annual basis. Only in that way can the directors' continued accountability to shareholders, and the legitimacy of their decisions that bind the corporation's stockholders, be assured. The shareholder vote is critical to the theory that legitimizes the exercise of power by the directors or officers over properties that they do not own.

This theory of delegated power of the board of directors similarly explains why, under Section 29 of the Corporation Code, in cases where the vacancy in the corporation's board of directors is caused not by the expiration of a member's term, the successor "so elected to fill in a vacancy shall be elected only for the unexpired term of the his predecessor in office." The law has authorized the remaining members of the board to fill in a vacancy only in specified instances, so as not to retard or impair the corporation's operations; yet, in recognition of the stockholders' right to elect the members of the board, it limited the period during which the successor shall serve only to the "unexpired term of his predecessor in office."

While the Court in *El Hogar* approved of the practice of the directors to fill vacancies in the directorate, we point out that this ruling was made before the present Corporation Code was enacted and before its Section 29 limited the instances when the remaining directors can fill in vacancies in the board,

i.e., when the remaining directors still constitute a quorum and when the vacancy is caused for reasons other than by removal by the stockholders or by expiration of the term.

It also bears noting that the vacancy referred to in Section 29 contemplates a vacancy occurring within the director's term of office. When a vacancy is created by the expiration of a term, logically, there is no more unexpired term to speak of. Hence, Section 29 declares that it shall be the corporation's stockholders who shall possess the authority to fill in a vacancy caused by the expiration of a member's term.

As correctly pointed out by the RTC, when remaining members of the VVCC Board elected Ramirez to replace Makalintal, there was no more unexpired term to speak of, as Makalintal's one-year term had already expired. Pursuant to law, the authority to fill in the vacancy caused by Makalintal's leaving lies with the VVCC's stockholders, not the remaining members of its board of directors.

August 2009 Philippine Supreme Court Decisions on Commercial Law, Tax Law and Labor Law

Posted on [September 14, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Commercial Law](#), [Labor Law](#), [Tax Law](#) • Tagged [amnesty](#), [backwages](#), [illegal dismissal](#), [illegal strike](#), [insurance](#), [jurisdiction](#), [misconduct](#), [negligence](#), [redundancy](#), [resignation](#), [stamp tax](#), [tax](#), [union](#) •

Here are selected August 2009 Philippine Supreme Court decisions on commercial law, tax law and labor law:

Commercial Law

Insurance; insurable interest. Insurable interest is one of the most basic and essential requirements in an insurance contract. In general, an insurable interest is that interest which a person is deemed to have in the subject

matter insured, where he has a relation or connection with or concern in it, such that the person will derive pecuniary benefit or advantage from the preservation of the subject matter insured and will suffer pecuniary loss or damage from its destruction, termination, or injury by the happening of the event insured against. The existence of an insurable interest gives a person the legal right to insure the subject matter of the policy of insurance. Section 10 of the Insurance Code indeed provides that every person has an insurable interest in his own life. Section 19 of the same code also states that an interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs. *Violeta R. Lalican vs. The Insular Life Assurance Company Limited, as represented by the President Vicente R. Aylon*, **G.R. No. 183526, August 25, 2009**.

Insurance; reinstatement. To reinstate a policy means to restore the same to premium-paying status after it has been permitted to lapse. Both the Policy Contract and the Application for Reinstatement provide for specific conditions for the reinstatement of a lapsed policy. In the instant case, Eulogio's death rendered impossible full compliance with the conditions for reinstatement of Policy No. 9011992. True, Eulogio, before his death, managed to file his Application for Reinstatement and deposit the amount for payment of his overdue premiums and interests thereon with Malaluan; but Policy No. 9011992 could only be considered reinstated after the Application for Reinstatement had been processed and approved by Insular Life during Eulogio's lifetime and good health.

Eulogio's death, just hours after filing his Application for Reinstatement and depositing his payment for overdue premiums and interests with Malaluan, does not constitute a special circumstance that can persuade this Court to already consider Policy No. 9011992 reinstated. Said circumstance cannot override the clear and express provisions of the Policy Contract and Application for Reinstatement, and operate to remove the prerogative of Insular Life thereunder to approve or disapprove the Application for Reinstatement. Even though the Court commiserates with Violeta, as the tragic and fateful turn of events leaves her practically empty-handed, the Court cannot arbitrarily burden Insular Life with the payment of proceeds on a lapsed insurance policy. Justice and fairness must equally apply to all parties to a case. Courts are not permitted to make contracts for the parties. The function and duty of the courts consist simply in enforcing and carrying

out the contracts actually made. *Violeta R. Lalican vs. The Insular Life Assurance Company Limited, as represented by the President Vicente R. Aylon*, [G.R. No. 183526, August 25, 2009](#).

Officers; personal liability. It is settled that in the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities. Gustilo and Castro, as corporate officers of Lowe, have personalities which are distinct and separate from that of Lowe's. Hence, in the absence of any evidence showing that they acted with malice or in bad faith in declaring Mutuc's position redundant, Gustilo and Castro are not personally liable for the monetary awards to Mutuc. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, [G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009](#).

Tax Law

Stamp tax; time deposit. The UNISA – the special savings account of Metrobank, granting a higher tax rate to depositors able to maintain the required minimum deposit balance for the specified holding period, and evidenced by a passbook – is a certificate of deposit bearing interest, already subject to DST even under the then Section 180 of the NIRC. Hence, the assessment by the CIR against Metrobank for deficiency DST on the UNISA for 1999 was only proper. *Metropolitan Bank and Trust Co. vs. Commissioner of Internal Revenue*, [G.R. No. 165697/G.R. No. 166481, August 4, 2009](#)

Tax amnesty. A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an absolute waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority. *Metropolitan Bank and Trust Co. vs. Commissioner of Internal*

Revenue, **G.R. No. 165697/G.R. No. 166481, August 4, 2009.**

Taxation; double taxation. Double taxation means taxing the same property twice when it should be taxed only once; that is, “taxing the same person twice by the same jurisdiction for the same thing.” It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as “direct duplicate taxation,” the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and the taxes must be of the same kind or character.

Using the aforementioned test, the Court finds that there is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in the City of Manila; (2) for the same purpose – to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority – petitioner City of Manila; (4) within the same taxing jurisdiction – within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods – per calendar year; and (6) of the same kind or character – a local business tax imposed on gross sales or receipts of the business. *The City of Manila, Liberty M. Toledo in her capacity as the Treasurer of Manila, et al. vs. Coca-Cola Bottlers Philippines, Inc.*, **G.R. No. 181845, August 4, 2009.**

Labor Law

Benefits; backwages. The issue on the proper computation of Mutuc’s backwages has been rendered moot by our decision that Mutuc was validly dismissed. Backwages is a relief given to an illegally dismissed employee. Since Mutuc’s dismissal is for an authorized cause, she is not entitled to backwages. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, **G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009.**

Benefits; service charge. Since Dusit Hotel is explicitly mandated by the Article 96 of the Labor Code to pay its employees and management their respective shares in the service charges collected, the hotel cannot claim that payment thereof to its 82 employees constitute substantial compliance with the payment of ECOLA under WO No. 9. Undoubtedly, the hotel

employees' right to their shares in the service charges collected by Dusit Hotel is distinct and separate from their right to ECOLA; gratification by the hotel of one does not result in the satisfaction of the other. *Philippine Hoteliers, Inc./Dusit Hotel Nikko-Manila vs. National Union of Workers in Hotel, Restaurant, and Allied Industries (NUWHARAIN-APL-IUF) Dusit Hotel Nikko Chapter*, **G.R. No. 181972, August 25, 2009.**

Dismissal; illegal strike. A perusal of the Labor Arbiter's Decision, which was affirmed in toto by the NLRC, shows that on account of the staging of the illegal strike, individual respondents were all deemed to have lost their employment, without distinction as to their respective participation.

Of the participants in the illegal strike, whether they knowingly participated in the illegal strike in the case of union officers or knowingly participated in the commission of violent acts during the illegal strike in the case of union members, the records do not indicate. While respondent Julius Vargas was identified to be a union officer, there is no indication if he knowingly participated in the illegal strike. The Court not being a trier of facts, the remand of the case to the NLRC is in order only for the purpose of determining the status in the Union of individual respondents and their respective liability, if any. *A. Soriano Aviation vs. Employees Association of A. Soriano Aviation, et al.*, **G.R. No. 166879, August 14, 2009.**

Dismissal; misconduct. In its 14 February 2000 decision, PNB's Administrative Adjudication Panel found Maralit guilty of serious misconduct, gross violation of bank rules and regulations, and conduct prejudicial to the best interest of the bank. Maralit violated bank policies which resulted in the return of unfunded checks amounting to P54,950,000. Accordingly, PNB dismissed Maralit from the service with forfeiture of her retirement benefits effective at the close of business hours on 31 December 1998.

PNB may rightfully terminate Maralit's services for a just cause, including serious misconduct. Serious misconduct is improper conduct, a transgression of some established and definite rule of action, a forbidden act, or a dereliction of duty. Having been dismissed for a just cause, Maralit is not entitled to her retirement benefits. *Ester B. Maralit vs. Philippine National*

Bank, [G.R. No. 163788, August 24, 2009](#).

Dismissal; negligence. Gross negligence connotes want or absence of or failure to exercise even slight care or diligence, or the total absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To warrant removal from service, the negligence should not merely be gross, but also habitual. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.

In *JGB and Associates, Inc. v. National Labor Relations Commission*, the Court further declared that gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Fraud and willful neglect of duties imply bad faith of the employee in failing to perform his job, to the detriment of the employer and the latter's business. *Chona Estacio and Leopoldo Manliclic vs. Pampanga I, Electric Cooperative, Inc. and Loliano E. Allas*, [G.R. No. 183196, August 19, 2009](#)

Dismissal; negligence. Under Article 282 (b) of the Labor Code, negligence must be both gross and habitual to justify the dismissal of an employee. Gross negligence is characterized by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.

In the present case, petitioner, as respondent's Accounting Manager, failed to discharge her important duty of remitting SSS/PhilHealth contributions not once but quadruple times, resulting in respondent's incurring of penalties totaling P18,580.41, not to mention the employees/members' contributions being unupdated. *Eden Llamas vs. Ocean Gateway Maritime and Management, Inc.*, [G.R. No. 179293, August 14, 2009](#).

Dismissal; redundancy. Redundancy exists when the service of an employee is in excess of what is reasonably demanded by the actual requirements of the business. A redundant position is one rendered superfluous by any number of factors, such as overhiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company or phasing out of a service activity formerly undertaken by the

enterprise.

For a valid implementation of a redundancy program, the employer must comply with the following requisites: (1) written notice served on both the employee and the DOLE at least one month prior to the intended date of termination; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant position; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009.

Dismissal; redundancy. We agree with the Labor Arbiter that Lowe employed fair and reasonable criteria in declaring Mutuc's position redundant. Mutuc, who was hired only on 23 June 2000, did not deny that she was the most junior of all the executives of Lowe. Mutuc also did not present contrary evidence to disprove that she was the least efficient and least competent among all the Creative Directors.

The determination of the continuing necessity of a particular officer or position in a business corporation is a management prerogative, and the courts will not interfere unless arbitrary or malicious action on the part of management is shown. It is also within the exclusive prerogative of management to determine the qualification and fitness of an employee for hiring and firing, promotion or reassignment. Indeed, an employer has no legal obligation to keep more employees than are necessary for the operation of its business. *Lowe, Inc., et al. vs. Court of Appeals and Irma Mutuc*, G.R. Nos. 164813 & G.R. No. 174590, August 14, 2009.

Dismissal; resignation. In termination cases, it is incumbent upon the employer to prove either the non-existence or the validity of dismissal. Inasmuch as respondents alleged petitioner's resignation as the cause of his separation from work, respondents had the burden to prove the same. The case of the employer must stand or fall on its own merits and not on the weakness of the employee's defense.

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the

exigency of the service, and one who has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, in fact, he intended to sever his employment.

In this case, we find no overt act on the part of petitioner that he was ready to sever his employment ties. *Baltazar L. Payno vs. Orizon Trading Corp./ Orata Trading and Flordeliza Legaspi*, **G.R. No. 175345, August 19, 2009**.

Dismissal; transfer. ATI's transfer of Bismark IV's base from Manila to Bataan was, contrary to Aguanza's assertions, a valid exercise of management prerogative. The transfer of employees has been traditionally among the acts identified as a management prerogative subject only to limitations found in law, collective bargaining agreement, and general principles of fair play and justice. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. The free will of management to conduct its own business affairs to achieve its purpose cannot be denied.

On the other hand, the transfer of an employee may constitute constructive dismissal "when continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank and/or a diminution in pay; or when a clear discrimination, insensibility or disdain by an employer becomes unbearable to the employee."

Aguanza's continued employment was not impossible, unreasonable or unlikely; neither was there a clear discrimination against him. Among the employees assigned to Bismark IV, it was only Aguanza who did not report for work in Bataan. Aguanza's assertion that he was not allowed to "time in" in Manila should be taken on its face: Aguanza reported for work in Manila, where he wanted to work, and not in Bataan, where he was supposed to work. There was no demotion in rank, as Aguanza would continue his work as Crane Operator. Furthermore,

despite Aguanza's assertions, there was no diminution in pay. *Gualberto Aguanza vs. Asian Terminal, Inc., et al.*, **G.R. No. 163505, August 14, 2009.**

Jurisdiction; Secretary of Labor. In the case at bar, the Secretary of Labor correctly assumed jurisdiction over the case as it does not come under the exception clause in Art. 128(b) of the Labor Code. While petitioner Jethro appealed the inspection results and there is a need to examine evidentiary matters to resolve the issues raised, the payrolls presented by it were considered in the ordinary course of inspection. While the employment records of the employees could not be expected to be found in Yakult's premises in Calamba, as Jethro's offices are in Quezon City, the records show that Jethro was given ample opportunity to present its payrolls and other pertinent documents during the hearings and to rectify the violations noted during the ocular inspection. It, however, failed to do so, more particularly to submit competent proof that it was giving its security guards the wages and benefits mandated by law.

Jethro's failure to keep payrolls and daily time records in Yakult's premises was not the only labor standard violation found to have been committed by it; it likewise failed to register as a service contractor with the DOLE, pursuant to Department Order No. 18-02 and, as earlier stated, to pay the wages and benefits in accordance with the rates prescribed by law. *Jethro Intelligence & Security Corporation and Yakult, Inc. vs.. The Hon. Secretary of Labor and Employment, et al.*, **G.R. No. 172537, August 14, 2009.**

Labor organization. Article 212(g) of the Labor Code defines a labor organization as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." Upon compliance with all the documentary requirements, the Regional Office or Bureau shall issue in favor of the applicant labor organization a certificate indicating that it is included in the roster of legitimate labor organizations. Any applicant labor organization shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration. *Sta. Lucia East Commercial Corporation vs. Hon. Secretary of Labor and Employment, et al.*, **G.R. No. 162355, August 14, 2009.**

Labor organization; bargaining unit. A bargaining unit is a “group of employees of a given employer, comprised of all or less than all of the entire body of employees, consistent with equity to the employer, indicated to be the best suited to serve the reciprocal rights and duties of the parties under the collective bargaining provisions of the law.” The fundamental factors in determining the appropriate collective bargaining unit are: (1) the will of the employees (Globe Doctrine); (2) affinity and unity of the employees’ interest, such as substantial similarity of work and duties, or similarity of compensation and working conditions (Substantial Mutual Interests Rule); (3) prior collective bargaining history; and (4) similarity of employment status. *Sta. Lucia East Commercial Corporation vs. Hon. Secretary of Labor and Employment, et al.*, **G.R. No. 162355, August 14, 2009.**

Strike; illegal strike. It is hornbook principle that the exercise of the right of private sector employees to strike is not absolute (see Section 3 of Article XIII of the Constitution).

Indeed, even if the purpose of a strike is valid, the strike may still be held illegal where the means employed are illegal. Thus, the employment of violence, intimidation, restraint or coercion in carrying out concerted activities which are injurious to the right to property renders a strike illegal. And so is picketing or the obstruction to the free use of property or the comfortable enjoyment of life or property, when accompanied by intimidation, threats, violence, and coercion as to constitute nuisance.

Here, the Union members’ repeated name-calling, harassment and threats of bodily harm directed against company officers and non-striking employees and, more significantly, the putting up of placards, banners and streamers with vulgar statements imputing criminal negligence to the company, which put to doubt reliability of its operations, come within the purview of illegal acts under Art. 264 of the Labor Code and jurisprudence. *A. Soriano Aviation vs. Employees Association of A. Soriano Aviation, et al.*, **G.R. No. 166879, August 14, 2009.**

July 2009 Philippine Supreme Court

Decisions on Commercial, Tax and Labor Laws

Posted on August 10, 2009 by Hector M. de Leon Jr. • Posted in Commercial Law, Labor Law, Tax Law • Tagged check-off, compensable illness, customs duties, franchise tax, illegal dismissal, illegal strike, jurisdiction, loss of confidence, minimum corporate income tax, probationary employment, project employee, real property tax, retirement, tax credit •

Here are selected July 2009 Philippine Supreme Court decisions on commercial, tax and labor laws:

Commercial Law

Board action. A corporate loan entered into by the President without board approval is binding on the corporation when the President is authorized under the by-laws to enter into loans on behalf of the corporation. *Cebu Mactan Members Center, Inc. vs. Masahiro Tsukahara*, G.R. No. 159624, July 17, 2009.

Tax Law

Franchise tax. Jurisprudence suggests that aside from the national franchise tax, the franchisee is still liable to pay the local franchise tax, unless it is expressly and unequivocally exempted from the payment thereof under its legislative franchise. The “in lieu of all taxes” clause in a legislative franchise should categorically state that the exemption applies to both local and national taxes; otherwise, the exemption claimed should be strictly construed against the taxpayer and liberally in favor of the taxing authority. *Smart Communications, Inc., vs. The City of Davao, represented by its Mayor Hon. Rodrigo Duterte and the Sangguniang Panlungsod of Davao City*, G.R. No. 155491, July 21, 2009.

Minimum corporate income tax. Under its charter, Philippine Airlines is exempt from the minimum corporate income tax. *Commissioner of Internal Revenue vs. Philippine Airlines, Inc.*, G.R. No. 180066, July 7, 2009.

Overseas communications tax. Section 13 of Presidential Decree No. 1590,

granting respondent tax exemption, is clearly all-inclusive. The basic corporate income tax or franchise tax paid by respondent shall be “in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description imposed, levied, established, assessed or collected by any municipal, city, provincial, or national authority or government agency, now or in the future x x x,” except only real property tax. Even a meticulous examination of Presidential Decree No. 1590 will not reveal any provision therein limiting the tax exemption of respondent to final withholding tax on interest income or excluding from said exemption the overseas communications tax. *Commissioner of Internal Revenue vs. Philippine Airlines, Inc. (PAL)*, **G.R. No. 180043, July 14, 2009**.

Real property tax; entity with personality to protest assessment. The liability for taxes generally rests on the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. However, personal liability for realty taxes may also expressly rest on the entity with the beneficial use of the real property, such as the tax on property owned by the government but leased to private persons or entities, or when the tax assessment is made on the basis of the actual use of the property. In either case, the unpaid realty tax attaches to the property but is directly chargeable against the taxable person who has actual and beneficial use and possession of the property regardless of whether or not that person is the owner.

In the present case, the NPC, contrary to its claims, is neither the owner nor the possessor/user of the subject machineries. *National Power Corporation vs. Province of Quezon and Municipality of Pabgilao*, **G.R. No. 171586, July 15, 2009**.

Real property tax; exemption. NPC’s claim of tax exemptions is completely without merit. To successfully claim exemption under Section 234(c) of the Local Government Code, the claimant must prove two elements: (a) the machineries and equipment are actually, directly, and exclusively used by local water districts and government-owned or controlled corporations; and (b) the local water districts and government-owned and controlled corporations claiming exemption must be engaged in

the supply and distribution of water and/or the generation and transmission of electric power.

As applied to the present case, the government-owned or controlled corporation claiming exemption must be the entity actually, directly, and exclusively using the real properties, and the use must be devoted to the generation and transmission of electric power. Neither the NPC nor Mirant satisfies both requirements. Although the plant's machineries are devoted to the generation of electric power, by the NPC's own admission and as previously pointed out, Mirant – a private corporation – uses and operates them. That Mirant operates the machineries solely in compliance with the will of the NPC only underscores the fact that NPC does not *actually, directly, and exclusively use* them. The machineries must be actually, directly, and exclusively used by the government-owned or controlled corporation for the exemption under Section 234(c) to apply. *National Power Corporation vs. Province of Quezon and Municipality of Pabgilao*, **G.R. No. 171586, July 15, 2009**.

Real property tax; sale of real property. Section 83 of Presidential Decree No. 464 states that the Regional Trial Court shall not entertain any complaint assailing the validity of a tax sale of real property unless the complainant deposits with the court the amount for which the said property was sold plus interest equivalent to 20% per annum from the date of sale until the institution of the complaint. This provision was adopted in Section 267 of the Local Government Code, albeit the increase in the prescribed rate of interest to 2% per month.

National Housing Authority v. Iloilo City holds that the deposit required under Section 267 of the Local Government Code is a jurisdictional requirement, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints.

Consequently, inasmuch as the tax sale was never validly challenged, it remains legally binding. *Spouses Francisco and Betty Wong and Spouses Joaquin and Lolita Wong vs. City of Iloilo, et al.*, **G.R. No. 161748, July 3, 2009**.

Tax credit; irrevocability. Section 76 of the NIRC of 1997 gives two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are: (1) filing for a tax refund or (2) availing of a tax credit.

Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the irrevocability rule.

Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, “no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.”

The last sentence of Section 76 of the NIRC of 1997 reads: “Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.” The phrase “for that taxable period” merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit. *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, **G.R. No. 178490, July 7, 2009**.

Tax lien; unpaid customs duties. The vessel first entered the Philippines through the Port of Mactan and it was the Collector of the Port of Mactan who first acquired jurisdiction over the vessel when he approved the vessel’s temporary release from the custody of the BOC, after Glory Shipping Lines filed Ordinary Re-Export Bond No. C(9) 121818.

When this re-export bond expired on March 22, 1994, Glory Shipping Lines filed a letter dated May 10, 1994 guaranteeing the renewal of the re-export bond on or before May 20, 1994, otherwise the duties, taxes and other charges on the vessel would be paid. Therefore, when May 20, 1994 came and went without the renewal of the vessel's re-export bond, the obligation to pay customs duties, taxes and other charges on the importation in the amount of P1,296,710.00 arose and attached to the vessel. Undoubtedly, this lien was never paid by Glory Shipping Lines, thus it continued to exist even after the vessel was sold to the respondent. *Secretary of Finance vs. Oro Maura Shipping Lines*, **G.R. No. 156946, July 15, 2009**.

Labor Law

Dismissal; loss of confidence. Loss of confidence applies only to cases involving employees who occupy positions of trust and confidence, or to those situations where the employee is routinely charged with the care and custody of the employer's money or property. To be a valid ground for an employee's dismissal, loss of trust and confidence must be based on a willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse.

In dismissing an employee on the ground of loss of confidence, it is sufficient that the employer has a reasonable ground to believe, based on clearly established facts, that the employee is responsible for the misconduct and the nature of his participation renders him unworthy of the trust and confidence demanded by his position. If the employer has ample reason to distrust the employee, the labor tribunal cannot justly deny the former the authority to dismiss the latter. *Renita Del Rosario, et al. vs. Makati Cinema Square Corporation*, **G.R. No. 170014. July 3, 2009**.

Dismissal; loss of confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Such ground of dismissal has never been intended to

afford an occasion for abuse because of its subjective nature. *Davao Contractors Development Cooperative (DACODECO), represented by Chairman of the Board Engr. L. Chavez vs. Marilyn A. Pasawa*, G.R. No. 172174, July 9, 2009.

Dismissal; probationary employee. Under Article 281 of the Labor Code, a probationary employee can be legally dismissed either: (1) for a just cause; or (2) when he fails to qualify as a regular employee in accordance with the reasonable standards made known to him by the employer at the start of the employment. Nonetheless, the power of the employer to terminate the services of an employee on probation is not without limitations. First, this power must be exercised in accordance with the specific requirements of the contract. Second, the dissatisfaction on the part of the employer must be real and in good faith, not feigned so as to circumvent the contract or the law. Third, there must be no unlawful discrimination in the dismissal. In termination cases, the burden of proving just or valid cause for dismissing an employee rests on the employer.

Here, petitioner did not present proof that respondent was duly notified, at the time of her employment, of the reasonable standards she needed to comply with for her continued employment. *Davao Contractors Development Cooperative (DACODECO), represented by Chairman of the Board Engr. L. Chavez vs. Marilyn A. Pasawa*, G.R. No. 172174, July 9, 2009.

Employee benefits; compensable illness. In any determination of compensability, the nature and characteristics of the job are as important as raw medical findings and a claimant's personal and social history. This is a basic legal reality in workers' compensation law.

What the law requires is a reasonable work connection and not direct causal relation. Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. For, in interpreting and carrying out the provisions of the Labor Code and its Implementing Rules and Regulations, the primordial and paramount consideration is the employee's welfare. To safeguard the worker's rights, any doubt on the proper interpretation and application must be resolved in favor of labor. *Government Service Insurance System vs. Salvador A. De Castro*, G.R. No. 185035, July 15,

2009.

Employee benefits; retirement. Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former. Retirement is provided for under Article 287 of the Labor Code, as amended by Republic Act No. 7641, or is determined by an existing agreement between the employer and the employee.

In this case, respondent offered the Special Separation Incentive Program (SSIP) to overhaul the bank structure and to allow it to effectively compete with local peer and foreign banks. SSIP was not compulsory on employees. Employees who wished to avail of the SSIP were required to accomplish a form for availment of separation benefits under the SSIP and to submit the accomplished form to the Personnel Administration and Industrial Relations Division (PAIRD) for approval.

Petitioner voluntarily availed of the SSIP. *Marcelino A. Magdadaro vs. Philippine National Bank*, G.R. No. 166198, July 17, 2009.

Employee benefits; salary increase. It is a familiar and fundamental doctrine in labor law that the collective bargaining agreement (CBA) is the law between the parties and they are obliged to comply with its provisions. If the terms of a contract, in this case the CBA, are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of their stipulations shall control.

A reading of the above-quoted provision of the CBA shows that the parties agreed that 80% of the TIP or at the least the amount of P1,500 is to be allocated for individual salary increases.

The CBA does not speak of any other benefits or increases which would be covered by the employees' share in the TIP, except salary increases. *University of San Agustin, Inc. vs. University of San Agustin Employees Union-FFW*, G.R. No. 177594, July 23, 2009.

Employee benefits; seamen. The terms and conditions of a seafarer's employment is governed by the provisions of the contract he signs at the

time he is hired. But unlike that of others, deemed written in the seafarer's contract is a set of standard provisions set and implemented by the POEA, called the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, which are considered to be the minimum requirements acceptable to the government for the employment of Filipino seafarers on board foreign ocean-going vessels. Thus, the issue of whether petitioner Nisda can legally demand and claim disability benefits from respondents Sea Serve and ADAMS for an illness suffered is best addressed by the provisions of his POEA-SEC, which incorporated the Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels. When petitioner Nisda was employed on 7 August 2001, it was the 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels (hereinafter referred to simply as Amended Standard Terms and Conditions for brevity) that applied and were deemed written in or appended to his POEA-SEC. *Carlos N. Nisda vs. Sea Serve Maritime Agency, et al.*, **G.R. No. 179177, July 23, 2009**.

Employee benefits; service award. Respondent's service award under Article 87 of the Saudi Labor Law has already been paid. The severance pay received by respondent was his service award. *LWV Construction Corporation vs. Marcelo B. Dupo*, **G.R. No. 172342, July 13, 2009**.

Employees; project employee. The principal test for determining whether a particular employee is a project employee or a regular employee is whether the project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee is engaged for the project. "Project" may refer to a particular job or undertaking that is within the regular or usual business of the employer, but which is distinct and separate and identifiable as such from the undertakings of the company. Such job or undertaking begins and ends at determined or determinable times.

Here, the specific projects for which respondent was hired and the periods of employment were specified in his employment contracts. The services he rendered, the duration and scope of each employment are clear indications that respondent was hired as a project employee. *Alcatel Philippines, Inc. vs. Rene R. Relos*, **G.R. No. 164315, July 3, 2009**.

Jurisdiction; Regional Director. Respondent contested the findings of the labor inspector during and after the inspection and raised issues the resolution of which necessitated the examination of evidentiary matters not verifiable in the normal course of inspection. Hence, the Regional Director was divested of jurisdiction and should have endorsed the case to the appropriate Arbitration Branch of the NLRC. Considering, however, that an illegal dismissal case had been filed by petitioners wherein the existence or absence of an employer-employee relationship was also raised, the CA correctly ruled that such endorsement was no longer necessary. *Victor Meteoro, et al. vs. Creative Creatures, Inc.*, [G.R. No. 171275. July 13, 2009](#)

Labor claim; deed of release. As a rule, deeds of release or quitclaim cannot bar employees from demanding benefits to which they are legally entitled or from contesting the legality of their dismissal. The acceptance of those benefits would not amount to estoppel. Furthermore, there is a gross disparity between the amount actually received by petitioner as compared to the amount owing him as initially computed by VA Calipay. The amount of the settlement is indubitably unconscionable; hence, ineffective to bar petitioner from claiming the full measure of his legal rights. In any event, the Supreme Court deemed it appropriate that the amount he received as consideration for signing the quitclaim be deducted from his monetary award. *Rafael Rondina vs. Court of Appeals former special 19th Division, Unicraft Industries International Corp., Inc. Robert Dino, Cristina Dino, Michael Lloyd Dino, Allan Dino and Mylene June Dino*, [G.R. No. 172212, July 9, 2009](#).

Labor claim; liability of corporate officers. To hold a director personally liable for the debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. *Rafael Rondina vs. Court of Appeals former special 19th Division, Unicraft Industries International Corp., Inc. Robert Dino, Cristina Dino, Michael Lloyd Dino, Allan Dino and Mylene June Dino*, [G.R. No. 172212, July 9, 2009](#).

Strike; illegal strike. It is undisputed that the notice of strike was filed by the

union without attaching the counter-proposal of the company. This, according to petitioners and the labor arbiter, made the ensuing strike of respondents illegal because the notice of strike of the union was defective.

The Implementing Rules use the words “as far as practicable.” In this case, attaching the counter-proposal of the company to the notice of strike of the union was not practicable. It was absurd to expect the union to produce the company’s counter-proposal which it did not have. One cannot give what one does not have. Indeed, compliance with the requirement was impossible because no counter-proposal existed at the time the union filed a notice of strike. The law does not exact compliance with the impossible. *Nemotenetur ad impossibile*.

Another error committed by the labor arbiter was his declaration that respondents, as union officers, automatically severed their employment with the company due to the alleged illegal strike. In the first place, there was no illegal strike. Moreover, it is hornbook doctrine that a mere finding of the illegality of the strike should not be automatically followed by the wholesale dismissal of the strikers from employment. *Club Filipino, Inc. and Atty. Roberto F. De Leon vs. Benjamin Bautista, et al.*, **G.R. No. 168406, July 13, 2009**.

Union; check-off. Article 222(b) of the Labor Code, as amended, prohibits the payment of attorney’s fees only when it is effected through forced contributions from the employees from their own funds as distinguished from union funds. Hence, the general rule is that attorney’s fees, negotiation fees, and other similar charges may only be collected from union funds, not from the amounts that pertain to individual union members. As an exception to the general rule, special assessments or other extraordinary fees may be levied upon or checked off from any amount due an employee for as long as there is proper authorization by the employee.

A check-off is a process or device whereby the employer, on agreement with the Union, recognized as the proper bargaining representative, or on prior authorization from the employees, deducts union dues or agency fees from the latter’s wages and remits them directly to the Union. Its desirability in a labor organization is quite evident. The Union is assured thereby of continuous funding. The system of check-off is primarily for the benefit of

the Union and, only indirectly, for the individual employees.

Here, the requisites for a valid levy and check-off of special assessments, laid down by Article 241(n) and (o), respectively, of the Labor Code, as amended, have not been complied with in the case at bar. To recall, these requisites are: (1) an authorization by a written resolution of the majority of all the union members at the general membership meeting duly called for the purpose; (2) secretary's record of the minutes of the meeting; and (3) individual written authorization for check-off duly signed by the employee concerned. *Eduardo J. Mariño, Jr. et al. vs. Gil Y. Gamilla, et al.*, **G.R. No. 149763**, July 7, 2009.

Validity of corporate loan without board approval

Posted on **August 5, 2009** by **Hector M. de Leon Jr.** • Posted in **Commercial Law** •

Generally, all corporate powers are exercised by the board of directors. Section 23 of the Corporation Code provides that “[u]nless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees. . . .”

Jurisprudence has recognized that:

“ . . . under Section 23, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board of directors, subject to the articles of incorporation, by-laws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by-laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business. (*see*

People's Aircargo and Warehousing Co., Inc. v. Court of Appeals, 357 Phil. 850, 862 [1998]).

In *Cebu Mactan Members Center, Inc. vs. Masahiro Tsukahara*, **G.R. No. 159624, July 17, 2009**, Cebu Mactan Members Center, Inc. (CMMCI) denied the borrowing obtain by its President and Chairman of the Board (Mitsumasa Sugimoto) from Masahiro Tsukahara. CMMCI claimed that the loans obtained by the CMMCI President were his personal loans. CMMCI also contended that if the loans were those of CMMCI, the same should have been supported by resolutions issued by CMMCI's board of directors.

It appears that on February 1994, the CMMCI President, purportedly on behalf of CMMCI, obtained a loan amounting to P6,500,000 from Tsukahara. As payment for the loan, CMMCI issued seven postdated checks of CMMCI payable to Tsukahara. On 13 April 1994, Sugimoto, again purportedly on behalf of CMCI, obtained another loan amounting to P10,000,000 from Tsukahara. Sugimoto executed and signed a promissory note in his capacity as CMMCI President and Chairman, as well as in his personal capacity.

Upon maturity, the seven checks were presented for payment by Tsukahara, but the same were dishonored by PNB, the drawee bank. After several failed attempts to collect the loan amount totaling P16,500,000, Tsukahara filed a case for collection of sum of money against CMMCI and Sugimoto with the Regional Trial Court.

Tsukahara alleged that the amount of P16,500,000 was used by CMMCI for the improvement of its beach resort, which included the construction of a wave fence, the purchase of airconditioners and curtains, and the provision of salaries of resort employees. He also asserted that Sugimoto, as the President of CMMCI, "has the power to borrow money for said corporation by any legal means whatsoever and to sign, endorse and deliver all checks and promissory notes on behalf of the corporation."

The Regional Trial Court ruled in favor of Tsukahara. The Court of Appeals affirmed. The Supreme Court agreed.

The Supreme Court ruled that the CMMCI President is given the power under CMMCI's by-laws to borrow money, execute contracts, and sign and indorse checks and promissory notes, in the name and on behalf of CMMCI.

ARTICLE III

Officers

2. President. The President shall be elected by the Board of Directors from their own number. He shall have the following powers and duties . . .

c. Borrow money for the company by any legal means whatsoever, including the arrangement of letters of credit and overdrafts with any and all banking institutions;

d. Execute on behalf of the company all contracts and agreements which the said company may enter into;

e. Sign, indorse, and deliver all checks, drafts, bill of exchange, promissory notes and orders of payment of sum of money in the name and on behalf of the corporation

With such powers expressly conferred under the corporate by-laws, the Supreme Court ruled that the CMMCI president, in exercising such powers, need not secure a resolution from the company's board of directors:

“Thus, given the president's express powers under the CMMCI's by-laws, Sugimoto, as the president of CMMCI, was more than equipped to enter into loan transactions on CMMCI's behalf. Accordingly, the loans obtained by Sugimoto from Tsukahara on behalf of CMMCI are valid and binding against the latter, and CMMCI may be held liable to pay such loans.”

June 2009 Philippine Supreme Court

Decisions on Commercial, Tax and Labor Laws

Posted on July 13, 2009 by Hector M. de Leon Jr. • Posted in Commercial Law, Labor Law, Tax Law • Tagged abandonment, attorney's fees, compensable illness, derivative suit, diminution of benefits, employer-employee relationship, illegal dismissal, illegal strike, loss of trust and confidence, misconduct, moral damages, negligence, redemption, reinstatement, retrenchment, stamp tax, union, willful disobedience •

Here are selected June 2009 decisions of the Philippine Supreme Court on commercial, tax and labor laws. □ □ **Commercial Law**

Derivative suits. The general rule is that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Nonetheless, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. A derivative action is a suit by a shareholder to enforce a corporate cause of action. The corporation is a necessary party to the suit. And the relief which is granted is a judgment against a third person in favor of the corporation. Similarly, if a corporation has a defense to an action against it and is not asserting it, a stockholder may intervene and defend on behalf of the corporation. By virtue of Republic Act No. 8799, otherwise known as the Securities Regulation Code, jurisdiction over intra-corporate disputes, including derivative suits, is now vested in the Regional Trial Courts designated by the Supreme Court pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

□ The Supreme Court has recognized that a stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties. Hence, a stockholder may sue for mismanagement, waste or dissipation of corporate assets because of a special injury to him for which he is otherwise without redress. In effect, the suit is an action for specific performance of an obligation owed by the corporation to the stockholders to

assist its rights of action when the corporation has been put in default by the wrongful refusal of the directors or management to make suitable measures for its protection. The basis of a stockholder's suit is always one in equity. However, it cannot prosper without first complying with the legal requisites for its institution. *Anthony S. Yu, et al., vs. Joseph S. Yukayguan, et al.*, **G.R. No. 177549, June 18, 2009**.

Illegal dismissal; liability of corporate officer. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee's monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee. The employer corporation has a separate and distinct personality from its officers who merely act as its agents.

The exception noted is where the official "had acted maliciously or in bad faith," in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, **G.R. No. 169173, June 5, 2009**; see also *Bienvenido C. Gilles vs. Court of Appeals, Schema Konsult and Edgardo Abores*, **G.R. No. 149273, June 5, 2009**

Redemption of foreclosed property; General Banking Act. The general rule in redemption is that it is not sufficient that a person offering to redeem manifests his desire to do so. The statement of intention must be accompanied by an actual and simultaneous tender of payment. This constitutes the exercise of the right to repurchase. In several cases decided by the Court where the right to repurchase was held to have been properly exercised, there was an unequivocal tender of payment for the full amount of the repurchase price. Otherwise, the offer to redeem is ineffectual.

Bona fide redemption necessarily implies a reasonable and valid tender of the entire repurchase price, otherwise the rule on the redemption period

fixed by law can easily be circumvented. *Allied Banking Corporation vs. Ruperto Jose H. Mateo, represented by Warlito Mateo, as Attorney-in-fact*, [G.R. No. 167420, June 5, 2009](#).

Tax Law

Deposit on future subscription; stamp tax. A deposit on future subscription is not subject to documentary stamp tax. *Commissioner of Internal Revenue vs. First Express Pawnshop Company, Inc.*, [G.R. Nos. 172045-46, June 16, 2009](#).

Validity of regulations. Revenue Regulations Nos. 9-2003, 22-2003, and Revenue Memorandum Order No. 6-2003, as pertinent to cigarettes packed by machine, are invalid insofar as they grant the BIR the power to reclassify or update the classification of new brands every two years or earlier. *Hon. Secretary of Finance, et al. vs. La Suerte Cigar and Cigarette Factory, et al.*, [G.R. No. 166498, June 11, 2009](#)

Labor Law

Diminution of benefits; company practice. To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.

With regard to the length of time the company practice should have been exercised to constitute voluntary employer practice which cannot be unilaterally withdrawn by the employer, jurisprudence has not laid down any hard and fast rule. In the case of *Davao Fruits Corporation v. Associated Labor Unions*, the company practice of including in the computation of the 13th-month pay the maternity leave pay and cash equivalent of unused vacation and sick leave lasted for six (6) years. In another case, *Tiangco v. Leogardo, Jr.*, the employer carried on the practice of giving a fixed monthly emergency allowance from November 1976 to February 1980, or three (3) years and four (4) months. While in *Sevilla Trading v. Semana*, the employer kept the practice of including non-basic benefits

such as paid leaves for unused sick leave and vacation leave in the computation of their 13th-month pay for at least two (2) years. In all these cases, the Supreme Court held that the grant of these benefits has ripened into company practice or policy which cannot be peremptorily withdrawn. The common denominator in these cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. *Metropolitan Bank and Trust Company vs. National Labor Relations Commission, Felipe A. Patag and Bienvenido C. Flora*, **G.R. No. 152928, June 18, 2009**.

Compensable illness. A government employee, who suffers complete and permanent loss of sight in one eye, is entitled to income benefit from the GSIS beginning the first month of said employee's disability, but no longer than the maximum period of 25 months. *Government Service Insurance System vs. Jaime K. Ibarra*, **G.R. No. 172925, June 18, 2009**.

Compensable illness. Although the Court commiserates with petitioner's sufferings, the Court cannot close its eyes to the need to ensure that the workmen's trust fund is protected from depletion due to claims for illnesses which may not be truly work-related. *Rodolfo B. Arceño Vs. Government Service Insurance System*, **G.R. No. 162374, June 18, 2009**.

Downsizing. Retrenchment is the reduction of work personnel usually due to poor financial returns, aimed to cut down costs for operation particularly on salaries and wages. Redundancy, on the other hand, exists where the number of employees is in excess of what is reasonably demanded by the actual requirements of the enterprise. Both are forms of downsizing and are often resorted to by the employer during periods of business recession, industrial depression, or seasonal fluctuations, and during lulls in production occasioned by lack of orders, shortage of materials, conversion of the plant for a new production program, or introduction of new methods or more efficient machinery or automation. Retrenchment and redundancy are valid management prerogatives, provided they are done in good faith and the employer faithfully complies with the substantive and procedural requirements laid down by law and jurisprudence.

For a valid retrenchment, the following requisites must be complied with:
(1) the retrenchment is necessary to prevent losses and such losses are

proven; (2) written notice to the employees and to the DOLE at least one month prior to the intended date of retrenchment; and (3) payment of separation pay equivalent to one-month pay or at least one-half month pay for every year of service, whichever is higher.

In case of redundancy, the employer must prove that: (1) a written notice was served on both the employees and the DOLE at least one month prior to the intended date of retrenchment; (2) separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher, has been paid; (3) good faith in abolishing the redundant positions; and (4) adoption of fair and reasonable criteria in ascertaining which positions are to be declared redundant and accordingly abolished.

It is the employer who bears the onus of proving compliance with these requirements, retrenchment and redundancy being in the nature of affirmative defenses. Otherwise, the dismissal is not justified. *Hotel Enterprises of the Philippines, Inc., etc. vs. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant, etc.*, **G.R. No. 165756, June 5, 2009.**

Employer-employee relationship. There existed no employer-employee relationship between the parties. De Raedt is an independent contractor, who was engaged by SGV to render services to SGV's client TMI, and ultimately to DA on the CECAP project, regarding matters in the field of her special knowledge and training for a specific period of time. Unlike an ordinary employee, De Raedt received retainer fees and benefits such as housing and subsistence allowances and medical insurance. De Raedt's services could be terminated on the ground of end of contract between the DA and TMI, and not on grounds under labor laws. Though the end of the contract between the DA and TMI was not the ground for the withdrawal of De Raedt from the CECAP, De Raedt was disengaged from the project upon the instruction of SGV's client, TMI. Most important of all, SGV did not exercise control over the means and methods by which De Raedt performed her duties as Sociologist. SGV did impose rules on De Raedt, but these were necessary to ensure SGV's faithful compliance with the terms and conditions of the Sub-Consultancy Agreement it entered into with TMI. *Sycip, Gorres, Velayo, & Company vs. Carol De Raedt*, **G.R. No. 161366, June 16, 2009.**

Ground for dismissal; abandonment. The rule is that the burden of proof lies with the employer to show that the dismissal was for a just cause. In the present case, the petitioner claims that there was no illegal dismissal since the respondent abandoned his job. The petitioner points out that it wrote the respondent various memoranda requiring him to explain why he incurred absences without leave, and requiring him as well to report for work; the respondent, however, never bothered to reply in writing.

In evaluating a charge of abandonment, the jurisprudential rule is that abandonment is a matter of intention that cannot be lightly presumed from equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. The employer bears the burden of showing a deliberate and unjustified refusal by the employee to resume his employment without any intention of returning. We agree with the CA that the petitioner failed to prove the charge of abandonment. *Pentagon Steel Corporation vs. Court of Appeals, et al.*, *G.R. No. 174141, June 26, 2009.*

Ground for dismissal; gross negligence. Respondent's actions, at their worse, reveal his negligence, but said negligence can hardly be deemed gross and habitual, as to constitute a just ground for his dismissal under Article 282(b) of the Labor Code.

Gross negligence under Article 282 of the Labor Code connotes want of care in the performance of one's duties, while habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Gross negligence has been defined as the want or absence of even slight care or diligence as to amount to a reckless disregard of the safety of person or property. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. To constitute a just cause for termination of employment, the neglect of duties must not only be gross but habitual as well. The single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. *AMA Computer College-East Rizal, et al. vs. Allan Raymond R. Ignacio*, *G.R. No. 178520. June 23, 2009.*

Ground for dismissal; gross negligence. Gross negligence is characterized

by want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.

Mateo was undisputedly negligent when he left the motorcycle along Burke Street in Escolta, Manila without locking it despite clear, specific instructions to do so. His argument that he stayed inside the LBC office for only three to five minutes was of no moment. On the contrary, it only proved that he did not exercise even the slightest degree of care during that very short time. Mateo deliberately did not heed the employer's very important precautionary measure to ensure the safety of company property. Regardless of the reasons advanced, the exact evil sought to be prevented by LBC (in repeatedly directing its customer associates to lock their motorcycles) occurred, resulting in a substantial loss to LBC. *LBC Express Metro Manila, Inc. and Lorenzo A. Niño vs. James Mateo*, **G.R. No. 168215, June 9, 2009**.

Ground for dismissal; lost of confidence. Recent decisions of this Court have distinguished the treatment of managerial employees from that of the rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required. It is sufficient that there is some basis for the employer's loss of trust and confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position. Nonetheless, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence rests and not on the employer's arbitrariness, whims, and caprices or suspicion. *Triumph International (PHILS.), Inc., vs. Ramon L. Apostol, et al.*, **G.R. No. 164423, June 16, 2009**.

Ground for dismissal; loss of confidence. To be a valid ground for dismissal, loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. Further, the act complained of must be work-related and must show that the employee concerned is unfit to continue working for the employer. *Sarabia Optical and Vivian Sarabia-Orn vs. Jeanet B. Camacho*, G.R. No. 155502, June 18, 2009.

Ground for dismissal; loss of confidence. Nissan failed to prove that Tagulao and Serrano were responsible for the loss of two rolls of tint. The records of the case show that there was a discrepancy between the dates of pick up and delivery as alleged by Nissan and as alleged by Tagulao and Serrano. Even Catudio, Nissan's employee, stated that she changed the dates on the delivery receipt of the two rolls of tint on the instruction of her boss.

Loss of trust and confidence, to be a valid ground for an employee's dismissal, must be based on a willful breach and founded on clearly established facts. The burden of proof of dismissal rests entirely upon the employer. In the present case, Nissan illegally dismissed Tagulao and Serrano because Nissan failed to prove that Tagulao and Serrano were terminated for a valid cause. Tagulao and Serrano are thus entitled to reinstatement and to receive backwages. *Nissan North Edsa Balintawak, Quezon City vs. Angelito Serrano, Jr. and Edwin Tagulao*, G.R. No. 162538, June 4, 2009

Ground for dismissal; loss of confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence.

The second requisite of terminating an employee for loss of trust and confidence is that there must be an act that would justify the loss of trust and confidence. To be a valid cause for dismissal, the loss of confidence must be based on a willful breach of trust and founded on clearly established facts.

We find that it was not established that respondent used her authority to influence her subordinates to stage a “no work day”; and assuming that she performed this act as alleged by petitioners, it does not satisfy the jurisprudential requirements for valid termination due to loss of trust and confidence.

Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she influenced a single subordinate, without exerting any force or making any threats, not to report to work. This does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, **G.R. No. 169173, June 5, 2009**.

Grounds for dismissal; serious misconduct. Under the circumstances, our conclusion can only be for Salon’s dismissal for two counts of valid causes – i.e., for serious violation of TIP’s Memorandum No. P-66, for unauthorized selling of examination papers, and for serious misconduct, for falsifying Manalo’s grade and violating the grading rules under the Manual of Regulations for Private Schools. *Technological Institute of the Philippines Teachers and Employees Organization and its member Magdalena T. Salon vs. the Honorable Court of Appeals, et al.*, **G.R. No. 158703, June 26, 2009**.

Ground for dismissal; willful disobedience. Willful disobedience of the employer’s lawful orders, as a just cause for dismissal of an employee, requires the concurrence of two (2) elements: (1) the employee’s assailed conduct must have been willful, i.e., characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties which he had been engaged to discharge.

Gilles’ resignation from CBI and sudden departure from India was not approved by SKI. When he asked the company’s permission to return to

Manila, the management instructed him to stay in India until a suitable replacement was found. He knew of the critical stage of the Project due to the accelerated period of its completion. Thus, when he left the Project, despite the clear and lawful instructions of the management for him to stay, his act constituted willful disobedience and gross neglect of duty under Article 282 of the Labor Code.

Gilles' departure from India, despite the instruction of SKI for him to stay, was impelled by the financial difficulties he encountered thereat. The money given to him before he left for India was already spent. Rickie Sarque, the Chief Accountant of SKI, admitted on the witness stand that Gilles was paid his salaries for the 3 ½ months when he was already back in Manila. Added to this were the problems he encountered due to the acceleration of the job completion period, the obligations he had to meet at home for his aged mother at that time, now deceased, and the relatives who needed his financial support. Clearly, Gilles had a valid reason to leave India.

SKI's failure to pay Gilles' salary on time was intolerable. For neglecting its duties as an employer, SKI may, thus, be considered to have acted in bad faith. It may be deemed as utter disregard by SKI of the welfare and well-being of its employee, especially at a time when he was far away from home.

We, therefore, find that Gilles was constructively dismissed from employment. Constructive dismissal exists when the employee involuntarily resigns due to the harsh, hostile, and unfavorable conditions set by the employer. It arises when there is clear discrimination, insensibility, or disdain by an employer and this becomes unbearable to the employee.

Invariably, the law recognizes and resolves such a situation in favor of the employees in order to protect their rights from the coercive acts of the employer. Resignation contemplates a voluntary act; thus, an employee who is forced to relinquish his position due to the employer's unfair or unreasonable treatment is deemed to have been illegally terminated or discharged. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. *Bienvenido C. Gilles vs. Court of Appeals*,

Schema Konsult and Edgardo Abores, **G.R. No. 149273, June 5, 2009**.

Illegal dismissal; attorney's fees. aAttorney's fees may be awarded only when the employee is illegally dismissed in bad faith and is compelled to litigate or incur expenses to protect his rights by reason of the unjustified acts of his employer. In the case at bar, respondent's unjustified and unwarranted dismissal prompted her to engage the professional services of a counsel and she is thus entitled to an award of attorney's fees. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, **G.R. No. 169173, June 5, 2009**.

Illegal dismissal; moral damages. There is sufficient basis to award moral damages and attorney's fees to respondent. We have consistently ruled that in illegal dismissal cases, moral damages are recoverable only where the dismissal of the employee was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Such an award cannot be justified solely upon the premise that the employer fired his employee without just cause or due process. Additional facts must be pleaded and proven to warrant the grant of moral damages under the Civil Code, i.e., that the act of dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy; and, of course, that social humiliation, wounded feelings, grave anxiety, and similar injury resulted therefrom.

In previous cases where moral damages and attorney's fees were awarded, the manner of termination was done in a humiliating and insulting manner, such as in the case of *Balayan Colleges v. National Labor Relations Commission* where the employer posted copies of its letters of termination to the teachers inside the school campus and it also furnished copies to the town mayor and Parish Priest of their community for the purpose of maligning the teachers' reputation. So also in the case of *Chiang Kai Shek School v. Court of Appeals*, this Court awarded moral damages to a teacher who was flatly, and without warning or a formal notice, told that she was dismissed.

In the case at bar, we see it fit to award moral damages to respondent because the manner in which respondent was treated upon petitioners'

suspicion of her involvement in drafting and in circulating the letter of appeal and the alleged staging of the “no work day” is contrary to good morals because it caused unnecessary humiliation to respondent. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, **G.R. No. 169173, June 5, 2009**.

Illegal dismissal; liability of corporate officer. The general manager of a corporation should not be made personally answerable for the payment of an illegally dismissed employee’s monetary claims arising from the dismissal unless he had acted maliciously or in bad faith in terminating the services of the employee. The employer corporation has a separate and distinct personality from its officers who merely act as its agents.

The exception noted is where the official “had acted maliciously or in bad faith,” in which event he may be made personally liable for his own act. That exception is not applicable in the case at bar, because it has not been proven that Wiltschek was impleaded in his capacity as General Manager of petitioner corporation and there appears to be no evidence on record that he acted maliciously or in bad faith in terminating the services of respondent. His act, therefore, was within the scope of his authority and was a corporate act for which he should not be held personally liable for. *M+W Zander Philippines, Inc. and Rolf Wiltschek vs. Trinidad M. Enriquez*, **G.R. No. 169173, June 5, 2009**; see also *Bienvenido C. Gilles vs. Court of Appeals, Schema Konsult and Edgardo Abores*, **G.R. No. 149273, June 5, 2009**.

Illegal dismissal; procedural due process. Procedural due process in the dismissal of employees requires notice and hearing. The employer must furnish the employee two written notices before termination may be effected. The first notice apprises the employee of the particular acts or omissions for which his dismissal is sought, while the second notice informs the employee of the employer’s decision to dismiss him. The requirement of a hearing, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. *Herminigildo Inguillom, et al. vs. First Philippine Scales, Inc., et al.*, **G.R. No. 165407, June 5, 2009**.

Illegal dismissal; reinstatement. The respondent’s illegal dismissal carries

the legal consequence defined under Article 279 of the Labor Code: the illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The imposition of this legal consequence is a matter of law that allows no discretion on the part of the decision maker, except only to the extent recognized by the law itself as expressed in jurisprudence. *Pentagon Steel Corporation vs. Court of Appeals, et al.*, *G.R. No. 174141, June 26, 2009.*

Reinstatement; union shop steward. A shop steward leads to the conclusion that it is a position within the union, and not within the company. A shop steward is appointed by the union in a shop, department, or plant and serves as representative of the union, charged with negotiating and adjustment of grievances of employees with the supervisor of the employer. He is the representative of the union members in a building or other workplace. Black's Law Dictionary defines a shop steward as a union official elected to represent members in a plant or particular department. His duties include collection of dues, recruitment of new members and initial negotiations for the settlement of grievances.

A judgment of reinstatement of the petitioner to the position of union Shop Steward would have no practical legal effect since it cannot be enforced. Based on the requirements imposed by law and the APCWU-ATI CBA, and in the nature of things, the subsequent separation of the petitioner from employment with respondent ATI has made his reinstatement to union Shop Steward incapable of being enforced. *Teodoro S. Miranda, Jr. vs. Asian Terminals, Inc. and Court of Appeals*, *G.R. No. 174316, June 23, 2009.*

Resignation; separation pay. No provision in the Labor Code grants separation pay to voluntarily resigning employees. Separation pay may be awarded only in cases when the termination of employment is due to (a) installation of labor-saving devices, (b) redundancy, (c) retrenchment, (d) closing or cessation of business operations, (e) disease of an employee and his continued employment is prejudicial to himself or his co-employees, or (f) when an employee is illegally dismissed but reinstatement is no longer feasible. In fact, the rule is that an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in

the employment contract or collective bargaining agreement (CBA), or it is sanctioned by established employer practice or policy.

Here, the primary consideration that impelled respondent to tender his resignation letter was the assurance that he would be paid his separation pay. It is thus unlikely for someone to just leave his employer for whom he has worked for twelve (12) years without any expectation of financial assistance. Hence, the former employee is entitled to receive separation pay. *“J” Marketing Corporation, represented by its Branch Manager Elmundo Dador*, [G.R. No. 163924, June 18, 2009](#).

Strike; requisites for validity. The requisites for a valid strike are: (a) a notice of strike filed with the DOLE 30 days before the intended date thereof or 15 days in case of ULP; (b) a strike vote approved by a majority of the total union membership in the bargaining unit concerned obtained by secret ballot in a meeting called for that purpose; and (c) a notice to the DOLE of the results of the voting at least seven (7) days before the intended strike. The requirements are mandatory and failure of a union to comply therewith renders the strike illegal. *Hotel Enterprises of the Philippines, Inc., etc. vs. Samahan ng mga Manggagawa sa Hyatt-National Union of Workers in the Hotel Restaurant, etc.*, [G.R. No. 165756, June 5, 2009](#).

Union security. “Union security” is a generic term, which is applied to and comprehends “closed shop,” “union shop,” “maintenance of membership” or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period as a condition for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.

In terminating the employment of an employee by enforcing the Union Security Clause, the employer needs only to determine and prove that: (1) the union security clause is applicable; (2) the union is requesting for the enforcement of the union security provision in the CBA; and (3) there is sufficient evidence to support the union's decision to expel the employee from the union or company. *Herminigildo Inguillom, et al. vs. First Philippine Scales, Inc., et al.*, **G.R. No. 165407, June 5, 2009.**

May 2009 Decisions on Commercial, Tax and Labor Laws

Posted on **June 8, 2009** by **Hector M. de Leon Jr.** • Posted in **Commercial Law, Labor Law, Tax Law** • Tagged **abandonment, appeal, compensable illness, due process, employer-employee relationship, independent contractor, intra-corporate controversy, loss of trust and confidence, negotiable instruments, serious misconduct, tax evasion** •

Here are selected May 2009 decisions of the Supreme Court on commercial, tax and labor laws.

Commercial Law

Collecting bank; liability. A collecting bank where a check is deposited, and which endorses the check upon presentment with the drawee bank, is an endorser. Under Section 66 of the Negotiable Instruments Law, an endorser warrants “that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting.” The Supreme Court has repeatedly held that in check transactions, the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements.

When Associated Bank stamped the back of the four checks with the phrase “all prior endorsements and/or lack of endorsement guaranteed,” that bank

had for all intents and purposes treated the checks as negotiable instruments and, accordingly, assumed the warranty of an endorser. Being so, Associated Bank cannot deny liability on the checks. *Bank of America, NT and SA Vs. Associated Citizens Bank, et al./Associated Citizens Bank vs. BA Finance Corporation, et al.*, [G.R. Nos. 141001/141018, May 21, 2009](#). □ □ Crossed check. Among the different types of checks issued by a drawer is the crossed check. The Negotiable Instruments Law is silent with respect to crossed checks, although the Code of Commerce makes reference to such instruments. The Supreme Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and could not be converted into cash. Thus, the effect of crossing a check relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, i.e., the payee named therein. The crossing may be “special” wherein between the two parallel lines is written the name of a bank or a business institution, in which case the drawee should pay only with the intervention of that bank or company, or “general” wherein between two parallel diagonal lines are written the words “and Co.” or none at all, in which case the drawee should not encash the same but merely accept the same for deposit. In *Bataan Cigar v. Court of Appeals*, the Supreme Court enumerated the effects of crossing a check as follows: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once – to one who has an account with a bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose; otherwise, he is not a holder in due course. *Bank of America, NT and SA vs. Associated Citizens Bank, et al./Associated Citizens Bank vs. BA Finance Corporation, et al.*, [G.R. Nos. 141001/141018, May 21, 2009](#).

Drawee bank; liability. The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee’s order. The drawer’s instructions are reflected on the face and by the terms of the check. When the drawee bank pays a person other than the payee named on the check, it does not comply with the terms of the check and violates its duty to charge the drawer’s account only for properly payable items. Thus, the Supreme Court ruled in *Philippine National Bank vs. Rodriguez* that a drawee should charge to the drawer’s accounts only the payables authorized by the latter; otherwise, the drawee will be violating the instructions of the

drawer and shall be liable for the amount charged to the drawer's account. *Bank of America, NT and SA vs. Associated Citizens Bank, et al./Associated Citizens Bank Vs. BA Finance Corporation, et al.*, [G.R. Nos. 141001/141018, May 21, 2009.](#)

Intra-corporate controversy. There is no question that the prayers for the appointment of a management receiver, the nullification and amendment of certain provisions of PEAC's articles of incorporation and by-laws, the recognition of the election of respondent Filchart's directors, as well as the inspection of the corporate books, are intra-corporate in nature as they pertain to the regulation of corporate affairs.

Even the issue of respondent Filchart's status as stockholder in PEAC and, concomitantly, its capacity to file SEC Case No. 08-97-5746 must be threshed out in the intra-corporate proceedings. Petitioner GD Express' allegation that respondent Filchart has not fully paid its subscription to the shares in PEAC and, thus, cannot claim to be a stockholder in PEAC does not oust the SCC of its jurisdiction over the case. For the purpose of determining whether SEC Case No. 08-97-5746 should be heard as an intra-corporate proceeding, the allegation in respondent Filchart's petition that it is a stockholder in PEAC is deemed hypothetically admitted. It is only after a full-blown hearing that the SCC may determine whether respondent Filchart's may be considered a bona fide stockholder of PEAC and is entitled to the reliefs prayed for in its petition.

However, in view of the transfer of jurisdiction over intra-corporate disputes from the SEC to the SCCs, which are the same RTCs exercising general jurisdiction, the question of jurisdiction is no longer decisive to the resolution of the instant case. *GD Express Worldwide N.V., et al. vs. Court of Appeals, et al.*, [G.R. No. 136978, May 8, 2009.](#)

Tax Law

Tax evasions; tax assessment. A tax assessment is not required before the Department of Justice can file a criminal complaint for tax evasion. *Lucas G. Adamson, et al. vs. Court of Appeals, et al./Commissioner of Internal Revenue vs. Court of Appeals, et al.*, [G.R. Nos. 120935/124557, May 21, 2009.](#)

Labor Law

Abandonment. It is well settled that abandonment as a just and valid ground for dismissal requires the deliberate and unjustified refusal of the employee to return for work. Two elements must be present, namely: (1) the failure to report for work or absence without valid or justifiable reason, and (2) a clear intention to sever the employer-employee relationship. The second element is more determinative of the intent and must be evinced by overt acts. Mere absence, not being sufficient, the burden of proof rests upon the employer to show that the employee clearly and deliberately intended to discontinue her employment without any intention of returning. In *Samarca v. Arc-Men Industries, Inc.*, the Supreme Court held that abandonment is a matter of intention and cannot lightly be presumed from certain equivocal acts.

To constitute abandonment, there must be clear proof of deliberate and unjustified intent to sever the employer-employee relationship. Clearly, the operative act is still the employee's ultimate act of putting an end to his employment. However, an employee who takes steps to protest her layoff cannot be said to have abandoned her work because a charge of abandonment is totally inconsistent with the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement. When Eleonor filed the illegal dismissal complaint, it totally negated petitioner's theory of abandonment.

Also, to effectively dismiss an employee for abandonment, the employer must comply with the due process requirement of sending notices to the employee. In *Brahm Industries, Inc. vs. NLRC*, the Supreme Court ruled that this requirement is not a mere formality that may be dispensed with at will. Its disregard is a matter of serious concern since it constitutes a safeguard of the highest order in response to man's innate sense of justice. Petitioner was not able to send the necessary notice requirement to Eleonor. Petitioner's belated claim that it was not able to send the notice of infraction prior to the filing of the illegal dismissal case cannot simply be unacceptable. Based on the foregoing, Eleonor did not abandon her work. *South Davao Development Company, Inc., et al. vs. Sergio L. Gamo, et al.*, [G.R. No. 171814, May 8, 2009.](#)

Appeal to DOLE Secretary; appeal bond. The purpose of an appeal bond is

to ensure, during the period of appeal, against any occurrence that would defeat or diminish recovery by the aggrieved employees under the judgment if subsequently affirmed. The Deed of Assignment in the instant case, like a cash or surety bond, serves the same purpose. First, the Deed of Assignment constitutes not just a partial amount, but rather the entire award in the appealed Order. Second, it is clear from the Deed of Assignment that the entire amount is under the full control of the bank, and not of petitioner, and is in fact payable to the DOLE Regional Office, to be withdrawn by the same office after it had issued a writ of execution. For all intents and purposes, the Deed of Assignment in tandem with the Letter Agreement and Cash Voucher is as good as cash. Third, the execution of the Deed of Assignment, the Letter Agreement and the Cash Voucher were made in good faith, and constituted clear manifestation of petitioner's willingness to pay the judgment amount. *People's Broadcasting vs. The Secretary of the Department of Labor and Employment, et al.*, [G.R. No. 179652, May 8, 2009](#).

Appeal; private carrier. In this case, petitioner availed of the services of LBC, a private carrier, to deliver its notice of appeal to the NLRC. Had petitioner sent its notice of appeal by registered mail, the date of mailing would have been deemed the date of filing with the NLRC. But petitioner, for reasons of its own, chose to send its notice of appeal through a private letter-forwarding agency. Therefore, the date of actual receipt by the NLRC of the notice of appeal, and not the date of delivery to LBC, is deemed to be the date of the filing of the notice of appeal. Since the NLRC received petitioner's notice of appeal on 26 February 2001, the appeal was clearly filed out of time. Petitioner had thus lost its right to appeal from the decision of the Labor Arbiter and the NLRC should have dismissed its notice of appeal. *Charter Chemical and Coating Corporation vs. Herbert Tan and Amalia Sonsing*, [G.R. No. 163891, May 21, 2009](#).

Compensable illness; definition. P.D. No. 626, as amended, defines compensable sickness as "any illness definitely accepted as an occupational disease listed by the Commission, or any illness caused by employment subject to proof by the employee that the risk of contracting the same is increased by the working conditions." Under Section 1 (b), Rule III, of the Amended Rules on Employees' Compensation, for the sickness and the resulting disability or death to be compensable, the same must be an "occupational disease" included in the list provided (Annex "A"), with the

conditions set therein satisfied; otherwise, the claimant must show proof that the risk of contracting it is increased by the working conditions. Otherwise stated, for sickness and the resulting death of an employee to be compensable, the claimant must show either: (1) that it is a result of an occupational disease listed under Annex “A” of the Amended Rules on Employees’ Compensation with the conditions set therein satisfied; or (2) if not so listed, that the risk of contracting the disease is increased by the working conditions.

Here, the CA correctly considered Cardiopulmonary Arrest T/C Fatal Arrhythmia in this case a cardiovascular disease – a listed disease under Annex “A” of the Amended Rules on Employees’ Compensation. The Death Certificate of Judge Vicencio clearly indicates that the cause of his death is Cardiopulmonary Arrest T/C Fatal Arrhythmia. Whether, however, the same was a mere complication of his lung cancer as contended by petitioner GSIS or related to an underlying cardiovascular disease is not established by the records of this case and, thus, remains uncertain. The Supreme Court held that Cardiopulmonary Arrest T/C Fatal Arrhythmia, the cause of death stated in Judge Vicencio’s Death Certificate, should be considered as a cardiovascular disease – a listed disease under Annex “A” of the Amended Rules on Employees’ Compensation. *Government Service Insurance System vs. Marian T. Vicencio*, [G.R. No. 176832, May 21, 2009](#).

Compensable illness; evidence. The degree of proof required under P.D. No. 626 is merely substantial evidence, or “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” The Supreme Court has repeatedly held that to prove compensability, the claimant must adequately show that the development of the disease is brought largely by the conditions present in the nature of the job. What the law requires is a reasonable work-connection and not a direct causal relation. It is enough that the hypothesis on which the workmen’s claim is based is probable. Medical opinion to the contrary can be disregarded especially where there is some basis in the facts for inferring a work-connection. Probability, not certainty, is the touchstone. *Government Service Insurance System (GSIS) vs. Teresita S. De Guzman*, [G.R. No. 173049, May 21, 2009](#).

Due process. Respondent was given ample opportunity to explain and rebut the evidence against him. A full adversarial hearing was not required. The essence of due process is simply the opportunity to be heard. As applied in

administrative proceedings, it is merely an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.

Petitioners complied with the twin-notice requirement. The notice dated October 17, 2000 served on respondent was the written notice specifying the charges against him. The subsequent notice dated February 7, 2001 (notice of adjudication specifying therein the causes for respondent's termination and the decision to dismiss him) served as the written notice of termination. In view of respondent's valid dismissal due to serious misconduct and loss of trust and confidence, respondent is not entitled to separation pay. *Telecommunications Distributors Specialist, Inc., et al. vs. Raymund Garriel*, [G.R. No. 174981, May 25, 2009.](#)

Employer-employee relationship; evidence. It has long been established that in administrative and quasi-judicial proceedings, substantial evidence is sufficient as a basis for judgment on the existence of employer-employee relationship. Substantial evidence, which is the quantum of proof required in labor cases, is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." No particular form of evidence is required to prove the existence of such employer-employee relationship. Any competent and relevant evidence to prove the relationship may be admitted. Hence, while no particular form of evidence is required, a finding that such relationship exists must still rest on some substantial evidence. Moreover, the substantiality of the evidence depends on its quantitative as well as its qualitative aspects.

In the instant case, save for respondent's self-serving allegations and self-defeating evidence, there is no substantial basis to warrant the Regional Director's finding that respondent is an employee of petitioner. *People's Broadcasting vs. The Secretary of the Department of Labor and Employment, et al.*, [G.R. No. 179652, May 8, 2009.](#)

Employer-employee relationship; existence. In order to determine the existence of an employer-employee relationship, the Court has frequently applied the four-fold test: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so called "control test," which is

considered the most important element.

From the time they were hired by petitioner corporation up to the time that they were reassigned to work under Gamo's supervision, their status as petitioner corporation's employees did not cease. Likewise, payment of their wages was merely coursed through Gamo. As to the most determinative test—the power of control, it is sufficient that the power to control the manner of doing the work exists, it does not require the actual exercise of such power. In this case, it was in the exercise of its power of control when petitioner corporation transferred the copra workers from their previous assignments to work as copraceros. It was also in the exercise of the same power that petitioner corporation put Gamo in charge of the copra workers although under a different payment scheme. Thus, it is clear that an employer-employee relationship has existed between petitioner corporation and respondents since the beginning and such relationship did not cease despite their reassignments and the change of payment scheme. *South Davao Development Company, Inc., et al. vs. Sergio L. Gamo, et al.*, [G.R. No. 171814, May 8, 2009.](#)

Employer-employee relationship; power of DOLE to determine. The DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship. Such prerogative determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions. The determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b).

Thus, before the DOLE may exercise its powers under Article 128, two important questions must be resolved: (1) Does the employer-employee relationship still exist, or alternatively, was there ever an employer-employee relationship to speak of; and (2) Are there violations of the Labor Code or of any labor law? The existence of an employer-employee relationship is a statutory prerequisite to and a limitation on the power of the Secretary of Labor, one which the legislative branch is entitled to impose.

The rationale underlying this limitation is to eliminate the prospect of competing conclusions of the Secretary of Labor and the NLRC, on a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NRLC, rather than an administrative official of the executive branch of the government. If the Secretary of Labor proceeds to exercise his visitorial and enforcement powers absent the first requisite, as the dissent proposes, his office confers jurisdiction on itself which it cannot otherwise acquire. *People's Broadcasting vs. The Secretary of the Department of Labor and Employment, et al.*, [G.R. No. 179652, May 8, 2009.](#)

Independent contractor. There is permissible job contracting when a principal agrees to put out or farm out with a contractor or a subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job or work service is to be performed within or outside the premises of the principal. To establish the existence of an independent contractor, we apply the following conditions: first, the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except to the result thereof; and second, the contractor has substantial capital or investments in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of his business.

The Implementing Rules and Regulation of the Labor Code defines investment—as tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work, or service contracted out. The investment must be sufficient to carry out the job at hand.

In the case at bar, Gamo and the copra workers did not exercise independent judgment in the performance of their tasks. The tools used by Gamo and his copra workers like the karit, bolo, pangbunot, panglugit and pangtapok are not sufficient to enable them to complete the job. Reliance on these primitive tools is not enough. In fact, the accomplishment of their task required more expensive machineries and equipment, like the trucks to haul the harvests and the drying facility, which petitioner corporation owns. *South Davao*

Development Company, Inc., et al. vs. Sergio L. Gamo, et al., [G.R. No. 171814, May 8, 2009.](#)

Loss of trust and confidence. Petitioner cites Article 282 of the Labor Code, specifically loss of trust and confidence as the ground for validly dismissing respondent. Under the law, loss of confidence must be based on “fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative.” In this regard, the Supreme Court has ruled that ordinary breach does not suffice. A breach of trust is willful if it is done intentionally, knowingly and purposely, without any justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

Here, respondent was investigated on and dismissed for misappropriation of company funds through falsification of company documents, as shown in the termination letter. Records, nevertheless, neither showed nor convinced us that there was misappropriation of funds that benefited anybody which warranted the dismissal of respondent for the first offense. Respondent admittedly committed padding of accounts and/or paper renewal, which respondent claims to be a practice among salesmen and such claim was not disputed by petitioner. The paper renewal committed by respondent may be considered as falsification, but we agree with the Labor Arbiter and the CA that such paper renewal did not amount to misappropriation that could justify outright dismissal for the first offense, as what petitioner did to respondent. Otherwise, the company rules would not have separated these two offenses under Rule Nos. 15 and 16. Besides, we agree with the CA that although petitioner did in fact violate company Rule No. 15 by falsifying company records and documents through paper renewal, such falsification has to be qualified. *San Miguel Corporation vs. NLRC, et al.*, [G.R. No. 153983, May 26, 2009.](#)

Serious misconduct. Respondent’s acts of forging subscribers’ signatures, attempting to cover up his failure to secure their signatures on the coverage waivers, selling a personally owned mobile phone to a company customer (a defective one at that) and attempting to connive with other employees to cover up his illicit schemes were serious acts of dishonesty. Respondent’s acts clearly constituted serious misconduct which is a ground for termination of employment by an employer. Respondent’s acts were likewise grounds for loss of trust and confidence, another valid cause for termination of

employment. Only employees occupying positions of trust and confidence or those who are routinely charged with the care and custody of the employer's money or property may be validly dismissed for this reason. *Telecommunications Distributors Specialist, Inc., et al. vs. Raymund Garriel*, G.R. No. 174981, May 25, 2009.

April 2009 Decisions on Commercial, Labor and Tax Laws

Posted on May 26, 2009 by Hector M. de Leon Jr. • Posted in Commercial Law, Constitutional Law, Labor Law, Tax Law • Tagged abandonment, backwages, bidding, breach of trust, CBA, dividends, due process, equal protection, excise tax, holdover, illegal dismissal, insurance, intra-corporate controversy, intra-union dispute, loss of confidence, non-stock corporation, pawnshop, prescription, real property tax, resignation, security of tenure, SSS, stamp tax, unfair competition, unfair labor practice, value added tax •

Here are selected April 2009 decisions of the Supreme Court on commercial, labor and tax laws:

Commercial Law

BOT; public bidding. In a situation where there is no other competitive bid submitted for the BOT project, that project would be awarded to the original proponent thereof. However, when there are competitive bids submitted, the original proponent must be able to match the most advantageous or lowest bid; only when it is able to do so will the original proponent enjoy the preferential right to the award of the project over the other bidder. These are the general circumstances covered by Section 4-A of Republic Act No. 6957, as amended. In the instant case, AEDC may be the original proponent of the NAIA IPT III Project; however, the Pre-Qualification Bids and Awards Committee (PBAC) also found the People's Air Cargo & Warehousing Co., Inc. Consortium (Paircargo), the predecessor of PIATCO, to be a qualified bidder for the project. Upon consideration of the bid of Paircargo/PIATCO, the PBAC found the same to be far more advantageous than the original offer of AEDC. It is already an established fact in *Agan* that AEDC failed to match the more advantageous proposal submitted by

PIATCO by the time the 30-day working period expired on 28 November 1996; and since it did not exercise its right to match the most advantageous proposal within the prescribed period, it cannot assert its right to be awarded the project. *Asia's Emerging Dragon Corp. vs. DOTC, et al./Republic of the Philippines etc. et al. vs. Hon. CA, et al.*, **G.R. No. 169914/G.R. No. 174166, April 7, 2009.**

Dividends. Dividends are payable to the stockholders of record as of the date of the declaration of dividends or holders of record on a certain future date, as the case may be, unless the parties have agreed otherwise. A transfer of shares which is not recorded in the books of the corporation is valid only as between the parties; hence, the transferor has the right to dividends as against the corporation without notice of transfer but it serves as trustee of the real owner of the dividends, subject to the contract between the transferor and transferee as to who is entitled to receive the dividends. *Imelda O. Cojuangco, Prime Holdings, Inc., and the Estate of Ramon U. Cojuangco vs. Sandiganbayan, Republic of the Philippines and the Sheriff of Sandiganbayan*, G.R. No. 183278, April 24, 2009.

Holdover. As a general rule, officers and directors of a corporation hold over after the expiration of their terms until such time as their successors are elected or appointed. Sec. 23 of the Corporation Code contains a provision to this effect. The holdover doctrine has, to be sure, a purpose which is at once legal as it is practical. It accords validity to what would otherwise be deemed as dubious corporate acts and gives continuity to a corporate enterprise in its relation to outsiders.

Authorities are almost unanimous that one who continues with the discharge of the functions of an office after the expiration of his or her legal term—no successor having, in the meantime, been appointed or chosen—is commonly regarded as a *de facto* officer, even where no provision is made by law for his holding over and there is nothing to indicate the contrary. By fiction of law, the acts of such *de facto* officer are considered valid and effective. *Dr. Hans Christian M. Señeres vs. Commission on Elections and Melquiades A. Robles*, G.R. No. 178678, April 16, 2009.

Insurance Contract. It is settled that where the insurance contract provides for indemnity against liability to third persons, the liability of the insurer is direct and such third persons can directly sue the insurer. The direct liability of the insurer under indemnity contracts against third party liability does not mean, however, that the insurer can be held solidarily liable with the insured and/or the other parties found at fault, since they are being held liable under different obligations. The liability of the insured carrier or vehicle owner is based on tort, in accordance with the provisions of the Civil Code; while that of the insurer arises from contract, particularly, the insurance policy. The third-party liability of the insurer is only up to the extent of the insurance policy and that required by law; and it cannot be held solidarily liable for anything beyond that amount. Any award beyond the insurance coverage would already be the sole liability of the insured and/or the other parties at fault. *The Heirs of George Y. Poe vs. Malayan Insurance Co. Inc.*, **G.R. No. 156302, April 7, 2009.**

Intra-corporate controversy. A corporate officer's dismissal or removal is always a corporate act and/or an intra-corporate controversy, over which the Securities and Exchange Commission [SEC] (now the Regional Trial Court) has original and exclusive jurisdiction. *Atty. Virgilio R. Garcia vs. Eastern Telecommunications Philippines, Inc. et al./Eastern Telecommunications Philippines Inc. vs. Atty. Virgilio R. Garcia*, **G.R. No. 173115/G.R. No. 173163-64, April 16, 2009.**

Non-stock corporations. A non-stock corporation may seize and dispose of the membership share of a fully-paid member on account of its unpaid debts to the corporation when it is authorized to do so under the corporate by-laws (even if not so provided in the Articles of Incorporation). *Valley Golf & Country Club, Inc. vs. Rosa O. Vda. Caram*, **G.R. No. 158805, April 16, 2009.**

Liability of corporate officers. Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith. *Armando David vs. National Federation of Labor Union, et al.*, **G.R. No. 148263 and 148271-**

72, April 21, 2009.

Labor Law

Backwages. The Court agrees with the NLRC's conclusion that petitioner is not entitled to backwages. He never bothered to redeem his driver's license at the soonest possible time when there was no showing that he was unlawfully prevented by respondent from doing so. Thus, petitioner should not be paid for the time he was not working. The Court has held that where the failure of employees to work was not due to the employer's fault, the burden of economic loss suffered by the employees should not be shifted to the employer. Each party must bear his own loss. It would be unfair to allow petitioner to recover something he has not earned and could not have earned, since he could not discharge his work as a driver without his driver's license. Respondent should be exempted from the burden of paying backwages. *Bernardino V. Navarro vs. P.V. Pajarillo Liner and NLRC*, G.R. No. 164681, April 24, 2009.

Breach of trust. The documentary evidence of petitioner indubitably establishes that respondent committed payroll padding, sold canepoints without the knowledge and consent of management and misappropriated the proceeds thereof, and rented tractor to another farm and misappropriated the rental payments therefor. These acts constitute willful breach by the employee of the trust reposed in him by his employer – a ground for termination of employment. *Bacolod-Talisay Realty and Development Corp., et al. vs. Romeo Dela Cruz*, G.R. No. 179563, April 30, 2009.

CBA. Just like any other contract, a CBA is the law between the contracting parties and compliance therewith in good faith is required by law. *HFS Phlippines, Inc., Ruben T. Del Rosario and IUM Ship Management vs. Ronaldo R. Pilar*, G.R. No. 168716, April 16, 2009.

Due process. The Court of Appeals correctly held that petitioners did not comply with the proper procedure in dismissing respondent. In other words, petitioners failed to afford respondent due process by failing to comply with the twin notice requirement in dismissing him, viz: (1) a first notice to apprise him of his fault, and (2) a second notice to him that his employment is being terminated. The letter dated June 3, 1997 sent to respondent was a

letter of suspension. It did not comply with the required first notice, the purpose of which is to apprise the employee of the cause for termination and to give him reasonable opportunity to explain his side. The confrontation before the *barangay* council did not constitute the first notice – to give the employee ample opportunity to be heard with the assistance of counsel, if he so desires. Hearings before the *barangay* council do not afford the employee ample opportunity to be represented by counsel if he so desires because Section 415 of the Local Government Code mandates that “[i]n all *katarungang pambarangay* proceedings, the parties must appear in person without the assistance of counsel or his representatives, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers.” The requirement of giving respondent the first notice not having been complied with, discussions of whether the second notice was complied with is rendered unnecessary. *Bacolod-Talisay Realty and Development Corp., et al. vs. Romeo Dela Cruz*, **G.R. No. 179563, April 30, 2009**.

Due process; lack of jurisdiction. The proceedings before the Labor Arbiter deprived David of due process. MACLU and NAFLU filed their complaint against MAC on 12 August 1993. Arbiter Ortiguerra’s decision shows that MACLU, NAFLU, and MAC were the only parties summoned to a conference for a possible settlement. Because of MAC’s failure to appear, Arbiter Ortiguerra deemed the case submitted for resolution. David’s resignation from MAC took effect on 15 October 1993. NAFLU and MACLU moved to implead Carag and David for the first time only in their position paper dated 3 January 1994. David did not receive any summons and had no knowledge of the decision against him. The records of the present case fail to show any order from Arbiter Ortiguerra summoning David to attend the preliminary conference. Despite this lack of summons, in her Decision dated 17 June 1994, Arbiter Ortiguerra not only granted MACLU and NAFLU’s motion to implead Carag and David, she also held Carag and David solidarily liable with MAC. *Armando David vs.. National Federation of Labor Union, et al.*, **G.R. No. 148263 and 148271-72, April 21, 2009**.

Hearing. The guiding principles in connection with the hearing requirement in dismissal cases are:

- (a) “ample opportunity to be heard” means any meaningful opportunity

(verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way;

(b) a formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist or a company rule or practice requires it, or when similar circumstances justify it;

(c) the “ample opportunity to be heard” standard in the Labor Code prevails over the “hearing or conference” requirement in the implementing rules and regulations. *Felix B. Perez, et al. Vs. Philippine Telegraph and Telephone Company*, **G.R. No. 152048, April 7, 2009**.

Illegal dismissal; abandonment. Petitioner insists that there cannot be any illegal dismissal because in the first place, there was no dismissal to speak of, as it was respondent who abandoned his work, after finding out that he was being investigated for theft. It is a basic principle that in the dismissal of employees, the burden of proof rests upon the employer to show that the dismissal is for a just cause and failure to do so would necessarily mean that the dismissal is not justified. Petitioner failed to discharge the burden of proof that complainant was guilty of abandonment. It did not adduce any proof to show that petitioner clearly and unequivocally intended to abandon his job. It has been repeatedly stressed that for abandonment to be a valid cause for dismissal there must be a concurrence of intention to abandon and some overt act from which it may be inferred that the employee had no more interest to continue working in his job. An employee who forthwith takes steps to protest his layoff cannot by any logic be said to have abandoned his work. Otherwise stated, one could not possibly abandon his work and shortly thereafter vigorously pursue his complaint for illegal dismissal. In the instant case, save for the allegation that respondent did not submit him to the investigation and the latter’s failure to return to work as instructed in the 8 February 1999 letter, petitioner was unable to present any evidence which tend to show respondent’s intent to abandon his work. Neither is the Court convinced that the filing of the illegal dismissal case was respondent’s way to avoid the charge of theft. On the contrary, the filing of the complaint a few days after his alleged dismissal signified respondent’s desire to return to work, a factor which further militates against petitioner’s theory of abandonment. *Harbor View Restaurant vs. Reynaldo Labro*, **G.R. No.**

168273, April 30, 2009.

Illegal dismissal; burden of proof. Under the Labor Code, as amended, the requirements for the lawful dismissal of an employee are two-fold, the substantive and the procedural. Not only must the dismissal be for a valid or authorized cause, the rudimentary requirements of due process – notice and hearing – must, likewise, be observed before an employee may be dismissed. One does not suffice; without their concurrence, the termination would, in the eyes of the law, be illegal.

As the employer, petitioner has the burden of proving that the dismissal of petitioner was for a cause allowed under the law and that petitioner was afforded procedural due process. Petitioner failed to discharge this burden. Indeed, it failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of individual respondents. Neither did petitioner show that individual respondents were given ample opportunity to contest the legality of their dismissal. No notice of such impending termination was ever given to them. Individual respondents were definitely denied due process. Having failed to establish compliance with the requirements on termination of employment under the Labor Code, the dismissal of individual respondents was tainted with illegality. *Iligan Cement Corporation vs. Iliascor Employees and Workers Union-Southern Philippines Federation of Labor, et al.*, G.R. No. 158956, April 24, 2009.

Illegal dismissal; penalty. The worst that respondent committed was an inadvertent infraction. For that, the extreme penalty of dismissal imposed on him by petitioners was grossly disproportionate. Taking into account the managerial position he held and the prior warning issued to him for failing to communicate with his superiors, the penalty commensurate to the violation he committed should be suspension for three months. *Gulf Air Jassim Hindri Abdullah, et al. vs. NLRC, et al.*, G.R. No. 159687, April 24, 2009.

Intra-union dispute. Pending the final resolution of the intra-union dispute, respondent's officers remained duly authorized to conduct union affairs. *De La Salle University, et al. vs. De La Salle University Employees Association (DLSUEA-NAFTEU)*, G.R. No. 177283, April 7, 2009.

Labor only contracting. We are not convinced that Vedali is an independent contractor. Petitioner failed to present any service contract with Vedali in the proceedings with the Labor Arbiter. There is nothing on record that Vedali has a substantial capital or investment to actually perform the service under its own account and responsibility. Petitioner is a mere labor-only contractor because it only supplied workers to petitioner to work at its pier. In a labor-only contract, there are three parties involved: (1) the “labor-only” contractor; (2) the employee who is ostensibly under the employ of the “labor-only” contractor; and (3) the principal who is deemed the real employer. Under this scheme, the “labor-only” contractor is the agent of the principal. *Iligan Cement Corporation vs. Iliascor Employees and Workers Union-Southern Philippines Federation of Labor, et al.*, G.R. No. 158956, April 24, 2009.

Liability of corporate officers. Article 212(e) of the Labor Code, by itself, does not make a corporate officer personally liable for the debts of the corporation because Section 31 of the Corporation Code is still the governing law on personal liability of officers for the debts of the corporation. There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith. *Armando David vs. National Federation of Labor Union, et al.*, G.R. No. 148263 and 148271-72, April 21, 2009.

Loss of confidence. Loss of trust and confidence, as a valid ground for dismissal, must be based on willful breach of the trust reposed in the employee by his employer. Such breach is willful if it is done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Elsewise stated, it must be based on substantial evidence and not on the employer’s whims or caprices or suspicions; otherwise, the employee would eternally remain at the mercy of the employer. A condemnation of dishonesty and disloyalty cannot arise from suspicion spawned by speculative inferences. *Adam B. Garcia vs. NLRC (Second Division) Legazpi Oil Company, Inc. Romeo F. Mercado and Gus Zuluaga*, G.R. No. 172854, April 16, 2009.

Loss of Confidence. Without undermining the importance of a shipping order or request, the respondents’ evidence is insufficient to clearly and

convincingly establish the facts from which the loss of confidence resulted. Other than their bare allegations and the fact that such documents came into petitioners' hands at some point, respondents should have provided evidence of petitioners' functions, the extent of their duties, the procedure in the handling and approval of shipping requests and the fact that no personnel other than petitioners were involved. There was, therefore, a patent paucity of proof connecting petitioners to the alleged tampering of shipping documents. The alterations on the shipping documents could not reasonably be attributed to petitioners because it was never proven that petitioners alone had control of or access to these documents. Unless duly proved or sufficiently substantiated otherwise, impartial tribunals should not rely only on the statement of the employer that it has lost confidence in its employee. *Felix B. Perez, et al. vs. Philippine Telegraph and Telephone Company*, **G.R. No. 152048, April 7, 2009**.

Prescription. Articles 1139 to 1155 of the Civil Code provide the general law on prescription of actions. Under Article 1139, actions prescribe by the mere lapse of time prescribed by law. That law may either be the Civil Code or special laws as specifically mandated by Article 1148. In labor cases, the special law on prescription is Article 291 of the Labor Code. The Labor Code has no specific provision on when a monetary claim accrues. Thus, again the general law on prescription applies – Article 1150 of the Civil Code. *Juanaria A. Rivera vs. United Laboratories, Inc.*, **G.R. No. 155639, April 22, 2009**.

Resignation. Resignation is defined as the voluntary act of an employee who finds himself in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service and he has no other choice but to disassociate himself from his employment. Respondent's resignation can be gleaned from the unambiguous terms of his letter to Captain Cristino. Respondent's bare claim that he was forced to execute his resignation letter deserves no merit. Bare allegations of threat or force do not constitute substantial evidence to support a finding of forced resignation. That such claim was proffered a year later all the more renders his contention bereft of merit. *Virgen Shipping Corporation, et al. vs. Jesus B. Barraquio*, **G.R. No. 178127, April 16, 2009**.

Resignation. Petitioner voluntarily resigned. Her employer cannot be held liable for constructive dismissal. *Gloria Artiaga vs. Siliman University and*

Siliman University Medical Center, G.R. No. 178453, April 16, 2009.

Security of Tenure. Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles. Under the rules and regulations promulgated by the CES Board, conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the four stages of the CES eligibility examinations. Upon conferment of CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES. Petitioner does not seem to have gone through this definitive process.

At this juncture, what comes unmistakably clear is the fact that because petitioner lacked the proper CES eligibility and therefore had not held the subject office in a permanent capacity, there could not have been any violation of petitioner's supposed right to security of tenure inasmuch as he had never been in possession of the said right at least during his tenure as Deputy Director for Hospital Support Services. Hence, no challenge may be offered against his separation from office even if it be for no cause and at a moment's notice. Not even his own self-serving claim that he was competent to continue serving as Deputy Director may actually and legally give even the slightest semblance of authority to his thesis that he should remain in office. Be that as it may, it bears emphasis that, in any case, the mere fact that an employee is a CES eligible does not automatically operate to vest security of tenure on the appointee inasmuch as the security of tenure of employees in the career executive service, except first and second-level employees, pertains only to rank and not to the office or position to which they may be appointed. *Jose Pepito M. Amores M.D. vs. Civil Service Commission, Board of Trustees of the Lung Center of the Philippines as represented by Hon. Manuel M. Dayrit and Fernando A. Melendres, M.D., G.R. No. 170093, April 29, 2009*

SSS. The claim for funeral benefits under P.D. No. 626, as amended, which

was filed after the lapse of 10 years by the therein petitioner who had earlier filed a claim for death benefits, had *not* prescribed. *Soledad Muños Mesa vs. Social Security System, et al.*, **G.R. No. 160467, April 7, 2009.**

Transfer. Jurisprudence recognizes the exercise of management prerogative to transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. To determine the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.

We have long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer. Such being the case, petitioner cannot adamantly refuse to abide by the order of transfer without exposing herself to the risk of being dismissed. Hence, her dismissal was for just cause in accordance with Article 282(a) of the Labor Code. *Aileen G. Herida vs. F4C Pawnshop and Jewelry Store/Marcelino Florete, Jr.*, **G.R. No. 172601, April 16, 2009.**

Unfair labor practice; burden of proof. Petitioner makes several allegations that UST committed ULP. The *onus probandi* falls on the shoulders of petitioner to establish or substantiate such claims by the requisite quantum of evidence. In labor cases as in other administrative proceedings, substantial evidence or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion is required. In the petition at bar, petitioner miserably failed to adduce substantial evidence as basis for the grant of relief. *UST Faculty Union vs. University of Sto. Tomas, Rev. Fr. Rolando De la Rosa, Rev Fr. Rodelio Aligan, Domingo Legaspi, and Mercedes Hinayon*, **G.R. No. 180892, April 7, 2009.**

Tax

Excise tax. Section 145 of the Tax Code, as amended by RA 9334: (1) does not violate the equal protection and uniformity of taxation clauses; (2) does not violate the constitutional prohibition on unfair competition; and (3) does not violate the constitutional prohibition on regressive and inequitable taxation. *British American Tobacco vs. Jose Isidro N. Camacho, et al.* **G.R. No. 163583, April 15, 2009.**

Real Property Tax. The NAIA Pasay properties of the Manila International Airport Authority is exempt from real property tax imposed by the City of Pasay. MIAA is not a government-owned or controlled corporation but a government instrumentality which is exempt from any kind of tax from the local governments. Indeed, the exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under Section 133(o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the MIAA. Hence, MIAA is not liable to pay real property tax for the NAIA Pasay properties. Furthermore, the airport lands and buildings of MIAA are properties of public dominion intended for public use, and as such are exempt from real property tax under Section 234(a) of the Local Government Code. However, under the same provision, if MIAA leases its real property to a taxable person, the specific property leased becomes subject to real property tax. In this case, only those portions of the NAIA Pasay properties which are leased to taxable persons like private parties are subject to real property tax by the City of Pasay. *Manila International Airport Authority vs. City of Pasay, et al.*, **G.R. No. 163072, April 2, 2009.**

Real Property Tax. Marcopper Mining's siltation dam and decant system are not machineries but improvements subject to real property tax. *The Provincial Assesor of Marinduque vs. Hon. Court of Appeals, et al.*, **G.R. No. 170532, April 30, 2009.**

Stamp tax. Pawnshop transactions evidenced by pawn tickets are subject to documentary stamp taxes. *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, **G.R. No. 171138, April 7, 2009.**

Value-added tax. There is nothing in Section 105 of the old Tax Code that prohibits the inclusion of real properties, together with the improvements

thereon, in the beginning inventory of goods, materials and supplies, based on which inventory the transitional input tax credit is computed. *Fort Bonifacio Development Corp. vs. Commissioner of Internal Revenue, et al./Fort Bonifacio Development Corp. vs. Commissioner of Internal Revenue et al.*, [G.R. No. 158885/G.R. No. 170680](#), [April 2, 2009](#).

Tale of Two Golf Clubs

Posted on [May 20, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Civil Law](#), [Commercial Law](#) •

Two recent decisions of the Supreme Court underscore the need for country clubs to strictly follow notice requirements in connection with the sale of a delinquent member's shares in a public auction.

In *Valley Golf & Country Club, Inc. vs. Rosa O. Vda. Caram*, [G.R. No. 158805, April 16, 2009](#), the Supreme Court invalidated the sale based on the finding that Valley Golf sent the notice of sale to the member (instead of sending it to his estate), notwithstanding that Valley Golf knew that the member has died. In *Calatagan Golf Club, Inc. vs. Sixto Clemente, Jr.*, [G.R. No. 165443, April 16, 2009](#), the Supreme Court invalidated the sale based on the finding that Calatagan sent the notice of sale to the member's P.O. box, notwithstanding that Calatagan knew that the P.O. box has been closed.

Valley Golf

In *Valley Golf*, Valley Golf sold the golf membership share (the "Golf Share") of Congressman Caram at a public auction sometime June 1987 after Caram allegedly stop paying his monthly dues beginning January 1980 and after Valley Golf allegedly sent 5 letters to Caram concerning his delinquent account during the period January 1986 to May 1987.

As it turned out, Caram died on 6 October 1986. His wife initiated intestate proceedings before the Regional Trial Court (RTC) of Iloilo City, Branch

35, to settle her husband's estate. Unaware of the pending controversy over the Golf Share, the Caram family and the RTC included the Golf Share as part of Caram's estate. The RTC approved a project of partition of Caram's estate on 29 August 1989. The Golf Share was adjudicated to the wife, who paid the corresponding estate tax due, including that on the golf Share.

It was only through a letter dated 15 May 1990 that the heirs of Caram learned of the sale of the Golf Share following their inquiry with Valley Golf about the Golf Share. After a series of correspondence, the Caram heirs were subsequently informed, in a letter dated 15 October 1990, that they were entitled to the refund of ₱11,066.52 out of the proceeds of the sale of the Golf Share, which amount had been in the custody of Valley Golf since 11 June 1987.

Caram's wife filed an action for reconveyance of the Golf Share with damages before the Securities and Exchange Commission (SEC) against Valley Golf. On 15 November 1996, SEC Hearing Officer Elpidio S. Salgado rendered a decision in favor of the wife, ordering Valley Golf to convey ownership of the Golf Share, or in the alternative, to issue one fully paid share of stock of Valley Golf of the same class as the Golf Share to the wife. Damages totaling ₱90,000.00 were also awarded to the wife.

The SEC hearing officer ruled that under Section 67, paragraph 2 of the Corporation Code, a share stock could only be deemed delinquent and sold in an extrajudicial sale at public auction only upon the failure of the stockholder to pay the unpaid subscription or balance for the share. However, the section could not have applied in Caram's case since he had fully paid for the Golf Share and he had been assessed not for the share itself but for his delinquent club dues. Proceeding from the foregoing premises, the SEC hearing officer concluded that the auction sale had no basis in law and was thus a nullity. The SEC en banc and the Court of Appeals affirmed the hearing officer's decision.

On appeal to the Supreme Court, the central issue raised was: "May a country club seize and dispose of the membership share of a fully-paid member on account of its unpaid membership to the country club when it is

authorized to do so under the corporate by-laws but not by the Articles of Incorporation?”

The Supreme Court ruled that there is a specific provision under Title XI on Non-Stock Corporations of the Corporation Code dealing with the termination of membership in a non-stock corporation such Valley Golf. Section 91 of the Corporation Code provides:

SEC. 91. Termination of membership.—Membership shall be terminated in the manner and for the causes provided in the articles of incorporation or the by-laws. Termination of membership shall have the effect of extinguishing all rights of a member in the corporation or in its property, unless otherwise provided in the articles of incorporation or the by-laws. (Emphasis supplied)

On the basis of Section 91, the Supreme Court ruled that the right of a non-stock corporation such as Valley Golf to expel a member through the forfeiture of the Golf Share may be established in the by-laws alone, as is the situation in this case. However, the Supreme Court proceed to declare the sale as invalid. The Supreme Court found that Valley Golf acted in bad faith when it sent the final notice to Caram under the pretense they believed him to be still alive, when in fact they had very well known that he had already died. The Court stated:

Whatever the reason Caram was unable to respond to the earlier notices, the fact remains that at the time of the final notice, Valley Golf knew that Caram, having died and gone, would not be able to settle the obligation himself, yet they persisted in sending him notice to provide a color of regularity to the resulting sale.

That reason alone, evocative as it is of the absence of substantial justice in the sale of the Golf Share, is sufficient to nullify the sale and sustain the rulings of the SEC and the Court of Appeals.

Moreover, the utter and appalling bad faith exhibited by Valley Golf in sending out the final notice to Caram on the deliberate pretense that he was still alive could bring into operation Articles 19, 20 and 21 under the Chapter on Human Relations of the Civil Code. These provisions enunciate a general obligation under law for every person to act fairly and in good

faith towards one another. Non-stock corporations and its officers are not exempt from that obligation.

Calatagan

A similar fate fell on Calatagan Golf Club, which sold the golf share of Clemente sometime January 1993 after Clemente allegedly stop paying its membership dues. Clemente learned of the sale of his share only in November of 1997. He filed a claim with the SEC seeking the restoration of his shareholding in Calatagan with damages.

On 15 November 2000, the SEC rendered a decision dismissing Clemente's complaint. Citing Section 69 of the Corporation Code which provides that the sale of shares at an auction sale can only be questioned within six (6) months from the date of sale, the SEC concluded that Clemente's claim, filed four (4) years after the sale, had already prescribed. The SEC further held that Calatagan had complied with all the requirements for a valid sale of the subject share, Clemente having failed to inform Calatagan that the address he had earlier supplied was no longer his address. Clemente, the SEC ruled, had acted in bad faith in assuming as he claimed that his non-payment of monthly dues would merely render his share "inactive."

The Supreme Court ruled that Clemente's action for recovery of share has not prescribed, citing Article 1140 of the Civil Code which provides that an action to recover movables shall prescribe in eight (8) years. The Supreme Court also found the sale of the golf share was void:

Ultimately, the petition must fail because Calatagan had failed to duly observe both the spirit and letter of its own by-laws. The by-law provisions was clearly conceived to afford due notice to the delinquent member of the impending sale, and not just to provide an intricate façade that would facilitate Calatagan's sale of the share. But then, the bad faith on Calatagan's part is palpable. As found by the Court of Appeals, Calatagan very well knew that Clemente's postal box to which it sent its previous letters had already been closed, yet it persisted in sending that final letter to the same postal box. What for? Just for the exercise, it appears, as it had known very well that the letter would never actually reach Clemente.

It is noteworthy that Clemente in his membership application had provided his residential address along with his residence and office telephone numbers. Nothing in Section 32 of Calatagan's By-Laws requires that the final notice prior to the sale be made solely through the member's mailing address. Clemente cites our aphorism-like pronouncement in *Rizal Commercial Banking Corporation v. Court of Appeals* that "[a] simple telephone call and an ounce of good faith x x x could have prevented this present controversy." That memorable observation is quite apt in this case.

Calatagan's bad faith and failure to observe its own By-Laws had resulted not merely in the loss of Clemente's privilege to play golf at its golf course and avail of its amenities, but also in significant pecuniary damage to him. For that loss, the only blame that could be thrown Clemente's way was his failure to notify Calatagan of the closure of the P.O. Box. That lapse, if we uphold Calatagan would cost Clemente a lot. But, in the first place, does he deserve answerability for failing to notify the club of the closure of the postal box? Indeed, knowing as he did that Calatagan was in possession of his home address as well as residence and office telephone numbers, he had every reason to assume that the club would not be at a loss should it need to contact him. In addition, according to Clemente, he was not even aware of the closure of the postal box, the maintenance of which was not his responsibility but his employer Phimco's.

The utter bad faith exhibited by Calatagan brings into operation Articles 19, 20 and 21 of the Civil Code under the Chapter on Human Relations. These provisions, which the Court of Appeals did apply, enunciate a general obligation under law for every person to act fairly and in good faith towards one another. A non-stock corporation like Calatagan is not exempt from that obligation in its treatment of its members. The obligation of a corporation to treat every person honestly and in good faith extends even to its shareholders or members, even if the latter find themselves contractually bound to perform certain obligations to the corporation. A certificate of stock cannot be a charter of dehumanization.

Two things to note:

1. Unlike the by-laws of Valley Golf, the by-laws of Calatagan contained what the Supreme Court described as "a clear and comprehensive procedure

to govern the payment of monthly dues, the declaration of a member as delinquent, and the constitution of a lien on the shares and its eventual public sale to answer for the member's debts."

2. In Calatagan, the Supreme Court did not appear to have seen any issue with the by-laws provision that states that "The club shall have a first lien on every share of stock to secure debts of the members to the Club." On the other hand, in Valley Golf, the Supreme Court appears to say (in an obiter) that a lien can be created only if there was a pledge or chattel mortgage executed by the owner of the golf share. The Supreme Court stated: "Caram had not signed any document that manifests his agreement to constitute his Golf Share as security in favor of Valley Golf to answer for his obligations to the club. There is no document we can assess that it is substantially compliant with the form of chattel mortgages under Section 5 of Act No. 1508. The by-laws could not suffice for that purpose since it is not designed as a bilateral contract between Caram and Valley Golf, or a vehicle by which Caram expressed his consent to constitute his Golf Share as security for his account with Valley Golf."

Mere pendency of cases not a defense to denying right to inspect

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When there is a dispute among stockholders of a corporation, there appears to be a natural inclination on the part of those who possess corporate records to limit access to certain records by stockholders belonging to another faction. The stockholders who are refused access will then cite violation of Section 74 of the Corporation Code, which provides that "the records of all business transaction of the corporation and the minutes of any meeting shall be open to the inspection of any director, trustee, stockholder or member of the corporation at reasonable hours on business days"; it further provides that the the shareholder "may demand, in writing, for a copy of excerpts from said records or minutes, at his expense."

A corporate officer or director who violates Section 74 commits a penal offense, and if found guilty, can be punished by: (a) a fine not less than PhP1,000 but not more than PhP10,000; (b) imprisonment for not less than 30 days but not more than 5 years; (c) or both fine and imprisonment, at the discretion of the court.

According to the Supreme Court:

The elements of the offense . . . are:

First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;

Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;

Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,

Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.

Thus, in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation. However, where no such improper motive or purpose is alleged, and even though so alleged, it is not proved by the corporation, then there is no valid reason to deny the

requested inspection.

In *Sy Tiong Shiou, et al. vs. Sy Chim, et al./Sy Chim, et al. vs. Sy Tiong Shiou, et al.*, [G.R. No. 174168/G.R. No. 179438, March 30, 2009](#), the officers of the corporation (*Sy Tiong Shiou, et al.*) denied the Spouses Sy access to corporate records because of pending civil and intra-corporate cases. This prompted the Spouses Sy to file several cases against *Tiong Shiou, et al.*

Two of the complaints, I.S. Nos. 03E-15285 and 03E-15286, were for alleged violation of Section 74 in relation to Section 144 of the Corporation Code. In these complaints, the Spouses Sy averred that they are stockholders and directors of *Sy Siy Ho & Sons, Inc.* (the corporation) who asked *Sy Tiong Shiou, et al.*, officers of the corporation, to allow them to inspect the books and records of the business on three occasions to no avail. In a letter dated 21 May 2003, *Sy Tiong Shiou, et al.* denied the request, citing civil and intra-corporate cases pending in court.

In the two other complaints, I.S. No. 03E-15287 and 03E-15288, *Sy Tiong Shiou* was charged with falsification under Article 172, in relation to Article 171 of the Revised Penal Code (RPC), and perjury under Article 183 of the RPC. According to the Spouses Sy, *Sy Tiong Shiou* executed under oath the 2003 General Information Sheet (GIS) wherein he falsely stated that the shareholdings of the Spouses Sy had decreased despite the fact that they had not executed any conveyance of their shares.

Sy Tiong Shiou, et al. argued before the prosecutor that the issues involved in the civil case for accounting and damages pending before the RTC of Manila were intimately related to the two criminal complaints filed by the Spouses Sy against them, and thus constituted a prejudicial question that should require the suspension of the criminal complaints. They also argued that the Spouses Sy's request for inspection was premature as the latter's concern may be properly addressed once an answer is filed in the civil case. *Sy Tiong Shiou*, on the other hand, denied the accusations against him, alleging that before the 2003 GIS was submitted to the Securities and Exchange Commission (SEC), the same was shown to respondents, who at that time were the President/Chairman of the Board and Assistant Treasurer of the corporation, and that they did not object to the entries in the GIS. *Sy*

Tiong Shiou also argued that the issues raised in the pending civil case for accounting presented a prejudicial question that necessitated the suspension of criminal proceedings.

On 29 December 2003, the investigating prosecutor issued a resolution recommending the suspension of the criminal complaints for violation of the Corporation Code and the dismissal of the criminal complaints for falsification and perjury against Sy Tiong Shiou. The reviewing prosecutor approved the resolution. The Spouses Sy moved for the reconsideration of the resolution, but their motion was denied on 14 June 2004. The Spouses Sy thereupon filed a petition for review with the Department of Justice (DOJ), which the latter denied in a resolution issued on 02 September 2004. Their subsequent motion for reconsideration was likewise denied in the resolution of 20 July 2005.

The Spouses Sy elevated the DOJ's resolutions to the Court of Appeals through a petition for certiorari, imputing grave abuse of discretion on the part of the DOJ. The appellate court granted the petition and directed the City Prosecutor's Office to file the appropriate informations against Sy Tiong Shiou, et al. for violation of Section 74, in relation to Section 144 of the Corporation Code and of Articles 172 and 183 of the RPC.

The appellate court ruled that the civil case for accounting and damages cannot be deemed prejudicial to the maintenance or prosecution of a criminal action for violation of Section 74 in relation to Section 144 of the Corporation Code since a finding in the civil case that respondents mishandled or misappropriated the funds would not be determinative of their guilt or innocence in the criminal complaint. In the same manner, the criminal complaints for falsification and/or perjury should not have been dismissed on the ground of prejudicial question because the accounting case is unrelated and not necessarily determinative of the success or failure of the falsification or perjury charges. Furthermore, the Court of Appeals held that there was probable cause that Sy Tiong Shiou had committed falsification and that the City of Manila where the 2003 GIS was executed is the proper venue for the institution of the perjury charges. Sy Tiong Shiou, et al. sought reconsideration of the Court of Appeals decision but their motion was denied.

Sy Tiong argue before the Supreme Court that:

. . . in affirming, modifying or reversing the recommendations of the public prosecutor cannot be the subject of certiorari or review of the Court of Appeals because the DOJ is not a quasi-judicial body within the purview of Section 1, Rule 65 of the Rules of Court. In any event, they argue, assuming without admitting that the findings of the DOJ may be subject to judicial review under Section 1, Rule 65 of the Rules of Court, the DOJ has not committed any grave abuse of discretion in affirming the findings of the City Prosecutor of Manila.

The Supreme Court ruled that the DOJ gravely abused its discretion when it suspended the hearing of the charges for violation of the Corporation Code on the ground of prejudicial question and when it dismissed the criminal complaints. According to the Supreme Court: "Indeed, a preliminary proceeding is not a quasi-judicial function and that the DOJ is not a quasi-judicial agency exercising a quasi-judicial function when it reviews the findings of a public prosecutor regarding the presence of probable cause. Moreover, it is settled that the preliminary investigation proper, i.e., the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution. This Court has adopted a policy of non-interference in the conduct of preliminary investigations and leaves to the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of information against the supposed offender.

As in every rule, however, there are settled exceptions. Hence, the principle of non-interference does not apply when there is grave abuse of discretion which would authorize the aggrieved person to file a petition for certiorari and prohibition under Rule 65, 1997 Rules of Civil Procedure.

As correctly found by the Court of Appeals, the DOJ gravely abused its discretion when it suspended the hearing of the charges for violation of the Corporation Code on the ground of prejudicial question and when it dismissed the criminal complaints.

A prejudicial question comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed since howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The civil action and the criminal cases do not involve any prejudicial question.

The civil action for accounting and damages, Civil Case No. 03-106456 pending before the RTC Manila, Branch 46, seeks the issuance of an order compelling the Spouses Sy to render a full, complete and true accounting of all the amounts, proceeds and fund paid to, received and earned by the corporation since 1993 and to restitute it such amounts, proceeds and funds which the Spouses Sy have misappropriated. The criminal cases, on the other hand, charge that the Spouses Sy were illegally prevented from getting inside company premises and from inspecting company records, and that Sy Tiong Shiou falsified the entries in the GIS, specifically the Spouses Sy's shares in the corporation. Surely, the civil case presents no prejudicial question to the criminal cases since a finding that the Spouses Sy mishandled the funds will have no effect on the determination of guilt in the complaint for violation of Section 74 in relation to Section 144 of the Corporation Code; the civil case concerns the validity of Sy Tiong Shiou's refusal to allow inspection of the records, while in the falsification and perjury cases, what is material is the veracity of the entries made by Sy Tiong Shiou in the sworn GIS.

On the issue of probable cause, the Supreme Court ruled:

Anent the issue of probable cause, the Court also finds that there is enough probable cause to warrant the institution of the criminal cases.

The term probable cause does not mean 'actual and positive cause' nor does

it import absolute certainty. It is merely based on opinion and reasonable belief. Thus a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be-at the most-no criminal offense. . .

In the instant case, however, the Court finds that the denial of inspection was predicated on the pending civil case against the Spouses Sy. This is evident from the 21 May 2003 letter of Sy Tiong Shiou, et al.'s counsel to the Spouses Sy . . .

Even in their Joint Counter-Affidavit dated 23 September 2003, Sy Tiong Shiou, et al. did not make any allegation that “the person demanding to examine and copy excerpts from the corporation’s records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand.” Instead, they merely reiterated the pendency of the civil case. There being no allegation of improper motive, and it being undisputed that Sy Tiong Shiou, et al. denied Sy Chim and Felicidad Chan Sy’s request for inspection, the Court rules and so holds that the DOJ erred in dismissing the criminal charge for violation of Section 74 in relation to Section 144 of the Corporation Code.

With respect to probable cause for falsification, the Supreme Court ruled:

The Spouses Sy charge Sy Tiong Shiou with the offense of falsification of public documents under Article 171, paragraph 4; and/or perjury under Article 183 of the Revised Penal Code (RPC). The elements of falsification of public documents through an untruthful narration of facts are: (a) the offender makes in a document untruthful statements in a narration of facts;

(b) the offender has a legal obligation to disclose the truth of the facts narrated;(c) the facts narrated by the offender are absolutely false; and (d) the perversion of truth in the narration of facts was made with the wrongful intent to injure a third person. On the other hand, the elements of perjury are: (a) that the accused made a statement under oath or executed an affidavit upon a material matter; (b) that the statement or affidavit was made before a competent officer, authorized to receive and administer oath; (c) that in that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and, (d) that the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

A General Information Sheet (GIS) is required to be filed within thirty (30) days following the date of the annual or a special meeting, and must be certified and sworn to by the corporate secretary, or by the president, or any duly authorized officer of the corporation. From the records, the 2003 GIS submitted to the SEC on 8 April 2003 was executed under oath by Sy Tiong Shiou in Manila, in his capacity as Vice President and General Manager. By executing the document under oath, he, in effect, attested to the veracity of its contents. The Spouses Sy claim that the entries in the GIS pertaining to them do not reflect the true number of shares that they own in the company. They attached to their complaint the 2002 GIS of the company, also executed by Sy Tiong Shiou, and compared the entries therein vis-a-vis the ones in the 2003 GIS. The Spouses Sy noted the marked decrease in their shareholdings, averring that at no time after the execution of the 2002 GIS, up to the time of the filing of their criminal complaints did they execute or authorize the execution of any document or deed transferring, conveying or disposing their shares or any portion thereof; and thus there is absolutely no basis for the figures reflected in the 2003 GIS. The Spouses Sy claim that the false statements were made by Sy Tiong Shiou with the wrongful intent of injuring them. All the elements of both offenses are sufficiently averred in the complaint-affidavits.

The Court agrees with the Court of Appeals' holding, citing the case of *Fabia v. Court of Appeals*, that the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case. Moreover, the Court finds that the City of Manila is the proper venue for the perjury charges, the GIS having been subscribed and sworn to in the said place. Under Section 10(a), Rule 110 of the Revised Rules of Court, the criminal action shall be instituted and tried in the court of

the municipality or territory where the offense was committed or where any of its essential ingredients occurred. In *Villanueva v. Secretary of Justice*, the Court held that the felony is consummated when the false statement is made. Thus in this case, it was alleged that the perjury was committed when Sy Tiong Shiou subscribed and sworn to the GIS in the City of Manila, thus, following Section 10(a), Rule 110 of the Revised Rules of Court, the City of Manila is the proper venue for the offense.

March 2009 Decisions on Civil, Commercial and Labor Laws

Posted on [April 12, 2009](#) by [Hector M. de Leon Jr.](#) • Posted in [Civil Law](#), [Commercial Law](#), [Labor Law](#) • Tagged [common carrier](#), [compensable illness](#), [constructive dismissal](#), [family home](#), [illegal strike](#), [mortgage](#), [part-time employment](#), [piercing corporate veil](#), [registered nurse](#) •

Here are selected March 2009 decisions on civil, commercial and labor laws:

Civil Law

Family home. A family home is generally exempt from execution, provided it was duly constituted as such. It is likewise a given that the family home must be constituted on property owned by the persons constituting it. As pointed out in *Kelley, Jr. v. Planters Products, Inc.*: “[T]he family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter’s consent, or on the property of the unmarried head of the family.” In other words, the family home must be established on the properties of (a) the absolute community, or (b) the conjugal partnership, or (c) the exclusive property of either spouse with the consent of the other. It cannot be established on property held in co-ownership with third persons. However, it can be established partly on community property, or conjugal property and partly on the exclusive property of either spouse with the consent of the latter. If constituted by an unmarried head of a family, where there is no

communal or conjugal property existing, it can be constituted only on his or her own property. Therein lies the fatal flaw in the postulate of petitioners. For all their arguments to the contrary, the stark and immutable fact is that the property on which their alleged family home stands is owned by respondents and the question of ownership had been long laid to rest with the finality of the appellate court's judgment in CA-G.R. CV No. 55207. Thus, petitioners' continued stay on the subject land is only by mere tolerance of respondents. *Simeon Cabang, et al. vs. Mr. & Mrs. Guillermo Basay*, **G.R. No. 180587, March 20, 2009**.

Mortgage; ownership of mortgaged property. For a person to validly constitute a mortgage on real estate, he must be the absolute owner thereof as required by Article 2085 of the New Civil Code. In other words, the mortgagor must be the owner; otherwise, the mortgage is void. Del Rosario was NOT the owner of the 5,546-sq.- meter portion of the 6,368-sq.-meter lot, so she could not have mortgaged the same to PCIB. There being no valid mortgage of the said portion to PCIB, it could not be subjected to foreclosure; it could not be sold at the public auction; it could not be bought by PCIB as the highest bidder at the public auction; and it could not be assigned by PCIB to NIDC. *National Investment and Development Corp. vs. Sps. Francisco and Basilisa Bautista*, **G.R. No. 150388. March 13, 2009**.

Mortgage; redemption period. The one-year redemption period should be counted not from the date of foreclosure sale, but from the time the certificate of sale was registered with the Register of Deeds. In this case, therefore, the one-year redemption period should be reckoned from the time the certificate of sale was registered on 27 October 1971. The law speaks of "one year" period within which to exercise redemption. Under Article 13 of the New Civil Code, a year is understood to be of three hundred sixty-five (365) days. Applying said article, the period of one year within which to redeem the properties mortgaged to Banco Filipino by the Spouses Bautista shall be 365 days from 27 October 1971. Thus, excluding the first day and counting from 28 October 1971, and bearing in mind that 1972 was a leap year, the redemption of the properties in question from Banco Filipino could only be made until 26 October 1972. *National Investment and Development Corp. vs. Sps. Francisco and Basilisa Bautista*, **G.R. No. 150388. March 13, 2009**.

Mortgage; possession after foreclosure. A stipulation allowing the mortgagee to take actual or constructive possession of a mortgaged property upon foreclosure is valid. In *Agricultural and Industrial Bank v. Tambunting*, the Supreme Court explained: “A stipulation ... authorizing the mortgagee, for the purpose stated therein specified, to take possession of the mortgaged premises upon the foreclosure of a mortgage is not repugnant [to either Article 2088 or Article 2137]. On the contrary, such a stipulation is in consonance or analogous to the provisions of Article [2132], et seq. of the Civil Code regarding antichresis and the provision of the Rules of Court regarding the appointment of a receiver as a convenient and feasible means of preserving and administering the property in litigation. *Development Bank of the Philippines vs. Spouses Jesus and Anacorita Doyon*, [G.R. No. 167238. March 25, 2009.](#)

Common carriers; liability. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo*, the Court interpreted the ship captain’s liability as ultimately that of the shipowner by regarding the captain as the representative of the ship owner. Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section 3 (2) thereof then states that among the carriers’ responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried. *Philippines First Insurance Co., Inc. vs. Wallem Phils. Shipping, Inc., et al.*, [G.R. No. 165647, March 26, 2009.](#)

Commercial Law

Piercing Corporate Veil; parent-subsidary. Circumstances which are useful in the determination of whether a subsidiary is but a mere instrumentality of the parent-corporation, to wit: (1) the parent corporation owns all or most of the capital stock of the subsidiary; (2) the parent and subsidiary corporations have common directors or officers; (3) the parent corporation finances the subsidiary; (4) the parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation; (5) the subsidiary has grossly inadequate capital; (6) the parent corporation pays the salaries and other expenses or losses of the subsidiary; (7) the subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation; (8) in the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own; (9) the parent corporation uses the property of the subsidiary as its own; (10) the directors or executives of the subsidiary do not act independently in the interest of the subsidiary, but take their orders from the parent corporation; (11) the formal legal requirements of the subsidiary are not observed. *Pantranco Employees Asso., et al. vs. NLRC, et al./Philippine National Bank Vs. Pantranco Employees Association Inc., et al.*, **G.R. No. 170689/G.R. No. 170705, March 17, 2009.**

Labor Code

Compensable illness. Cordero has substantially proved her claim to compensability. Under Section 1(b), Rule III implementing P.D. No. 626, sickness or death is compensable if the cause is included in the list of occupational diseases annexed to the Rules. If not so listed, compensation may still be recovered if the illness is caused or precipitated by factors inherent in the employee's work and working conditions. Here, strict rules of evidence are not applicable since the quantum of evidence required under P.D. No. 626 is merely substantial evidence, which means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." What the law requires is a reasonable work-connection and not a direct causal relation. It is sufficient that the hypothesis on which the workmen's claim is based is probable since probability, not certainty, is the touchstone. *Government Service Insurance System Vs. Maria Teresa S.A.*

Cordero/Employees Compensation Commission Vs. Maria Teresa S.A. Cordero, [G.R. No. 171378/G.R. No. 171388, March 17, 2009](#).

Constructive dismissal. Case law holds that constructive dismissal occurs when there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or diminution in pay or both; or when a clear discrimination, insensibility, or disdain by an employer becomes unbearable to the employee. Respondent's sudden, arbitrary and unfounded adoption of the two-day work scheme which greatly reduced petitioners' salaries renders it liable for constructive dismissal. *Fe la Rosa, et al. Vs. Ambassador Hotel*, [G.R. No. 177059, March 13, 2009](#).

Declaration of illegality of strike. Article 264(e) of the Labor Code prohibits any person engaged in picketing from obstructing the free ingress to and egress from the employer's premises. Since respondent was found in the July 17, 1998 decision of the NLRC to have prevented the free entry into and exit of vehicles from petitioner's compound, respondent's officers and employees clearly committed illegal acts in the course of the March 9, 1998 strike. The use of unlawful means in the course of a strike renders such strike illegal. Therefore, pursuant to the principle of conclusiveness of judgment, the March 9, 1998 strike was ipso facto illegal. The filing of a petition to declare the strike illegal was thus unnecessary. *Jackbilt Industries, Inc. Vs. Jackbilt Employees Workers Union-Naflu-KMU*, [G.R. No. 171618-19, March 13, 2009](#).

Employment of registered nurse. Article 157 does not require the engagement of full-time nurses as regular employees of a company. Under Article 157, Shangri-la, which employs more than 200 workers, is mandated to "furnish" its employees with the services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic which means that it should provide or make available such medical and allied services to its employees, not necessarily to hire or employ a service provider. While it is true that the provision requires employers to engage the services of medical practitioners in certain establishments depending on the number of their employees, nothing is there in the law which says that medical practitioners so engaged be actually hired as employees. The law only requires the employer "to retain", not employ, a part-time physician who needed to stay in the premises of the non-hazardous workplace for two (2) hours. The

phrase “services of a full-time registered nurse” should thus be taken to refer to the kind of services that the nurse will render in the company’s premises and to its employees, not the manner of his engagement. *Jerome D. Escasinas, et al. Vs. Shangri-la’s Mactan Island Resort, et al.*, [G.R. No. 178827, March 4, 2009.](#)

Part-time employment. For a private school teacher to acquire permanent status in employment, the following requisites must concur: (1) the teacher is a full-time teacher; (2) the teacher must have rendered three consecutive years of service; and (3) such service must have been satisfactory. The burden is on petitioners to prove their affirmative allegation that they are permanent teaching personnel. However, there is not enough evidence on record to show that their total working day is devoted to the school. There is no showing of what the regular work schedule of a regular teacher in respondent school is. What is clear in the records is that Evelyn and Alwyn spent two hours and four hours, respectively, but not the entire working day, at the respondent school. They do not meet requirement “c” of Section 45 of the Manual. Hence, we sustain the findings of the Court of Appeals that the petitioners are part-time teachers. Being part-time teachers, they cannot acquire permanent status. *Spouses Alwyn Ong Lim and Evelyn Lukang Lim Vs. Legazpi Hope Christian School, et al.*, [G.R. No. 172818, March 31, 2009.](#)

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